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For Release: **For further information, contact:**
Wednesday, Jan. 7 **Richard Wexler, National Coalition for Child Protection Reform**
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**NUMBER OF D.C. FAMILIES TORN APART SOARS 41 PERCENT
IN WAKE OF FENTY'S "FOSTER-CARE PANIC" ADVOCATES SAY**

The number of children torn from their parents in Washington shot up 41 percent in the first nine months of 2008 compared to the same months the year before, according to data released at a news conference Wednesday.

"These data show that Mayor Adrian Fenty's irresponsible grandstanding in the wake of the discovery of the bodies of the children of Banita Jacks, almost exactly one year ago, set off a foster-care panic that cut a swath of destruction through families in the District," said Richard Wexler, executive director of the National Coalition for Child Protection Reform. "That panic has left all of the District's vulnerable children less safe."

"During the fall of 2008, my students represented families with 16 children taken away by CFSA," said Matthew Fraidin, Associate Professor of law at the University of the District of Columbia's David A. Clarke School of Law. "Seven of those children were returned home within a week, two more within two months, and another one month later. When children can be returned home that quickly it almost always means they never should have been taken in the first place.

"But these children were returned home quickly only by adult standards," said Fraidin, whose program is one of only two in the nation in which students represent exclusively birth

parents caught up in child welfare systems. “For the children, it was an eternity, and some are likely to suffer for it for the rest of their lives.”

The D.C. child welfare system, like many others nationwide, has long been marked by dramatic racial disparities. Fraidin pointed out that CFSA’s own figures show that while 70 percent of D.C. children are Black, 95 percent of the children in CFSA’s care are Black.

“Make no mistake: D.C.’s child welfare system is our own shameful apartheid here at home. Every one of the 16 children involved in my students’ cases during the past three months is African-American. Abundant research demonstrates that maltreatment of children in African-American families is not greater than maltreatment of children in white families.

“So we know the fact that African-American children are taken at such vastly disproportionate rates means they are being taken from their families not because they are being maltreated, but because they are black; racism is an undeniable force in removal decisions and in the short shrift children and families are given in every aspect of the foster care system.”

Fraidin and Wexler spoke at a news conference at UDC two days before the first anniversary of the discovery of the Jacks tragedy. They noted that this week also marks the ninth anniversary of another D.C. child abuse tragedy, the death of Brianna Blackmond. They released a “Children First Action Agenda,” a seven-point plan for reform of the District’s Child and Family Services Agency and the D.C. Family Court.

One year ago, Wexler said, the District’s child welfare system still had very serious problems, but it was slowly improving.

Then Fenty responded to the Jacks tragedy by firing everyone even remotely connected to the case. Wexler said that set off a “foster-care panic,” a huge spike in the number of children torn from their homes. From January through September, 2008, the most recent period for which data are available, the number of entries into foster care soared 41 percent

over the same period in 2007, Wexler said. When only children torn from everyone they know and love for the first time are counted, he said, the increase is more than 51 percent.

“The mayor’s knee-jerk, indiscriminate ‘off with their heads’ response to the Jacks case plunged a fragile agency into chaos, traumatized countless children, and put untold others in danger,” Wexler said. He dismissed the mayor’s recent claims of improvement, which, he said, at best involved no more than restoring the system to where it was a year ago. “The mayor has the gall to claim it as an accomplishment when his child welfare agency supposedly recovers from the damage he inflicted in the first place,” Wexler said.

Worst of all, Wexler said, is the false claim that taking huge numbers of additional children from their parents makes children safer, that it is somehow “erring on the side of the child.”

“There is probably no phrase in the child welfare lexicon that has done more damage to children than ‘err on the side of the child.’ That convenient catchphrase ignores a mountain of research. For starters, it ignores the enormous trauma to children inherent in removal itself.”

Wexler cited a landmark study of 15,000 typical cases which found that children left in their own homes fared better even than comparably-maltreated children placed in foster care. Another study found that foster care alumni have twice the rate of post-traumatic stress disorder of Gulf War veterans and only one in five can be said to be doing well.

“That’s because most parents who lose their children to foster care are neither brutally abusive nor hopelessly addicted,” Wexler said. “Far more common are cases in which family poverty is confused with neglect. Other cases fall between the extremes, the parents neither all victim nor all villain.”

Fraidin said his students represented two families in the past three months “whose children were warehoused in foster care because of allegations that *other* people – not the parents – had excessively disciplined the children. One child was returned to his mother

voluntarily by CFSA, but only after living with strangers for two months in foster care. It took a ruling by a Family Court judge that the other child had never been abused or neglected to send that seven-year-old boy home – after he had spent three months away from his mother.”

The “err on the side of the child” myth also ignores the high rate of abuse in foster care itself, Wexler said. “Of course most foster parents don’t abuse the children in their care – neither do most birth parents. But the rate of abuse in foster care is alarming. Several studies have found abuse in one quarter to one-third of foster homes.

“And even that isn’t the worst of it,” Wexler said. “The more you overload the system with false reports, trivial cases, and children who never needed to be taken from their parents, the less time workers have to find children in real danger. And that’s the real reason for most of the horror stories that make headlines.”

Wexler cited the case of Isiah Garcia who died in July, before a caseworker for the District’s Child and Family Services Agency could see him. “Isiah’s caseworker had 50 cases,” Wexler said. “No one can keep up with a load that high.”

Fraidin said the routine, needless destruction of families is enabled by the system’s pervasive secrecy. “CFSA can hide its mistakes behind claims of confidentiality, and all court hearings and records are secret,” he said. Because the courts and records are sealed, Fraidin said, “we can tell you that every single one of the children in our cases is African-American, and we can tell you that they were torn needlessly from their families and then abruptly returned without so much as an apology -- but we can’t tell you the names of the children or their parents.

“We can tell you that children wrongfully taken from their parents are only allowed to see their parents for two hours a week, and only under the supervision of a CFSA social worker, but we can’t invite you to observe this tragic spectacle, or watch the tears shed when the visit ends.

“We can tell you that CFSA still loses paperwork handed to it by grandmothers trying to apply to take their grandchildren out of foster care, but we can't tell you who those grandparents are, or tell you the details of the situations; we can tell you that judges apply the wrong law when approving removals, and can show you the court form that proves it, but we can't let you talk to anyone whose child was wrongly taken; indeed, you'd need special permission from the Family Court itself, just to be a bystander at these hollow proceedings; we can tell you that children are taken from their parents on suspicion of abuse, even when the abuse is allegedly committed by someone other than the parent, but we can't introduce you to the families forever traumatized in this way.”

Fraidin and Wexler presented seven specific recommendations, including insulating the job of CFSA director from what Wexler called “grandstanding” by Mayor Fenty, opening almost all court hearings and records in child welfare cases to the press and the public, and creating a strong institutional provider of defense counsel for indigent families caught up in the system – and appointing those lawyers at the same time guardians *ad litem* are named for the children.

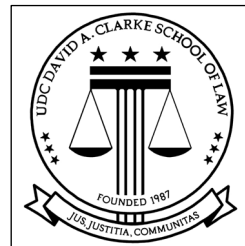
“This has nothing to do with parents’ rights, and everything to do with children’s rights,” Wexler said. “This agenda defends children against being thrown needlessly into a foster care system that churns out walking wounded four times out of five.

“Up to now, Mayor Fenty has failed to put the needs of children ahead of personal ego and personal ambition,” Wexler said. “Mr. Mayor, it’s time to recognize that the children come first.”

ADDITIONAL MATERIAL ON THE FOLLOWING PAGES

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D.C. Child Welfare by the Numbers: The 97% Solution

Fall 2008: An eight-year old boy, Brian,* is taken from his mother because the boy's uncle allegedly beats him. Even though the uncle does not live with the child, the child stays in foster care for two-and-a-half months until the government gets around to admitting they have no evidence that the child is in danger. They drop the case and send him home.

Fall 2008: A 15 year old boy, James, is forced into foster care for 5 weeks after his step-father dies. He lives with strangers even though the boy's grown sister, acknowledged by all to be an appropriate caretaker, is ready, willing, and able to take him in. After five weeks, CFSA sends him home.

Fall 2008: A seven year-old boy, Lamar, is taken from his mother because his grandfather – who does not live with the mother -- allegedly beats him. The boy lives with strangers for six weeks, even though two loving, capable, professional aunts are available to take him in. He sees his mother only two hours each week. He is finally allowed to live with one aunt, with whom he stays for another six weeks – until the judge determines the boy was not abused. After three months, he goes back home.

The Mayor held a news conference on December 18 to trumpet a variety of numbers that supposedly demonstrate “great strides” and a “dramatically strengthen[ed] safety net” at the D.C. Child and Family Services Agency. I want to share a few other numbers with you, drawn from cases handled by my students at UDC law school in just the past three months, and remind you how important it is to look behind the numbers to the humans involved in these matters – yes, to put the "children" back in child welfare.

- **97**: this number represents the percentage of children in CFSA care who are black, even though **70** is the percentage of black children in DC. Incredibly, racial disproportionality is *increasing*; it is even higher than the **95%** reported in 2007.
- **100**: this represents the percentage of the children involved in my clinic's cases in the past three months who are black. This also represents the percentage of children involved in the cases who were taken from their families.
 - Research demonstrates conclusively that maltreatment rates among black and white families are not different, so the disproportion of black children in the

* All children's names have been changed.

system means that children are taken from their families and placed in foster care for reasons relating to race, not because of maltreatment.

- **16**: this represents the number of children in my students' cases who were taken from their families by CFSA;
 - **10** children (or more than 60%) were returned within three months, when CFSA or the Court realized the children could be protected safely at home;
 - **7** of these children were returned within a week!

If CFSA had investigated these children's families adequately before taking the children away, the children would have avoided the life-changing trauma inflicted on them unnecessarily, taxpayers would have saved the thousands of dollars unnecessarily expended to warehouse the children in foster care, and CFSA could have focused on investigating and providing services to children and families who actually need attention.

Which brings us to . . .

- **1750**. This, of course, is the dreaded "backlog" of incomplete investigations, supposedly the enemy whose elimination makes everything hunky-dory in CFSA. Well, whether it is Banita Jacks' daughters, Renee Bowman's daughters, or Amari Hall, we know that calling an investigation "closed" or "completed" can be dangerous. When the Mayor says "we have gotten out from under the huge backlog," we ask: *Were the investigations thorough and meaningful, or quick-and-dirty?*
 - In the mad rush to attack the backlog, it's clear from the numbers above that *CFSA seized most children much too quickly.*
 - It's likely that CFSA's slipshod investigations also overlooked the families who need support and the children who really do need protection.
 - CFSA hurt children by tearing them from their families; did CFSA also *leave children in harm's way* by speeding through the investigations?

We can tell you:

- The stale investigations were completed by social workers detailed from all over the agency – but those employees had to give short shrift to the duties they were supposed to be fulfilling in their regular assignments.
- Children stayed in foster care longer than necessary because CFSA staff didn't promptly investigate relatives' applications to care for the children.
- A lawyer described the adoptions division of CFSA as a "ghost town," because so few social workers were available in that unit. Did another pre-adoptive parent like Renee Bowman slip through unnoticed, without CFSA finding out that she had a criminal record and significant financial problems?

Simple math tells us that as more and more children are investigated, application of CFSA's non-rational, racially-skewed removal practices will adversely affect more and more children, who will be hurt by being torn away unnecessarily from their caregivers.

More numbers? How about . . .

- **1**, which is the number of emergency plans CFSA is required by federal law to create.
 - **467** represents the number of days it is overdue.
 - **2,255** represents the number of children in foster care, each of whom is in danger until the agency knows where the child will be going in an emergency, knows the likely contact information, and has arranged for continuation of the child's medications.
- **2** is the number of hours each week children are allowed to see the parents from whom they were taken, and only under supervision.
 - CFSA insists that visitation be supervised for virtually every child, and most judges accede to that demand. But children and families are not all cut from the same mold. Especially when we know that many children should not even be taken from their families at all, *a stingy, one-size-fits-all visitation policy exacerbates the harm inflicted on children.*
- Oh, by the way, **64** is the percentage of children with a court-ordered goal of reunification who don't even see their parents once a week, according to CFSA's own figures for September 2008. That's **285** children.
- And **550** is the number of children in foster care whose brothers and sisters live in different foster homes. **44** percent of those children don't see their siblings the minimally-required amount of twice a month. That translates to **242** children. Remember, at least 60% of these children should not have been put in foster care, and should not be apart from their parents and siblings in the first place!
- **71**. This is the number of hours a child is in CFSA's custody, purportedly due to an "emergency," without the parent being able to meet with a lawyer.
- **1** is the number of hours a parent is allowed to prepare with a lawyer for the first court hearing, which determines whether the child will stay in foster care and whether the case will move forward.
 - 71 and 1 only apply to low-income parents, of course, because you and I can go out and hire a lawyer immediately if our child is taken. (The likelihood of a child

being taken from a middle-class white family is virtually nil, however, so I'm not worried.) If the parent is poor, however, the court will only allow him or her to speak with a lawyer an hour prior to the first court hearing.

- **3** is the number of minutes a student was given to review the government's abuse Petition before the first hearing in one case. **0** is the number of minutes students were allowed in several other cases.

And finally, **two concepts**: Secrecy and accountability. As journalists, you know better than anyone that these concepts are mutually exclusive. In D.C., however, the devastatingly broken child welfare system operates behind a dark iron curtain that hurts children, but protects politicians, judges, lawyers, and social workers. All court hearings are sealed. All court records are sealed. So you can't know what happens in the courtrooms where these decisions are made. You can't watch, and we can't tell you.

The best summary of the dangers of secrecy to children in the child welfare system comes from a longtime Minnesota social worker, who wrote in 1997, "Sometimes decisions that are literally life and death to children are made without full knowledge or deliberation due to the inattention of the judge, the fraternity mentality of the attorneys or the incompetence of the social worker." One year later, Minnesota opened its family courts.

When lawyers, social workers and judges are shielded from scrutiny, as in the District of Columbia, only the children get hurt. Lawyers may without compunction or sanction fail to meet with child and adult clients from one hearing to the next, social workers may leave children in foster care for weeks or months after a willing relative has come forward, and judges may act in derogation of applicable law. And politicians and other policy-makers, whose decisions have made those failures all-but-inevitable, are shielded from answering to the public, which deserves to know how its money is being spent and its most precious resource protected. In a transparent system, however, adults can't afford to shirk their responsibilities or abuse their power. Yes, sunshine gives children, like flowers, a chance to grow.

Fall 2008: A seven year-old boy, Philip, lives in a group home for 30 days, and then in foster care with strangers for 2 months, even though his four siblings, who are taken when he is, are returned to their mother after 4 days. The government agrees early on that his grandmother would be an appropriate caregiver for the boy. Nonetheless, the government refuses to let the boy live with her until they complete their paperwork, an "expedited" process that is supposed to take 72 hours. CFSA repeatedly loses paperwork his grandmother submits, makes up imaginary legal requirements, and misses deadline after deadline to inspect her home. After 30 days of living in a group home with other children, the boy's life is again disrupted unnecessarily, when he is moved from the group home to a foster home -- simply so CFSA can report compliance with the 30-day limit on group home placements imposed by the LaShawn v. Fenty Consent Decree. In the new foster home, the boy's foster mother abuses him, leaving bruises from a beating with a belt. The boy is moved to yet another foster home -- despite everyone's agreement that he should have been living with his grandmother weeks earlier! Finally, after 2 1/2 months, the judge sends the boy to live with his grandmother.

Philip's story is much more human than this cold synopsis. He felt fear and sorrow and loneliness. He was confused and disconsolate at being kept from his siblings. He tried to live a life that included school and television and playing – though he missed playing with his brothers and sisters, and didn't know the children in the group home or in his new neighborhoods. Philip, and all of the Philips and Brians and James' and Lamars, have complicated, nuanced lives, like all of us. Children shouldn't be reduced to cold abstractions simply to maintain a dangerous veil of secrecy.

While the District's rigid secrecy laws remain in place, Philip's full story can't be told. Until it is, however, there will be dozens and hundreds and thousands of children taken from their parents because of their race, not because they are maltreated. There will be countless more children unable to see their parents and siblings. Young lives will be disrupted needlessly, and children will suffer unnecessary trauma. And children will continue to be treated like . . . numbers.

ADDITIONAL MATERIAL ON FOLLOWING PAGES

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COLUMBIA**

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Legal Clinic

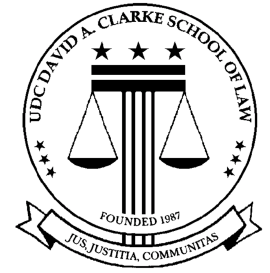
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Imagine that you're a fifteen year-old boy, living in your comfortable family home in Northwest D.C.

Then imagine that one day, tragedy strikes.

Your beloved stepdad, the only father you've ever known, the man whose home you live in, the most steady influence in your life, collapses in front of you. You call 911, the paramedics come, but unfortunately he cannot be saved.

Just at that moment you get a call from your mom, whom you love and who loves you. She currently resides in D.C. jail on a parole violation. She's scheduled to be released within the next couple of months. At all times during her incarceration she was involved in the everyday decisions of your education, nutrition, and everything else. She stayed in constant contact with her husband – your stepdad – and you visited her in jail constantly. You tell her what has happened. She tells you that your adult sister will come to pick you up and care for you until she's released. Your sister is racing to get to you

Imagine that meanwhile, back at your house, a few of your stepdad's siblings, whom you've never met, arrive. They call the D.C. Child and Family Services Agency ("CFSA") and report an anonymous tip that you have no one to take care of you, because your stepdad just died, and your mom is in jail. A CFSA social worker arrives at the house. She agrees. She deems your sister's house, which she's never seen herself, to be too small. You see, your sister lives with her sister, and a few of her children. Too many family members in the house. You'd be just one too many. You'd maybe even have to sleep on a couch or an air mattress at first, surrounded by loved ones who'd be there for you in these most difficult and painful of times. Exactly the wrong environment, the social worker determines. Your sister protests, and tells the social worker that she's ready, willing and able to take care of you. The social worker just doesn't see it. So, she takes you into custody and puts you in a foster home.

Imagine that you go to the foster home, every day longing to be with your sister, as directed by your mother. The government alleges that you are a neglected child – that because your mom is incarcerated and your stepdad just passed away, your mom is unable to discharge her parental duties. The problem is it's just not true. Your mom has always discharged her duties, whether behind bars or not. The law is clear that being incarcerated in itself is not neglect, as long as you take steps necessary to provide an appropriate caretaker for your child. Your sister is there. That's what your mom wants, and the law says that your mom gets to decide. Moreover, that's what *you* want. But the government disagrees. The foster home is

FOSTER-CARE PANIC/12

okay, but the spicy food made by the Haitian woman who runs it just doesn't agree your stomach. CFSA promises to provide your sister with transportation and furniture assistance, to help alleviate the problems that they say prevent you from living with her. But they never provide the help. You never get to see your mom while you're in foster care.

Imagine that finally, your mom gets out of jail a couple of weeks later. You think the nightmare is over, but it's not. The government refuses to release you; they think your mom may not be fit to care for you. They want to investigate more. So, you continue to rot in foster care for 3 more weeks. Ultimately, after nearly a month and a half in CFSA custody, after so many lonely, homesick nights, the government finally realizes that it has no case. It dismisses the petition, and you're released to your mom's custody. Now, you live comfortably with your mom and your sister, in the same house where your stepdad passed, where you were all once a happy family, and where you could have remained one – until CFSA stepped in.

Tragically, this is a true story. It happened to one of my clients' family. It's exactly what's wrong with the "remove first, ask questions later" approach utilized by CFSA. There was another way – CFSA could have done all that it could to keep this family, and so many families, together, rather than apart. They have the resources. Their mission is to promote families staying together. Our client's child was released. Others are not so lucky. From everything that I've seen, the practice needs to stop. It's time to put the focus on "family" back into the Child and Family Services Agency.

Keeping families together shouldn't just be the goal and the practice of CFSA only because it's the right thing to do, but also because it's what's best for children and their families.

ADDITIONAL MATERIAL ON FOLLOWING PAGES

THE PRICE OF PANIC

Terrified of having the next Banita Jacks case on their caseload and incurring the Wrath of Fenty, D.C. caseworkers adopted a take-the-child-and-run approach in 2008. Hundreds of helpless children are paying the price.

In the first nine months of 2008, children were torn from their families 633 times, a 41 percent increase over the same period in 2007. When only children entering foster care for the first time are counted, the figure is even worse: Removals soared by 51 percent.

The extent to which decisions are made based *not* on actual child maltreatment but on what's on the front page can be seen in the month-by-month totals on the other side of this page. The panic finally shows signs of calming down in June – but then, when tragedy strikes again in July, removals more than double.

There is no evidence that such foster-care panics make children safer. On the contrary, they only steal workers time and resources from finding children in real danger. All over the country, reliable measures of child safety have worsened in the wake of foster care panics. And nationwide, in the few jurisdictions large enough to detect a pattern in fatalities, deaths of children known-to-the-system actually have increased.

The only good news: Fenty's panic eased again in August and September, the most recent months for which data are available. But what happens when the next child "known to the system" dies?

The highly-respected court-appointed monitor on the D.C. child welfare system, Judith Meltzer, said it best when she testified before the D.C. Council in July. Said Meltzer:

"The District of Columbia will never have enough child protective services investigators if the only response to an overwhelmed family is a call to the Hotline and the removal or threatened removal of a child from his or her family."

(MORE)

THE PRICE OF PANIC: MONTH-BY-MONTH

CHILDREN TAKEN FROM THEIR HOMES IN WASHINGTON D.C.

	First Entries		Total Entries	
	2007	2008	2007	2008
JANUARY	45	66	55	75
FEBRUARY	40	64	57	72
MARCH	43	80	56	98
APRIL	30	56	43	79
MAY	41	58	54	68
JUNE	38	42	52	64
JULY	26	70	37	85
AUGUST	40	35	50	47
SEPTEMBER	33	38	44	45
TOTAL	336	509	448	633

FIRST REMOVALS **TOTAL REMOVALS**
UP: **51%** **UP:** **41%**

Source: Child and Family Services Agency FACES system.

THE CHILDREN FIRST ACTION AGENDA

Seven ways to reform D.C. child welfare

- **CFSA must become a “Fenty-free zone.”** The agency must be able to make decisions that serve children, free from political interference and grandstanding. It was just such grandstanding that plunged the agency into chaos a year ago. Therefore, the new director of CFSA needs special job protections. One possibility would be to name her or him to a fixed term, removable during that time only for cause. Another would be to vest the hiring and firing power with the monitor for the lawsuit settlement that now is supposed to govern child welfare in the District.
- **The new CFSA director must understand that there is no child protection without family preservation.** The new director must be someone who knows that the only child welfare systems that truly have improved child safety are those that did far more to avoid taking children in the first place. In Washington, this means a commitment not only to move caseworkers physically into the community, but to change their mindset as well – and give them the resources they need to become true community partners. And it means finally getting serious about “performance-based contracting.” That means requiring the private agencies that oversee much of the District’s foster care and child welfare services to deliver on keeping children safely in their own homes or returning them there, instead of simply letting them scarf up *per diem* payments for holding children needlessly in foster care.
- **“Sunshine is good for children.” The system must become transparent.** For starters, that means all court hearings and most records in child welfare proceedings should be presumed open. In the very rare cases where that genuinely would cause severe harm to a child, lawyers for parents or children could ask the court to close the minimum amount required to avoid that harm. But CFSA should not be allowed even to ask for secrecy, since CFSA’s only interest in secrecy is to cover up its mistakes. At least 15 states now hold these hearings in the open, and two more allow reporters to be present. And now, even Britain, long known for its secretive judiciary, plans to open its family courts.

Not one of the states to open these hearings has closed them again. That’s because the Chicken Littles were wrong – none of the scare scenarios presented by opponents actually happened. In contrast, in some states, court conditions and counsel for families improved and in some cases, justice was done as soon as light was shed on the formerly closed process.

We all do better when someone is looking over our shoulder – or even when we think someone might. How much more tax cheating would there be, if there were no such things as audits? But there are no real audits in D.C. Family Court. Everyone is free to cut corners. We will never know, for example, if everyone would have been more careful about placing foster children with Renee Bowman – and then allowing Bowman to adopt those children, two of whom she now is suspected of killing – had the whole process been out in the open. While we cannot guarantee that no child ever will be embarrassed if hearings are open, in an open system, more children are likely to live long enough to blush.

The Chief Judge of New York State’s highest court, Judge Judith Kaye put it best. Said Judge Kaye: “Sunshine is good for children.”

- **CFSA must be free to comment on cases.** Several states allow their child welfare agencies to

comment on individual cases under a wide variety of circumstances, not only when a child has died or nearly died, but almost any time a case becomes public. The D.C. Council should enact similar legislation. While this will not stop CFSA from stonewalling, at least reporters and the public will be able to see the stonewalling for what it is.

● **Birth parents must receive high quality legal representation, and it must be made available from the moment removal of a child is contemplated.** The representation should be from an institutional provider, where lawyers have low caseloads and strong support staff, in order to offer alternatives to the typical cookie-cutter no-services “service plans” offered by CFSA, and in order to argue effectively for the return of children who never should have been taken from everyone they knew and loved in the first place. Now, most birth parents get their representation from low-paid attorneys with no support staff, and meaningful assistance from counsel is available only when it is too late; after the all-important first hearing. By then, a judge almost always has rubber-stamped CFSA and the child is trapped in foster care.

NCCPR believes effective representation is most important not for the sake of the parents, and not to “get bad parents off” but rather because no judge can make a good decision unless she or he has heard all sides of the story – so such representation is vital to ensure the safety and well-being of children. This has been proven in the other Washington, Washington State, where this kind of representation has been so good for children that even the lawyers who represent the government in child abuse cases now support it. (See *Leveling the Playing Field in the other Washington*, elsewhere in this packet.)

● **“Guardians *ad litem*,” who now “represent” children in Family Court, should act as lawyers. They should advocate for what the children they represent want, even if the GAL does not think it’s in the child’s best interests.** In New York State, Judge Kaye recently ordered GALs to take this approach. But in the District, and most other places, the job of the guardian is to fight for what the *guardian* thinks is best for the child – even if the child disagrees. The guardian may make the court aware of what the child wants but, if the guardian thinks that is bad for the child, the guardian fights against the child’s wishes. That can mean that the only parties without strong advocates in their corners are the parents – and the child.

Of course, the fact that a child wants a particular outcome doesn’t mean he or she should get it. And some children are too young to express a rational preference, or any preference at all. But deciding what’s best is what judges are for. And they can’t truly do justice unless everyone has an advocate making the best possible case for his or her side.

● **A rational method must be established for screening hotline calls.** Child abuse hotlines vary in their power to accept or reject out calls. Nationwide, in 2006, 38 percent of calls are screened out. But in the District, only 10 percent were screened out -- and that, of course, was before the Banita Jacks case, in which the hotline caught hell for giving a caller a hard time, even when the call ultimately was accepted. The far more serious problem is the propensity of the D.C. hotline to accept for investigation what are almost certainly false allegations and trivial cases.

Yes, when you screen calls some children in real danger may be missed. But more children are missed when you don’t screen, and false reports and trivial cases cascade down upon workers, stealing those workers time from finding children in real danger.

For more ways to reform child welfare, see NCCPR’s Due Process Agenda and Twelve Ways to do Child Welfare Right, available in this packet and online at www.nccpr.org

Leveling the playing field in the other Washington

How providing good lawyers for parents helps their children

In Pierce County, Washington, the judge in charge of the county's juvenile courts was dismayed at the escalating rate of terminations of parental rights – knowing that he was dooming some of the children to a miserable existence in foster care.

So he persuaded the legislature to provide enough money for defense attorneys to have resources equal to those of the Attorney General's office, which represents the state child welfare agency in juvenile court. The result: successful reunification of families increased by more than 50 percent.

And that's not because lawyers "got their clients off."

Where the parents are innocent, lawyers have time to prove it. Where there is a problem in the home that must be corrected, the lawyers have time to sit down with the parents, explain early on what they are up against and guide them through the process of making whatever changes are needed. They also can advocate for more and better services geared to what families really need, instead of the cookie-cutter, no-service "service plans" often offered by child welfare agencies.

Between 2000 and 2003, of 144 cases in the program in which families were reunified, not one was brought back to court.

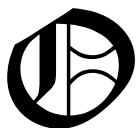
"These children aren't coming back," said Bobbie Bridge, then a Justice of the Washington State Supreme Court, and a supporter of the program, "and we do get them back when we make bad reunification decisions."

The National Council of Juvenile and Family Court Judges is publicizing the results, and even the State Attorney General at the time, who had to face the better-prepared lawyers, supported the project and wanted it expanded.ⁱ (We don't know if she still holds that view in her current job – governor.) It's now in 25 of the state's 39 counties. Further information about the program is available at <http://www.opd.wa.gov/PRP-home.htm>

New York City has let contracts to provide similar representation for half of all indigent parents. The city is doing this with the full support of its child welfare agency, the Administration for Children's Services. This is because ACS recognizes that it is not infallible, and recognizes the role lawyers for birth parents can play in fighting for help for families.

It's also probably because, before becoming ACS Commissioner, John Mattingly co-authored a scathing report on how the city's Family Courts ran roughshod over families. (At the time, Mattingly was with the Annie E. Casey Foundation, which helps to fund NCCPR.) The report quoted judges admitting they routinely rubber-stamped removals even when they thought ACS failed to make its case, because they were afraid of winding up on the front page if they sent a child home and something went wrong.ⁱⁱ

The Fable of Fenty

nce upon a time there was a foster child.

Like so many foster children, he was bounced from one home to another, never finding anyone to really love and nurture him.

Worse, almost every one of his foster parents neglected him. They didn't starve him. On the contrary, they fed him and fed him and fed him – but it was all junk food. There was no nutrition. The boy grew so fat he could barely move.

At one point, there was some hope for the boy. He was taken in by a guardian who slowly made him healthier. When the guardianship ended, he finally was placed in a pretty good foster home where he continued to improve, but he still was very sick.

But then that foster parent left, and the boy fell into the hands of one of the worst foster parents of all. This foster parent just didn't care about the boy. In fact, he seemed to care about nobody but himself. So he simply went back to neglecting the boy. Then, one day, the boy broke his foster parent's most prized possession – the boy shattered his foster parent's mirror. So the foster parent flew into a rage and broke both the boy's arms and legs.

Hauled into court, months later, the foster father was unrepentant. On the contrary, he was bragging: "Well, yes, I broke the boy's arms and legs – but after that I took him to the hospital. I made sure the arms and legs were put into casts! And look – now he's almost healed! Soon he'll be just like he was before I broke all his limbs. So aren't I wonderful?"

The fable is inspired, of course, by the press releases churned out by the administration of Mayor Adrian Fenty concerning the Child and Family Services Agency's compliance with a recent court agreement. But almost everything in that agreement involves undoing the damage to the agency that Fenty himself did by his grandstanding after the Banita Jacks case threatened to make him look bad.

CFSA may well spend proportionately more than any child welfare agency in the country, but CFSA throws a lot of the money away on needless substitute care and institutionalization. Full compliance with the latest court agreement will do little more than leave CFSA back where it was at the end of the administration of former mayor Anthony Williams, which built on slow, steady improvements made when the agency was in receivership.

And that's no fable.

(More)

Would YOU want this job?

This is the actual first paragraph of the job description for a new CFSA director:

FENTY ADMINISTRATION LEADERSHIP

*Working as the Director of the Child and Family Services Agency (CFSA) is an opportunity to work in one of the most rewarding and challenging posts in District government. The Director of CFSA will fulfill Mayor Adrian M. **Fenty**'s commitment to improving outcomes for the District's most vulnerable children and families. Mayor **Fenty** is looking for an exceptional leader, characterized by innovation and "outside the box" thinking, to motivate and support frontline workers, supervisors and senior management within the agency. The **Fenty** administration employs individuals who combine energy, enthusiasm, achievement, and an ability to attract and motivate other exceptional people. The administration is less focused on people in similar positions in other cities and more focused on pure talent. Backgrounds in either the public or private sector, characterized by innovation, uncompromised vision, and imagination set candidates apart. The **Fenty** administration will hold its agency heads accountable in achieving targeted results. Respect for the public trust and the commensurate integrity are mandatory prerequisites. Years of experience will be considered alongside responsiveness, aptitude and adaptability.*

[EMPHASIS ADDED]

(over)

**NATIONAL COALITION FOR
CHILD PROTECTION REFORM**

**53 Skyhill Road (Suite 202) / Alexandria, Virginia, 22314
Phone and Fax: (703) 212-2006 / e-mail: info@nccpr.org / www.nccpr.org**

**A CHILDREN FIRST AGENDA FOR D.C. CHILD WELFARE
Statement of Richard Wexler, Executive Director,
National Coalition for Child Protection Reform, January 7, 2009**

Today, we meet to remember two tragic anniversaries. And we come together to offer ideas can reduce the number of such tragedies occurring in the District of Columbia in the future.

As we all know, Friday marks the first anniversary of the discovery of the bodies of Banita Jacks' children. But we also are approaching another anniversary. Sunday marks the ninth anniversary of the disclosure of another D.C. child welfare tragedy: the killing of Brianna Blackmond.

No child welfare system ever will prevent every death. No system can prevent every death of a child previously known to the child welfare agency. No system even can prevent every death where the warning signs were many and obvious. Human fallibility guarantees that while the goal for child abuse fatalities always must be zero, our reach always will exceed our grasp.

But it is possible to do far better than Washington D.C. has done in the year since the bodies of the Jacks children were discovered, or even in the nine years since Brianna Blackmond died.

But doing so requires putting the needs of children first. That means putting those needs ahead of everything. It means putting children's needs ahead of what gut instinct may say is right, when the facts say it's wrong. It means putting children's needs ahead of what we may think of their parents, when an avalanche of research shows that children are likely to do better, and be safer, with those parents than they would in substitute care.

And most of all, it means putting the needs of children ahead of personal ego and personal ambition – something D.C.’s mayor repeatedly has refused to do.

As a result, the most important single short-term step to fix D.C. child welfare is to insulate the child welfare agency from the mayor’s insistence on putting his ambition and his ego ahead of the needs of vulnerable children. Mr. Mayor, it’s time to recognize that the children come first.

The mayor’s knee-jerk, indiscriminate “off with their heads” response to the Jacks case plunged a fragile agency into chaos, traumatized countless children, and put untold others in danger. And now, the mayor has the gall to claim it as an accomplishment when the agency supposedly recovers from the damage he inflicted in the first place.

Nowhere is the mayor’s overweening ego more apparent than in the job description for a new director of the Child and Family Services Agency. The description mentions the word “child” or “children” only twice – and that includes the name of the agency. In contrast, the name Fenty turns up five times.

Child protection will not improve in Washington, D.C. until the child protection agency is itself protected from the mayor’s interference.

When it comes to long-term change, nobody put it better than the highly-respected longtime monitor of the D.C. child welfare system, Judith Meltzer. Last summer she told the D.C. Council:

"The District of Columbia will never have enough child protective services investigators if the only response to an overwhelmed family is a call to the Hotline and the removal or threatened removal of a child from his or her family."

Mayor Fenty is welcome to call this criticism anything he wants – as long as he doesn’t call it hindsight. The mayor was warned that his response would bring about disaster, and he chose to ignore it.

In an op ed column for *The Washington Post* that ran on January 16, 2008, my

organization predicted everything that would happen over the next year. We wrote:

Every CFSA worker is now terrified of having the next parent like Banita Jacks on her caseload. So they'll rush to tear large numbers of children needlessly from their parents. Those children will suffer the trauma of needless separation from everyone loving and familiar and they'll be placed at risk of abuse in foster care itself – several studies suggest one in three foster children is abused in care. Worst of all, a deeply-troubled child welfare system with serious and real problems will be further overwhelmed, making it even more likely that some other child in real danger will be missed.

And we were not alone. Just days after the Jacks case hit the papers, here's what court monitor Judith Meltzer told the D.C. Council:

In many systems, the fear that something is being missed typically results in increased and sometimes inappropriate decisions to remove children from their families. CFSA and the Family Court must expect these results and plan to respond appropriately – by having additional staff trained and available to appropriately handle all hotline calls and investigations and by being vigilant about their practice and decision making so that children who can be maintained at home safely are not unnecessarily removed.

Mayor Fenty ignored the warnings.

And, sadly, that is not unusual. The dominant response to child welfare failings in Washington D.C. for decades can be boiled down to a single sentence: Take the child and run.

The problem with that approach is that most parents who lose their children to foster care are neither brutally abusive nor hopelessly addicted. They are nothing like the parents in the Jacks or the Blackmond cases. Far more common are cases in which family poverty is confused with “neglect.”

As far back as 1995, the first “receiver” to try to run the D.C. child welfare system said that at least 30 percent of the district's foster children could have been living in their own homes if their birth parents simply had decent housing.

Other cases fall between the extremes, the parents neither all victim nor all villain. But what these cases have in common is that there are alternatives to tearing apart these families that are more humane than foster care, less expensive than foster care and, most important, *safer* than foster care.

It had taken years to move the district toward this better way, a way that is in keeping

with best practices around the country. And, in fact, a year ago at this time, that slow progress was continuing.

But it was still a bad system. And the court monitor had been issuing increasingly urgent warnings about areas where progress had stalled or never begun.

The mayor spent the first year of his term ignoring those warnings. In fact, his neglect goes back even further. For the previous year, Adrian Fenty chaired the D.C. Council's Human Services Committee. Either he knew, or should have known, that there were huge problems at CFSA.

Indeed, a November, 2007 report from the monitor warned of problems needing "immediate and urgent attention."

But when tragedy struck, the Mayor took no responsibility. Mr. "accountability" made sure the buck stopped anywhere but in his office. Instead of acknowledging his own neglect of the agency, he scapegoated lower-level frontline caseworkers who couldn't fight back against both Mayoral power, and his expert manipulation of public opinion.

Then, when tragedy struck again last July, Mayor Fenty apparently decided that if it could win him editorial pats on the back once, why not go for twice: Once again, he fired the caseworker.

But then, when a third tragedy struck only days later, the nominal head of CFSA suddenly decided to act like she was actually running the agency. Sharlynn Bobo rushed out a statement defending her worker. And it worked. The mayor didn't fire the worker. He fired Bobo. Clearly, Bobo had forgotten the most important job of a CFSA director is always to say "how high?" when the mayor says "jump?"

It wouldn't be so bad if the only people to suffer from all this were a few caseworkers – though that would be bad enough.

But the mayor's actions did enormous harm to the very children he claims to want to

protect. The mayor ensured that the discovery of the bodies of the Jacks children would lead to a foster-care panic – a huge spike in needless removals of children from everyone they know and love.

Just as we had predicted, in the months after the Jacks children's bodies were discovered, and the mayor confused scapegoating with accountability, every caseworker was running scared, terrified of having the next such case on her load. As a result, during the first nine months of 2008, entries into foster care soared 41 percent over the same period the year before. When only children entering foster care for the first time are counted, the panic is even worse – the increase is more than 51 percent.

Before her own hasty departure, Bobo characterized this foster care panic as “an abundance of caution.” Others sometimes refer to the mass confiscation of impoverished children as being “conservative.” And worst of all is the claim heard over and over again that somehow, large-scale family destruction is “erring on the side of the child.”

None of that is true.

Tearing a child from everyone loving and familiar is not cautious – it is a profoundly reckless act. Throwing children needlessly into any system of foster care, let alone D.C.'s, is not conservative, it is a radically destructive act. And there probably is no phrase in the child welfare lexicon that has done more harm to children than “err on the side of the child.”

- When a child is needlessly thrown into foster care, he loses not only mom and dad but often brothers, sisters, aunts, uncles, grandparents, teachers, friends and classmates. For a young enough child it can be an experience akin to a kidnapping. Other children feel they must have done something terribly wrong and now they are being punished. One recent study of foster care “alumni” found they had twice the rate of post-traumatic stress disorder of Gulf War veterans and only 20 percent could be said to be “doing well.” How can throwing children into a system which churns out walking wounded four times out of five be “erring on the side of the child?”

A second study, of 15,000 cases, is even more devastating. That study found that even maltreated children left in their own homes with little or no help fared better, on average, than *comparably-maltreated* children placed in foster care. So whenever anyone tells you that rushing to tear children from their parents is “cautious” or “conservative” or “erring on the side of the child” please remember the 15,000 children who would gladly tell you otherwise if they could. (For more on these studies, see the handouts called *The Evidence is In* and *80 Percent Failure* in this packet and at www.nccpr.org).

- All that harm can occur even when the foster home is a good one. The majority are. But the rate of abuse in foster care is far higher than generally realized and far higher than in the general population. That same alumni study found that one-third of foster children said they’d been abused by a foster parent or another adult in a foster home. (The study didn’t even ask about one of the most common forms of abuse in foster care, foster children abusing each other). Switching to orphanages won’t help -- the record of institutions is even worse.

Furthermore, the more a foster care system is overwhelmed with children who don’t need to be there, the less safe it becomes, as agencies are tempted to overcrowd foster homes and lower standards for foster parents. If a child is taken from a perfectly safe home only to be beaten, raped or killed in foster care, how is that “erring on the side of the child”?

- But even that isn’t the worst of it. Everyone knows how badly caseworkers are overwhelmed. They often make bad decisions in both directions – leaving some children in dangerous homes, even as more children are taken from homes that are safe or could be made safe with the right kinds of services. The more that workers are overwhelmed with children who don’t need to be in foster care, the less time they have to find children in real danger. So they make even more mistakes in both directions. That is almost always the real explanation for the horror-story cases that make headlines.

And that is why the Adrian Fenty Foster Care Panic of 2008 has left all of D.C.’s

vulnerable children less safe.

To see this, one need look no further than one of the cases that made headlines in July, when Isiah Garcia died before a caseworker could visit his home. Thanks to the Fenty Foster Care Panic, that caseworker had 50 cases. No one can keep up with a caseload like that.

None of this means no child ever should be taken from her or his parents. Rather, it means that foster care is an extremely toxic intervention that must be used sparingly and in small doses. But for the past year, Mayor Fenty has prescribed mega-doses of foster care.

Now, the mayor says, he's fixed all that. He says the backlog of uncompleted cases is almost gone. And, Mayor Fenty says the agency has hired new workers to replace the workers who quit in droves rather than be abused by - Mayor Fenty.

Even if all of that is true, the best that can be said is that the D.C. child welfare system today might be no worse than it was one year ago. In other words, Washington, D.C. has the same lousy system, only bigger.

What are we supposed to do? Stand up and cheer? Thank the mayor profusely for undoing the damage he did in the first place?

If one of those parents who really is brutal and sadistic breaks a child's arms and his legs, but then rushes the child to the hospital, where they put casts on the arms and legs and successfully mend them, do we then praise the abuser for taking his child to the hospital? Or do we insist that he not keep custody of his child?

The D.C. Child and Family Services Agency must be protected from the mayor's grandstanding. The position of CFSA director must become a real job, not just a figurehead. And the job must be insulated from political interference. There are a variety of ways that might be done. One might be to name the CFSA director to a fixed term, and stipulate that the director cannot be removed during that period except for cause. Another might be to vest the power to hire and fire with the court-appointed monitor overseeing the system.

But something must be done, since it is hard to imagine anyone any good being willing to take the job, knowing that she or he *has* no real job other than to make the mayor look good.

Once it is made possible for a capable leader to do the job, the next step is to choose a leader who understands that there can be no child protection without family preservation; a leader committed to restoring the pre-Fenty vision of the agency - to rebuild by emphasizing safe, proven approaches to keeping families together – and this time, to actually carry out the vision.

The new leader also must be committed to making the agency, and the courts, transparent. That means leading a campaign to open court hearings to press and public, and ending the practice of hiding behind self-imposed “confidentiality” restrictions when asked to comment on cases.

But it also means something else. No judge can rule wisely on a case unless she or he hears all sides of the story. That doesn’t really happen now. Because in most cases, indigent parents are represented by low-paid lawyers with no support staff. And there is no meaningful representation at all until *after* the first hearing, after the judge already has decided whether to hold the child in foster care.

It is essential, therefore, that a strong institutional provider of counsel for birth parents be created in the District – with access to their own social workers and support staff, in order to present alternatives to the cookie cutter, no-service “service plans” often put forward by CFSA, and to challenge the agency, from the very beginning, when children never needed to be taken away at all.

The reason to do this is not because the parents are always right. Rather, it’s because this is the only way to find out who is right in any given case. And finding out who is right is the absolute minimum required before there can be true justice for the District’s vulnerable children.

The rest of our Children First agenda is in the enclosed material.

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ⁱ Heath Foster, “Relying on good advice can reunite troubled families,” *Seattle Post-Intelligencer*, February 12, 2003, p.B1.

ⁱⁱ Special Child Welfare Advisory Panel for New York City, *Advisory Report on Frontline Practice* (March 9, 2000) p.48.