

Stop Turning Back

~~DON'T TURN BACK~~

Had

Reform Has Made New York's Children Safer

An analysis of trends in New York City child welfare from the
National Coalition for Child Protection Reform
Released January 2006

Full report updated, March, 2009

Data pages updated December, 2009

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The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protection system in their professional capacities and work to make it better serve America's most vulnerable children.

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Funding for this report, and NCCPR's other national advocacy activities, comes from the Annie E. Casey Foundation, the Atlantic Philanthropies and the Open Society Institute, part of the Soros Foundations Network. We thank them for their support, but acknowledge that the views expressed in this publication are those of NCCPR alone and do not necessarily reflect the opinions of our funders.

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EXECUTIVE SUMMARY

Reform was succeeding.

The dramatic reduction in the number of children taken from their homes each year since 1998 occurred *with no compromise of safety*, as measured by re-abuse of children left in their own homes and foster-care recidivism.

Children were safer when ACS emphasized family preservation.

- The number of child abuse fatalities among children "known to the system" in 2005 was *lower* than 2004.
- The 2005 number was significantly lower than 1998 – when more than twice as many children were taken from their homes. And the number set a record in 2006, when removals of children also soared. As removals continued to rise, deaths of children "known to the system" set a new record in 2008. And the three-year total of such deaths since the surge in removals is the worst three-year total on record.
- Reabuse of children left in their own homes – a far better measure of safety than fatalities -- fell 30 percent from 1998 through FY 2005. Though it rose slightly each year after FY 1999, the increase *continued* in FY 2006, even as removals soared. In FY 2007, with removals still surging, the increase in reabuse was the largest single-year increase on record, it barely declined the following year and returned to that level in FY 2009.
- A second key measure of safety, foster-care recidivism soared 40 percent in FY 2007 – to its highest level since 1999. This measure, too, barely declined in FY 2008, then set a record high in FY 2009.

Foster care panics backfire.

After Elisa Izquierdo died in November 1995, the operating philosophy of ACS could be boiled down to "take the child and run." Huge numbers of children were torn from their parents during a "foster care panic." It didn't work.

- The worst year for fatalities among children "known to the system" since 1993 (until 2006) also was the year the city took away the most children of any year since 1993.
- The worst three years for such fatalities – until the most recent three - were the Years of Panic, 1996-98.

Another surge in removals is underway...

The number of children taken from their parents in FY 2009 was 55 percent higher than in FY 2005, a significantly faster rate of increase than the increase in reports alleging abuse.

...and it, too, is backfiring.

Deaths of children previously known to ACS reached a tragic record high in 2006, another record in 2008 and a new three-year record.

Foster care is no answer.

Foster care corrodes the psyches of children. Despite the efforts of many dedicated, caring foster parents, one recent study found that only 20 percent of foster care alumni are doing well. One-third of the alumni said they were abused in foster care. Another study, released in 2007 compared outcomes for 15,000 children. It found that, on average, children left in their own homes fared better than *comparably maltreated* children placed in foster care. The record of group homes and institutions is worse. For some children, life in their own homes is so bad that foster-care is a less harmful alternative. Some children must be taken from their parents. But it makes no sense to throw huge numbers of additional children into a system that churns out walking wounded four times out of five, when for most of them there are better, safer alternatives.

Stop turning back.

To its credit, ACS has not abandoned all of its reform initiatives. Kinship care is up and congregate care is down. But it is not enough. Even before the recent surge in removals, the system still erred in both directions, leaving some children in danger even as others were needlessly taken from homes that are safe or could be made safe with the right kinds of help. *And the only acceptable goal for the number of child abuse fatalities is zero.* But we must pursue all of these goals knowing that our reach always will exceed our grasp. Restarting the reforms that began under former ACS Commissioner Nicholas Scoppetta and continued under Commissioners Bell and Mattingly will bring us closer to all of these goals. The solution to the problems of reform is more reform.

The Price of Panic

Ever since New Yorkers learned about the horrifying death of Nixzmary Brown, people have made comparisons to other notorious cases. Some say it's like the case of Elisa Izquierdo. Others remember Lisa Steinberg, killed by the man who illegally adopted her.

But the case that *most* resembles the case of Nixzmary Brown is a case which got little attention at the time, and was soon forgotten. It is the case of a four-year-old girl named Caprice Reid.

Like Nixzmary Brown – if police accounts are correct – Caprice Reid was tied to a chair. Like Nixzmary Brown, Caprice Reid was beaten – so severely that by the end she could not walk. Like Nixzmary Brown, Caprice Reid was starved. Indeed, police said Caprice was beaten and starved to death over four straight days.

But there is one crucial difference between Caprice Reid and Nixzmary Brown. Caprice Reid did not die in her own home. On the contrary. Caprice Reid had been *taken* from her own home after her mother was accused of “lack of supervision.” She was shunted from foster home to foster home, finally landing in a home that had been shut down by one private foster care agency, only to be reopened by another.

And it was in that home where Caprice Reid died, at the hands of her foster mother and foster grandmother. They pled guilty to manslaughter.

About a week before she died, Caprice Reid's mother saw her daughter for the last time. The little girl clung to her mother's neck and said “Don't go, Mommy. I love you.”¹

To know *how* this could have happened, one need only know *when* it happened: 1997. The Administration for Children's Services wasn't the agency it is today. The agency was in the midst of a frenzy of child removal – a foster-care panic

The ultimate paradox of a foster-care panic is that it jeopardizes the very children it is meant to protect – children in dangerous homes who really should be taken away.

– in the wake of the death of Elisa Izquierdo. The number of children torn from their homes was skyrocketing. ACS was begging for beds for all these children – and beggars can't be choosers.

Caprice Reid paid the price of panic.

But it wasn't just Caprice who suffered. The ultimate paradox of a foster-care panic is that it jeopardizes the very children it is meant to protect – children in dangerous homes who really should be taken away. In the Years of Panic following Elisa Izquierdo's death, the total number of deaths of children previously known to ACS – not just deaths in foster homes but children dying in their own homes as well -- didn't decline. On the contrary, those deaths soared by 50 percent. (For details and sources for all New York City data cited in this report, see page 20). And 1998, the year when the panic was at its worst, also was the year when more children “known to the system” died than in any year since 1993.

Fortunately, ACS learned from its mistakes. The agency changed course and embraced safe, proven approaches to keeping families together. As a result:

New York City's children were safer. There were fewer deaths of children “known to the system” through 2005 than during the Years of Panic. And there were fewer such deaths in 2005 than in 2004. In addition, more reliable measures than fatali-

ties show that reform was accomplished

The only acceptable goal for the number of child abuse fatalities is zero. But it is a goal we must seek understanding that our reach will always exceed our grasp. And it is a goal we must seek without going back to the days when a policy intended to protect children wound up destroying children in order to save them.

without compromising safety.

But they are not safe enough. The only acceptable goal for the number of child abuse fatalities is zero. But it is a goal we must seek understanding that our reach will always exceed our grasp. And it is a goal we must seek without going back to the days when a policy intended to protect children wound up destroying children in order to save them.

But that, it seems, is what ACS has done.

Child abuse did not double in the three days following the death of Nixzmary Brown – but the number of children torn from their parents and thrown into foster care did, compared to the same time period a year ago.² And child abuse has not increased 55 percent since 2005. Even reports alleging maltreatment did not increase that much. But child removals did.³

Although some suggest that the rate at which children previously known to ACS died in late 2005 and early 2006 was unusual, the sad truth is, it was not. What was unusual was the attention that was paid.

The tragic fact is that children previously known to ACS and its predecessor agencies had been dying at an average rate of about one every two weeks at least as far back as 1993 – a rate that is not unusual nationwide. They actually died at a *higher* rate when the city was taking away far more children, a pattern that was repeated in 2006. But when the deaths occur at a time when city policy is to tear away huge numbers of children, they are largely ignored – as is happening right now. When they happen while the city is emphasizing family preservation, people rush to assume cause and effect where it does not exist.

Even if it were true that the number of deaths in the last few months of 2005 had been unusually high, what would that mean? Overall, deaths of children known to the system were lower in 2005 than in 2004.

We fail to understand why anyone would believe children are safer in a community where the child abuse fatalities happen to be evenly spaced.

When the deaths occur at a time when city policy is to tear away huge numbers of children, they are largely ignored. When they happen while the city is emphasizing family preservation, people rush to assume cause and effect where it does not exist.

If the outrage and disgust we all feel over Nixzmary's death becomes an excuse to turn back the clock and return to the days when the operating philosophy at ACS boiled down to "take-the-child-and-run," it will not reduce the number of children who die. At best, it may change the names on the

tombstones. At worst, it will give those who carve the tombstones a little more business.

We made the prediction in the previous paragraph when this report first was released in January, 2006, just after the death of Nixzmary Brown.

Sadly, the prediction has proven correct. In fact, the tombstone makers got a lot more business. In 2006, deaths of children previously known to ACS reached 44, the highest total since at least 1993.⁴ And in 2008, such deaths set another record – 49. And the number of such deaths in the past three years is now the highest three-year total since 1993. The previous record was set during the foster-care panic that followed the death of Elisa Izquierdo in 1995.

Child welfare reform in New York City was succeeding. The dramatic reduction in foster care placements since 1998 had been accomplished *without compromising safety* and children who come to the attention of ACS were far better off now than they were a decade before.

When this report first was released, we wrote that “ACS needs to find out if any of the errors in the case of Nixzmary Brown and other tragedies can be generalized beyond these individual cases. If so, the lessons must be applied to the reform process. But the City of New York must not return to the days of “take the child and run.” Nor should anyone believe that “the pendulum has swung too far” toward keeping families together. The data show that simply is not true.

“The solution to the problems of reform is more reform.”

In fact, ACS has not returned all the way to the worst excesses of the 1990s. Even in the midst of three years of crisis, ACS continued to reduce the proportion of children in the worst forms of care, group homes and institutions. There also are signs of improvement in placing children with rel-

atives instead of strangers.

If the outrage and disgust we all feel over Nixzmary’s death becomes an excuse to turn back the clock and return to the days when the operating philosophy at ACS boiled down to “take-the-child-and-run,” it will not reduce the number of children who die. At best, it may change the names on the tombstones. At worst, it will give those who carve the tombstones a little more business.

Furthermore, entries into care in 2008, though 55 percent higher than in 2005, remain lower than they were not only after Elisa Izquierdo died, but also before that tragedy.

There have been other steps forward as well, notably big improvements in legal representation for families.

But it is now painfully apparent that, on balance, ACS is moving in the wrong direction.

That’s why we’ve changed the title of this report. ACS needs to stop turning back.

Foster care panics

Perhaps the most important thing to understand about any child welfare system is that *nothing* influences how many children

The good old days? IN 2000, THIS IS WHAT IT WAS LIKE AT ACS

Akka Gordon,* a former child abuse investigator for ACS wrote about her experiences for the monthly magazine *City Limits*, in December, 2000. The full story is available online at <http://www.citylimits.org/content/articles/articleView.cfm?articlenumber=665> *If ACS turns back on reform, it will be like this again.* These are some excerpts from Gordon's account [italics added by NCCPR]:

"To the manager ... who makes the fateful decision to remove a child and the judge who approves it, a child exists only on a piece of paper, alongside a list of disturbing circumstances. They don't see a child having a panic attack at 3 a.m. because he is suddenly alone in the world. Or slamming his head against the wall out of protest or desperation. The good intentions that go into the decision to remove a child often have little to do with the sometimes brutal outcomes of that choice. ... *Unlike fatalities, the trauma a child endures from being wrongly removed, followed by years of difficulty growing up in foster care, are not measurable.*"

"A manager or supervisor has no one to answer to if a child who shouldn't be in foster care is removed from home anyway. *There is no penalty for the wrongful taking of a child.*"

"At moments of uncertainty, the mantra was 'Cover your ass' – a phrase heard often around the office. ... The obsessive concern with liability at the field offices quickly overshadows the reasonable criteria [workers] have been taught for identifying abuse and neglect. Most quickly learn to abandon their training and to do what it takes to survive."

"One week after the investigation begins, caseworkers have to file an electronic report. The computer offers two options: 'safe' and 'unsafe.' But my manager accepted only one. Any time I determined a child to be 'safe' my manager rejected it and returned it to me. *The first step to protect yourself, I quickly discovered, is to determine that a child is 'unsafe' from the outset of an investigation.*"

"Any caseworker can tell you that they have done removals that they did not personally agree with. But they rarely complain to management, since they will never get in trouble for removing a child under supervisors' orders. Caseworkers are also quiet about unnecessary removals because *doing a removal and then transferring a case to foster care takes them a lot less time than keeping it and trying to work with a family.* Keeping a case obligates a worker to do regular home visits and follow-ups to make sure a family is getting preventive services. It also means dealing with anything that may go wrong and continuing to be responsible for the children's safety."

"*By the time I resigned, I felt strongly that the system was working against children instead of for them.*"

*The name is a pseudonym. The worker wanted to use her real name but lawyers for City Limits advised against it.

are taken from their parents more than whether there was a highly-publicized death of a child "known to the system" and how government officials and media respond to

that death.

The former head of the Illinois Department of Children and Family Services, Jess McDonald, has a chart he calls he "EKG chart" which links spikes in child re-

movals to the very week such a story made the front page of the *Chicago Tribune* or the *Chicago Sun-Times*.

The same is true long term.

In 1995, 8,000 children were taken from their parents by ACS' predecessor, the Child Welfare Administration. In November of that year, Elisa Izquierdo died. In January, 1996, Mayor Giuliani himself said Elisa's death proved the city was doing too much to keep families together. So did his new head of the newly-formed ACS, Nicholas Scoppetta. Scoppetta would later realize that this was a mistake. To his great credit, he began the era of reform.

But from 1996 through 1998, the operating philosophy at ACS became take-the-child-and-run. The result was a foster care panic.

By 1998, removals had increased by 50 percent – to 12,000 children taken from their homes. Children were torn from their parents for such crimes as leaving a ten-year-old and a four-year-old at home for an hour to shop for groceries, or losing track of a child's whereabouts while helping a friend to move. Even a prosecutor who handled such cases for the Queens District Attorney's office said: "I find that police charge endangering the welfare of a child when there shouldn't be an endangering case at all."⁵

The fear of ACS so permeated impoverished neighborhoods that some parents never left their apartments without their papers exonerating them from a false allegation.⁶

Giuliani and Scoppetta said they were doing this to reduce fatalities among children known to the system. But those fatalities increased – from 24 in 1996 to 36 in 1998. And that figure of 36 was the highest number of deaths of children previously known to the child welfare agency at any time from 1993 – until 2006. Furthermore, the number of deaths during the three years of this foster-care panic – 90 – was higher than any previous or successive three-year

period – until the most recent three years, again because of what happened in 2006.

But while some news coverage of fatalities in late 2005 and early 2006 included a "boilerplate" paragraph noting that the deaths came at a time when ACS was working to keep families together, and some commentators have gone farther, specifically scapegoating family preservation, in not one story about any of those 90 deaths during the Years of Panic did any reporter write that the death came "as the city has sought to emphasize its policy of 'if in doubt, yank 'em out.'" Only one *New York Times* story raised the issue, even indirectly, in 1999. (That story is included in Appendix A). And, of course, not one columnist or editorial writer linked the sharp increase in fatalities to ACS' policy of take-the-child-and-run.

Then, in 1999, the City settled a class-action lawsuit, *Marisol A. v. Giuliani*. The lawsuit created a panel of national experts, including John Mattingly, overseen by the Annie E. Casey Foundation, (which also helps to fund NCCPR). The panel was purely advisory, but Scoppetta took its advice.

Showing remarkable courage, he changed course and embraced safe, proven programs to keep families together. As he was preparing to leave office, he told the *Times*: "I'm absolutely convinced we have too many children in foster care."⁷ William Bell and now John Mattingly continued the reforms. By FY 2005, the number of children taken from their parents was 4,887.

Fortunately, ACS made so much progress that even with the increases in 2006 and succeeding years, New York City still takes away fewer children than it did during the Years of Panic. But the current upsurge in removals endangers all that has been accomplished.

New York City is not alone

Very few jurisdictions are large enough to be able to detect any pattern based

The errors go both ways

ACS STILL CONFUSES POVERTY WITH NEGLECT

The theme of this report is that ACS improved when it reformed to emphasize taking fewer children. But it hasn't improved enough. And the errors go both ways. Just as the agency still sometimes leaves children in dangerous homes, it also continues to tear apart some families just because they are poor.

But unlike the old ACS, the new ACS sometimes will admit its mistakes and help such families. It did just that only weeks before this report originally was issued in the case of a Mexican immigrant family, whose story was first told by the Immigrants and Child Welfare Project (ICWP) and Cabrini Immigrant Services.

The story begins on December 14, 2005 – a time when ACS already was feeling pressure to revert to a “take the child and run” approach.

An ACS caseworker found Anna (not her real name), a mother with four children, living in an SRO hotel – just like many other poor immigrant families who work in neighborhood restaurants. (The father had gone back to Mexico for medical care he couldn't afford in the United States).

Anna did not beat her children, or torture them, or starve them; nor did she let anyone else do so. And she didn't keep them out of school.

On the contrary, the parent coordinator at the children's school knows them well. He says the mother is devoted to her children

There was no allegation that Anna mistreated her children in any way. Why, then, were they torn from everyone they knew and loved? Because the two youngest children slept in the same bed as the mother and the family kept their clothes in bags stacked in a corner of the room. The ACS caseworker also cited the presence of roaches.

The caseworker did not speak Spanish. Instead of getting a translator, she used the oldest child – age 14 - -to translate.

At a family team conference - -which is supposed to find ways to avoid foster care – five ACS staff berated Anna for living in overcrowded conditions.

Then ACS refused to place the children with an uncle, because of his immigration status.

So the children were trapped in foster care, in a home where the foster mother did not speak Spanish. According to ICWP, the foster mother refused to allow the oldest daughter even to call her mother, telling the girl “go out on the street if you want to talk to your mother, this phone is only for my use.”

The foster mother said the 14-year-old did not show her enough respect. When a social worker suggested during a telephone conversation that perhaps the girl was distraught at being separated from her family the foster mother said: “I don't care if she's mad, I can't have that girl acting towards me with disrespect.”

During the conversation, the 14-year-old could be heard in the background, crying.

The youngest child is 18 months old, and was being breastfed by his mother. While in care, he lost three pounds in one week, refusing to eat unfamiliar food.

The parent coordinator at the children's school notes that at least six other families live at the same address, prompting him to ask: “So is ACS going to remove the children from all of them – is it now a crime to be immigrant and poor?”

In the past, that would have been the end of the story. But with the Immigrants and Child Welfare Project and Cabrini Immigrant Services advocating for the family, top ACS officials intervened. They found the family a place at a family shelter in the Bronx. They're now working to find permanent housing for the family, including the father, now back in this country.⁸

And that leaves two questions:

- How many other families, who don't have this kind of advocacy, still are being needlessly torn apart?

- In the current climate of foster-care panic, if another such case comes to their attention again tomorrow, will top ACS officials be willing to do the right thing again?

We got a disturbing answer early in 2009, when the *Daily News* told the story of a little boy named Juan. Juan's mother, Lillian Lucas-Dixon, did not beat him, or torture him, or sell him on the streets for drugs. As the *Daily News* reports, her crime was working to raise her youngest child.

She needed to get to her job as a subway station attendant. So she'd leave Juan, age 7, home alone after school until his 23-year-old sister got off work and could get to their Co-op City apartment to watch Juan.

"My choice was, do I lose my job or stay home with my son?" Lucas-Dixon, told the *Daily News*.

Juan mentioned this in his notebook at school. Poor Juan had no way of knowing that every school employee is on notice that their jobs are on the line if they don't call in absolutely everything to the hotline. So the school did. And, of course, Juan knows nothing about the "get tough" message caseworkers have been hearing for three years now, which explains why, instead of helping Juan's mother find after school care, they simply opted to take the child and run.

So now Juan is in a foster home of a total stranger, far from where he lived. And in a throwback to one of the most regressive practices of bad child welfare agencies, visits often are scheduled during his mother's working hours.

As to the mother who raised Juan, and should be raising him now, the *Daily News* reports that:

Her oldest eight have graduated or are in college or the military. The ninth is in high school. ... Her older children, now ages 15 through 29, say they always received Christmas presents, went on vacations, participated in sports and arts programs and that their mother knew the administrators and teachers at each of their schools.

"She does for 10 of us what some parents do for one," said Princess, Lucas-Dixon's 20-year-old daughter, a student at Sullivan County Community College. "I just don't get it." Lucas-Dixon brags that none of her kids have criminal records, were pregnant as teens or abused drugs. "If I was dumb enough to have a large family, I owe it to myself and the world to produce responsible citizens," she said.

In fact, there are millions of children like Juan, left home alone every day in America by single parents, usually mothers, who have no other choice. But Juan was in the wrong place, New York City, at the wrong time, a time when every ACS worker is running scared.⁹

on fatalities. But two that are big enough mirror the pattern in New York City.

The state-run system in Illinois went through a foster-care panic from 1993 to 1997, after the death of Joseph Wallace. The number of children in foster care on any given day soared from about 33,000 to over 50,000. And again, total child abuse fatalities actually increased. (Illinois doesn't break "known-to-the-system" into a separate category). So Illinois changed course. Today, fewer than 16,000 children are in foster care statewide.¹⁰ And, as discussed below, as foster care plummeted in Illinois, child safety improved.

The Florida foster care panic began in late November, 1998, after the death of Kayla McKean. Removals soared 50 percent in one year. And while New York City and Illinois learned from their mistakes, it

took a lot longer for Florida. So, in most of the state, removals stayed at that high level until 2007.¹¹ In the four years before the panic, (which is as far back as the data go) there were an average of 25 child abuse deaths per year involving children "known to the system." In the seven years afterwards, the annual average was 37. The number shot up again in 2006, in part because the definition of a maltreatment-related fatality was broadened.

But then, in 2007, the first year removals declined, for the first time in nearly a decade deaths of children known-to-the-system declined as well.¹²

There's been another significant decline in entries into care in 2008 – and current leadership in Florida is committed to this kind of reform.

Why would it happen?

It certainly seems counterintuitive. After all, if a child known-to-the-system dies, you'd think you could reduce deaths by taking away more children.

But consider:

Although every child abuse fatality is a terrible tragedy, they are, in fact, needles in a very large haystack. There are 1.9 million children in New York City. Just the number that came to the attention of ACS each year was about 50,000, and now it is even higher. Of that number, between 22 and 49 have died in any given year.

If you want to find the needles in a haystack you can't do it by trying to vacuum up the haystack. Yet that's what workers try to do during a foster-care panic. Suddenly workers are terrified to leave any child in his or her own home. As more and more children are taken, caseloads increase. Workers have less time to make those crucial life and death decisions. So they make snap judgments. That leads to more mistakes in both directions – more children needlessly taken away even as more children in real danger are overlooked.

That's how a foster-care panic can lead to an increase in fatalities.

Indeed, there are signs of this dynamic of panic in the case of Nixzmary Brown.

ACS caseworkers generally have reasonable caseloads – indeed, their counterparts in most of the country would envy them. But that can change very quickly.

The supervisor of Nixzmary's case also was in charge of another case in which a child known-to-the-system died, the case of Dahquay Gillians.

"When we get fatalities, there's all kinds of pressure on the unit to find an explanation,' the supervisor told the *Daily News*. 'We were . . . dealing with all the fallout from [Dahquay's] case. The Nixzmary Brown case wasn't an issue.'"

This particular supervisor also admitted to falsifying a document in the Gillians case. Perhaps a better supervisor could have handled the additional pressure.

But unfortunately, as we discuss below, some of the steps ACS has announced in the wake of Nixzmary's death, and some statements from the agency, may only reinforce the dynamic of panic, and leave children more vulnerable – because some workers and some supervisors always will be better than others.

Who is in foster care?

The other reason the idea that a foster-care panic would increase child abuse deaths seems counterintuitive is because of misunderstandings over who is in foster care and why. Very few parents who lose their children to foster care are anything like the mother of Elisa Izquierdo or – if the allegations are true – the parents of Nixzmary Brown.

Far more common are cases in which a family's poverty is confused with neglect. And even with all the progress at ACS, such cases still exist.

ACS workers sometimes still will tear children from their parents solely because a working mother – desperate to keep her low-wage job and stay off welfare - - left her children home alone because the sitter said she's be late. And ACS workers still will take children solely because their parents can't afford better housing. (See "The errors go both ways," page 9).

And it was only in 2005 – after finding itself on the losing end of scathing decisions from a federal district court and the New York State Court of Appeals, that ACS finally settled a class-action lawsuit and stopped fighting to continue the shameful practice of routinely tearing away children from battered mothers, solely because those mothers had been beaten. (NCCPR Vice President Carolyn Kubitschek was co-counsel for plaintiffs in this suit).

Mothers who did everything right – obtaining orders of protection, fleeing to shelters – still would be accused of “engaging in domestic violence,” apparently for throwing their faces into their attackers’ fists. (See page 12). As one expert testified, for the child, to be torn away from the non-offending parent in this situation is “tantamount to pouring salt on an open wound.”¹³

It is extremely difficult to take a swing at “bad mothers” without the blow landing on their children.

Other cases fall on a broad continuum between the extremes, the parent neither all victim nor all villain. Sometimes, these in-between cases involve substance abuse. And that raises another question: Why even bother with parents – usually mothers -- in these cases? But the reason to “bother” is not for the sake of the parents, but for their children.

University of Florida researchers studied two groups of infants born with cocaine in their systems. One group was placed in foster care, the other with birth mothers able to care for them. After six months, the babies were tested using all the usual measures of infant development: rolling over, sitting up, reaching out. Consistently, the children placed with their birth mothers did better. For the foster children, being taken from their mothers was more toxic than the cocaine.¹⁴

It is extremely difficult to take a swing at “bad mothers” without the blow landing on their children. If we really believe all the rhetoric about putting the needs of children first, then we need to put those needs ahead of everything – including how we may feel about their parents. That

doesn’t mean we can simply leave children with addicts and do nothing. It does mean that allowing families to stay together under supervision while a parent is in drug treatment or allowing the parent and child to live together while the parent gets inpatient treatment is almost always a better first choice *for the child*, than tearing the family apart and consigning the child to foster care. Those infants in Florida are trying to tell us something. It’s about time we listened.

Double standards

Because the idea that taking away more children can increase child abuse fatalities is counterintuitive, it contributes to a double standard in the attention paid to deaths of children “known to the system.”

If a child “known-to-the-system” dies in his or her own home at a time when the city is trying to keep families together, often it is assumed, wrongly, that the death is related to the policy. But if a child known-to-the-system dies even as the city already is tearing away huge numbers of children from their parents, then it seems, on the surface, that the two facts are unrelated, so it’s easier to dismiss the death as an aberration.

It would be hard to argue that the death of Caprice Reid was any less shocking than the death of Elisa Izquierdo. It should have been no less horrifying. Yet a Nexis search done by NCCPR in 2000 found more than 1,000 stories mentioning the name of Elisa Izquierdo, from all over the country. The total mentioning Caprice Reid: 36. And only one of them was on the front page of any New York City daily. The fact that almost any New Yorker reading this report will recognize the name Elisa Izquierdo and almost none will recognize the name Caprice Reid speaks for itself.

After the panic

Child abuse fatalities consistently went up during the New York City foster

When ACS punished children of battered mothers

Before the reforms at ACS, it was common practice to take children from mothers solely because the mothers had been beaten. It took a class-action lawsuit to curb the practice, and a reform-minded ACS administration to settle the case and acknowledge that it was doing terrible harm to children. (NCCPR Vice President Carolyn Kubitschek was co-counsel for the battered women). Below, is the story of one of the courageous women who brought the lawsuit. If ACS turns back on reform, the children of women like these will be in danger once again:

Sharwline Nicholson held down a full-time job while pursuing a college degree in behavioral sciences and caring for her two children.

She decided to break off a relationship with her daughter's father because he lived far away in South Carolina. When she told him, he became enraged. "He started hitting on me, pounding me, kicking me..."¹⁵

But even as she was bleeding profusely, suffering from a broken arm, broken ribs, and gashes to her head, as she called 911 and waited for an ambulance to take her to a hospital, she arranged for a neighbor to care for her children.

But that wasn't enough for ACS. As Nicholson lay in her hospital bed, ACS took the children from the babysitter and threw them into foster care with strangers.

When ACS workers came to her hospital room to let her know, "there was no softness, no comfort, no explanation of where [the children] were, nothing," Nicholson said. "I compare it to kidnapping. I compare it to death."¹⁶

The ACS case manager said the children were in "imminent danger" because their mother was in the hospital and couldn't protect them. The case manager admitted he deliberately delayed notifying the court of the "emergency" removal to gain leverage over Nicholson and force her to meet ACS demands. He said this practice is common.

ACS charged Nicholson with "engaging in domestic violence" in front of the children. In fact, when she was beaten one child was asleep in another room, the other was in school.

"It reached the point where I said 'Oh, why did I call 911,'" Nicholson said.¹⁷

Nicholson could not even visit her children for eight days, and then only with supervision at a foster care agency. Notes Judge Weinstein, "Ms. Nicholson was able to locate her nine-month-old daughter within the building by following the sounds of her crying." She found her "sitting on a chair by herself with tears running down." She had a rash on her face, yellow pus running from her nose, and she seemed to have scratched herself. Her son had a swollen eye. He said the foster mother had slapped his face. When another foster mother was assigned to take him away, he asked the new foster mother: "You're not going to hit me, are you?"

Even after the court ordered the children returned, on condition that the family stay with a cousin in The Bronx, ACS stalled for days – on grounds that the children would not have adequate bedding.

Long after being reunited, the harm ACS did to her children remains. Once, when her son heard police were in the building he froze and said "Oh no, they're going to take me."¹⁸

Winning back her own children has been only the beginning for Sharwline Nicholson. She's joined the Board of Directors of the Child Welfare Organizing Project, and helps other families fight for their children. She hopes to open her own shelter for battered women and their children.¹⁹

care panic after Eliza Izquierdo died. But what about afterwards – did they consistently go down?

No. In both Illinois and New York

City there's been no absolutely clear pattern – fatalities have fluctuated. *But they've never reached the height they reached during the worst of the panic in each jurisdiction,*

(until removals soared again in 2006) and by several measures, the general trend in New York City in fatalities among children “known to the system” had been downward.

The foster care panic of 1996-98, in which huge numbers of children were torn from their homes, did not improve child safety. And when ACS was trying to do more to keep families together, children were safer.

- In every year since 1998 – when child removals reached their highest point since 1993 – until 2006, the number of child maltreatment fatalities among children previously known to ACS has been lower than they were in that year; in most years significantly lower.

- In no three-year period since 1993 have such fatalities been as high as they were during the Years of Panic – until the three years from 2006 through 2008 created a new three-year record.

- The average number of such fatalities per year since the panic was lower than during the panic years.

- There were fewer child maltreatment fatalities among children previously known to ACS in 2005 than in 2004.

All that said, fatalities are not a great measure of overall child safety – for a reason for which we all should be grateful. Even in a jurisdiction the size of New York City, the number of deaths of children “known-to-the-system” is small enough to be able to fluctuate due to random chance.

And not all children “known to the system” are equally well known. In some cases, it turns out the case file had more “red

flags” than a Soviet May Day parade. In other cases, it would have been very hard to know in advance that the child was in danger.

This long discussion of fatalities appears here because it’s the measure of choice for the news media and some public officials. And as long as that is the measure of choice, we will keep pointing out that the one and only clear pattern, in New York City and around the country, is that during a foster-care panic, fatalities go up.

Again, the preceding paragraph is not hindsight. It was written in January, 2006.

Other measures

If not by fatalities, how can one measure safety?

One way that often is reliable is an independent court-appointed monitor with the power to read every record, look over everyone’s shoulder and do random “case readings.” As a result of lawsuits, such monitors exist in, among other places, Illinois and Alabama. In Illinois, the monitors have found that, as the reforms led to a dramatic reduction in removals of children, child safety improved. One of those monitors, Prof. Mark Testa, Director of the Children and Family Research Center at the University of Illinois at Urbana-Champaign told the *St. Louis Post-Dispatch* that, as the newspaper put it: “Children are safer now than they were when the state had far more foster children.”²⁰ And that’s especially significant since the rate at which children are removed from their parents in Chicago probably is lower than the rate in New York City.²¹

Alabama also has an independent monitor. And he has attested to the fact that, as that state rebuilt its system to emphasize family preservation, child safety improved. (Appendix A includes a *New York Times* story about how this unlikeliest of places became, relatively speaking, a national

model for fixing child welfare).

Other key measures are the overall rate at which children left in their own homes are reabused within a specified period of time and foster care “recidivism” - that is, how often, when a child is returned home from foster care, must that child be placed again? These are measures of safety with populations large enough to be unaffected by random chance. These measures also have flaws, but as a way to detect trends, they’re probably the best available short of a case reading.

The New York Times cites the sharp drop in reabuse in the story about Alabama, and that number also has declined in Illinois.²²

What these measures show for New York City

Data are available for one of these measures back to 1993 and for the other back to 1998. They are presented in full at the end of this analysis. But the bottom line is that, before the panic one measure remained largely unchanged, the other improved significantly. **But since the panic, both measures have worsened. Reabuse of children previously known to ACS dropped by 30 percent from 1998 – the height of previous foster-care panic -- through 2005.**²³ That means that the foster care panic of 1996-98, in which huge numbers of children were torn from their homes did not improve child safety. And the approach of trying to do more to keep families together made children safer.

Reabuse rates did increase slightly in the years after 1999 – but they have never reached the 1998 level. And this increase continued in 2006, even as they city tore apart far more families. Then, in 2007, as the surge in removals continued, reabuse spiked – showing the largest single-year increase on record. And the figure was beginning to approach its 1998 peak. The reabuse figure declined only slightly in 2008.

The rate of foster-care recidivism improved after 1999, and that improvement continued despite the increase in removals in 2006. But then, in 2007, recidivism shot up by more than 40 percent, reaching its highest level since 1999. That figure, too, declined only slightly in 2008.

Why in the world would anyone want to return to throwing thousands more children needlessly into a system that churns out walking wounded four times out of five – when there is an alternative that is just as effective, indeed more effective, at keeping children safe?

Any single year change in figures should be viewed with caution; but now this poor performance on safety has gone on for two years in a row, even as entries into foster care continue to rise. At a minimum, the data do nothing to support the notion that children in New York City are safer now than they were when Nixzmary Brown died. On the contrary, they suggest that now, children are less safe.

Even had the safety numbers stayed the same, instead of improving when ACS was working harder to keep families together, the reformed system still would have been better than its predecessor. Here’s why:

Suppose you had two drugs to fight cancer. Each drug cured the disease 85 percent of the time, and failed in 15 percent of cases. But one drug had hideous, painful side effects. The other didn’t. Which drug would you choose?

Foster care has hideous, painful side effects. It corrodes the psyches of thousands

of children. Indeed, one recent study of foster-care alumni in Oregon and Washington State, co-authored by Casey Family Programs (a separate agency from the Annie E. Casey Foundation) and Harvard Medical School, found that the alumni had twice the level of Post-Traumatic Stress Disorder of Gulf War veterans.

Despite the efforts of many dedicated, caring foster parents, Only about 20 percent of the alumni were said to be doing well.²⁴

And in 2007, a landmark study from MIT compared outcomes for 15,000 children in those “in-between” cases – the kinds where the decision could go either way. On average, the children left in their own homes fared better than *comparably maltreated* children placed in foster care.²⁵

Why in the world would anyone want to return to throwing thousands more children needlessly into a system that churns out walking wounded four times out of five – when there is an alternative that is just as effective, indeed more effective, at keeping children safe?

Add to the emotional trauma the rate of abuse in foster care itself, which is far higher than in the general population and far higher than generally realized. 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.²⁶ (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 group homes, orphanages or any other form of institution won’t help -- the record of “congregate care” is even worse.²⁷ And 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.

Witness Caprice Reid.

The most dangerous phrase in the child welfare lexicon

It is for all these reasons that the most pernicious myth in child welfare can be summed up in the claim that only parents are harmed by wrongful removal of children, and that taking these children means agencies are “erring on the side of the child” In fact, there is probably no phrase in the entire child welfare lexicon that is more dangerous to children.

- It is dangerous to children because it vastly underestimates the trauma to a child from needless foster care placement.

- It is dangerous to children because it underestimates the risk of abuse in foster care itself.

- It is dangerous to children because it encourages the overloading of the system with needless placements, stealing time, money and effort from the quest to find children in real danger.

Thus, the idea that foster care should be used quickly and easily because it’s supposedly “safer” for children, while every i must be dotted and every t crossed before a family is reunified, or allowed to stay together, is a perilous double standard that endangers children’s psyches and sometimes their very lives.

None of this means that all children can be kept in their own homes, or that all families separated by foster care can be reunified. Rather, it means that for most children most of the time, the best way to err on the side of the child is to err on the side of the family.

Fixing the bicycle while riding it

One of the leaders of the reform effort in Alabama, and a member of the panel that advised Commissioner Scopetta, Paul Vincent, has said that reforming a child welfare system is like fixing a bicycle while riding it. We would add: Riding it up a

mountain.

One can be ahead of almost all the other cyclists, and still be only half way up the mountain. And that is why it is possible to be a national model – compared to the rest of the country – and yet tragedies still happen. And those tragedies go in both directions. Some children are left in dangerous homes; others have their lives destroyed by needless foster care placement, others face abuse in foster care itself.

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.

But ACS was still making progress up the mountain. And that progress can resume – if it isn't stopped by a foster care panic.

Three years ago, there were two indications that ACS might soon be able to further improve child safety. One was the fact that, for the first time, ACS was to be allowed to plow savings from reducing foster care directly into services to strengthen families. Of course now that foster care has increased, presumably there are no more savings.

And, indeed, in March, 2009, the agency announced steep budget cuts – cuts that might not have been necessary were ACS still taking children at the same rate as 2005, since keeping families together not only is the better option for most children, it's also the less expensive option.

The other reason still holds: For the

first time in well over a century, ACS is demanding accountability from the scores of private agencies that provide foster care and which, in fact, effectively ran the system.

This can be seen most clearly in the closing of Miracle Makers, an agency involved in another tragedy late in 2005. Miracle Makers was the private agency which recommended returning Sierra Roberts to her father (though in fairness to Miracle Makers, it does not appear that the agency could have known, at the time, that this recommendation was tragically wrong). And ACS didn't end its contract with Miracle Makers after-the-fact to find a scapegoat – they did it months before, after seeing that it was one of the worst performing private agencies in the city.

That should, of course, be a given. A private agency does a lousy job and doesn't improve, so you stop doing business with it. But in New York City child welfare it's revolutionary.

Child welfare has been the perfect example of what the late Jack Newfield called “the permanent government.” Commissioners came and commissioners went, but for more than 150 years, since Charles Loring Brace founded the Children's Aid Society and started grabbing poor people's children and throwing them onto “orphan trains,” the private agencies have actually run the system, and run it for their own convenience.

Every time the city would come up with a plan for accountability, the agencies and their blue-chip boards of directors drawn from every corner of the city's business, civic and religious elite, would crush it.²⁸

A foster-care panic itself impedes efforts to hold private agencies accountable. It puts the city in a position where it is so desperate for beds that it has to do business on the private agencies' terms. And that may well explain why ACS put Caprice Reid in a foster home opened by one of those agencies even after another had shut it down as subs-

tandard.

So until the reforms initiated by Commissioner Scoppetta, and continued, up to now, under commissioners Bell and Mattingly, the City of New York *couldn't* close an agency for poor performance – because performance wasn't even measured. It's likely that ten years ago, even an agency like St. Christopher's – which the city Department of Investigation charged in 2005 with acts of blatant falsification of case records – would have gotten a stern letter demanding a "corrective action plan" – and nothing more. It is a measure of how much things have changed that instead ACS canceled its contracts with the agency.²⁹

But the sad fact is, as of March, 2009, the ugly forces set in motion three years earlier have not been stopped.

Toward real solutions

ACS still leaves some children in dangerous homes. ACS *also* still takes children, needlessly, from homes that are safe or could be made safe with the right kinds of help. And both errors are equally harmful to children.

Any measures taken in the wake of recent tragedies must recognize this. Therefore:

- *Mayor Bloomberg and Commissioner Mattingly must speak out forcefully against the surge in entries into care that still is underway.*

The message to workers must be that children have to be safe, but child removal doesn't necessarily equal child safety – and wrongful removal is as harmful to a child as leaving that child with dangerous parents.

Child safety has always been the agency's top priority, and the fact that reforms were accomplished without compromising safety shows that this message is clearly understood on the frontlines.

Unfortunately, Commissioner Mattingly has made some comments which are perilously incomplete. He told the *Daily*

News:

"We do have to take a hard look on the front lines whether the practice has drifted slowly into one direction as opposed to the other - in this case, family preservation and support. I can guarantee you it is not coming from the top, but I am not at this point in a position to guarantee you that caseworkers are making the right judgments every time based solely on the facts as opposed to based on their conviction that keeping families together is the best thing to do. It is the worst thing to do sometimes."

But a commissioner could just as easily look at the case of Anna, the Mexican immigrant mother whose story is told on page 9 and say:

"We do have to take a hard look on the front lines whether the practice has drifted slowly into one direction as opposed to the other - in this case, needlessly traumatizing children by tearing them from their mother. I can guarantee you it is not coming from the top, but I am not at this point in a position to guarantee you that caseworkers are making the right judgments every time based solely on the facts as opposed to based on their conviction that taking children from impoverished parents is the best thing to do. It is the worst thing to do sometimes."

As soon as a commissioner stops making both comments – with equal force -- he runs the risk of encouraging a foster-care panic. By the time the message reaches the frontlines, it comes out as "I can take away hundreds of children needlessly, and while the children's lives might be destroyed, my career is safe. Leave one child in a dangerous home and I might be accused of acting on something other than the facts."

Akka Gordon's account of her time at ACS, excerpted on page 7, shows how easily it can happen. So does the fact that in the week after Nixzmary Brown died, removals of children more than doubled compared to the same period last year. There were 194 children removed from their

homes during this period in 2006, compared to 84 the year before.

Unfortunately, in the time since the above was written, though the Mayor and Commissioner Mattingly have done many things right, they have failed to send a balanced message to the frontlines.

Indeed, some of their actions -- such as having *The New York Times* sit in when the Commissioner grilled workers who did not act aggressively enough on a case,³⁰ only reinforce the idea that a worker will only be in trouble if she fails to remove a child, not if she takes a child needlessly.

ACS repeatedly has argued that an increase in children removed from their homes should be expected because there has been a sustained increase in reports alleging maltreatment.

There are two problems with this argument:

First, the increase in removals has significantly outpaced even the increase in reports (and so, sadly, did the increase in deaths of children previously known to ACS).

Second, if the reports really were being evaluated on their merits, the proportion that led to removal would be going down.

That's because common sense suggests that the reliability of reports during a panic is likely to go down. A lot of the new reports are likely to be "CYA" reports from mandated reporters, such as doctors and teachers, terrified of being on the front page, and being prosecuted, if they don't report anything and everything and something goes wrong. And the general public, rightly furious over what happened to Nixzmary Brown, is more likely to see abuse anywhere and everywhere: "That neighbor always did seem a little strange, and her baby sure was crying a lot last night."

• *Any review of open cases must look for errors in both directions.* The reviewers must be as vigilant to protect child-

ren from needless removal from their homes, and the attendant dangers of foster care, as they are to protect them from potentially dangerous parents.

Conclusion

In previous versions of this report, we wrote that:

"The solution to the problems of reform is more reform. So the message we offer to Mayor Bloomberg to ACS and to all concerned New Yorkers is simple: Don't turn back.

"Don't turn back to the days of "take the child and run" when children were torn from their parents for such crimes as leaving a ten-year-old and a four-year-old at home for an hour to shop for groceries, or losing track of a child's whereabouts while helping a friend to move.

"Don't turn back to the days when the fear of ACS so permeated impoverished neighborhoods that some parents never left their apartments without their papers exonerating them from a false allegation.

"Don't turn back to the days when battered women had to live in fear of seeking help – because ACS might take their children.

"Don't turn back to the days when, in a single year, New York City threw 12,000 children into foster care, a form of care that churns out walking wounded four times out of five."

ACS has not regressed nearly this far. But the fact is, ACS is turning its back on the approach that promised to make it a national model.

New York City still can have the finest child protection system in the nation. It can reach the top of the mountain. But only if it will stop turning back.

See following pages for key statistics, end-notes, and appendix.

KEY NEW YORK CITY CHILD WELFARE STATISTICS

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Reports Alleging maltreatment	52,458	49,129	47,591	52,994	53,567	57,732	54,673	53,540	57,224	55,925	53,894	51,477	50,251	62,585	64,190	64,572	64,748
% of reports labeled "indicated" by caseworkers	29.6	29.2	25.1	33.0	35.6	35.6	36.9	37.3	34.1	33.6	33.6	33.7	32.6	36.7	39.8	39.9	42.1
Snapshot number of children in foster care	48,036	46,855	43,494	42,008	41,771	40,901	38,440	34,354	30,858	28,215	25,701	22,082	18,968	16,706	17,005	16,946	16,440
Entries into foster care	9,809	9,022	7,949	8,912	11,453	12,000	10,418	9,390	7,908	8,498	6,901	6,201	4,813	6,213	7,132	7,451	7,474
Recidivism (%)	12	12	13	13	11	12	12.2	10.1	8.6	9.3	9.2	8.6	8.8	7.8	11.4	11.1	14.1
Re-abuse (%)						17	7.7	8.8	8.9	10	9.3	10.5	11.7	12.6	14.7	14.2	14.7
Fatalities, child known to system	25	25	27	24	30	36	23	22	32	25	24	33	30	44	41	49	

Three dates are crucial in evaluating trends in these data: November, 1995: Elisa Izquierdo dies. 1999: Marisol lawsuit is settled and panel of national experts begins work. January, 2006: Nixzmary Brown dies.

NOTES ON DATA:

- Data are for fiscal years, except fatality data, which are for calendar years.
- Where a box is blank, data were unavailable to NCCPR.
- The snapshot number is the average number of children in foster care on one day of each fiscal year.
- Recidivism means percentage of children reunified with birth parents from foster care who had to be placed in foster care again within one year.
- Reabuse means percentage of cases where abuse was "indicated," and there was another indicated case of abuse within one year.
- Fatalities indicates the number of child abuse fatalities in which the child was previously known to ACS or its predecessor agencies.

Sources:

Reabuse rate data for all years except 1998 and recidivism data from 1999 to date are from annual *Mayor's Management Reports*. 1998 reabuse data are from Richard Perez-Pena and Andy Newman, "A Child's Death Commands Lasting Attention to Change," *The New York Times*, January 18, 2006.

All other data are from *Child Welfare Watch*, back issues are available here:

<http://www.nycfuture.org/content/search/topicsearch.cfm> *Child Welfare Watch*, in turn cites *NYC Mayor's Management Reports*, *New York State Office of Children and Family Services Monitoring and Analysis Profiles*.

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LEVEL 1 - 104 OF 664 STORIES

Copyright 1999 The New York Times Company
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July 23, 1999, Friday, Late Edition - Final

SECTION: Section B; Page 1; Column 5; Metropolitan Desk

LENGTH: 981 words

HEADLINE: Agency Head Defends Effort For Children

BYLINE: By NINA BERNSTEIN

BODY:

The Commissioner of the city's child welfare agency angrily defended his reform efforts yesterday and questioned the motives of an advocacy group that issued a report focusing on the rising number of fatalities among abused and neglected children.

Nicholas Scoppetta, the Commissioner of the city's Administration for Children's Services, mounted his counterattack against the advocacy group, Children's Rights Inc., in an appearance at Mayor Rudolph W. Giuliani's daily news briefing at City Hall. Mr. Scoppetta contended that the rise in the number of abused and neglected children who died after their cases had been reported to the agency -- to 36 last year from 24 in 1996 -- was not an accurate measure of his agency's performance.

"We have made vast strides," Mr. Scoppetta said, citing increased training, reduced caseloads and new accountability measures for the city's caseworkers, lawyers and managers.

He dismissed as inaccurate the advocacy group's findings that the investigations of the cases, both before and after the children died, demonstrated a continuing pattern of caseworker and agency mistakes.

"To look at 30 cases out of 430,000 children in the universe of children whose lives are touched by child protective investigations, and to make these emotional, sweeping, hyperbolic statements, is just unfair," he said.

But several advocates pointed out that Mr. Scoppetta's own plan of action for overhauling the system, issued in December 1996, made reducing the number of child fatalities the first of the "outcome and performance measures" he set to track the system's progress. The goal was listed as "stopping the killing of children."

Marcia Robinson Lowry, director of Children's Rights Inc., the national advocacy group that issued the report on Wednesday, said: "The importance of the report is not that number. But the city did say, after all, 'Judge us on this.'"

Mr. Scoppetta dismissed the relevance of fluctuations in child fatalities, saying that "when the system was at its worst," the city's count had declined, from 59 cases in 1988, to 27 cases in 1995, when news media attention to the beating death of 6-year-old Elisa Izquierdo spurred Mr. Scoppetta's appointment.

Richard Wexler, president of the National Coalition for Child Protection Reform, based in Alexandria, Va., contended that the rise of child fatalities since Mr. Scoppetta took over the agency has parallels in Illinois and Connecticut, where notorious child abuse deaths were also followed by a crackdown intended to protect children that instead led to a spurt in deaths because the foster care system was overwhelmed.

Though the rise in the city's count of child fatalities was cited in the Children's Rights 33-page report, its focus was instead on the cases of 201 city children whose deaths were reviewed by the state in 1997 and 1998, including many foster children not included in the city's tally. In 167 of those cases, Ms. Lowry said, the state found that city caseworkers had violated state regulations. And in an unknown number of cases, the system's role in a foster child's death was not brought to light, she said.

Examples the report cited included a severely asthmatic child who died suddenly after breathing problems and a seizure suffered soon after he was placed with a foster mother who had been given no training in asthma.

Another was a 16-year-old who was killed execution style last year after he ran away from the latest in a series of foster care institutions where he had lived since his abandonment at age 5.

Mr. Scoppetta criticized Children's Rights for its reliance on the state reviews of city investigations.

"This organization interviewed not one single caseworker, not one single witness, not one single doctor in the case and then they make these sweeping generalizations," he said. Mr. Scoppetta defended the quality of the casework done in one of the cases the report criticized, in which a baby born as the result of a rape was reported several times to the agency as abused or neglected, and died at six months when her mother left her alone in a bathtub.

He said an independent board of specialists had found that the case had been handled properly despite the result.

Mr. Scoppetta charged that Children's Rights, which filed a lawsuit in Federal Court in 1995 seeking the system's takeover by a receiver, was motivated by the legal fees it hoped to collect from the court in the case.

The suit was settled this year with an agreement to have a panel of national experts monitor and advise the agency on how to improve a system that city officials and advocates have agreed is resistant to reform.

Ms. Lowry, who was the target of similar accusations when David N. Dinkins was Mayor, responded coolly. "Lawyers who bring these lawsuits never recover the full cost of bringing them," she said. "This is a public interest organization that operates on a very, very slim budget."

Without a mechanism to reimburse lawyers who successfully sue to protect children, she added, "a public agency that spends over \$1.5 billion a year where children's rights are being violated and children are being harmed, would have been able to continue harming children."

Mr. Scoppetta charged that Ms. Lowry, who has been litigating for foster children in New York City for more than 25 years and nearly that long in other jurisdictions across the country, "has trouble sharing the high moral ground with anybody else in the business." He added, "You know once you are an advocate advocating for change and then change actually happens, your purpose for existing disappears."

Ms. Lowry said: "You cannot learn from your mistakes if you cannot admit you've made them. If the agency is not prepared to admit that they have serious problems in practice then I don't know how they are going to fix those problems."

NEW YORK TIMES August 20, 2005

Once Woeful, Alabama Is Model in Child Welfare

By ERIK ECKHOLM

MONTGOMERY, Ala. - As a mother, Stephanie Harris seemed hopeless. She was 29 and a determined crack addict back in 1993, when she was sent to prison for neglecting her six children, including infant twins. The authorities had little choice, she now agrees, but to give custody of her children to relatives.

"It didn't bother me," she recalled in a recent interview. "All I wanted to do was get high."

She served eight months, failed a urine test and went back to prison for a year.

If history were the guide, in Alabama or perhaps any other state, Ms. Harris might never have regained her children, child welfare officials here say. More likely, the children would have been shuffled among relatives and foster homes.

But officials here had, under court supervision, begun a wholesale overhaul of the child protection system to make it more pro-family, and they did not give up on Ms. Harris. Today she is off drugs, has a job and has custody of all but one of her children, whom an aunt is fighting to keep.

Her case illustrates what experts in child welfare say has been one of the country's most sweeping transformations of the handling of neglected and abused children. What by all accounts had been a dysfunctional system in Alabama, scarring too many children by sending them to foster-care oblivion while ignoring others in danger, has over the last 14 years become a widely studied model. But it has not been cheap, and in some ways Alabama has had to be dragged onto its pedestal because of political and philosophical resistance to the reforms and in spite of the state's endemic poverty.

"Alabama set the pace," said Richard Wexler, director of the National Coalition for Child Protection Reform, a private group in Alexandria, Va. "Though they've had some setbacks, I still view Alabama as a national model."

Forced by a legal settlement to make changes after parents and advocates filed a class-action lawsuit charging that the system failed to aid troubled families or protect children from neglect or abuse, Alabama has more than quadrupled its spending on child welfare since 1990, even as it has trimmed other programs in recent years.

One former governor, Fob James, complained about federal interference and questioned whether so much devotion to helping irresponsible parents was leaving children in harm's way. While Mr. James's successors have accepted the changes, they still resent being monitored; in a court brief this month, Attorney General Troy King said that the continuing court supervision defied the principle of "democratic self-rule through officials answerable to the people."

While Alabama's system is far from perfect, local officials and independent experts say, the system now is more likely than before to keep children with their parents, safely, and tries to provide whatever aid might help that happen.

Typical caseloads for social workers have been trimmed to 18 from 50, allowing far more intensive monitoring of families and help. Where reports of neglect or abuse sometimes lay unchecked for months, investigators are now usually on the scene within a day when danger is imminent, and within five days more than 90 percent of the time, officials report.

In what many call the best measure of a system's ability to protect children from abuse - the share of children who are mistreated after intervention by social workers - Alabama has steadily improved its record. In recent years, a second abuse incident within 12 months of the first one occurred in roughly 5 percent of cases, down from about 13 percent in the early 1990's. Studies indicate that the comparable national average is about 11 percent.

And in a recent federal survey of child welfare systems, Alabama was one of only six states found to be "substantially in compliance" with norms for protecting children from neglect or abuse.

"When the lawsuit was filed, we didn't have the services that could keep children at home safely," said Carolyn B. Lapsley, the state's deputy commissioner for children and family services and a veteran social worker. "Now we're very proud; we have changed the system in every single county."

Though Alabama says it has made enough progress that it should be released from court supervision, skeptics question whether the new, labor-intensive practices can be maintained in the face of stringent budgets, high poverty and other social ills, including methamphetamine use, which state officials blame for a recent rise in the number of children removed from homes.

"We do not dispute that the agency has made progress," said James Tucker, a children's advocate and a lawyer in the suit that produced court monitoring.

"However, we believe that their recent efforts have focused more on creating a paper trail that looks like reform than producing the real reforms we seek," Mr. Tucker said, adding that some counties were lagging substantially, for example, in provision of vital family services.

Judge Ira DeMent of Federal District Court in Montgomery ruled in May that the state had not proved it could sustain its gains and declined to end the oversight for now. The state has asked him to reconsider.

When the class-action suit was filed, in 1988, "those who looked at the Alabama system invariably judged it as one of the worst in the country," Mr. Tucker said.

The 1991 settlement committed the state to a series of principles: quick investigations to head off danger, family preservation if possible, wide-ranging services for struggling parents and faster adoption for those requiring it, among others.

Ira Burnim, a lawyer with the Bazelon Center for Mental Health Law in Washington who helped draw up the agreement, said parents were often seen more as threats than as potential partners. And, Mr. Burnim said, "there's a traditional tendency to focus on 'saving' the children but also to see them as damaged goods."

Child-welfare spending that totaled \$71 million in 1990, including \$47 million in federal money, rose to \$285 million in 2004, \$179 million of it from the federal government. Some of that came from Medicaid money the state had not previously tapped.

The state hired hundreds of new social workers and thinned caseloads. Workers could now spend more than 10 hours a week in some homes.

Cindy Letson, who lives in the small town of Moulton in the corn and poultry country of northern Alabama, has seen firsthand how the system works.

Her face weathered beyond her 48 years, Ms. Letson described a history of family violence and recalled the day in 2001 when the police took her for psychiatric evaluation.

She returned home within a day cleared of any serious disorder, she said, but was sent for counseling and help in breaking an addiction to antiseizure drugs. Her twin boys had already been removed and were sent to foster parents.

She followed the directives and was allowed to visit her boys for one hour a week. After repeated entreaties she regained custody two years ago, and now lives on welfare with her 7-year-old boys, Kyle and Kenley.

"I was ready to give up, but in the end the system worked," Ms. Letson said.

Elements of Alabama's approach have been adopted by other states. "A lot of the ideas we used came from the Alabama example," said Benjamin Wolf of the Illinois A.C.L.U., who has helped design changes to the system in Illinois, which is also operating under court supervision.

Alabama's method of evaluating its own system - choosing individual cases and closely examining how each was handled - has been adopted by the federal government for its assessment of child-welfare systems in each state, said

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Olivia A. Golden, a former federal welfare official now with the Urban Institute in Washington. New York City has also adopted the method.

But here, as in every state, there remain lapses. [On Wednesday, a state judge criticized the Jefferson County Department of Human Resources for failing to protect 2-year-old Sean Porter, who suffered severe bruising to his groin last December, two weeks after school officials reported suspicious bruises on his sister, The Birmingham News reported.]

In a report last November, Ivor D. Groves, a welfare expert from Florida who is Alabama's court-appointed monitor, said the state's progress toward the original reform goals had varied by county.

But without question, Mr. Groves said, "the egregious conditions of impossible caseloads and large numbers of un-investigated" abuse and neglect reports "have been eliminated."

Some Alabama counties show "the best child-welfare practice in the country," Mr. Groves wrote.

Ms. Harris, in Montgomery, has been a beneficiary of Alabama's progress. As she emerged from work-release and a third drug-treatment program in 1995, she showed that she was serious about going straight. So caseworkers, while requiring regular drug tests, helped Ms. Harris rebuild her life and then regain her children.

They paid for years of counseling and helped with expenses like child care, utility bills and, at one point, Christmas presents and shoes for the children.

Ms. Harris has since borne two more children and lives in a subsidized red-brick house in Montgomery with five of her children.

She works the day shift as a carhop and scrambles to provide for her boisterous clan, supplementing her income with Social Security payments for a child needing special education and a father's child support for two of them.

"My social worker was there for me," she said. "I've learned to pay my bills and manage my life."

In June, the child agency finally closed its books on Ms. Harris, satisfied that she could provide a decent home.

NOTES

- ¹ Rachel Swarns, "Agency Was Warned About Foster Mother Charged in Girl's Death," *The New York Times*, July 2, 1997, p.B3; Michelle McPhee et. al., "Two Charged in Foster Death" *New York Daily News*, July 2, 1997, p.17. The guilty pleas were reported in a two-paragraph "neighborhood news" brief in the *Daily News* on March 12, 1999.
- ² Joseph Mallia, "Child abuse reports soar after publicized case," *Newsday*, January 17, 2006.
- ³ See data tables on Page 20.
- ⁴ *Child Welfare Watch*, Note 2, supra.
- ⁵ Rachel Swarns, "In Policy Shift, More Parents Are Arrested for Child Neglect," *The New York Times*, Oct. 25, 1997, p.A1.
- ⁶ Somini Sengupta, "Parents in Poor Neighborhoods Wary of Child Welfare Agency," *The New York Times*, May 31, 2000.
- ⁷ Nina Bernstein, "City Will Close Office Running Foster Program," *The New York Times*, August 29, 2001.
- ⁸ Additional information about this case is available from Ilze Earner, Ph.D., Immigrants and Child Welfare Project, 646-228-8690 iearner@hunter.cuny.edu, Sr. Pietrina Raccuglia, Cabrini Immigrant Services, (212) 791-4590, cis2les@verizon.net, and Maria Elena Perez, Cabrini Immigrant Services, (212) 791-4590.
- ⁹ Dorian Block, "Boy, 7, taken away because she left him alone to go to work," *New York Daily News*, Jan. 18, 2009.
- ¹⁰ The Illinois Department of Children and Family Services publishes data monthly in an *Executive Statistical Summary*. Back issues give totals before and during the panic. The most recent edition, from December, 2005, is available at <http://www.state.il.us/DCFS/docs/execstat.pdf>
- ¹¹ Florida data from 1998 – before the panic, are available through the Child Welfare League of America, National Data Analysis System. Go to this url: http://ndas.cwla.org/data_stats/access/predefined/Report.asp?ReportID=388 and follow instructions for creating a table. Data from 1999 through 2005 are available from the federal Administration for Children and Families here: http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2002.htm Data for 2006 and 2007 are available from the Florida Department of Children and Families.
- ¹² ALL DATA FOR 1995-1998: Florida Department of Children and Families, Child Abuse and Neglect Deaths: Calendar Year 1999 (released March 2001). PREVIOUSLY KNOWN: 1999-2007: State Child Abuse Death Review Team, Annual Reports, available online at <http://www.flcadr.org/reports.html>
- ¹³ Decision of Judge Jack B. Weinstein, *Nicholson v. Williams*, 205 F.R.D. 92 (E.D.N.Y. 2001).
- ¹⁴ Kathleen Wobie, Marylou Behnke et. al., *To Have and To Hold: A Descriptive Study of Custody Status Following Prenatal Exposure to Cocaine*, paper presented at joint annual meeting of the American Pediatric Society and the Society for Pediatric Research, May 3, 1998.
- ¹⁵ Weinstein, note 10, supra. Also: Dawn Fratangelo, "Double Jeopardy," *Dateline NBC*, July 31, 2001.
- ¹⁶ Wendy Davis, "Active Parenting," *City Limits*, June 2002, p.17.
- ¹⁷ Ibid.
- ¹⁸ Ibid.
- ¹⁹ Ibid.
- ²⁰ Matthew Franck, "The Pendulum," *St. Louis Post Dispatch*, Feb. 2, 2003.
- ²¹ NCCPR calculates the propensity of a state or locality to remove children by comparing the number of children taken from their parents over the course of a year to the total number of impoverished children in each locality. A precise comparison of New York City and Chicago is not possible, because the Chicago data are included in figures for all of Cook County, Ill.
- ²² Illinois Department of Children and Family Services, *Signs Of Progress in Child Welfare Reform*, April, 2003, available online at <http://www.state.il.us/dcf/docs/SignsProg.pdf>
- ²³ Richard Perez-Pena and Andy Newman, "A Child's Death Commands Lasting Attention and Outrage," *The New York Times*, January 18, 2006.
- ²⁴ Casey Family Programs, *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study*, (March 14, 2005), available online at http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/300/nw_alumni_study_full_apr2005.pdf See also, NCCPR's analysis of this study, *80 Percent Failure*, at www.nccpr.org
- ²⁵ Joseph J. Doyle, Jr., "Child Protection and Child Outcomes: Measuring the Effect of Foster Care" *American Economic Review*: In Press, 2007. This study is available online at http://www.mit.edu/~jdoyle/doyle_fosterlt_march07_aer.pdf See also NCCPR's full analysis of this study at www.nccpr.org
- ²⁶ Casey Family Programs, note 25, supra. For other studies on abuse of foster care see NCCPR Issue Paper #1, *Foster Care vs. Family Preservation: The Track Record on Safety*, available at www.nccpr.org
- ²⁷ See NCCPR Issue Paper #15 *Just Say No to the Orphanage*, at www.nccpr.org See also, Richard Wayman, J.D., *Clinical Studies, Survey Review, and Pediatric Research on Risks and Harm to Children and Youth Subjected to Large Residential Institutions*, available from NCCPR. For a report specific to congregate care in New York City, see: Madelyn Freundlich, *Time Running Out: Teens in Foster Care*, (Juvenile Rights Division, Legal Aid Society, Lawyers for Children, Children's Rights, Inc.), November, 2003.
- ²⁸ This is one of the many stories brilliantly woven together in one of the most important books ever written about child welfare in New York City or anywhere else, *The Lost Children of Wilder: The Epic Struggle to Change Foster Care*, by *New York Times* reporter Nina Bernstein (Pantheon: 2001). Another fine illustration of how private agencies ran child welfare is an outstanding 1975 *Daily News* series, "Big Money, Little Victims" (May 13-17, 1975).
- ²⁹ Nix foster contracts, *New York Daily News*, January 15, 2005.
- ³⁰ Leslie Kaufman, "After 7-Year-Old's Death, Agency Monitors Cases More Aggressively," *The New York Times*, December 11, 2006.