

This report is an accurate assessment of the Maine child welfare system at the time it was written. Since that time, a new governor has brought new leadership to the Maine child welfare system. That leadership has made notable improvements, including a significant reduction in the number of children taken from their parents and a significant increase in the use of kinship care.

July, 2006

A LAW UNTO ITSELF

**A Briefing Paper on the Maine Department of Human Services
and its impact on the state's most vulnerable children**

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Child Protection Reform
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ABOUT NCCPR

The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protective system in their professional capacities and work to make it better serve America's most vulnerable children. **Board of Directors:** **President:** *Martin Guggenheim*, Director of Clinical and Advocacy Programs, New York University Law School. **Vice President:** *Carolyn Kubitschek*, attorney specializing in child welfare law, former Co-ordinator of Family Law, Legal Services for New York City. **Treasurer:** *Joanne C. Fray*, attorney with extensive experience with litigation involving the care and protection of children and termination of parental rights, Lexington, Mass. **Directors:** *Elizabeth Vorenberg*, (Founding President) former Assistant Commissioner of Public Welfare, State of Massachusetts; former Deputy Director, Massachusetts Advocacy Center; former member, National Board of Directors, American Civil Liberties Union; *Annette Ruth Appell*, Associate Professor, William S. Boyd School of Law, University of Nevada, Las Vegas; former member of the Clinical Faculty, Children and Family Justice Center, Northwestern University Law School Legal Clinic, former Attorney and Guardian ad Litem, office of the Cook County, Ill. Public Guardian; *Marty Beyer, Ph.D.*, clinical psychologist and consultant to numerous child welfare reform efforts; *Ira Burnim*, Legal Director, Judge Bazelon Center for Mental Health Law, Washington, DC; former Legal Director, Children's Defense Fund; former Staff Attorney, Southern Poverty Law Center; Prof. Dorothy Roberts, Northwestern University School of Law. **Staff:** *Richard Wexler*, Executive Director. Author, *Wounded Innocents: The Real Victims of the War Against Child Abuse*. (Prometheus Books: 1990, 1995).

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The home video shows five-year-old Logan Marr describing the way she says her foster mother, Sally Schofield, would grab her cheeks. "She does this to me," Logan says. "It hurts until I cry, and she does it to my sister, too."

Logan made the comment during a supervised visit with her mother and grandmother. The supervisor reported it to the Maine Department of Human Services. A caseworker repeatedly called Schofield, but did nothing more. Later, DHS would claim that Logan "told stories on occasion."

But perhaps there is another explanation for the agency's lack of action.

E-mails between Schofield and the caseworker who was supposed to be supervising Logan's placement in her home, reveal, in the words of the Portland Press Herald, "the kind of chatty, conversational tone used by friends or co-workers." And, indeed, Schofield was formerly a DHS worker herself.

In one e-mail, the caseworker gloats about the prospect of separating Logan from her mother forever. "Christy [Baker, Logan's mother] is still up to her old tricks so she continues to make a TPR [termination of parental rights] easier and easier to get." (It is not clear whether this is the same caseworker as the one who did little to look into Logan's allegation of abuse).

Less than two months later, Logan was separated from her mother forever – but not in the way the caseworker had planned.

Schofield allegedly bound the little girl to a chair in the basement. Police say Logan Marr died of suffocation, her mouth covered with duct tape. Schofield has been charged with manslaughter.¹

A three-year-old child spends weeks in a hospital, hundreds of miles from home. It is a time when any small child would most need to be close to her mother.

But Michaela Corbin Bumford's grandmother says the little girl had to spend those weeks largely with strangers. DHS wouldn't allow Michaela's mother to see her, even though the mother has never been accused of abusing the child. But DHS' action in allegedly denying a sick child a chance to see her mother might fit many people's definition of abuse.

Perhaps there is a reason for this behavior. But DHS has refused all requests for an independent inquiry.²

Instead, DHS has relentlessly pursued, and won, termination of the mother's parental rights.

Gladys Wright raised six children and has 12 grandchildren. She volunteers to drive foster children to appointments and activities – and she must be approved for that

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job by DHS. She has never been accused by anyone of abuse or neglect.

Yet when DHS took one of the grandchildren, aged five months, from his mother, DHS refused to place the child with Wright.

“They called me hostile,” Wright told the Bangor Daily News. “I guess that was because I disagreed with them and I told them so. I said they were dirty, rotten rats for taking my grandson away.”

DHS promptly retaliated – against the child. DHS denied him even the chance to visit his grandmother. After Wright went public, DHS relented, allowing one supervised visit per week.

Says Wright: “I just tried to stand up to them, that was all, and they didn’t like it.”³

OVERVIEW

These three cases have two things in common. First, in each case, the interests of vulnerable children were subordinated to the interests of the Maine Department of Human Services. Second, they reflect the arrogance that almost always accompanies power without accountability.

In its child protective function, the Maine Department of Human Services is an agency with almost unlimited power and almost no accountability. Most child protective services agencies around the country have the same power, and the same lack of checks and balances. But there are indications that Maine DHS has abused its power even more than most. Indeed, when it comes to taking away children, the Maine Department of Human Services is effectively a law unto itself.

- U.S. Department of Health and Human Services figures indicate that the State of Maine has more children in foster care, relative to its child population than all but between three and five other states.⁴

- Maine has one of the worst records for placing children with relatives instead of strangers, even though, contrary to the common prejudice, placing a child with a relative is safer.

- Documents submitted by DHS to the U.S. Department of Health and Human Services raise questions about the agency's priorities. They show a nine percent cut in federal funds used for family preservation and a 31 percent cut in federal funds used for family reunification. The funds appear to have been redirected toward promoting adoption.⁵

- Even Maine's highly-touted success in increasing adoptions has a dark side. Though the number of adoptions is up, it has not come close to keeping pace with the number of times Maine terminates parental rights. As a result, Maine is well on its way to creating a generation of legal orphans with no ties to birth parents and little hope of adoption either.⁶ And as the state rushes to score p.r. points and cash in on federal bounties of \$4,000 to \$6,000 for every finalized adoption over a baseline number, the state is likely to make more and more slipshod, quick-and-dirty placements which are more likely to fall apart in future years. (Maine gets to keep the federal bounty, even when an adoption falls apart. In fact, DHS can place the same child again, and collect another bounty).

At the time Logan Marr died, DHS was trying to terminate her mother's parental rights, so Logan could be adopted by Sally Schofield.

The entire approach of DHS to Maine's families can be boiled down to a single sentence: Take the child and run. And that philosophy is endangering the health, well-being, and the very safety of Maine's children.

Legislators have been quick to focus on the specific lapses that may have led to the death of Logan Marr. But that will not be enough to prevent further tragedies. The legislature needs to focus on the big picture: The only way to fix foster care is to have

less of it. And that means the legislature must demand that DHS fundamentally change its approach to vulnerable children and families.

WHO IS IN FOSTER CARE?

All over the country, horror stories about the few birth parents who really are brutally abusive or hopelessly addicted have created a misimpression of who really is in the foster care system and why. Far more common than the horror story cases are cases in which a family's poverty is confused with child "neglect."

In Maine, for example, the definition of "abuse or neglect" includes "deprivation of essential needs"⁷ -- virtually a definition of poverty.

Agencies insist that they never take children because of poverty alone. But poverty is rarely alone. What would you do, for example, in this situation:

You are an impoverished single mother with an eight-year-old daughter and a four-year-old son. The four-year-old is ill with a fever and you need to get him medicine. But you have no car, it's very cold, it's snowing, and it will take at least an hour to get to and from the pharmacy. You don't know most of your neighbors and those you know you have good reason not to trust. What do you do?

Go without the medicine? That's "medical neglect." DHS can take away your children for medical neglect. Bundle up the feverish four-year-old in the only, threadbare coat he's got and take him out in the cold and rain? That's "physical neglect." DHS can take away your children for physical neglect. Leave the eight-year-old to care for the four-year-old and try desperately to get back home as soon as you can? That's "lack of supervision." DHS can take away your children for lack of supervision.

And in every one of those cases, DHS could say, with a straight face, that it didn't take your children "because of poverty alone."

Other cases fall on a broad continuum between the extremes, the parents neither all victim nor all villain.

The case of Logan Marr's family is one of those in-between cases.

Logan's mother, Christy Baker, lost her children to foster care because her boyfriend at the time stole prescription medication from the child's grandmother. That is the basis for alleging "drug abuse" in the family. Logan and her sister were returned, but taken a second time because the family moves often, and Baker allegedly let the children be in the presence of two relatives who are sex offenders. Baker says there was only one such relative and he was never alone with the children. Baker also allegedly once was beaten by her new husband in front of the children; she denies it. There is no allegation that Baker ever beat or otherwise mistreated the children.⁸

Clearly there is a need to intervene in this case. But even if every allegation against Christy Baker is true, there are ways to keep children in such situations safe without traumatizing them by taking them away from everyone they know and love.

Indeed, in tens of thousands of similar cases, Intensive Family Preservation Services (IFPS) have kept such families together – and such programs have a far better track record for safety than foster care. (See NCCPR Issue Papers 1, 9 and 10 for a description of how these programs work and their track record).

IFPS is not the only safe, effective alternative to the "take the child and run" mentality that dominates Maine DHS. Others are listed in Appendix 1.

But such programs are smeared when, for example, the label "family

preservation” is slapped onto any decision to leave any child in any home under any circumstances, when something goes wrong. It’s been a very effective smear campaign. And Logan Marr has paid the ultimate price.

DHS POLICIES PUT CHILDREN AT RISK

Agencies like DHS justify their actions with some great applause lines. They tell us they’re placing “child safety” ahead of “family preservation.” They tell us they’re defending “children’s rights.” And over and over they tell us they’re just “erring on the side of the child.”

But there is probably no other phrase in the English language that has done more harm to children. It’s an effort to convince us that child removal equals child safety. And that simply isn’t true. In fact, the take-the-child-and-run approach actually makes children less safe. Sometimes, it destroys children in order to “save” them.

Here’s why:

- That glib cliché about “erring on the side of the child” underestimates the devastating emotional trauma endured by children when they are needlessly taken from loving homes, even when they are placed in good foster homes.

Try to imagine what it is like to be a small child, suddenly taken from everyone loving and familiar. Not just mom and dad, but also brothers, sisters, aunts, uncles, grandparents friends, teachers and classmates. One three-year-old, dragged literally kicking and screaming from her parents kept calling out “I’m sorry, I’m sorry, I’m sorry.” All she could comprehend was that she must have done something terribly wrong and now she was being punished. Indeed, for some younger children, the experience is

akin to a kidnapping.

How is inflicting this torment on a child who is not, in fact, in danger in his own home, “erring on the side of the child”?

Even in more serious cases, removing a child from the home causes clear, measurable harm; harm that often could be avoided with the right kind of services.

In a University of Florida study of “crack babies” one group was placed in foster care, another 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, the separation from their mothers was more toxic than the cocaine.

It is extremely difficult to take a swing at “bad mothers” without the blow landing on their children. Therefore, if we really believe all the rhetoric about the needs of the children coming first, we must put those needs before anything – even our anger at their parents.

This does not mean that addicts simply can be left alone to raise children. It does mean that the answer in most such cases is drug treatment – including inpatient programs in which mothers can stay with their children – instead of instant removal of the children.

- The “err on the side of the child” cliché underestimates the serious and real danger of abuse in foster care. Official statistics show that there were 266 complaints of abuse in foster care in Maine last year, 76 deemed serious enough for DHS to investigate.⁹ But official numbers seriously underestimate the problem.

For abuse in foster care to make it into official statistics, here’s what has to happen: First, it’s often the foster child herself who must disclose it; something that takes

an extraordinary amount of courage. She may well have to tell it to the very worker who put her in the foster home in the first place. At a minimum, it will be someone from the same agency.

So if the worker “substantiates” the allegation, she is admitting her own serious error. Her supervisors up the line also must admit their own failings if the report is ever to become an official statistic. And, of course, DHS then has to find another foster home in a time of so-called foster parent “shortage.” So it’s no wonder that Logan Marr’s videotaped statement about having been abused was dismissed.

Even more frightening is the way DHS intimidated Logan’s family, making them so fearful of losing visits with Logan that they dared not press their concerns. Baker explained that the supervisor “said that I was not allowed to distrust the foster family that was caring for her or any caregivers, because she needed to feel safe and secure in her home and if I did then I would lose my visits.”¹⁰

The problem is not unique to Maine.

In New York City, for example, where Children's Rights Inc. settled a lawsuit against the child welfare system, they have found that “abuse or neglect by foster parents is not investigated because [agencies] tolerate behavior from foster parents which would be unacceptable by birth parents.”¹¹ And a lawyer who represents children in Broward County, Florida, says in a sworn affidavit that over a period of just 18 months he was made personally aware of 50 instances of child-on-child sexual abuse involving more than 100 Broward County foster children. The official number during this same period: Seven – because until what the lawyer called “an epidemic of child-on-child sexual abuse” was exposed, the child abuse hotline didn’t accept reports of such abuse.¹²

When it comes to abuse in foster care, agencies like DHS have an enormous incentive to see no evil, hear no evil and speak no evil.

Academic studies show far higher rates of abuse in foster care than turn up in official statistics. Indeed, even what is said to be a model foster care program, where caseloads are kept low and workers and foster parents get special training, is not immune. When alumni of the Casey Family Program were interviewed, 24 percent of the girls said they were victims of actual or attempted sexual abuse in their foster homes. Furthermore, this study asked only about abuse in the one foster home the children had been in the longest. A child who had been moved from a foster home precisely because she had been abused there after only a short stay would not even be counted.¹³ Officials at the program say they have since lowered the rate of all forms of abuse to “only” 12 percent, but this is based on an in-house survey of the program’s own caseworkers, not outside interviews with the children themselves.¹⁴ (More data on the extent of abuse in foster care can be found in NCCPR Issue Paper 1).

The high rate of abuse in foster care is not because most foster parents are abusive. The majority want to do the very best they can for the children in their care, and many are heroic. And, as the Broward County data indicate, abuse in foster care includes the vastly underreported problem of foster children abusing each other. Good foster parents often are the first to blow the whistle on the abusive minority in their midst. But that minority is significant and probably growing. And the more foster care systems are overwhelmed with children who don’t need to be taken from their parents, the greater the temptation to overcrowd foster homes and lower standards for foster parents.

If a child is taken from a safe home, or one that could be made safe with the right

kind of services, only to be beaten, raped or killed in foster care, how is that “erring on the side of the child”? Is it any comfort to know that Logan Marr died with her “children’s rights” on?

But even that isn’t the worst of it. DHS resources are not limitless. All the time, money and effort spent taking Logan Marr from her home instead of providing the right kind of help for the family was, in effect, stolen from some other child in real danger whom we may never know. The more time workers must spend coping with children who don’t need to be taken from their homes, the less time they have to find those children in real danger. As a result, more such cases are missed, and more children die, not just in foster care, but in their own homes as well. “Erring on the side of the child” doesn’t protect children – it protects only the system. The take-the-child-and-run approach leaves all children less safe.

This is clear when looking at the consequences of “foster care panics” around the country. A foster care panic occurs when a child is killed by his or her birth parents, and agencies react by suddenly taking away huge numbers of additional children.

Such panics occurred in Illinois in 1993, Connecticut in 1995 and New York City in 1996. In each case, the panic was justified by the need to prevent child abuse deaths. But in each case total child abuse deaths actually increased. The deaths did not decline again until the panics abated. (There is more on foster care panics in NCCPR Issue Paper 2).

That’s not as surprising as it sounds. Even in the best of times, child welfare systems are arbitrary, capricious and cruel. They err in both directions, leaving some children in dangerous homes, even as they take many more from homes that are safe or

could be made safe with the right kinds of services.

That's not because workers for agencies like DHS are jack-booted thugs who relish tearing children from their families. Rather, workers tend to be well-meaning but underprepared, undertrained and overwhelmed with far more cases than they can handle. (And, as the handling of the Logan Marr case suggests, they are, like most of us, more likely to sympathize with people with whom they can identify).

The more time they must waste on children who don't need to be in foster care, the less time they have for each investigation. So they wind up making even more mistakes in both directions, and more children die.

And a state that perennially has proportionately more children in foster care than most, perennially wastes resources that could have been used to find children in real danger.

How is that "erring on the side of the child"?

EXTENDED FAMILIES, EXTENDED HOSTILITY

One way to ease the trauma for a child suddenly removed from his parents is to place the child with a relative, usually a grandparent. It's called kinship care.

Nationwide, 29 percent of children are placed with relatives.¹⁵ But in Maine, fewer than 8.2 percent of foster children have the security of a placement with a loved one. DHS Commissioner Kevin Concannon says "that's an area Maine can do better in."¹⁶ Almost two years ago, a former DHS official, Margaret Semple, said almost exactly the same thing, and claimed that the agency was trying to improve.¹⁷ But there's no evidence of improvement. A federal study finds that 24 states have increased efforts to use kinship

care, and in another 17 states kinship placements increased even without a new recruiting drive.

But not Maine.

According to the study, Maine has not increased kinship placements in the past three years – and Maine isn't even trying.¹⁸

Why not? Probably because of a common, though largely unspoken, prejudice against extended families: If grandma raised the child who allegedly neglected the grandchild, it is believed, then there must be something wrong with grandma, and grandpa, and all the other relatives in the family.

In fact, in poor communities all over America there are parents who have waged a battle for decades to save their children from poverty, despair, and the lure of the streets. They have been forced to call upon reservoirs of strength that most of us can only imagine. Is the mother who won the battle with three children and lost it with a fourth to be denigrated and discarded when she comes forward to take in that fourth child's children? Judging by the agency's record, the answer from DHS apparently is yes.

The prejudice against extended families is contradicted by the evidence. The most extensive effort to track the success of relative placements is in Illinois, where more than 42 percent of foster care placements are with relatives. That state has found less abuse in placements with relatives than in placements with strangers.¹⁹

EXCUSES, EVASIONS, AND NON-SEQUITURS

Confronted with his state's high rate of taking children from their homes, Commissioner Concannon's responses have been nothing if not imaginative.

He diverted attention from the issue of child abuse by claiming that Maine has a low overall rate of infant mortality – and then apparently claiming that this somehow was linked to taking away lots of children from their parents.²⁰

Even if taking away children from their parents might, in theory, have something to do with deaths due to child abuse or neglect, it has nothing to do with deaths due to, for example, poor prenatal care, or Sudden Infant Death Syndrome, or illness, or accidents over which the parents have no control.

Concannon is trying to distract attention from the real issue: Just-released data for 1999, the most recent year available, show that 12 states that took away fewer children than Maine, also had fewer child maltreatment fatalities, relative to their child populations.²¹ Because, fortunately, child abuse deaths are extremely rare, it is difficult to make comparisons among small states. But however limited the value of such a comparison, at least it is relevant to the subject at hand, unlike the red herring of infant mortality.

STACKING THE DECK AGAINST FAMILIES

Concannon also suggested that perhaps Maine courts were more willing to approve removals of children; at least that appears to be what he meant, his comment is not entirely clear.²²

In fact, courts in every state routinely rubber-stamp requests by agencies like DHS to take away children.

Indeed, Concannon's bragging about Maine courts' aggressiveness in this regard is ironic, in light of his and other agencies' repeated attempts to hide their bad decisions

behind judges' robes.

Agencies almost always claim that their decisions must be right because, they say, "we can't take children on our own, the courts have to approve."

In fact, this isn't true. In Maine and every other state, child protective workers can indeed have children removed entirely on their own authority if the child welfare agency decides it's an "emergency."²³ In other cases, DHS may go to a judge, but the agency can go alone, without the parents having a chance to defend themselves, virtually ensuring that DHS will get its way.

After such a removal, Maine can keep the child for up to 72 hours. Only then can the family come to court and try to get the child back.

Typically around the country at these hearings there is, on one side, a child welfare agency lawyer who has had 72 hours to review the case and prepare a presentation. On the other side is almost always an overwhelmed, impoverished birth parent who, if she has a lawyer at all, probably just met him in the hallway five minutes before.

Margaret Semple claimed that the state must meet very high standards before children can be removed from their homes.²⁴ That's not true either. Maine's definition of "neglect" already has been noted.

And the burden of proof to place a child in foster care is not "beyond a reasonable doubt" as in a criminal case, or even "clear and convincing" evidence, the middle standard of proof sometimes applied by courts. Rather, DHS needs only "a preponderance of the evidence," the lowest standard in American jurisprudence – the same one used to determine which insurance company pays for a fender bender.²⁵

Presiding is a judge who knows that, if he returns the child and something goes wrong, his career may well be over. If he leaves the child in foster care, the child may be traumatized, but the judge is safe.

And to top it off, the entire process takes place behind closed doors. The public has no way to know if all sides are being treated fairly, and no way to know what “standards” if any, judges are applying.

With the deck so stacked, is it any wonder that DHS almost always wins? Yet DHS officials say, with straight faces, that this process “proves” agency decisions are correct.

The deck remains stacked throughout the process.

Lewiston Attorney Donald Hornblower told the legislature’s Judiciary Committee that lawyers representing parents consistently are outnumbered and outgunned. Once a child is taken, there is very little chance of the child being returned unless DHS wants the child returned. Said Hornblower:

"There is a lack of accountability all around. I've seen parents' attorneys who are not prepared, guardians and counselors who do not testify honestly ... Ultimately, too many children are being placed in unsafe [foster-care] homes and the importance of parents is being minimized.”²⁶

HEADS I WIN, TAILS YOU LOSE

Nowhere has the arrogance of DHS been on clearer display than in its treatment of four-year-old Michaela Corbin Bumford.

Michaela was born with cystic fibrosis, and that, say her mother Trisha Corbin

Bumford and her grandmother, Linda Corbin, has caused eating and digestive problems. As a result, Michaela has had trouble gaining weight.

In November, 1998, desperately worried because treatment at a clinic in Portland seemed to do no good, Linda and Trisha did what any responsible mother and grandmother would do: They tried to get a second opinion from one of the nation's leading medical centers, Boston Children's Hospital.

Instead of encouraging this, the clinic called DHS. The clinic blamed the lack of weight gain on the mother. DHS agreed, and the agency has had legal custody of Michaela ever since, placing her with her paternal grandmother.

Just last month, they succeeded in terminating Trisha's parental rights. She plans to appeal.

But DHS could not even win gracefully, preferring to rub salt into the family's wounds. A spokesman practically gloated: "I'm glad we were right," he said.

In fact, there is ample evidence that DHS was wrong.

- Although nationwide, law guardians appointed to represent children's "best interests" tend to side with child welfare agencies, often doing little independent investigation, in this case two law guardians opposed the termination of Trisha Corbin's parental rights.

- All over America social scientists bemoan the decline of the extended family and the natural support system it offers. In this case, a strong, intelligent grandmother came forward to help her daughter raise a sick child. Instead of welcoming this development, the judge who terminated Trisha's rights complained that she was too "dependent" on her mother and "the mother is calling the shots in this case."

- Senate Democratic Leader Beverly Daggett, herself a former child protective services worker, says the case deserves an independent review. But Concannon has refused. If, in fact, DHS is so clearly correct, Concannon should have nothing to fear from an open, impartial examination of all the evidence.

- But the most damning evidence against DHS is simply this: Since she was taken from her mother, Michaela actually has been gaining weight more slowly than before she was taken away.

To which Concannon replies, essentially: Heads I win, tails you lose.

Even though lack of weight gain was the reason Michaela was removed in the first place, Concannon now says weight gain is not an appropriate way to measure the girl's health.²⁷

GETTING IT WRONG

Scandals over foster care often are followed by calls to take a bad situation and make it even worse by building orphanages.

The record for abuse in institutions is even worse than the record in foster homes. (That record is detailed in NCCPR Issue Paper #14). Yes, there are a few model institutions, places that generally have endowments that seem to rival the gross domestic product of Third World nations. But they are called models precisely because they are not the norm. And research on child development shows that even "good" institutions cause emotional harm to many forced to live there.

Indeed, even proponents of orphanages generally say they favor the idea only because, supposedly, there is no alternative. But that's not true. Get the children who

don't need to be in foster care back to their own homes, and there will be plenty of room in good foster homes for children in real danger.

One can only hope that the other tragedy now in the headlines in Maine, the case of James Levier, will remind everyone of what happens when a vulnerable population we don't want to think about is shut away. When it comes to orphanages, we're not talking about rotten apples, we're talking about rotten barrels.

GETTING IT RIGHT

What makes the behavior of DHS even more tragic is the fact that there are places around the country that are doing so much better. They have refused to jump on the family-bashing bandwagon. They are reducing their foster care populations, and making children safer.

- In 1997, at the height of the foster care panic, Illinois took away more children than any other state. But since then Illinois has slashed the number of children in foster care by 40 percent. Much is still wrong in Illinois, including a lack of due process for people wrongly labeled child abusers. But Illinois now has a lower percentage of their children in foster care than Maine. At the same time, the rate of reabuse of children left in their own homes has declined.²⁸ **Keeping families together has made children safer.**

- Pittsburgh and surrounding Allegheny County, Pa., which has a population roughly equal to Maine, has about 25 percent fewer foster children. Since 1997, they've cut their foster care population 20 percent by emphasizing services to keep families together, and there, too, reabuse of children left in their own home is down.²⁹ **Keeping families together has made children safer.**

- Thanks to a lawsuit that led to a landmark consent decree, Alabama is rebuilding its entire child welfare system to emphasize keeping families together. Twenty-one counties have completed the rebuilding process. In those counties, the foster care population is down by 33 percent,³⁰ and an independent, court-appointed monitor has found that children are safer now than they were before the changes.³¹ **Keeping families together has made children safer.**

The states, it is said, are laboratories of democracy. Shouldn't DHS be reading the lab results?

MONEY

Yes, Maine needs to spend more on child welfare, but it also needs to spend smarter. Alternatives to foster care not only are safer and more humane than foster care, they often cost less. The cost of an Intensive Family Preservation Services intervention, for example, is about one third the cost of a year in foster care.

And, as noted at the start of this report, Maine appears to be shifting federal money away from efforts to keep families together. So lack of money is no excuse. What's really lacking in Maine is the will to change.

OPEN THE SYSTEM

In Appendix 1, we discuss "Eight Ways to do Child Welfare Right." All of these strategies can work in Maine. They can and should become the centerpiece of a reformed child welfare system.

But another step is equally essential: Open the system to full public scrutiny.

That means opening most court hearings and records in child maltreatment cases.

An open system is an essential first step toward true accountability in Maine and all over the country.

One caseworker in another state allegedly told several parents “I have the power of God.” It is deeply disturbing if he said it. But more disturbing is this: It’s true.

Workers for agencies like DHS *do* have the power of God. To give the power of God to people, send them off on a Godly crusade in which they feel they are rescuing innocent children from evil parents, and then expect them to exercise self-restraint is more than can be expected from most human beings.

Rarely is the power of God accompanied by the wisdom of Solomon.

One DHS official says everything should stay secret because otherwise children might be embarrassed. Yes, had the hearings in the case of Logan Marr been public, she might someday have been embarrassed. But perhaps open hearings would have led to alternatives to taking Logan away, or to placement with relatives. Then Logan Marr might have lived long enough to blush.

NOTES:

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- ¹ Tess Nacelewicz, "Victim's family bitter at DHS," *Portland Press Herald*, March 16, 2001; Joshua Weinstein, "Tape captures girl saying foster mother hurt her, sister," *Portland Press Herald*, March 15, 2001; Tom Bell, "DHS cites caseworker lapse," *Portland Press Herald*, March 29, 2001.
- ² "Family did girl harm, DHS says" Note 27, *infra*.
- ³ Renee Ordway, "DHS blasted for reliance on foster care for kids," *Bangor Daily News*, June 19, 1999.
- ⁴ A comparison of state foster care data compiled by the U.S. Department of Health and Human Services as of March 31, 1999 to child population data as of 1998, compiled by the Child Welfare League of America, shows that only Illinois, Rhode Island, New York, California, and Nebraska have a higher placement rate than Maine. However, since 1999 the Illinois foster care population has dropped sharply – and child safety has improved in the process. Illinois now has a lower percentage of its children in foster care than Maine. And the figure for Nebraska may be inflated by the presence of Boys Town.
- ⁵ The figures can be found in charts, called "Annual Summary of Child and Family Services" submitted with Maine's annual State Plan for child welfare services, filed with the U.S. Department of Health and Human Services. "Family preservation" and "family reunification" are not the same as "family support," a much broader funding category that can include programs with little direct relationship to child maltreatment.
- ⁶ In 1997, Maine placed 214 children in adoptive homes, but terminated parental rights in 445 cases. By 1999, adoptions had risen to 355, but terminations rose to 625, according to data supplied by DHS to the U.S. Department of Health and Human Services.
- ⁷ Maine Statutes, Title 22, Subtitle 3, Chapter 1071, Subchapter 1, Subsection 4002.
- ⁸ Tess Nacelewicz, "Victim's family bitter at DHS," *Portland Press Herald*, March 16, 2001.
- ⁹ Andy Kekacs, "The tragic deaths of two foster children," *Kennebec Journal*, March 25, 2001
- ¹⁰ Weinstein, note 1, *Supra*.
- ¹¹ Marisol A. v. Giuliani, *Complaint*, Paragraph 245, p.75.
- ¹² Affidavit of David Bazerman, Esq, *Ward v. Feaver*, Case# 98-7137, United States District Court, Southern District of Florida, Fort Lauderdale Division, Dec. 16, 1998, p.4
- ¹³ David Fanshel, et. al., *Foster Children in a Life Course Perspective* (New York: Columbia University Press, 1990), p.90.
- ¹⁴ *How Are The Children Doing? Assessing Youth Outcomes in Family Foster Care*. (Seattle: Casey Family Program, 1998).
- ¹⁵ U.S. Dept. of Health and Human Services, *Report to The Congress on Kinship Foster Care* (Undated, probably 2000) p.vi.
- ¹⁶ Michelle Kearns, "Coalition questions Maine's high foster care rate," *Lewiston Sun Journal*, March 25, 2001
- ¹⁷ Ordway, note 3, *Supra*.
- ¹⁸ Report to the Congress, note 15, *Supra*, Chart, Appendix B, p.20.
- ¹⁹ Illinois Department of Children and Family Services, Signs of Progress in Child Welfare Reform, <http://www.state.il.us/dcf/signspsub.shtml>
- ²⁰ Kearns, note 18, *Supra*.
- ²¹ U.S. Dept. of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment: 1999* (Washington, DC: April, 2001), Chart, p.41. Available online at <http://www.calib.com/nccanch/chma99.pdf>
- ²² *Ibid*.
- ²³ Maine Statutes, Title 22, Subtitle 3, Part 3, Chapter 1071, Subchapter III, Subsection 4023.
- ²⁴ Ordway, note 3, *Supra*.
- ²⁵ The standard rises to "clear and convincing" only at the very end of the process, when the state seeks to terminate parental rights.
- ²⁶ Gregory Kesich, "Bill backers: Open DHS hearings," *Portland Press Herald*, March 14, 2001.
- ²⁷ Information on the Corbin case from Gary Remal, "Daggett joins Corbins in custody battle for Michaela," *Kennebec Journal*, July 2, 2000; "Family did girl harm, DHS says," *Kennebec Journal*, Aug. 4, 2000; Gary Remal, "Girl permanently taken from mother," *Kennebec Journal*, March 23, 2001.
- ²⁸ Illinois Department of Children and Families, *Signs of Progress in Child Welfare Reform*, http://www.state.il.us/dcf/com_communications_signs.shtml
- ²⁹ Allegheny County Department of Human Services, Office of Children, Youth, and Families, Ensuring Permanency in Allegheny County, <http://trfn.clpgh.org/acdhs/CYF/permrep799.htm>; and personal communications.
- ³⁰ Ivor D. Groves, *A Summary Report on Implementation Status of the R.C. v. Petelos Consent Decree* (Tallahassee, Fl: Human Systems and Outcomes, Inc., December, 1999)
- ³¹ Ivor D. Groves, *System of Care Implementation: Performance, Outcomes, and Compliance*, March, 1996, Executive Summary, p.3.