

Approved: May 4, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Senator Wint Winter Jr. at
10:05 a.m. on February 19, 1991 in room 514-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Mary Pat Beales, Head Injury Association
Chris Hansen, American Civil Liberties Union

The Chairman called the meeting to order.

Mary Pat Beales, Executive Director of the Head Injury Association, addressed the Committee with a request for introduction of a head and spinal cord injury trust fund. (ATTACHMENT 1)

Senator Gaines made a motion to introduce the bill as requested. Senator Petty seconded the motion. The motion carried.

Chris Hansen, Associate Director of Children's Rights Project of the American Civil Liberties Union, addressed the Committee on child welfare systems and the status of the ACLU suit against Kansas's SRS. (ATTACHMENT 2)

The meeting was adjourned.

(no Guest Log was taken on this date)

TO: Senate Judiciary Committee Members
Senators Winter, Moran, Yost, Bond, Feleciano, Gaines,
Kerr, Martin, Morris, Oleen, Parrish, Petty, Rock

FROM: Mary Pat Beals, Executive Director
Head Injury Association

DATE: February 19, 1991

RE: Head and Spinal Cord Injury Trust Fund

WE NEED YOUR HELP!

PLEASE SUPPORT, AS A COMMITTEE, THE ESTABLISHMENT OF A HEAD AND SPINAL CORD INJURY TRUST FUND.

BACKGROUND: People with head and spinal cord injury need services provided in a non-medical, community-based setting. The proposed Head and Spinal Cord Injury Trust Fund will create a funding source to establish these services.

The Head Injury Association has been gathering information from persons with head injury and their families since 1981. Emergency and acute medical care are provided but there are only a few community-based programs available. We need more! At least two million dollars a year needs to be made available through the Trust Fund.

We are proposing that the Trust Fund be created through an increase in the fines for the conviction of moving violations, i.e., speeding tickets, driving under the influence of alcohol.

Eighty percent of severe head injuries are caused by motor vehicle crashes. Most head injuries happen to young persons between the ages of 15 and 24. Head injury kills and disables more young Kansans than all other diseases combined.

Senate Judiciary Committee
2-19-91

Attachment 1

TESTIMONY OF

CHRIS HANSEN
Associate Director
Children's Rights Project (ACLU)
132 West 43 Street
New York, New York 10036
(212) 944-9800

February 19, 1991

Senate Judiciary Committee

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Attachment 2

Introduction

My name is Chris Hansen and I am the Associate Director of the Children's Rights Project of the ACLU. The Children's Rights Project is a national project that brings lawsuits against state or county child welfare systems in order to ensure that those systems provide effective, efficient, minimally adequate services to children and families.

As the legislature may know, a suit against Kansas's SRS was filed by Rene Netherton, a member of the Kansas bar and guardian ad litem for many of the children in the Topeka area who are in custody of SRS. The suit was filed on behalf of all of the Children in Need of Care in Kansas. The suit charges that SRS is not complying with legally mandated minimum standards of care. That suit is now pending before the Honorable Adrian Allen in District Court in Topeka. I am one of the lawyers representing the plaintiffs in that case. I believe it would be inappropriate for me to discuss in public any matter relating to the suit that has not been first presented to Judge Allen. Accordingly, my testimony will be limited to a general discussion of the case and to a discussion of similar suits around the country.

Sheila A. v. Hayden

The case is entitled Sheila A. v. Hayden. Nine children from seven families are listed (by pseudonym) as named plaintiffs. Because children cannot sue in their own name, a number of prominent Kansans agreed to be Next Friends for the named plaintiff children. The next friends include: Eugene Balloun, Sheila Wombles, Rev. C.L. Bachus, Bishop Kenneth W. Hicks, Paul David Walker, Barbara Walker, Kristy L. Simpson, and Judy Frick. Until his death, Dr. Karl Menninger was also a next friend.

The suit argues that SRS does not comply with P.L. 96-272, 42 U.S.C. §627 et. seq., 670 et. seq., the statute that authorizes federal funds for child welfare and conditions the receipt of those funds on state compliance with minimal standards. The suit is also based on the Kansas child welfare statutes passed by the Kansas legislature, and SRS's own policies. The suit does not seek to create new standards in child welfare, but only to assure that SRS meets those standards and procedures that Congress, this legislature and SRS believe essential to child welfare practice. The suit does not seek to assure Kansas families and children the best possible system of child welfare--though such a goal is certainly desirable. The suit only seeks to hold the state to minimally adequate standards and procedures. Finally, the suit does not ask the court to second guess the difficult decisions made by SRS social workers. Instead, it asks only that social workers be adequately trained and supported so that they can adequately make those decisions.

The court denied the motions by the state defendants to dismiss the case. Further, the court has certified the case as a class action on behalf of all children in the Child in Need of Care program or at risk of entering that program. We are now engaged in discovery.

Possible Remedy

Most of the previous cases have resulted in Consent Decrees or orders defining the standards and procedures to be followed by the child welfare system. The remedy can include standards and procedures in such areas as case plans and reviews, services and care provided to children and families, preventive services, timelines for critical actions, worker training, worker caseloads, foster parent training, and placement alternatives. The court is then available to assure that there is compliance with the orders.

More recently, many states have chosen to cooperate with reform efforts even prior to a finding of liability. For example, in Virginia, even prior to bringing suit, we were able to reach agreement on the reading a random sample of cases with the state agency to identify strengths and deficiencies. In Illinois, the ACLU affiliate and the state agreed on a panel of experts to identify strengths and deficiencies of their child welfare system. In both instances, we hope that the results will provide a basis for defining areas that need correction and that we can reach agreement on solutions to those problem areas.

The most drastic remedy granted so far was recently granted by the court in Connecticut. The parties there agreed to binding arbitration of the dispute. The arbitrators, which included a federal judge, decided that the problems were so structural in nature that control of the child welfare system should temporarily be taken away from the state and placed in the hands of a court appointed body until the problems are remedied.

We are always ready to discuss cooperative means of identifying problems that do exist and possible solutions to those problems that take careful account of the views of SRS itself. If cooperation is not possible, then trial will be necessary and, if the court finds liability, the court will be called upon to devise an appropriate remedy.

History of Child Welfare Litigation

Child welfare systems are usually considered to consist of four components. The first is the child protection system which investigates allegations that a parent has abused or neglected a child. The second is preventive services, services to families in trouble that seek to preserve the families wherever possible

and avoid the need to remove the children from the parents. Third is the foster care system that assumes temporary custody of children who cannot live with their parents, usually though not always as a result of abuse or neglect by the parent. The final part of the child welfare system is responsible for finding permanent adoptive homes for those children who cannot ever return to their parents. Because of the enormous power wielded by the government through the child welfare system to interfere in a family even to the point of permanently removing the children from the parents, its operation raises serious civil liberties concerns.

Unfortunately, child welfare systems are often grossly inadequate, unnecessarily interfering in families and causing serious, irreversible harm to the very children the system was set up to protect. Allegations of abuse or neglect are often not investigated promptly or completely. Children are removed from their home when services to the family would have made it possible to preserve the family. Children who are in foster care are often placed in homes of untrained and poorly supported foster parents who are supervised by poorly trained and enormously overworked social workers. As a result, children do not receive necessary services or treatment and remain in care much longer than is necessary. They move repeatedly from one home to another. Children who are appropriate for adoption wait years for an adoptive home. These kinds of failures can prevent children from ever having a relationship with a caring and consistent parent, one of the prerequisites to healthy adult relationships. These problems are generally not the fault of the workers or the foster parents, but of the state agency which has inadequate resources and often mismanages those that do exist.

Faced with state agencies that assumed enormous, sometimes total control for individuals and did so in ways that were unnecessary and harmful, lawyers for children looked for methods that could be used to force reform. We developed legal theories based on constitutional rights, based on general due process principles and the right not to be harmed while in state custody (see Mushlin, "Unsafe Havens: The Case for Constitutional Protection of Foster Children From Abuse and Neglect," 23 Harv. C.R.-C.L. L. Rev. 199 (Winter, 1988), and based on the federal child welfare funding statute, P.L. 96-272, 42 U.S.C. §620 et. seq., 670 et. seq.. Applying litigation methods and theories developed in the areas of prison litigation and mental health litigation to a whole new area of state control over individuals -- child welfare -- we initiated litigation on behalf of all of the children affected by the child welfare system, or part of the system, in a number of jurisdictions.

With one exception, the earliest challenges to state child welfare systems were litigated by the Children's Rights Project. Among the earliest cases were:

Joseph A. v. New Mexico, 575 F. Supp. 346 (N.M., 1983) (An Children's Rights Project case on behalf of all of the children in New Mexico's foster care system, Joseph was primarily directed at the state's failure to develop plans for the children in care and to implement those plans. The result was that children drifted year after year through the foster care system, not returning home, not being adopted, never having a permanent home. The case was settled with a Consent Decree in 1983. Since then, the Children's Rights Project has engaged in substantial enforcement activity. For a more extensive discussion of Joseph, see below.)

G.L. v. Zumwalt, 564 F. Supp. 1030 (W.D. Mo., 1983) (A Children's Rights Project case on behalf of all children in the county that includes Kansas City, this case was primarily directed at the high level of abuse and neglect by foster parents of foster children, indicating serious problems in recruiting, training, and supervising of foster parents and equally serious problems in training and supervision done by workers. The case was settled by a Consent Decree in 1983 and has been in the enforcement phase since then. A court oversight committee has been established and a methodology for measuring compliance agreed upon. See Mushlin, Levitt, and Anderson, "Court-Ordered Foster Family Case Reform: A Case Study," LXV Child Welfare 141 (March/April 1986))

In Re Michael and Michele P., state court, Louisville, Kentucky. (A Children's Rights Project case on behalf of all black Protestant children who have a plan of adoption in Louisville, the case alleged that the state had itself committed abuse or neglect by failing to expeditiously arrange for adoptive homes for children whose plan was adoption. The case was settled by a Consent Decree in 1981 and was closed upon compliance in 1990. For a more extensive discussion of In re P., see below.)

Wilder v. Bernstein, 645 F. Supp. 1292 (S.D.N.Y., 1986) aff'd 848 F.2d 1338 (2nd Cir., 1988) (A Children's Rights Project case on behalf of all black Protestant children in foster care in New York City and taxpayers challenging racial and religious discrimination in the placement of children into publicly funded, voluntary child care agencies, this case was settled by a Consent Decree in 1986 and is in the enforcement phase.)

Lynch v. Dukakis, 550 F. Supp. 325 (Mass., 1982) aff'd 719 F.2d 504 (1st Cir, 1983) (This is a case on behalf of all of the children in Massachusetts's foster care system challenging a range of problems. A court order was obtained in 1983 setting limits on the size of caseloads by foster care caseworkers.)

For a full discussion of early child welfare litigation, see Lowry, "Derring-Do in the 1980's: Child Welfare Impact

Litigation After the Warren Years," XX Family Law Quarterly 255, (Summer, 1986)

After this initial wave of litigation established the viability of the legal theories and gave some hope for genuine reform of child welfare systems, the pace of litigation accelerated. A number of new cases were filed by the Children's Rights Project and by others. The new cases fell into two major categories: class actions seeking injunctive relief to reform the whole child welfare system or parts of it and damages cases for harms done to individual families by the system. Among the newer cases in both categories are:

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Martin A. v. Gross and Cosentino v. Perales, 138 Misc. 2d 212 (Sup.Ct. N.Y. Co., N.Y., 1987); Grant v. Cuomo, 130 AD 2d 154 (App. Div., 1st. Dept., N.Y., 1987) aff'd 73 N.Y. 2d 820 (1988). (These three cases all challenge the failure of New York City to comply with state and federal mandates in the areas of protective and preventive services. Martin A, a Children's Rights Project case, challenges the failure to consider and then, where appropriate, provide preventive services to families whose children are placed in foster care. Cosentino challenges the failure to provide housing as a preventive service and the resultant placement of children in foster care solely because the family lacks housing. Grant argued that in some circumstances, the city was required to provide preventive services. All three cases were successful in the trial court on motions for preliminary relief. Grant was unsuccessful at both levels of appeal, the courts holding that the decisions challenged involved the exercise of discretion. Martin and Cosentino have been successful on appeal and are now preparing for trial.)

Del A. v. Edwards, Civ. Act. No. 86-0801 (E.D. La., mot. to dismiss, March 2, 1988) aff'd 855 F.2d 1148 (5th Cir., 1988) vac. and en banc rev. gr. 862 F.2d 1107 (5th Cir., 1988) app. dismiss. 867 F.2d 842 (5th Cir., 1989) (This Children's Rights Project case is on behalf of all of the children in Louisiana's child welfare system. Plaintiffs survived several motions to dismiss. Defendants appealed the denial of the motion to dismiss the damages claims on qualified immunity grounds. Appeal ultimately dismissed. Trial was begun and has not been completed.)

Roe v. Staples, C-1-83-1704 (S.D. Ohio, Consent Decree entered Oct. 2, 1986) (This case challenged the conditions in the foster care system in Hamilton County, Ohio which includes Cincinnati. It was settled by a Consent Decree in 1986.)

L.J. v. Massinga, 838 F.2d 118 (4th Cir., 1988) cert. den. 57 USLW 3453 (Jan. 9, 1989); Consent Decree approved 699 F. Supp. 508 (Md., 1988) (This is a challenge to the foster care system

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in Baltimore. It was settled with a Consent Decree in 1988 and is in enforcement.)

B.H. v. Johnson, No. 88C5599 (N.D. Ill., filed July, 1988) (This is a case by the Illinois affiliate of the ACLU alleging deficiencies in the child welfare system in Illinois. A panel of agreed-upon experts has presented a report to the court of problems with the child welfare system and the parties are engaged in discussions about possible solutions.)

LaShawn v. Barry, No. 89-1754 (D.C., filed June 1989) (This Children's Rights Project case is a comprehensive challenge to child welfare in the District of Columbia. The trial began last week and should be completed this week.)

Juan F. v. O'Neill, No. H89 859 (Conn., filed December 1989) (This Children's Rights Project case is a comprehensive challenge to child welfare in Connecticut. Recently settled after binding arbitration.)

R.C. v. Hornsby, Civ. Act. No. 88-D-1170-N (M.D. Ala., filed 1988) mot. to dismiss den. Apr. 19, 1989 (This is a case initially filed on behalf of an individual in Alabama by the Alabama affiliate of the ACLU with the Mental Health Law Project. Motion to dismiss was denied. Plaintiffs are now in discovery.)

B.M. v. Magnant, No. I-P-89-1054 (S.D. Ind., filed September 29, 1989) (This is a comprehensive challenge to child welfare services in Marion Co., Indiana.)

These cases all seek fairly wide-spread reform of the foster care system. There have been other cases challenging one or more discrete issues within the system. For example, in Illinois, Bates v. Johnson was settled in June, 1986, with rules requiring parent/child visitation on a set schedule. Another case, In re G.S., was settled in June, 1987, with a decree establishing a whole new system for lawyers who represent children in dependency cases. In Arkansas, a court ruled that the state was failing to provide services to children placed with relatives. See also Eugene F. v. Gross, Index No. 1125/86 (Sup. Ct., N.Y. Co.). In California, Timothy J. v. Chaffee, LASC # CA 001128 alleges that social workers do not make sufficient visits to children and their families. Doe v. NYC DSS, 670 F. Supp. 1145 (S.D.N.Y., 1987) is a challenge to the city's failure to place children in foster homes upon receiving custody instead of having children sleep in offices. It was settled in 1989.

DAMAGES

DeShaney v. Winnebago Co., 57 USLW 4218 (Feb. 22, 1989) (In this case, the Supreme Court found that the state owed no duty to protect a child who was in the custody of his parent but who was

being supervised by the child protection system even when the social worker for the system observed repeated instances of suspicious injuries and did nothing.)

Taylor v. Ledbetter, 818 F.2d 791 (11th Cir., 1987) cert. den. Ledbetter v. Taylor, 57 USLW 3588 (1989) (Successful suit for damages against state and county officials for injuries caused by foster parents while child was in state custody.)

Doe v. NYC DSS, 649 F.2d 134 (2nd Cir., 1981) cert den. 649 F.2d 134 (1982); 709 F.2d 782 (2nd Cir., 1983) (Successful suit for damages against city and private agency officials for injuries caused by foster parents while child was in state custody.)

See also Harpole v. Ark. DHS, 820 F.2d 923 (8th Cir., 1987); Leshner v. Lavrich, 784 F.2d 193 (6th Cir., 1986); Scrivner v. Andrews, 816 F.2d 261 (6th Cir., 1987) (Unsuccessful efforts to relitigate family court proceedings by damages suits in federal court.)

The question remains in all of these cases whether the use of litigation is successful in changing state foster care agencies. It is possible to look at the impact of child welfare litigation from two standpoints: what impact the lawsuit has had on the law and what impact the lawsuit has actually had on the lives of children. Making new law and establishing legal precedent is important because that precedent then provides guidance to other states and other systems about what is permissible and, one hopes, encourages other systems to reform before they, too, get sued. And if that guidance is not followed, legal precedent in one system provides the basis for victory in a lawsuit in the next system. The cases have established important legal precedents.

The judgments entered in lawsuits which have gone to a successful conclusion also provide important precedent concerning the power of the courts in these kinds of cases. Thus the courts have approved judgments with specific requirements covering a range of issues including the frequency and content of worker and foster parent training, worker caseload size, time periods within which case planning must be done, permissible planning options for children, time periods and steps that must be followed to ensure that children receive a permanent placement, citizen reviews of planning for individual children, and provision of medical treatment for children.

Obtaining a judgment is only the first and not the last step in bringing about real change in the lives of children affected by child welfare systems. Without vigorous and constant monitoring these judgments are no more likely to be enforced than the laws upon which they are based. However, with persistence,

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these judgments can produce reforms. The Louisville and New Mexico cases provide good examples.

Louisville, Ky.; In re Michele and Michael P.

In Louisville, a neglect petition was brought against the local department of social services for itself neglecting children who had been placed in the department's custody and for whom adoption had been determined to be appropriate. All states have laws allowing the state social services agency to sue a parent for causing harm -- either physical or emotional -- to a child. In Kentucky, the Children's Rights Project argued that the state was causing the same kind of harm to these children by failing to make efforts to effectuate its own plan for them, and was itself a neglectful custodian.

There is unanimous agreement among social work professionals that foster care should be temporary, and children either returned home or placed in a new permanent home through adoption whenever possible. There is also unanimous agreement that the older children are the harder it is to find adoptive homes for them. In all too many instances children are not adopted simply because the paperwork is not done and they don't become available for adoption until they are either too damaged by their experiences in foster care -- during which most children are shifted among a number of different homes -- or too old to be acceptable to families or individuals looking for younger children.

The Children's Rights Project alleged that Michele and Michael were only illustrative of a broader problem. The reason Michele and Michael had not been adopted was not that their worker was incompetent, but rather that the system itself was inadequate. The court both sustained the neglect petition against the department and allowed the case to proceed as a class action on behalf of all Louisville children for whom adoption was the plan.

On the even of trial, the state agreed to a court-ordered judgment that was intended to reform the adoption process in Louisville. The court order listed each of the steps that must be taken to find an adoptive home for a child and a specific time period within which that step should be accomplished. For example, when a child first enters foster care in Louisville, the first step is to have a planning conference to determine whether that child will return home or will be appropriate for adoption. The consent decree provides that that conference must be held within seven days of the date the child enters care. Further along in the process the decree provides time tables within which the social worker must prepare a summary of the case to be sent to the lawyers who must then prepare the necessary court documents in order to make the child legally available for adoption and within which the child must be referred to the unit

which finds adoptive homes. The decree also requires periodic reports by the state concerning compliance.

The court approved the consent decree in September, 1981. For the next few years, Kentucky made few efforts to comply with the decree. In addition, Kentucky announced that it had unilaterally decided to disobey the decree and would no longer produce the required compliance reports. The Children's Rights Project moved for contempt based on the state's decision not to provide further reports and based on the lack of compliance reflected in the reports that had been submitted. Compliance statistics ranged from 10% to 55%. A contempt finding was granted and sustained on appeal.

Still, little action was taken to comply. In 1987, the Children's Rights Project moved for contempt for a second time, asserting that virtually no progress had been made in achieving compliance with the Decree. This time, the Children's Rights Project analyzed data for the period January 1, 1986 through July 1, 1987, which showed compliance figures for each step ranging from 17% to 72%, with half of the steps under 50% compliance.

Even though the state disputed these figures, its own analysis also showed substantial noncompliance. Based on the evidence, the court announced its intention to hold the state in contempt for a second time and instructed the parties to meet to agree upon an order that might have some effect in improving compliance.

The parties were able to agree upon a modification of the decree that went into effect in 1988 and that incorporated a mechanism for collecting and reporting compliance data that both parties could agree was accurate. This was an important step designed to avoid future arguments about whether there was compliance or not. Without those arguments, the parties could concentrate on solutions to non-compliance.

The modification also provided for the hiring of a part-time, independent person to audit the state data to make sure it was accurate. At the state's request, the modification set up a mechanism whereby the state could seek to escape from the strict requirements of the decree in an individual case if they could demonstrate that compliance would be harmful to the child or if it was impossible for the state to comply. The modified decree also required the state to achieve certain specific rates of compliance over time.

The compliance data pursuant to the new procedures began to be produced in the last quarter of 1988 and continued for several quarters. The improvement was been dramatic. In the first quarter in which the modified decree applied, compliance was 100% for all categories but one and for that category, compliance

was 99%. The independent reviewer determined that the data was substantially accurate. For the second quarter, the first three months of 1989, the state showed 100% compliance for all of the steps except one and for that step, compliance was 93%. No child was exempted due to individual circumstances in either quarter. Similar results have persisted in subsequent quarters.

There are several explanations for this dramatic though belated progress. Most importantly, the state's initial agreement to the decree had been based, in part, upon the implicit assumption that the fact of reaching agreement would satisfy the Children's Rights Project. When it became clear that the Children's Rights Project insisted not merely upon an agreement, but upon implementation of that agreement, the state appeared to assume that if the problems were ignored for a long enough period, Children's Rights Project lawyers and other advocates would give up and turn their attentions elsewhere. The second contempt motion finally seemed to convince Kentucky that the only way that Children's Rights Project lawyers would stop their continued pressure and repeated contempt motions was for the state to comply with the Decree. Kentucky then hired a full-time staff person whose job was to ensure that workers understood the requirements of the Decree and followed it. This new staff person's efforts have obviously been very successful.

In 1990, after compliance continued, the parties jointly agreed to place the case on the inactive calendar, ending active supervision of Kentucky's adoption system. At a joint press conference, both parties agreed that Kentucky's progress showed that compliance was possible with an appropriate commitment.

The story of In Re P. demonstrates that litigation can be successful in changing the behavior of state foster care agencies. The key factors include (1) clear goals and a court order with measurable requirements; (2) extensive fact-gathering both pre- and post-judgment; and (3) persistence and flexibility.

New Mexico

The Children's Rights Project is in a somewhat different position in our New Mexico case because it is farther away from the success it has achieved in Louisville. Nevertheless it can point to measurable improvement which is directly and solely attributable to the continuing pressure supplied by the court order in that state.

Joseph and Josephine A. v. New Mexico Department of Human Services was filed in federal court in 1980 and focussed on planning for children and access to adoption..

A Consent Judgment, entered on the eve of trial, regulated the foster care system. It set maximum caseload standards,

mandated regular training for workers and established minimal caseworker qualifications, established permissible permanent plans for children, set standards for the content of the plans, established steps in the planning process and time periods within which the planning had to be done, established procedures for freeing children for adoption, for adoption recruitment and adoption matching. The judgment required periodic reviews of children's status internally, by a court, and by Citizen Review Boards, which were also created by the judgment. It also mandated the establishment of a statewide computer information system and monitoring procedures, including the creation of the position of compliance monitor.

The implementation process in New Mexico has varied enormously. The department was unable to do the initial planning that would have led to a smooth implementation of the reforms required by the judgment. When confronted with claims of noncompliance in 1984 and 1985, the department admitted the noncompliance and agreed to hire a nationally recognized child welfare expert as a consultant to work with state administrators in designing procedures, management systems, and a computerized information system, as well as a uniform case record system.

Over the last several years, the department has made measurable progress. That progress has been insufficient to constitute compliance with the decree, however, and there is insufficient evidence that the reforms have been institutionalized to a degree that continuing court supervision is unnecessary. Nevertheless, both sides readily admit that the court order has resulted in dramatic change in a state foster care system that, when the lawsuit was filed, had been one of the worst in the country.

Among the specific changes:

- * Sixty-four per cent of the children in foster care in New Mexico had been in state custody for 24 months or longer. The length of time in custody has dropped from four and a half to one and one-half years.
- * The department instituted in 1987 an annual training program for all workers, and now provides preservice training for workers.
- * The amount of funding for child welfare services has increased.
- * The number of attorneys available to handle children's cases increased by 14, and all areas of the state now have attorneys to handle both neglect and termination of parental rights cases. Previously many of the areas of the state simply had no attorneys available to free children for adoption.
- * The number of social workers has increased by 49 and the number of supervisors by 6.

- * A caseload weighting system has been developed and refined so that mixed caseloads can be judged by consent decree standards.
- * A statewide computer system is in place, which tracks most though not all consent decree requirements and provides a "tickler" system to ensure that planning events take place as required.
- * The department has instituted a Quality Assurance Program, based on a design by the outside expert, to measure the quality of the casework and planning, as well as compliance with mandated timelines.
- * A uniform case record system has standardized the recording of information, made that information more accessible, and is considered by case workers to save significant amounts of time.
- * Citizen Review Boards have been established statewide and review many though not all children for whom review is mandated. When the legislature cut the money to operate the boards, the department was able to find the money elsewhere in its budget.
- * The number of children with inappropriate or unrealistic plans has dropped significantly. In 1987, 66 children had a plan of return home but had had no contact with a parent for the previous six months. In 1988, only 36 children were in such a category. In 1987, 323 children had had a plan of return home for more than 18 months without that plan being accomplished. In 1988, only 68 children were in such a category. In 1987, 43 children 15 years or younger had a plan of emancipation or independent living. In 1988, 14 children had such a plan.
- * Less than one-third of the children for whom adoption was appropriate had been referred for adoptive placement before the lawsuit was filed. Almost all children in that category are now referred for adoptive placement.
- * Adoptive placements have almost tripled, increasing from 52 in 1983 to 137 in 1987.

New Mexico is far from providing an ideal foster care system to its children. But even the defendants concede that the consent decree in this case provides an excellent framework for operating the child welfare system, has brought money into the department that would not otherwise have been available, and has kept the department moving toward reform through several different state administrations for whom child welfare and foster care would not otherwise have been a priority.

As these cases illustrate, the path of implementation has been far from smooth. It has required persistence and, in some instances, further litigation. But the lawsuits, and the judgments that have resulted from them, have been the only consistent and long-lasting pressure for reform in child welfare systems that were seriously damaging the children caught up in them.