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IMPLEMENTATION OF THE INTERETHNIC ADOPTION AMENDMENTS

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

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IMPLEMENTATION OF THE INTERETHNIC ADOPTION AMENDMENTS

TUESDAY, SEPTEMBER 15, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:55 a.m., in room B318, Rayburn House Office Building, Hon. E. Clay Shaw, Jr. (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE
September 8, 1998
No. HR-19

CONTACT: (202) 225-1025

Shaw Announces Hearing on Implementation of the Interethnic Adoption Amendments

Congressman E. Clay Shaw, Jr., (R-FL), Chairman, Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the implementation of legislation designed to decrease the length of time that minority children wait in foster care for adoptive families. **The hearing will take place on Tuesday, September 15, 1998, in room B-318 Rayburn House Office Building, beginning at 11:00 a.m.**

Oral testimony at this hearing will be from invited witnesses only. Witnesses will include the Honorable Olivia A. Golden, Assistant Secretary of the Administration for Children and Families, U.S. Department of Health and Human Services, and former Senator Howard Metzenbaum, as well as a representative of the U.S. General Accounting Office, legal scholars, researchers, adoption agency executives, and family recruitment specialists. Any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

Previous law permitted race or national origin to be considered as one of several factors when making a foster or adoptive placement for a child. The 1996 interethnic adoption amendments (sec. 1808 of P.L. 104-188) removed that option, making it clear that placement policies cannot consider race or national origin. The law now requires that children be placed immediately if a family is available. Specifically, the purpose of the amendments were to: (1) decrease the length of time that children wait to be adopted, (2) prevent discrimination in the placement of children on the basis of race, color, or national origin, and (3) facilitate identification and recruitment of foster and adoptive families that can meet children's needs.

In announcing the hearing, Chairman Shaw stated: "Our Subcommittee wrote legislation more than two years ago that ended race matching policies in adoption that resulted in minority children remaining in foster care on average more than twice as long as other children. The goal was to make adoption easier for the hundreds of thousands of waiting children. It is time to examine the impact of this legislation on the children it was intended to help, and on the system it was intended to change."

FOCUS OF THE HEARING:

The purpose of this hearing is to provide oversight on the implementation of the 1996 interethnic adoption amendments. In addition to examining the extent of official compliance with the law, such as State regulations, training, investigation, and imposition of penalties, the hearing will examine the placement procedures and practices used by local child protection offices.

(MORE)

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should *submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, with their name, address, and hearing date noted on a label*, by the close of business, Tuesday, September 29, 1998, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Human Resources office, room B-317 Rayburn House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette WordPerfect 5.1 format, typed in single space and may not exceed a total of 10 pages including attachments. **Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.**

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at "http://www.house.gov/ways_means/".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

*****

Chairman SHAW. As we go into the hearing this morning, I would like to state the intention of the Chair. The intention of the Chair is to attempt to conclude this hearing by about 20 after 12:00. If I fail in doing so, I will simply recess until approximately 1:30 or 1:45. The purpose of that is that there is a meeting that the Republican Members here are required to go to, but I hope that we can conclude the meeting.

I will ask all of the witnesses to summarize their testimony as best they can. I will strictly adhere to the five minute rule. I don't want my instructions to in any way minimize the importance of this hearing as it is something that the committee worked on very hard in a bipartisan manner with regard to a very important subject.

Our goal in this hearing is straight forward: We aim to find out if the provisions of the 1996 Interethnic Placement legislation are being aggressively implemented. We want to know if the State laws and administrative guidance are consistent with the 1996 statute, whether States are actually putting into practice the policies that should be reflected in their statutes and administrative documents and whether the Department of Health and Human Services is doing everything possible to implement this law.

Finally, although this issue may be a bit premature, we want to know whether there is concrete evidence that the barriers to interethnic adoption are actually falling. There is no more important evidence on this goal than data on the comparative lengths of time white, black, and Hispanic children wait to be adopted. There still seems to be some lingering confusion about the meaning of the law we passed in 1996. Thus, I want to reiterate for the record that the statute is actually quite clear: As a general principle of foster care and adoption placements, considerations of race, color, and national origin are now illegal. There is a very slight—and I emphasize very slight—exception to this prohibition. The exception is that in a particular individual case, race, color and national origin can be considered if there is a compelling Government interest. The only compelling Government interest is that race or color matching would be in the best interests of the child. This is a very strict test and can be met in only exceptional cases. In its 1997 administrative memorandum on this provision, HHS listed only one situation in which race matching was clearly justifiable—in the adoption of an older child who stated a clear preference for the same race parents.

I might say the underlying provision here is to get these kids out of foster care, where you have loving families that are anxious to bring them into their families. Thus, regardless of one's views about race or color matching, the law says it is illegal. So we are here to promote full and vigorous implementation of the law.

Before we turn to our witnesses, I want to make one additional point. Minority children spend far too long in foster care. We have very good data on this point, some of which will be reviewed by our distinguished witnesses today. In fact, Professor Barth says that in his studies it shows that black children in California stay in foster care up to four times longer than white kids. This is a tragedy and a travesty. I have long been committed to attacking this problem of unequal treatment of minority children in State custody, and

after reading today's testimony I am even more strongly committed to doing everything I can to shorten their stay in foster care.

Can anyone here imagine a worse fate for a little toddler than to be confined to foster care for four or five years and during that time to live in three or four different families? Particularly when you know that there are families out there that are anxiously awaiting to adopt kids just exactly like them. But there is something I don't understand. Where are the Nation's powerful and normally vociferous children's advocates on this particular issue? I want advocates to take this challenge seriously. We should be condemning anyone who supports race matching and spending a substantial part of your time and money fighting those who would keep these children in foster care.

In my opinion, there is no clearer or more important issue on the Nation's social policy agenda than fighting to ensure that children, including minority children, have the privilege of being adopted.

[The opening statement and attachment follow:]

Opening Statement by Chairman Shaw
Subcommittee on Human Resources
Committee on Ways and Means
Hearing on Interethnic Child Placements
September 15, 1998

Our goal in this hearing is straightforward: We aim to find out if the provisions of the 1996 interethnic placement legislation are being aggressively implemented.

We want to know if state laws and administrative guidance are consistent with the 1996 statute, whether states are actually putting into practice the policies that should be reflected in their statutes and administrative documents, and whether the Department of Health and Human Services is doing everything possible to implement the law. Finally, although this issue may be a bit premature, we want to know whether there is evidence that the barriers to interethnic adoption are actually falling. There is no more important evidence on this goal than data on the comparative lengths of time white, black, and Hispanic children wait to be adopted.

There still seems to be some lingering confusion about the meaning of the law we passed in 1996. Thus, I want to reiterate for the record that the statute is actually quite clear: As a general principle of foster care and adoption placements, considerations of race, color, and national origin are illegal. I would like to insert in the record a memorandum from the American Law Division of the Congressional Research Service.

There is a very slight — and I emphasize, very slight — exception to this prohibition. The exception is that in a particular individual case, race, color, or national origin can be considered if there is a compelling government interest. The only compelling government interest is that race or color matching would be in the best interests of the child. This is a very strict test and can be met in only exceptional cases. In its 1997 Administrative memorandum on this provision, HHS listed only one situation in which race matching was clearly justifiable — in the adoption of an older child who stated a clear preference for same race parents.

Thus, regardless of one's views about race or color matching, the law says it is illegal. So we are here to promote full and vigorous implementation of the law.

Before we turn to our witnesses, I want to make one additional point. Minority children spend far too long in foster care. We have very good data on this point, some of which will be reviewed by our distinguished witnesses today. In fact, Professor Barth says that his studies show that black children in California stay in foster care up to four times longer than white children.

This is a tragedy and a travesty. I have long been committed to attacking this problem of unequal treatment of minority children in state custody, and after reading today's testimony I am even more strongly committed to doing everything I can to shorten their stay in foster care. Can anyone here imagine a worse fate for a little toddler than to be confined to foster care for four or five years and during that time to live in three or four different homes?

But here is something I don't understand. Where are the nation's powerful and normally vociferous children's advocates on this issue. I want advocates to take this challenge seriously. You should be condemning anyone who supports race matching and spending a substantial part of your time and money fighting those who would keep these children in foster care. In my opinion, there is no clearer or more important issue on the nation's social policy agenda than fighting to ensure that children, including minority children, get adopted.

Mr. Levin, would you care to comment on this topic?

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Memorandum September 14, 1998

TO : House Ways and Means Subcommittee on Human Resources
Attention: Ron Haskins
Cassie Bevan

FROM : Gina Stevens
Legislative Attorney
American Law Division

SUBJECT : Transracial Adoption and Foster Care Placement.

The 1994 passage of the Howard M. Metzenbaum Multiethnic Placement Act (MEPA)[1] prohibited state and federally funded agencies from delaying or refusing to place a child in an adoptive or foster home on the basis of the race of the parent and child involved.[2] MEPA permitted agencies to "consider the cultural, ethnic, or racial background of the child . . . as one of a number of factors."[3] In 1996, the "permissible consideration" provision of MEPA was repealed by section 1808 of the Small Business Jobs Protection Act (SBJPA)[4], "Removal of Barriers to Interethnic Adoption." The 1996 amendment was designed to address the concern that the race-as-a-factor proviso routinely allowed States to take race into account in making a placement decision. The SBJPA states:

> Neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may -
>
> (A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or
>
> (B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.[5]

---

[1] Pub. L. No. 103-382, §§ 551-554, 108 Stat. 4056, 4056-57.

[2] *See* 42 U.S.C. 5115a(a)(1).

[3] 42 U.S.C. 5115a(a)(2).

[4] Pub. L. No. 104-188, § 1808(a)(3), 104 Stat. 1755.

[5] 42 U.S.C. § 671(a)(18).

In sum, the Interethnic Adoption provisions maintain a prohibition against delaying or denying the placement of a child for adoption or foster care on the basis of race, color, or national origin of the adoptive or foster parent, or the child involved.

When Congress enacted MEPA in 1994, Congress deemed a violation of MEPA a violation of Title VI of the Civil Rights Act of 1964.[6] Title VI broadly prohibits discrimination in the admission to and participation in programs of Federal financial recipients. Section 601 of the Act provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[7]

Alleged violations of Title VI are analyzed under the equal protection clause of the Fourteenth Amendment. This approach was first adopted by the Supreme Court in *University of California Board of Regents v. Bakke*[8], where the Court invalidated the special admissions program at the Medical School. The Court concluded that Title VI proscribed "only those racial classifications that would violate the equal protection clause [of the Fourteenth Amendment]." In reviewing governmentally adopted racial classifications under the equal protection clause, the Court has generally applied a "strict" level of scrutiny under which the classification is sustained only upon a showing that the policy furthers a "compelling" governmental objective and is "narrowly tailored" to the achievement of that objective. When Congress deemed a violation of MEPA a violation of Title VI, it incorporated the constitutional strict scrutiny standard applied to racial classifications.

Although the Supreme Court has never examined the constitutionality of same-race preference policies in the adoption context, the Court has considered the role of race in child custody decisions. In *Palmore v. Sidoti*,[9] the Court narrowly held that "race may not be the sole factor in a decision to remove a child from its natural mother,"[10] but left open the possibility of using race as one relevant consideration in child custody decisions. The Court explicitly approved use of the "best interests of the child" test where race is an issue.

In adoptive or foster care placement decisions, the "best interests of the child" remains the operative standard. The "best interests of the child" test is widely accepted by courts and agencies as the proper test to determine child placement issues,[11] with race not permitted to be the sole factor used by agencies in making placement decisions, but rather one of several

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[6] Pub. L. No. 88-352, 78 Stat. 241.

[7] 42 U.S.C. § 2000d.

[8] 438 U.S. 265 (1977).

[9] 466 U.S. 429 (1984).

[10] *Id.* at 429, 434 (1984).

[11] For a general discussion of the "best interest" standard and its application in adoption proceedings, *see* 2 Am.Jur.2d *Adoption* § 136 (1994).

factors to be considered.[12] Most courts have assumed that the "best interests" test affords them substantial discretion to consider race in child placement disputes.

In *Palmore*, following the divorce of a white couple in which custody of their three-year-old daughter was awarded to the wife, the mother began to live with and later married an African-American man. The child's father then sued to obtain custody. The lower court ordered the change in custody solely on a belief that the child would be stigmatized if she stayed in a home with her mother and African-American stepfather. The mother appealed. The Supreme Court noted that consideration of race, a suspect classification, was subject to strict scrutiny and that use of race as the basis for governmental action must be justified by a compelling governmental interest and must be necessary to the accomplishment of a legitimate purpose. It went on to find the best interests of the child to be a substantial governmental purpose for purposes of equal protection analysis, but found that considering race as the sole basis for the court's decision did not survive strict scrutiny and thus violated the equal protection clause of the fourteenth amendment. Courts have limited the application of *Palmore* to custody disputes and have declined to extend it to the adoption and foster care areas.[13]

The Interethnic Adoption provisions, enacted in 1996 as part of the SBJPA, repealed the 1994 MEPA provision that allowed States to take race into account in making an adoption or foster care placement decision. You have asked how this prohibition will operate in conjunction with Supreme Court case law that permits race to be considered as part of the best interests of the child determination. The Department of Health and Human Services (HHS) issued an Information Memorandum (dated June 4, 1997) to provide guidance on this point, and in order to assist in the implementation of the Interethnic Adoption Provisions. The Information Memorandum states in part:

> 1) From the perspective of civil rights law, the strict scrutiny standard under Title VI, the Interethnic Adoption provisions and the U.S. Constitution forbid decision making on the basis of race or ethnicity except in the very limited circumstances where such consideration would be necessary to achieve a compelling governmental interest. The only compelling governmental interest related to child welfare that has been recognized by the courts is protecting the "best interests" of the child who is to be placed. Additionally, the consideration must be narrowly tailored to advance the child's interests, and must be made as an individualized determination for each child.[14]

---

[12] *See, Drummond v. Fulton County Dep't of Family and Children Svcs.*, 563 F.2d 1200, 1205 (5th Cir. 1977), *cert. denied* 437 U.S. 910 (1978) (stressing the importance of considering race in placement decisions); *In Re Adoption of Baker*, 185 N.E.2d 51, 53 (Ohio Ct. App. 1962) ("Under ordinary circumstances a child should be placed in a family having the same racial, religious and cultural backgrounds. . . "); *cf. In Re Davis*, 465 A.2d 614, 622-25 (Pa. 1983) (holding the lower court's failure to acknowledge race was erroneous but harmless).

[13] *See, J.H.H. v. O'hara*, 878 F.2d 240, 245 (8th Cir. 1989), *cert. denied*, 493 U.S. 1072 (1972) (the court concluded that *Palmore's* holding established only that race cannot be the determining factor in custody proceedings and did not exclude the use of race in foster care and adoption placement decisions).

[14] *See*, Information on Implementation of Federal Legislation - Questions and answers that clarify the practice and implementation of section 471(a)(18) of title IV-E of the Social Security Act, U.S.

(continued...)

The HHS Information Memorandum provides an example of when the consideration of race would be permissible. As its example, HHS states that an older child might express an unwillingness to be placed with a family of a particular race. In this situation, the agency would not be required to dismiss the child's stated preference. The Memorandum counsels the adoption worker to "consider the child's willingness to accept the family as an element that is critical to the success of the adoptive placement."[15] The worker is also encouraged to consider families of a particular race who are able to meet the child's needs.

While HHS recognizes that other situations may exist in which race may be taken into account in a placement decision, it notes that it cannot anticipate them all. HHS cautions that only the most compelling reasons based on unique and individual circumstances may serve to justify consideration of race in a placement decision. Therefore, HHS concludes that the situations where race lawfully may be considered in a placement decision will be rare.[16]

Based upon the Supreme Court's holding in *Palmore* and the guidance issued by HHS, it would appear that decision making on the basis of race or ethnicity is prohibited except in the very limited circumstances where such consideration would be necessary to achieve a compelling governmental interest. The only compelling governmental interest related to adoption and foster care that has been recognized by the courts is protecting the "best interests" of the child who is to be placed. Additionally, the consideration must be narrowly tailored to advance the child's interests, and must be made as an individualized determination for each child.

We hope that you find this memorandum helpful, and that you call upon us in the future should the need arise.

Gina Marie Stevens by [illegible]

Gina Marie Stevens
Legislative Attorney

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[14](...continued)
Department of Health and Human Services Administration on Children, Youth and Families (ACYF-IM-CB-98-03)(June 5, 1997).

[15] *Id.* At 4.

[16] HHS recently provided additional guidance on the implementation of the Interethnic Adoption provisions in response to questions presented by the General Accounting Office in connection with its ongoing study on States' implementation of the Interethnic Adoption provisions. *See* Guidance for Federal Legislation - The Small Business Job Protection Act of 1996 (Public Law (P.L.) 104-188), Section 1808, "Removal of Barriers to Interethnic Adoption" 3-4, U.S. Department of Health and Human Services Administration on Children, Youth and Families (ACYF-IM-CB-97-04)(June 5, 1997).

Chairman SHAW.

Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. As you mentioned, we have some time constraints here. On your side you'll have to be gone after 12:20, I think you said. We have and I have some scheduling problems on legislative matters after that. So for the sake of saving time, let me just enter my statement in the record and simply say that I hope we'll have a good discussion here today. There are differing points of view, but I don't see the need for us to have any kind of an adversarial atmosphere here.

I think the goal here is very common. I think we all share it. There may be differing perspectives as to how to reach it, but there surely is a common bond here. I hope we can proceed with that spirit. I ask that my full statement be entered into the record.

Chairman SHAW. Without objection.

[The opening statement follows:]

Representative Sander Levin
Statement for Hearing on Inter-ethnic Adoptions

September 15, 1998

Mr. Chairman, there is a clear bipartisan consensus that we should find permanent, loving homes for abused and neglected children as quickly as possible. In fact, we came together just last year to pass the Adoption and Safe Families Act, which focuses on removing barriers standing between children and adoptive families.

We are here today to discuss how the consideration of race and ethnicity affects the placement of children in adoptive homes.

As you pointed out, in 1996 Congress prohibited states from considering race when placing children in adoptive or foster homes with exceptions only for special circumstances. The impetus for this requirement arose from a fear that states where delaying placements in an effort to find prospective adoptive parents who were the same race as the child needing a home.

As our distinguished witnesses testify today, I will be listening for a discussion of the nuances of this difficult and sometimes heated issue. I hope there is wide agreement that children should never be left to languish in foster care when there are prospective parents of any race waiting to provide a loving home.

I hope our panelists will provide some context for this issue. For example, if race-matching never took place, how many of the 500,000 children now in foster care would find permanent homes? What are some of the other potential barriers to adoption and how many children are impacted by those hurdles?

I am interested to hear about efforts to recruit more prospective minority adoptive parents, a goal a few of our witnesses have specifically focused on.

Mr. Chairman, I look forward to hearing the testimony of all of today's witnesses and hope we can continue to develop a consensus about how to protect the best interests of children. Thank you.

Chairman SHAW. I appreciate that. I concur in your statement.

As our first witness, from the U.S. Department of Health and Human Services, a friend of this committee, Dr. Olivia Golden, who is Assistant Secretary of the Administration for Children and Families.

Dr. Golden, welcome.

STATEMENT OF HON. OLIVIA A. GOLDEN, PH.D., ASSISTANT SECRETARY, ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. GOLDEN. Thank you. In the interest of time, my long statement is in the record. I'll read a brief one.

Chairman SHAW. All of the statements without objection, full statements, will be placed into the record. Thank you.

Ms. GOLDEN. Mr. Chairman and members of the subcommittee, I am pleased to appear before you to discuss the implementation and enforcement of the Multiethnic Placement Act of 1994 as amended by the Interethnic Placement provisions of 1996. I am joined today by David Garrison, Acting Director of the Office for Civil Rights, and Dr. Carol W. Williams, Associate Commissioner for the Children's Bureau.

We are proud that this administration has been able to work with the Congress and with important leadership in this committee to pass critical adoption and foster care legislation. Working together we have enacted laws that make the health and safety of children our first consideration. We have put in place a legal framework that encourages timely decision making in the adoption and foster care systems. We have begun to tear down the many barriers to adoption, including race-based discrimination that stands in the way of placing children in permanent homes. We are firmly dedicated to eradicating race-based discrimination.

While the important work of implementing the Multiethnic Placement Act continues, a great deal has changed since its enactment in 1994. For example, when the Multiethnic Placement Act was enacted, 29 States and the District of Columbia had laws or policies that allowed race-based discrimination in foster care and adoption placements. Today as a result of that legislation and cooperative work with this department, States have moved away from these race-based decisions, meaning that a child no longer needs to go through additional months of waiting while workers seek a family of the same race when a family of a different race is ready and able to adopt.

Twenty-nine compliance reviews have been conducted by the Office for Civil Rights, OCR, since August 1996. For example, as a result of one review conducted in five counties in Florida, discriminatory practices found in one county are being corrected. Children in Florida are now being placed in homes within their county of residence more frequently and the time children wait for placement has been shortened.

Technical assistance provided to at least 40 States has resulted in the revision of countless regulations, policies, and training curricula that guide the work of child welfare professionals and has prompted the retraining of many public and private agency workers. The Secretary has personally written to all 50 governors urg-

ing their leadership in these critical endeavors. She has emphasized that we need their assistance in moving forward with the complex and important next phase of implementation, gaining full compliance with the provisions of these laws by individual social workers, volunteers, and supervisors who make key decisions affecting the placement of specific children.

As these four examples demonstrate, we have made important strides. But there is much that remains to be done. The average age of the 110,000 children who are in foster care and waiting to be adopted is between seven and eight years old. Their average length of stay in foster care is almost four years. We simply cannot ask these children to wait even a moment longer than necessary to enjoy the love and care of a family. This is why we must continue our work to end, in practice as well as in policy, discrimination that causes children to remain in the impermanence of foster care. This will require not only our ongoing commitment at the Federal level, but leadership and dedication on the part of State and local officials with direct responsibility for the administration of child welfare programs across this country.

Now I am pleased to provide a more detailed overview of the department's multi-pronged strategy to implement the Multiethnic Placement Act and interethnic provisions. My written testimony provides much more detail on these strategies. First, I would like to address policy guidance. Within six weeks of the passage of the Multiethnic Placement Act in 1994, the department issued an information memorandum summarizing the new law and transmitting a copy of its text. This was followed several months later with the publication of guidance in the Federal Register. Consistent with the Supreme Court's Adarand decision and with the Chairman's summary in the opening, our guidance restricted consideration of race to exceptional case-specific circumstances only, a very strict interpretation of the law.

The department also issued guidance to the States on the act's requirements relating to diligent recruitment. Beginning in October, 1995, States were required to amend their title IV-B child and family services plans to address the steps they will take to recruit perspective foster and adoptive families who reflect the racial and ethnic diversity of children needing placements.

When the Interethnic Placement provisions were enacted in August 1996, the department reviewed the new law's impact on the ongoing efforts to prevent race or ethnicity-based delays or denials of placements. It was determined that while the changes were significant, the basic issues of State law and policy had been addressed in the department's initial review. The 1996 provisions affirmed the department's strict interpretation and clarified Congress's intent to eliminate completely delays in placement where they were in any way avoidable. Basic information about the 1996 Interethnic Placement provisions was transmitted to the States in November 1996, and more detailed guidance in June of 1997.

In addition, I am pleased to announce today that a notice of proposed rulemaking on child welfare monitoring that further implements the financial penalty provisions of the 1996 Interethnic

Placement law will be published in the Federal Register this coming Friday, September 18.

The second key area of our implementation strategy has been providing effective training and technical assistance. For example, in Illinois and Missouri, the department has alerted State officials proactively to provisions of new laws or bills that contain provisions in violation of the Multiethnic Placement Act and Interethnic Placement provisions. As a result, these statutes have been corrected or repealed.

The third part of our implementation strategy, is conducting monitoring and compliance reviews. The Department of Health and Human Services has developed three procedures for monitoring compliance with the Multiethnic Placement Act. First, ACF's child and family services review includes the State's self assessment, followed by an on-site ACF review, including interviews and examination of case records. If ACF's review suggests potential non-compliance with MEPA, OCR will be notified so a more in-depth investigation can be undertaken.

Second, the OCR investigates complaints by individuals who believe they have been victims of discrimination. Third, OCR also conducts periodic compliance reviews, reviews of the policies and practices of recipients of HHS funds to determine whether they are in compliance with the law.

We have accomplished much in the past few years. Building on these actions, our work in the coming years must focus on collaboration with States and others to change frontline practice. This work will be challenging, but it is tremendously important if we are to give the thousands of children awaiting adoptive homes a chance to begin new lives as part of a new family.

Thank you for the opportunity to testify before the subcommittee. I would be pleased to answer any questions you may have.

[The prepared statement follows:]

STATEMENT BY

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on

THE IMPLEMENTATION OF THE MULTIETHNIC PLACEMENT ACT OF 1994 AND THE INTERETHNIC PLACEMENT PROVISIONS OF 1996

before the

Committee on Ways and Means
Subcommittee on Human Resources
U.S. House of Representatives

September 15, 1998

Dear Mr. Chairman and Members of the Subcommittee,

I am pleased to appear before you today to discuss the implementation and enforcement of the Multiethnic Placement Act of 1994, as amended and expanded upon by the Interethnic Placement provisions of Section 1808 of the Small Business Job Protection Act of 1996. Like the members of this Subcommittee, we in the Department of Health and Human Services are committed to ensuring that every child in the child welfare system is given the opportunity to grow up in a safe, stable, loving, permanent home. In fact, we have pledged to double the number of these children adopted over a five-year period. We are firmly dedicated to eradicating race-based discrimination that stands in the way of placing children in permanent homes.

We are proud that this Administration has been able to work in a bipartisan fashion with members of Congress in both Houses over the past several years to pass critical adoption and foster care legislation. The enactment of the Multiethnic Placement Act in 1994, passed with the strong support of the President, placed front and center the issues of adoption and children's need for permanency. The Multiethnic Placement Act, along with the 1996 Interethnic Placement provisions, the Court Improvement Program, and the Adoption and Safe Families Act of 1997, have all made significant contributions to strengthening the child welfare system of this country. By working together, we have enacted and are now implementing laws that make the health and safety of children our first consideration. We have put in place a legal framework that encourages timely decision-making in the adoption and foster care systems. And we have begun to tear down the many barriers to adoption, including the problem of discrimination on the basis of race or ethnicity.

While the important work of implementing the Multiethnic Placement Act continues, a great deal has changed since its enactment in 1994.

- When the Multiethnic Placement Act was enacted, we found 29 States and the District of Columbia had laws or policies that allowed race-based discrimination in foster care and adoption placements. Today, as a result of cooperative work with this Department, States have moved away from such race-based decisions. What this means to a child in States like Arkansas and California, is that he or she will no longer need to go through additional months of waiting while workers seek a family of the same race, when a family of a different race, is ready and able to adopt today.

- Twenty-nine compliance reviews (broad reviews of practices at the local, county, or multi-county level) have been conducted by the Office for Civil Rights (OCR) since August 1996. A compliance review conducted by OCR in 5 counties in Florida, for example, found that race was being used as a factor in the placement of children in foster care. In fact, it was determined that some caseworkers used race as a primary factor in placing children. These discriminatory practices are being corrected and children in Florida are now being placed in homes within their county of residence more frequently, and the time children wait for placement has been shortened.

- Technical assistance provided by both the Administration for Children and Families and the Office for Civil Rights in at least 40 States has resulted in the revision of countless regulations, policies and training curricula that guide the work of child welfare professionals, and has prompted the re-training of many private and public agency workers.

- The Secretary has personally written to all 50 governors urging their leadership in these critical endeavors. She has emphasized that we need their assistance in moving forward with the complex and important next phase of implementation -- gaining full compliance with the provisions of these laws by individual social workers, volunteers and supervisors who make key decisions

affect the placement of specific children.

As these examples demonstrate, we have made important strides. But there is much that remains to be done to address the needs of abused and neglected children in our child welfare system. Over a half a million children are in foster care. And, based on our most recent data, we estimate that approximately 110,000 of these children are waiting to be adopted. Approximately 59 percent of these children are African American (Non-Hispanic), 29 percent are White (Non-Hispanic), 10 percent are Hispanic and 2 percent are of other races or ethnicities. The average age of children waiting to be adopted is between 7 and 8 years old. Over a quarter are over the age of 10. Many also have disabilities. Many of these children have spent long periods of time in foster care; in fact, their mean length of stay in foster care is almost four years.

As we move forward to ensure that these children are placed in safe and loving adoptive or permanent homes, we must address many obstacles. We must work to provide timely, adequate services that meet the needs of children and families. We must promote decision-making that reflects a child's sense of time -- for while a year passes quickly for an adult, for a four-year-old child a year represents a quarter of her lifetime. We must improve court procedures. We must address the need for better interjurisdictional cooperation among States and counties. We must recruit an expanded pool of families willing and able to serve as foster or adoptive parents for children in need, including children with special needs, minority children, older children and sibling groups. We must also continue our work to end, in practice as well as in policy, discrimination that causes children to remain in the impermanence of foster care.

We simply cannot ask a child who has been maltreated, removed from his home and placed in multiple foster homes for as much as half of his life to wait even a moment longer than necessary finally to get to enjoy what every child deserves - the love and care of a family. This is the reason that we are committed to doing all we can from the Federal level to implement the Multiethnic Placement Act and Interethnic Placement provisions. But we know that the successful implementation of these statutes will require not only our ongoing commitment to implement and enforce the law, but leadership and dedication on the part of State and local officials with direct responsibility for the administration of child welfare programs all across this country.
I am pleased now to provide you with a more detailed overview of the Department 's implementation of the Multiethnic Placement Act and Interethnic provisions.

Implementation of the Multiethnic Placement Act:

Since 1994, staff in both the Administration for Children and Families and the Office for Civil Rights within the Department of Health and Human Services have worked closely together to promote the full implementation of the Multiethnic Placement Act and the 1996 Interethnic Placement provisions. The Department has initiated a multi-pronged strategy to support implementation, including:

- Issuing timely policy guidance to States;
- Reviewing State laws and policies;
- Providing technical assistance to public and private agency staff;
- Conducting reviews; and
- Investigating individual cases of alleged violations.

I would like to share with you some of the key steps the Department has taken in each of these areas.

Policy Guidance to States

Within six weeks of the passage of the Multiethnic Placement Act in 1994, the Department issued an Information Memorandum to State child welfare agencies and State civil rights officers summarizing the new law and transmitting a copy of the law's text. This was followed several months later with the publication of guidance in the Federal Register that reviewed key legal concepts and identified examples of practices that would be illegal under the Act, such as State policies that require searching for a same race placement for a specified period of time before allowing a child to be adopted by a family of another race. Consistent with the Supreme Court's Adarand decision, our guidance restricted consideration of race to exceptional, case-specific circumstances only. This was a very strict interpretation of the law and caused some to question whether it was overly restrictive.

Between October 1994 and June 1995, the Department conducted an initial review of all States' statutes, regulations and published policies on adoption and foster care to determine if they were in compliance with the Multiethnic Placement Act. Based on this review, on June 30, 1995, letters were sent to 29 States and the District of Columbia outlining problem areas of noncompliance with the Federal law and offering technical assistance. Among the issues identified through the Department 's review were 28 State statutes or policies that gave discriminatory preference to same-race placements, 9 statutes that contained time requirements for searching for same-race placements before a transracial placement could be considered, and 5 statutes, regulations or policies that contained discriminatory racial preferences in recruitment of potential foster or adoptive families.

By October 21, 1995, one year after the enactment of the Multiethnic Placement Act, all but three States had amended their statutes, regulations and policies to bring them into compliance. Two of the remaining States came into compliance in July 1996, and the last State in April 1997. (This last State's delay in complying with the Federal law was due to the need for legislative action in a State in which the legislature meets only biannually.)

In addition to working with States to implement the non-discrimination provisions of the Multiethnic Placement Act, the Department also issued guidance to the States on the Act's requirements relating to diligent recruitment. Beginning in October 1995, States were required to amend their title IV-B Child and Family Services plans to address the steps they will take to recruit prospective foster and adoptive families who reflect the racial and ethnic diversity of children needing placements.

When, on August 20, 1996, the President signed into law the Small Business Job Protection Act of 1996, which included the provisions relating to the "Removal of Barriers to Interethnic Adoption," the Department reviewed the new law's impact on the ongoing implementation of efforts to prevent race- or ethnicity-based delays or denials of foster care or adoption placements. It was determined that, while the changes were significant, the basic issues of State law and policies had already been addressed in the Department 's initial review of State laws and policies completed in 1995. The 1996 Interethnic Placement provisions affirmed the Department 's strict interpretation and clarified Congress' intent to eliminate completely delays in placement where they were in any way avoidable. The law now explicitly reaffirmed that neither race nor ethnicity could be used as the basis for any denial of placement, nor could such factors be used as a reason to delay any foster or adoptive placement. It also put in place new and more effective enforcement policies.

Basic information about the 1996 Interethnic Placement provisions was transmitted to the States in November 1996, and more detailed guidance in June 1997. This guidance clarified the changes made to the Multiethnic Placement Act (including the elimination of language in the original statute that made the racial

or ethnic background of the child a "permissible consideration " in determining the best interests of the child). It also explained new provisions that subject States and other entities receiving Federal funding to specific graduated financial penalties (in cases in which a corrective action plan fails to cure the problem within six months.) This guidance highlighted four critical elements of the Multiethnic Placement Act and the 1996 Interethnic Placement provisions.

> 1) Delays in placing children who need adoptive or foster homes are not to be tolerated, nor are denials based on any prohibited or otherwise inappropriate consideration.
>
> 2) Discrimination is not to be tolerated, whether it is directed toward adults who wish to serve as foster or adoptive parents, toward children who need safe and appropriate homes, or toward communities or populations which may heretofore have been under-utilized as a resource for placing children.
>
> 3) Active, diligent, and lawful recruitment of potential foster and adoptive parents of all backgrounds is both a legal requirement and an important tool for meeting the demands of good practice.
>
> 4) The operative standard in foster care or adoptive placement has been and continues to be "the best interests of the child." Any consideration of race, color or national origin in foster or adoptive placements must be narrowly tailored to advance the child's best interests and must be made as an individualized determination of each child's needs and in light of a specific prospective adoptive or foster parent 's capacity to care for that child.

In addition to issuing guidance to the States on the law's requirements for policy and practice, the Department has also been working to develop regulations on the 1996 Interethnic Placement provisions' application of financial penalties under title IV-E of the Social Security Act. We anticipate publishing this guidance as part of a Notice of Proposed Rulemaking very soon.

Technical Assistance:

Since the passage of the Multiethnic Placement Act in 1994, the Department has committed itself to providing effective training and technical assistance to both our regional office staff (who have the most frequent direct contact with State officials) and to the States themselves to ensure the successful implementation of this important new Federal law. In July 1995, staff from the headquarters and regional offices of the Children's Bureau within the Administration for Children and Families (ACF) and the Office for Civil Rights (OCR) jointly conducted training sessions for ACF and OCR staff in each of the 10 Federal regions and included at least one State site visit in each region. Similar technical assistance was then provided by regional staff to States to assist them in making needed changes to State laws, policies and regulations in order to ensure that they were in compliance with the Federal law. For example:

- The Department has worked with the State of Maine on several occasions to revise its policies and training manuals to ensure that they do not encourage illegal considerations of race. Later this month, staff from both OCR and ACF will conduct a training session for all State Department of Human Services adoption staff and the new State Adoption Coordinator to ensure that the revised policies are clear to those who are on the frontlines of implementation.

- In Illinois and Missouri, the Department has alerted State officials to provisions of new laws or bills that contain provisions in violation of the

Multiethnic Placement Act and Interethnic Placement provisions. As a result, these statutes have been corrected or repealed.

- Most recently, David Garrison, Acting Director of the Office for Civil Rights, and I sent a letter to all States reiterating our commitment to making the staff and resources of our respective offices available to States, at their request, to provide technical assistance on policy or practice issues.

Among other strategies, the Department has made extensive use of national and regional conferences and meetings as a forum to train on the requirements of the law. For instance, in Boston, OCR and ACF regional staff presented a workshop at the 25th annual New England Adoption Conference sponsored by the Open Door Society of Massachusetts, Inc. Over 1,500 adoptive parents, prospective adoptive parents, birth parents, foster parents, social workers and agency professionals attended the conference.

The ACF has also made available the Children's Bureau's National Resource Centers to support State implementation efforts. One of our Resource Centers, the National Resource Center on Legal and Court Issues, operated under a cooperative agreement with the American Bar Association's Center on Children and the Law, prepared a monograph on the Multiethnic Placement Act that was released shortly after the law went into effect. The publication has since been revised to reflect the changes made by the 1996 law, and was recently disseminated to all States. The monograph reviews the requirements of the law and contains practical suggestions for child welfare administrators and social workers who are responsible for implementing the law in the best interests of the children they serve.

We also have used our discretionary grants to further the purposes of the Multiethnic Placement Act, as amended. For instance, we have awarded grants under the Adoption Opportunities program to develop resource materials and community programs to preserve, strengthen and support families that adopt transracially. Further, because the number of children awaiting adoptive families continues to outstrip the available number of homes, we are supporting innovative efforts to expand the pool of families for waiting children drawn both from within and beyond their communities.

Monitoring and Compliance Reviews:

The Department of Health and Human Services has developed three procedures for monitoring compliance with the Multiethnic Placement Act, as amended. These are:

- The Child and Family Services Reviews, conducted by the Administration for Children and Families (ACF);
- Complaint Investigations, conducted by the Office for Civil Rights (OCR); and
- Compliance Reviews, conducted by the OCR.

Under ACF's Child and Family Services Review, part of the revised child welfare monitoring strategy that we have been piloting, States first undertake a self-assessment, based to the extent possible on a review of existing data. This is followed by an on-site review involving Federal staff, as well as appropriate State and local officials. The on-site review involves an examination of a limited number of case records and interviews with a range of individuals involved in the delivery and receipt of child welfare services. Questions relating to the State's implementation of the non-discrimination and recruitment provisions of the Multiethnic Placement Act are included as part of the self-assessment. In addition, data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) and/or other State data are used as part of the self-assessment and

may help to reveal patterns (e.g. differences in placement patterns related to race) which warrant a closer examination during the on-site review of individual cases. If ACF's review suggests potential noncompliance with the law, OCR will be notified so that a more in-depth investigation can be undertaken.

The OCR has responsibility for ensuring compliance with Title VI of the Civil Rights Act of 1964. Complaints by individuals who believe that they have been victims of discrimination are investigated by OCR. Since the passage of the Multiethnic Placement Act and the Interethnic Placement provisions of 1996, 18 complaints relating to adoption and foster care have been received and investigated.

- In one case, a private agency in Michigan was investigated for its policies relating to transracial placements. The case involved a medically fragile African American child, born weighing just one pound four ounces, who required foster care. When the infant was four months old (then weighing four pounds, six ounces), he was placed with a white foster family. After just two weeks with that family, the child was, at the request of a foster care worker and the worker's supervisor, moved to a different foster home, this one an African American family. The investigation revealed that the two employees had circumvented agency review procedures and violated agency policy against using race in placement decisions. They had also misrepresented the facts of the child's situation, both orally and in case documentation. As a result of the investigation, the supervisor was fired, and the worker, a new employee, placed on probation. The agency was also provided with technical assistance on the requirements of the Multiethnic Placement Act, as amended, to help guard against future violations of the law.

The OCR also conducts periodic reviews of the policies and practices of recipients of HHS funds to determine whether they are in compliance with the law. Generally, the scope of the inquiry in a compliance review is broader than in a complaint investigation, although some of the same data and information are compiled. Since August 1996, when the Interethnic Provisions were signed into law, the OCR has initiated 29 compliance reviews of recipients in 19 States. Typically, compliance reviews investigate county- and local-level entities, and private agencies, as well as the State agency. As a result of this type of review, we have required States to take a variety of corrective actions, including making policy changes; disseminating information on policy changes to staff and private agencies involved in placement decisions; training placement supervisors and workers; monitoring future placement practices; collecting racial and ethnic data to assess recruitment and placement patterns; and educating prospective adoptive parents.

Looking to the Future: Changing Front-line Practice

We have accomplished much in the past few years. We have changed the law and the policy framework in which decisions are made about individual children so that decisions can be made truly on the basis of individual children's needs, and not on blanket assumptions about race. We have also taken important steps in educating and re-training administrators and workers in the States. Building on these actions, our work in the coming years will focus on affecting change in front-line practice all across the country. Decisions about placing children in specific foster or adoptive homes are made by literally thousands of social workers in both public and private agencies and by juvenile or family court judges. Clearly, reaching all of these individuals is beyond the ability of one Federal agency acting alone. Therefore, we will be reaching out to work collaboratively with State agencies, universities, professional organizations and others to ensure that all of these individuals understand and follow the law.

This work is tremendously important if we are to give the thousands of children awaiting adoptive homes a chance to begin new lives, as part of a new family. As challenging as this work will be, we are committed to continuing to bring the vision of the Multiethnic Placement Act, as amended, into reality.

Thank you for the opportunity to testify before the Subcommittee. I would be pleased to answer any questions you may have.

Chairman SHAW. Thank you, Dr. Golden.

Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman.

Good to see you, Dr. Golden. I particularly was struck by your testimony which said that you wanted to end discrimination which allows children to languish in foster care. We worked very hard together on the Adoption and Safe Families Act, which was about that.

But one of the major innovations in the 1996 legislation was the imposition of stiff financial penalties on any State that violated the prohibition on race matching. I understand from your testimony no penalties have been issued against any States since 1996. Is that correct?

Ms. GOLDEN. What we have done is forced changes in the activities of States. The Congress in laying out the penalty process included a corrective action period in the title IV–E penalty process. The civil rights penalty process also includes corrective action. So our first step is to make change happen. That is what we have done. We have not gotten to the penalty aspect because we haven't had resistance to making the changes.

Mr. CAMP. Has there been any warning of penalty or threatening of penalty?

Ms. GOLDEN. I don't think there have been formal actions, formal letters. Certainly one of the things that leads people to comply is that they know it is against the law and that there are penalties. But so far as I know, there haven't been any formal letters.

Mr. CAMP. In February of this year, the Boston Globe on February 25th published an editorial suggesting that Rhode Island violated the intent of Federal law by delaying the adoption of a four year old boy because of racial considerations. According to the article, which without objection I would like to place in the record of this hearing.

Chairman SHAW. Without objection.

[The information follows:]

Balancing kinship and kindness

When President Clinton signed a law encouraging adoption of abused or neglected children last year, Hillary Clinton said she hoped it would bring the security of "a stable, loving home" to thousands of children. In Rhode Island, in an ominous precedent for the effectiveness of the law, the child welfare system is threatening the secure home it has found for one 4-year-old boy.

Congress and the president intended the Adoption and Safe Families Act to reverse a trend in which thousands of children languished in temporary foster homes while social workers tried to reunite them with their families. The parents had lost custody because of drug addiction, abuse of the child, or other serious difficulty.

The law states that while reasonable efforts should be made to reunite a biological family, the "health and safety of the child" come first. Children thrive most assuredly from stable, consistent, loving care by a single family – beginning as early in life as possible.

The Rhode Island Department for Children, Youth and Families acted responsibly when it removed the boy from his drug-plagued mother (the father was not a factor) when the child was 13 months old. For three years he has been in the care of a single foster family, which has been trying to adopt him for a year.

When the boy was taken from his mother, his grandmother tried to adopt him herself. State officials denied her request for reasons they will not explain. She died in September 1996, and immediately thereafter a second cousin came forward to seek custody.

Through all this, the boy was living with his foster parents and their adopted son, who is slightly older. They moved to Western Massachusetts. A social worker, preparing a report for Rhode Island to be used in adoption proceedings, found that the foster family expressed a love for the boy "that is evident in the interactions observed." His foster mother "stated that they love him and they are 'Mommy and Daddy' to him.... They express hope" that the boy "can remain with them and fear for his emotional well-being if he does have to leave the only home he can really remember."

President Clinton, when he signed the law, urged families just like this one to "open their homes and their hearts to children who need a loving home." The cousin might well make an excellent mother, but the foster parents have a prior claim by virtue of their exemplary parenting.

The federal law contains no penalties for violation, leaving it to the states to change policy on their own. The case of the Rhode Island boy is complicated by racial considerations. The boy is half black and half Hispanic; the foster parents are white. The cousin has enlisted the aid of Arlene Violet, a former attorney general, who has hinted that the state is guilty of racism.

The department spent a year trying to reunite the child with his biological mother. By the time the court terminated the mother's parental rights, the boy was 3 years old and thriving in the foster family. It is not racism to protect the "health and safety of the child."

Jay Lindgren, director of the Department for Children, has taken charge of the case. He acknowledges that the boy is a "well-adjusted, happy little child with an older foster brother in a situation that he sees as family." This description argues in favor of a quick adoption.

Lindgren favors an open adoption, in which the cousin would have the right to overnight visits by the boy. The cousin still wants to adopt him. Judge Kathleen Voccola, delaying proceedings while she sorts out the case, has forced the foster parents to send the boy off on the visits. Open adoptions work well when the adults involved are on good terms. Given the intensity of the legal wrangling, the child might as well be in the middle of a divorce.

Of course, the boy should be encouraged to establish strong connections with his biological relatives. The Massachusetts social worker found the foster family ready to "preserve and recognize his cultural background." There is no need for the judge to insist on mandatory visits when what is really needed is an end to the legal conflict so that long-term relationships can be freely forged.

For three years – ever since he was barely out of infancy – the boy has thrived on the love of a single family, his primary source of physical, intellectual, and emotional sustenance. The State of Rhode Island would be going against the intent of federal law and the dictates of common sense if it disturbed this precious bond.

The Boston Globe 2/26/98, p. A18

Mr. CAMP. The boy was removed from a mother who was drug-plagued. I will quote. "His drug-plagued mother, when the child was 18 months old, for three years he had been in the care of a single foster family who has been trying to adopt him. Once the parental rights were terminated and the child was freed for adoption, it appears that a second cousin stepped forward to adopt and the case is currently still unresolved."

I wondered if you were aware of this particular case. It has gotten some note in the press. When cases like this come forward, does HHS go out and try to investigate the State's potential abuse of Federal law in this situation?

Ms. GOLDEN. I can tell you a little bit about that case and then perhaps the broader issues. The Office for Civil Rights did in fact investigate a complaint in that case and did not in that specific case find a violation. As you know, there was a set of issues where this State was attempting to identify the appropriate placement for a child. My understanding is that the State has in fact supported the foster family's petition to adopt and it's currently before the courts.

Broadly, I think what I——

Mr. CAMP. Is this one of the cases where you have asked for corrective action or has your department opened a file in this matter?

Ms. GOLDEN. My memory of that case is that that's a case where the Office for Civil Rights in their complaint investigation did not find practices that involved looking at race. You have noted that there were allegations, but that in fact when they investigated, they did not find such practices.

But you have raised an important issue. It does sometimes happen that OCR will look at a particular case and they will see practices that are wrong. In that case, they will absolutely require corrective action. In my long testimony I describe a case in Michigan in which a private agency took action to dismiss individual employees in addition to agreeing to a change in practice.

So I think you are right to note that when we look at a particular complaint, it is very important for us not only to look at that one situation, but to identify practices that could be corrected.

Mr. CAMP. There is another situation. Judge Mason in Maryland ordered a white woman who had been caring for a two-year old black child whose sibling was murdered by the biological mother to return the child to the mother. According to the Washington Post, which wrote an editorial on this on January 3 of this year, one reason for the judge's decision was that the foster mother was white while the biological mother is African-American. In other words, the judge used race-matching as one of the justifications for removing the child from a home where he had lived since he was four months old and return the child to a mother who had murdered another child, a sibling, which was one of the issues we addressed in our legislation.

So if the judge said that race-matching was one of the criteria, in your opinion would that have been legal under the 1996 Interethnic provision? I would also ask has the department taken any action against the State of Maryland, either by opening a file or beginning a corrective action as you described, or any other action?

Ms. GOLDEN. Well, I think you are referring to the case that the press has been summarizing as the Pixley case?

Mr. CAMP. Yes.

Ms. GOLDEN. Yes. Obviously, as you know because we have worked so much together, I really share your concerns both about safety and about permanence. The newspaper coverage has certainly suggested a lot of troubling questions in that case.

In terms of jurisdiction, the MEPA legislation as amended in 1996 covers entities that receive money from the Federal Government, for example, a State, or an agency that gets dollars from the Federal Government to engage in foster care or adoption placements. There actually wasn't such an entity involved in this case. There was an informal arrangement between the mother and the person who cared for the child. So from our look at it, it doesn't appear that there is jurisdiction.

Mr. CAMP. All right. I see my time is almost up. Thank you, Dr. Golden.

Chairman SHAW. Mr. Levin.

Mr. LEVIN. I thank you, Mr. Chairman. Let me just ask you if you would, and welcome, to just indicate what the agency is doing in cooperation with States to help move children, especially minority children, into permanent adoptive status. So just tell us quickly what is going on here?

Ms. GOLDEN. I am glad you asked that question because I think there is a great deal going on. Congressman Camp and I were just talking a little bit about how central that goal is, and it's one that of course we worked with the committee on in the Adoption and Safe Families Act.

I would say that there's a whole array of things going on. The enforcement of MEPA and the Interethnic Placement provisions are a piece of that. One important thing is that States are moving to comply with the MEPA policy provisions and they are passing State legislation to comply with the provisions in the Adoption and Safe Families Act that speed up adoption and enable children to move more quickly through the system. For example, States are dealing with provisions relating to the termination of parental rights.

A second area where we have been working a lot with States on just shifting the focus to adoption. One of the things that used to happen, and that the Adoption and Safe Families Act makes clear is not appropriate, is that children would languish in temporary settings because nobody was thinking about the fact that a return home might not be safe. Consequently, no action was taken for several years. So we have been working a lot on how you go about planning, contingent planning, finding placements for the children. We have been working on numbers. We have been working with the States on baseline numbers for the adoption incentives provisions. We are expecting that soon we will be able to come back to you and tell you how much adoption has increased for special needs children and, in particular, for minority children.

Then the MEPA enforcement has been an important part. As my testimony noted, about 29 States used to have discriminatory policies; they don't now. We have also been doing a lot on technical assistance, such as conferences in the States. Our National Resource

Center on Legal and Court Issues has been providing materials. We have been working on recruitment. We have been trying to provide technical assistance in that area.

I guess just one last thing to mention, because it's really important in all adoptions and comes up especially in transracial ones, we have also been working on an issue I hear a lot from adoptive families, which is support for families after the legal adoption. Finally, we have been trying to hold States accountable because they are the ones with the key operational responsibility in all these areas.

Mr. LEVIN. Let me ask you, later Professor Kennedy is going to testify. He refers to a department memorandum. There may be several here because I also have a document from the GAO and your responses. But he says that in the department memorandum, I'm not quite sure, I don't think that's the GAO response itself. But anyway, he says the department writes and quotes that adoption agencies must consider all factors that may contribute to a good placement decision for a child. That may affect whether a particular placement is in the best interest of the child. Then three dots, so there's something in between. Then it goes on, "In some instances, it is conceivable that for a particular child race, color, or national origin would be such a factor." Then it goes on to say that this statement flies in the face of Congress's decision to remove race, color, national origin from the menu of possible items that the agency may lawfully take into account.

Do you want to comment on that?

Ms. GOLDEN. Sure. Let me comment in part again by noting that I think Chairman Shaw gave a good overview of just what our guidance says at the beginning, which is that our guidance is clear and I think consistent with the law and the Constitution. As GAO notes, our interpretation was seen as very strict until Congress in 1996 made the change to confirm that that was the accurate interpretation.

What our guidance says is that there can be no delay or denial of placement based on race, that there can be no discrimination, and that there can be no routine consideration of race. You can't ever have it as something that you routinely look at in all circumstances. What you can do, because the best interests of the child govern placement, you should never make a placement that is against a child's best interest, is that there can be narrow particular examples where race is a factor. As the Chairman noted, our guidance makes clear that we expect those to be infrequent, where considering race in some way would be necessary to a placement that's in the best interest of the child.

I think if you read the guidance and our technical assistance and our work with States, it is clear that that's a narrow exception and that our message is that there can be no discrimination, no delay or denial, and no routine consideration of race.

I think, just to go back to what you said at the beginning about our shared perspective on this, I think there is just very broad agreement that there is such urgency to moving children into homes that will be good for them, that we just can't afford to miss the opportunity to use any families that are ready to provide a loving home to a child.

Mr. LEVIN. Thank you.

Chairman SHAW. I have just a couple of questions. Dr. Golden, first of all I want to say I am very pleased to hear that your regulations are going to be unveiled this Friday. I look forward to being able to review them.

Ms. GOLDEN. Thank you.

Chairman SHAW. Secondly, have we seen the effect of this legislation taking hold across the country and in terms of how long particularly minority kids are kept in foster care?

Ms. GOLDEN. That is a good question. I think what I would say is we only have bits of information now. We will have more in the future. I think what we have seen so far is changes in practice. We have seen some individual jurisdictions that have been keeping track. I think my testimony noted in fact in some counties in Florida where they changed practices and are noting more children being placed closer to home and shorter waiting times. So there are individual scattered examples.

In terms of overall data, we now have, and again it's something that's thanks to a lot of historical commitment from this committee, we now have for the first time very solid national adoption and foster care data. So we have baseline information from that, but we don't really have trend data yet because we are really just at the point where we see what States, you know sort of see from all States really good adoption and foster care data. We will have that trend data over time.

Chairman SHAW. Well I would hope that by the end of the next Congress that we should have that information available. Assuming I remain chairman of this committee, I would intend to call a hearing just to review strictly the results of what has happened.

Do any of the other Members seek recognition?

Mr. ENGLISH. Mr. Chairman, I don't have a question, but I would like to yield my time to Mr. Camp.

Mr. CAMP. Thank you. Dr. Golden, I would just like to ask if it's your belief or your understanding that Federal law bans categorical discrimination on the basis of race, color or national origin in the placing of children in foster or adoptive homes.

Ms. GOLDEN. Yes. I mean I'm not sure, categorical discrimination meaning discrimination?

Mr. CAMP. Yes.

Ms. GOLDEN. Yes.

Mr. CAMP. Do you think the following policy statement is consistent with current law that in the adoption and foster care process, children of black ancestry must receive as a priority placement with black families? Is that consistent or inconsistent with current?

Ms. GOLDEN. To my knowledge that sounds like the kind of statement that we would tell people was not in compliance if it had priority or preference in it. Is there something we need to do in the way of action?

Mr. CAMP. Yes. Well one of my concerns is with grantees of the department that are receiving taxpayer funds. That statement was found just last week on the Web site of the North American Council on Adoptable Children. They are a current grantee of HHS, which would indicate to me that they have not gotten the message as to what current law is. I wondered if there was a process for

informing them and also what maybe the process was for choosing those grantees because of this particular problem.

Ms. GOLDEN. Well I think you'll certainly have a chance to explore some of those issues, particularly with the witness representing them. We definitely engage in conversations and technical assistance whenever such an issue comes up. The law applies to organizations that are using the resources for adoptive and foster care placements.

Mr. CAMP. Certainly you would agree that Federal Government or taxpayer funding of an organization that advocated that policy would be a problem?

Ms. GOLDEN. Since I don't know the full story of the situation, it sounds as though we need to look at it and come back to you.

Mr. CAMP. The other concern I have——

Chairman SHAW. If I might, if you'd yield for just a second.

Mr. CAMP. Yes, I'd be happy to.

Chairman SHAW. I would ask that you submit for the record your finding in that regard.

Ms. GOLDEN. Okay.

Mr. CAMP. I am also concerned about another Web page, the National Adoption Information Clearinghouse, which is part of HHS. Also in its Web page refers to the 1994 law in kind of a passing reference but has no reference to the 1996 provisions. I am concerned about HHS's ability to fulfill its mandate without providing the kind of guidance and technical assistance to the States to implement those provisions.

So I am concerned about the fact that in an appropriate place there is no reference to the legal appropriate practices regarding adoption and racial——

Ms. GOLDEN. I'll check. My understanding was that our guidance and information memorandum on the 1996 legislation as well as 1994 were up, not only on our Web site and on the OCR Web site, which they are up on, but were also on that Web site. But it sounds as though you have checked and haven't found them, so we need to go back and find out if it's a computer thing or what the issue is.

Mr. CAMP. If you could follow up on that I would appreciate it. Thank you, Mr. Chairman.

Chairman SHAW. Thank you. If none of the other Members are seeking recognition, we thank you for being here. We would ask that any Members that have any questions that they wish to submit to the secretary do so, and we would ask that you submit answers in writing that will become part of the minutes of this hearing.

Ms. GOLDEN. Thank you very much.

[Questions submitted to Ms. Golden, and her responses, follow:]

Olivia Golden's Responses to Questions Submitted by the Subcommittee on Human Resources of the Committee on Ways and Means

Question: Do you believe that the federal government ought to be funding organizations that have on their web site the following policy: "In the adoption and foster care process, children of black ancestry must receive as a priority placement with black families." This policy violates a law that has been in place for over four years. Yet the North American Council on Adoptable Children, a current grantee under the Adoption Opportunities Program, as recently as last week, advocated this policy through its web page. Please explain the process of choosing grantees and if the Department has any plans to more closely examine prospective grantees to ensure Congress that no grantee will receive federal funds if they advocate policies that are illegal.

Answer: I would be pleased to explain our process for awarding grants and to provide some additional information on how we are employing the Adoption Opportunities grant program to support the implementation of the Multiethnic Placement Act and Interethnic Placement (MEPA/IEP) provisions. Time-limited and topic-specific competitions for discretionary grants, including the Adoption Opportunities program, are announced in the *Federal Register*. Each announcement describes priority area topics that will be considered for funding, in keeping with the statutory requirements for each program. The announcement also contains a description of eligible applicants, competition requirements, evaluation criteria, and the instructions and forms for applying. Following the closing date for submission of applications, all applications submitted for funding consideration are reviewed by a panel of external reviewers composed of individuals knowledgeable about the relevant field. Each application is evaluated on its programmatic and technical merits, based on the criteria that were published in the grant announcement, and is assigned a numerical score. Funding decisions are then made by the Department on the basis of the panels' scores and comments. To receive funding, all applicants must also sign assurances certifying that they will comply with a number of specified Federal laws, including nondiscrimination provisions in Title VI of the Civil Rights Act of 1964 and other relevant nondiscrimination statutes.

The Adoption Opportunities program is particularly important to furthering the goals of MEPA/IEP. The program funds grants to public and private organization to facilitate the elimination of barriers to adoption and to provide permanent and loving homes for children in foster care, particularly children with special needs. One of the major project areas, as mandated by the statute, is increasing the placement of minority children in adoptive families through a variety of means, including the improved recruitment of minority families. In our most recent Adoption Opportunities grant announcement we highlighted the significance of MEPA/IEP, as well as the reforms contained in the Adoption and Safe Families Act. Among the priority areas announced was one entitled, "Achieving Increased Adoptive Placements of Children in Foster Care," which focused on developing or institutionalizing innovative programs and models for successful recruitment, development and retention of adoptive families for special needs minority children, both in same-race and in trans-racial adoptions, and on increasing the number of adoptions or permanent placements of children from over-represented populations in foster care who cannot return home and who have been in care for extended periods of time. Part of the evaluation criteria for that priority area required applicants to address and reviewers to assess how the project will respond to non-minority prospective adoptive parent applicants interested in adopting children of different backgrounds, consistent with MEPA/IEP. Similarly, the grant priority area funding a National Resource Center on Special Needs Adoption required applicants to describe a plan for assisting agencies in developing practices which are consistent with the anti-discriminatory placement and recruitment provisions of MEPA/IEP.

Just as there is a need to continue to communicate the requirements of the law and its implications for practice to States and private agencies, there is also a need to continue to emphasize the importance and applicability of the law to our discretionary grantees. Therefore, we will be sending a letter to all of our Adoption Opportunities grantees in the near future highlighting once again the requirements of the law and their responsibility to comply with the law.

Question: The National Adoption Information Clearinghouse is a service of HHS and is funded by HHS. The Clearinghouse is intended to provide educational information about adoption issues to a wide audience including both child welfare professionals and families interested in adoption. On a web page for the Clearinghouse is a fact sheet entitled: Adoption and the African-American Child: A Guide For Parents. This guide makes a passing reference to the 1994 law but no mention at all of the 1996 provisions. In your view, should a major agency of HHS charged with educating professionals and the public virtually ignore an issue of this magnitude?

Answer: The Department uses a number of means and outlets to share information with professionals and the public on important matters of public policy. The National Adoption Information Clearinghouse, operated under a contract funded by the Department of Health and Human Services, is one resource we have for sharing information broadly with the public on a wide range of issues relating to adoption. We realized, following receipt of this question from the Subcommittee, that while we had mailed out our guidance on the Multiethnic Placement Act and the Interethnic Placement provisions to States and other appropriate audiences, and had posted it on the Department's own website to make it widely available, and had taken a number of other steps to share information on the law broadly, we had not taken appropriate steps to ensure that the information available on the website of the National Adoption Information Clearinghouse was up-do-date. We have now corrected that oversight. The Clearinghouse's website now prominently displays information on the Multiethnic Placement Act, as amended, and has links to all of our policy issuances on that topic, so that anyone using the Clearinghouse website may access them easily. We have also updated the particular fact sheet noted by the Subcommittee, so that it reflects accurate information on the law.

Question:. The Subcommittee heard testimony from Professor Randall Kennedy from Harvard Law School. Mr. Kennedy questioned the consistency of the Department's memorandum in making it clear that race, color, or national origin are not factors that can be taken into account in determining an appropriate child placement. Here is what he said:

> "The Department seems to be engaged, frankly, in a usurpation of the Congress' authority to determine public policy. Inasmuch as Congress has determined that neither race nor color nor national origin should be part of the calculation in determining where to place a child for adoption or foster care, there is no justification for the Department, on its own, to assert that such factors should be included in agency decision making."

Please respond to this assertion.

Answer: Thank you for the opportunity to respond to this issue. As I noted earlier in response to a question from Congressman Levin, I believe that the Department's guidance to the States has actually been quite clear and consistent and entirely in keeping with the letter and spirit of the law. We have been very explicit in saying that agencies may not use considerations of race or ethnicity to delay or deny foster care or adoptive placements for children. We have emphasized that discrimination is not to be tolerated, whether it is directed toward prospective foster or adoptive parents, toward children who need safe, appropriate homes, or toward communities or populations who, in the past, may have been underutilized as a resource for placing children. We have also made it clear that agencies may not routinely consider race, national origin or ethnicity in making placement decisions. We have, however, noted, as Chairman Shaw did in his opening statement, that in certain rare instances it may be necessary to consider factors of race or ethnicity in the context of making an individualized placement decision for a particular child. In these instances, any such consideration would have to be part of a framework that assesses the strengths and weaknesses of prospective parents to meet all of a child's needs, so as to provide for the child's best interest. Only the most compelling reasons may serve to justify the consideration of race or ethnicity as part of a placement decision and such reasons are likely to emerge only in unique and rare situations.

Chairman SHAW. It's a pleasure to have you with us.

Our next panel includes an old friend of this subcommittee, Senator Howard Metzenbaum. Also, Mark Nadel is a Ph.D., Associate Director of Income Security Issues, Health, Education, and Human Services Division of the U.S. General Accounting Office; Rita Simon, Dr. Rita Simon, a professor at American University in Washington, D.C; Dr. Richard Barth, a professor at the University of North Carolina in Chapel Hill (who I believe that Dr. Haskins probably had a hand in because he's getting from the University of North Carolina); Professor Randall Kennedy from Harvard Law School, Cambridge, Massachusetts; and Joe Kroll, who is executive director of the North American Council on Adoptable Children, St. Paul, Minnesota.

I would say to all the witnesses we have your full testimony which will be made a part of the record of this hearing.

Senator Metzenbaum, you are unique in many ways, but you are most known to me as the only Senator that I have ever known that came back to undo his own legislation saying it's been misinterpreted, get rid of it, change it, and let's get on with getting kids out of foster care. Also, I know that you are a part-time resident of my congressional district. It is my pleasure to welcome you back to this committee.

Senator Metzenbaum.

Mr. CAMP. Mr. Chairman, before we begin, if I could just express my gratitude for Senator Metzenbaum's work in this whole area of adoption.

It's been a pleasure to work with you. I appreciate the valuable insight you have given this committee and also look forward to your testimony. Thank you.

Thank you, Mr. Chairman.

Mr. CAMP. Senator.

STATEMENT OF HON. HOWARD METZENBAUM, A FORMER SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. Let me say thank you for your comments. Let me also say I am everlastingly grateful to the chairman of this committee, to the ranking member of this committee and to all the other members of this committee for taking an interest in this subject, because I must confess that I don't know of any area of Government in connection with which I have been more frustrated than this one.

In 1994, I thought I had achieved the objective by passing the Multiethnic Placement Act. I have probably been the author of maybe 30 pieces of legislation that have gone through the Congress. This was the only one that bore my name, the Metzenbaum Multi-Ethnic Placement Act. You came along two years later and repealed that act with my support. I came here and testified in support of that repeal. I was grateful to you for your leadership and for moving forward in order to really make the law work, to tighten it up and make it effective. So I thought that we had made the grade.

The fact is, the law is there, but HHS isn't there. HHS has dawdled and doodled and sent out pieces of paper to the various State governments. But when it comes to enforcing the law, it hasn't

been enforced. There hasn't been one State that's been called on the carpet for violating the law. The reality is I believe that almost every State is violating the law. Although I don't have evidence of that as a fact, but all the indications, the case in Rhode Island, the cases in Washington, the cases in other places in this country, certainly suggest it. I have a tremendous sense of frustration. I am so grateful that this committee has seen fit to conduct this hearing.

Now the GAO asked HHS some questions. They sent out a list of about nine pages of questions. Carol Williams, who I think is the deputy director, replied. The first question: may public agencies allow adoptive parents to specify the race, color, national origin, ethnicity, or culture of children whom they are willing to adopt? A pretty simple question. The answer is no, they may not. But not as far as HHS is concerned. They took 61 lines of gobbledygook, plain gobbledygook in order to answer that question. All those answers were phrased to limit the law's applicability.

There's no member of the cabinet for whom I have more respect than Donna Shalala, but the reality is that this law isn't being enforced and those kids are still sitting out there in foster homes and some in orphan homes and aren't being adopted by parents who want to adopt them.

There's another question that was answered. In a manner contrary to law, HHS told the GAO that any consideration of race or ethnicity must be done in the context of individualized decisions. Well of course. That would always be considered and that's where the discrimination always occurs. There hasn't been one action, not one letter to any governor or to any State agency saying that "you are in violation" or "it appears that you are in violation and your Federal funding is threatened as a consequence thereof." HHS has sat back. Some of the people at HHS don't believe in the law. There are too many of them, I'm afraid. I am afraid too many of them are impacting upon the enforcement of this law.

Now the GAO has pointed out they are making continued mailings to the States. That's good, fine. But until you rap the knuckles, until you say "unless you shape up we are going to hold back two percent or three percent or five percent of your Federal funding from HHS," you are not going to get effective enforcement. You may have all the nice speeches that you want, the lady who just preceded me, made a nice speech, but the children are still sitting out there, not being adopted.

The social workers continue to discriminate, while the kids remain in foster homes and in public institutions. The problem lies at the doorstep of HHS. Now the reality is that in this particular instance, you couldn't have had better support from the top of the administration. The President made a speech before my law was ever enacted. I think it was to a group of Black Baptist ministers in Florida indicating his strong support for the thrust of MOPA. But HHS does not do anything about it.

Parade Magazine just had a big article called For the Love of Family, pointing out four families where there were multi-racial adoptions. There was a small two-inch box in the article which said that for more information, write the National Council for Adoption. That small box which brought forth well over 10,000 responses,

over 10 percent of which reported problems in attempting to adopt transracially.

Mr. Chairman, your efforts in this regard are much appreciated. To HHS I say, "you are failing to enforce the law." You should be ashamed. You ought to hang your head in shame because it's those little kids out there, those black kids are not getting the benefit of the legislation that you and I authored.

To the social workers who are failing to follow the law, I say to them "you are a disgrace to your profession" because you are more concerned about this whole question of race and stuff than you are concerned about the children for whom you ought to have the real concern.

To this committee I want to conclude by saying thanks for your leadership in amending the law and thanks for holding this hearing. You are a ray of sunshine in a governmental process loaded against thousands of black children much in need of a loving parental relationship. Thank you.

[The prepared statement follows:]

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Chairman SHAW. Thank you, Senator.
Dr. Nadel.

STATEMENT OF MARK V. NADEL, PH.D., ASSOCIATE DIRECTOR, INCOME SECURITY ISSUES, HEALTH, EDUCATION, AND HUMAN SERVICES DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. NADEL. Mr. Chairman and members of the subcommittee, I am pleased to be here today to discuss the findings in our report which has been released today on the implementation of the Multiethnic Placement Act of 1994 and the 1996 legislation. This morning I will summarize our findings regarding the implementation of the 1994 act and regarding the implementation of the 1996 amendment, and finally, what remains to be done to better assure effective implementation.

Our work examined implementation efforts by HHS and by the State of California in two of its counties, Alameda and San Diego. In implementing the 1994 act, HHS recognized that restricting racial placement decisions would require significant changes of child welfare agencies, and the department launched a major effort to provide policy guidance and technical assistance on the 1994 act. Between enactment and the effective date of the act, HHS provided the States with written guidance and technical assistance, which included training and a review of State policy and law to assure that States that were not in conformance completed corrective actions as the assistant secretary discussed.

In terms of what came later, it is important to note that some States believe that HHS's guidance regarding the use of race was more restrictive than was required in the original Metzenbaum Act. California also began implementation efforts promptly. It provided counties with information on the Federal law, made necessary changes to State law, and worked on implementation with the association of county welfare directors.

Turning now to the implementation of the 1996 amendment, we found that HHS was slower to revise its policy guidance and provided less help to the States than was the case after the 1994 act. For example, it took three months to notify States of a change in Federal law even though the change was effective immediately. HHS provided policy guidance and some technical assistance, but not as much as previously. For example, it did not repeat the outreach and training to State officials, nor at the time of our review had it updated the monograph that it had issued on implementation of the 1994 act.

I have talked about differences between 1994 and 1996, but there were some needed actions that HHS did not take either time. Although the department provided policy guidance, it did not provide a key step necessary to successful implementation—practical guidance on changes in social work needed to make casework practice consistent with the act. It was not until May of 1998 when GAO voiced the concerns we had picked up from county officials and caseworkers that the department issued guidance in the form of our questions and their answers. This guidance clarified, for example, that public agencies cannot use race to differentiate between

otherwise acceptable foster care placements, even if such a consideration does not delay placement.

Our work on California's efforts to implement the 1996 amendment indicated that the State also has been slow to undertake important activities. Although California began its efforts by notifying its counties of the 1996 amendment, it has not made the statutory or regulatory changes necessary for implementation.

Officials at all levels of Government face three challenges as they continue to implement the amended act. The first challenge is for agencies to continue to change longstanding social work practices and the beliefs of some caseworkers. While some social workers told us that they welcomed the removal of race matching in Federal law, which they believe will make placement easier, the belief that race or cultural heritage is central to a child's best interest when making a placement is so inherent in social work theory and practice that a policy statement of the National Association of Social Workers still reflects this tenet, despite the changes in Federal law.

The second challenge is for agencies to translate legal principles into practical advice for caseworkers. State program officials in California are struggling to understand the amended act in the context of casework practice issues. They are waiting for the HHS Children's Bureau or the Federal National Resource Centers to assist them in making the necessary changes to day to day casework practices. Currently, some caseworkers were unsure how and when, if at all, they are allowed to consider race in making placement decisions. Thus, the paucity of practical guidance contributes to continued uncertainty about allowable actions under the law.

Finally, the third challenge we identified is the need for agencies to develop information systems to monitor compliance with the act. Developing such systems will be particularly difficult because neither the Federal administrative data in the Adoption and Foster Care Analysis and Reporting System, known as AFCARS, nor individual case files are likely to contain needed information related to placement decisions.

But even if we had some better data on individual placement decisionmaking, analysis is going to be hampered by inherent difficulties in interpreting the results. For example, if we find an increase in the percentage of same-race adoptions, it could indicate the law is being flouted or it could indicate that the pool of black adoptive parents has increased due to successful placement efforts. We won't know unless we have better information on the pool of available parents.

So without better data currently not available, we'll not be able to provide a more definitive assessment of the impact of this legislation. Mr. Chairman, this concludes my prepared statement. I'll be happy to answer questions later.

[The prepared statement follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Human Resources, Committee on Ways and Means, House of Representatives

For Release on Delivery
Expected at 11:00 a.m.
Tuesday, September 15, 1998

FOSTER CARE

Challenges Faced in Implementing the Multiethnic Placement Act

Statement of Mark V. Nadel, Associate Director
Income Security Issues
Health, Education, and Human Services Division

GAO/T-HEHS-98-241

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss implementation of the Multiethnic Placement Act of 1994, as amended by the interethnic adoption provisions in 1996. As you know, this legislation sought to decrease the length of time that children wait to be adopted by eliminating race-related barriers to placement in permanent homes. At least one-third of the estimated 500,000 children currently in foster care will never return to their birth parents, leaving those children in need of permanent homes. Minority children--who made up over 60 percent of those in foster care nationwide in 1994--waited twice as long for permanent homes as did other foster children. Historically, the delays in placing minority children may have been due in part to the common practice of matching the race of a child with that of a foster or adoptive parent--a practice that was customary and required in many areas for the last 20 years.

Whereas the 1994 act explicitly permitted race to be considered as one of a number of factors when making a placement, the 1996 amendment removed that provision. The amendment clarified that race, color, or national origin may be considered only in rare circumstances when making placement decisions. Under the amended law, agencies can no longer routinely assume that placing children with parents of the same race is in the best interests of a child. The amended legislation also put child welfare agencies on notice that they are subject to civil rights principles banning racial discrimination when making placement decisions.

Today, I would like to discuss (1) the actions taken by three levels of government--the U.S. Department of Health and Human Services (HHS), the California Department of Social Services, and two of that state's larger counties, Alameda and San Diego--to implement the 1994 act; (2) the actions taken by these agencies to implement the 1996 amendment to the act; and (3) the challenges all levels of government face to change placement practices. My testimony is based on our new report, Foster Care: Implementation of the Multiethnic Placement Act Poses Difficult Challenges (GAO/HEHS-98-204, Sept. 14, 1998). In that work, we focused our review on foster care and adoption placement policy and guidance; and technical assistance, including training. We selected California for review because it has the largest foster care population in the nation and minority children made up 64 percent of its foster care caseload as of September 30, 1996.

In summary, HHS and the state of California initiated a variety of efforts to inform agencies and caseworkers about the Multiethnic Placement Act of 1994. HHS issued policy guidance to the states and began a range of technical assistance efforts, including training for state officials and efforts to ensure that state laws were consistent with the act. These actions were a joint effort of HHS' Children's Bureau and the Office for Civil Rights. The state revised its state law and adoption regulations and collaborated with county child welfare officials to develop a strategy to implement the act. The two California counties we reviewed trained their caseworkers on the provisions of the act. In contrast, when implementing the 1996 amendment, HHS and the state of California were slower to take action and provided less help. As a consequence, HHS has done little to address casework practice issues--a step necessary for successful implementation--and the state has yet to make formal changes, such as revision of state law and regulations.

All levels of government face three significant challenges in changing placement practices. First, agencies need to continue changing long-standing social work practices, such as some officials' and caseworkers' beliefs that the interests of children are best served when race is considered. Second, agencies need to translate legal principles into practical advice for caseworkers. While officials and caseworkers we spoke with understand that the law prohibits them from delaying or denying placements on the basis of race, they also voiced confusion about allowable actions under the law. Third, agencies need to develop information systems to monitor compliance with the amended act's restrictions on race in placement decisions.

BACKGROUND

The guiding principle in foster care and adoption placement decisions is "the best interests of the child." When considering what is in the child's best interests, factors of both physical and emotional well-being are taken into consideration. Historically, these factors have included maintaining a child's cultural heritage. While a caseworker may have few or many homes to consider when making a placement decision, historically the pool of available foster and adoptive parents has contained fewer minority parents than there were minority children needing homes. Thus, while attempts to match the race of a child with that of a foster or adoptive parent may have delayed the placement of minority children, it was a common practice.

As originally enacted, the Howard M. Metzenbaum Multiethnic Placement Act of 1994 provided that the placement of children could not be denied or delayed solely because of the race, color, or national origin of the child or of the prospective foster or adoptive parents.[1] However, the act expressly permitted consideration of the racial, ethnic, or cultural background of the child and the capacity of prospective parents to meet the child's needs--if such a consideration was one of a number of factors used to determine a child's best interests. As a result of the act, HHS and some states needed to change their foster care and adoption policies. Some states also needed to change state law and the casework practices of their workers to comply with the federal law.

The 1996 amendment clarified that race, color, or national origin may be considered only in rare circumstances.[2] It did so, in part, by removing language that allowed consideration of these factors as part of a group of factors in assessing both the best interests of the child and the capacity of prospective foster or adoptive parents to meet the needs of a child. Thus, under the law, "the best interests of a child" is now defined on a narrow, case-specific basis, whereas child welfare agencies have historically assumed that same-race placements are in the best interests of all children. After passage of the 1996 amendment, HHS and some states again needed to change their foster care and adoption policies. Some states also needed to again change state law and the casework practices of their workers to comply with the federal law.

HHS AND CALIFORNIA BEGAN IMPLEMENTATION EFFORTS PROMPTLY AFTER PASSAGE OF THE 1994 ACT

In implementing the 1994 act, HHS recognized that the restriction on the use of race in placement decisions would require significant changes of child welfare agencies in order to end discriminatory placement practices. In response, HHS launched a major effort to provide policy guidance and technical assistance on the 1994 act. (The app. shows a timeline of major federal and state implementation actions.) Between enactment and the effective date of the act, HHS

- issued a memorandum to states that summarized the act and provided its text;
- issued policy guidance based on existing civil rights principles;
- issued a monograph on the new law that provided additional guidance for states; and
- provided technical assistance to states that included discussing the law with state child welfare directors; providing training to state officials; reviewing each state's statutes, regulations, and policies to ensure that the District of Columbia and the 28 states that were not in conformance with the act completed corrective actions; investigating complaints of discrimination that were filed with the agency; and

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[1]P.L. 103-382, secs. 551-553, 108 stat. 3518, 4056-57.

[2]P.L. 104-188, sec. 1808, 110 stat. 1755, 1903-04.

making available other information and resources from its contracted Resource Centers, including assistance to individual states.

HHS' actions were unique in that the agency brought together two units within HHS that share responsibility for enforcement of the law--the Children's Bureau and the Office for Civil Rights--to work as a team. As a result, these units provided joint guidance and technical assistance to states. Some states believed that HHS' guidance regarding the use of race in placement decisions was more restrictive than provided for in the act. However, in part because of the internal collaboration and team approach HHS had taken, the agency was confident that its guidance accurately reflected the statutory and constitutional civil rights principles involved.

California also began implementation efforts promptly. Our work at the state level indicated that California took four actions before the date that the state was required to conform with the act. It

- issued an informational memorandum to counties notifying them of the change in the federal law;
- began a collaborative effort with an association of county child welfare officials to devise an implementation strategy;
- passed legislation that amended its state law to comply with the federal statute;[3] and
- revised state adoption regulations.

State officials told us that it was not necessary to revise California's existing foster care regulations because those regulations did not include the discriminatory requirement that same-race placements be sought for 90 days before transracial placements could be made.

In the two California counties we reviewed, one county revised its foster care and adoption policies in February 1996, while the other made no change but issued a memorandum to its staff in January 1996 to alert them to the new law. Both counties included the 1994 act in their training curriculums for new caseworkers.

HHS AND CALIFORNIA WERE SLOW TO RESPOND TO THE 1996 AMENDMENT

When we looked at federal actions to implement the 1996 amendment, we found that HHS was slower to revise its policy guidance and provided less technical assistance to states than was the case after the passage of the 1994 act. For example, after the passage of the 1994 act, HHS notified states of the new law within 6 weeks of its passage. After the 1996 amendment was passed, however, HHS took 3 months to notify states of the change in federal law, even though the change was effective immediately. In the 9 months after passage of the amendment, HHS

- notified states of the change in the law;
- revised policy guidance; and
- provided technical assistance, including reviews of agency placement practices in selected locations.

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[3]Because California's state law would not be in conformance with the act until January 1, 1996, HHS extended the date by which California was to comply with the act, postponing compliance from October 21, 1995, to January 1, 1996.

Although HHS continued to make Resource Center assistance available to states and to investigate complaints of violations after enactment of the amendment, it did not repeat other assistance activities provided after the 1994 legislation. For example, it did not repeat the outreach and training to state officials, nor has it updated the monograph on the act to include information on the amendment. Furthermore, HHS officials told us that it was not necessary to conduct another comprehensive review of state statutes because they said they would work with states on a case-by-case basis.

Missing from HHS' implementation efforts for both the 1994 act and the 1996 amendment was one step necessary for successful implementation–guidance on casework practice issues. Such guidance is distinct from policy guidance in that the former addresses questions about changes in social work practice needed to make casework consistent with the act and its amendment, whereas the latter provides a more general framework for understanding the law. It was not until May 1998, when we voiced concerns to HHS that we had picked up from county officials and caseworkers, that HHS issued guidance answering practical questions. This guidance clarified, for example, that public agencies cannot use race to differentiate between otherwise acceptable foster care placements, even if such a consideration does not delay or deny a child's placement.

Our work on California's efforts to implement the 1996 amendment indicated that the state has also been slow to undertake important activities. Although California began its efforts by notifying its counties of the 1996 amendment, it has not

- passed legislation to make state law consistent with federal legislation;
- revised foster care and adoption regulations; or
- targeted its limited training to staff who are most directly responsible for complying with the amended act's provisions: the caseworkers who place children in foster and adoptive homes.

Although California counties can change their own policies without state actions, only one of the two counties we visited has begun incorporating the 1996 amendment into its policies. In that county, the adoption unit has begun to update its policies, but the foster care unit has not done so. Regarding training activities in the two counties, one county is in the process of developing written training material to reflect the 1996 amendment and has provided formal training on it to some workers. The other county charged supervisors with training their staff one-on-one.

HHS AND THE STATE FACE CONTINUING IMPLEMENTATION CHALLENGES

Officials at all levels of government face three challenges as they continue to implement the amended act. The first challenge is for agencies to continue to change long-standing social work practices and the beliefs of some caseworkers. The belief that race or cultural heritage is central to a child's best interests when making a placement is so inherent in social work theory and practice that a policy statement of the National Association of Social Workers still reflects this tenet, despite changes in the federal law. The personal acceptance of the value of the act and the 1996 amendment varies among the officials and caseworkers, in our review. Some told us that they welcomed the removal of routine race-matching from the child welfare definition of best interests of a child and from placement decisions. Those who held this belief said the act and the 1996 amendment made placement decisions easier. Others spoke of the need for children--particularly minority children--always to be placed in homes that will support a child's racial identity. For those individuals, that meant a home with same-race parents. Furthermore, some who value the inclusion of race in placement decisions told us that they do not believe that the past use of race in the decision-making process delayed or denied placements for children.

The second challenge is for agencies to translate legal principles into practical advice for caseworkers. State program officials in California are struggling to understand the amended act in the context of casework practice issues. They are waiting for the HHS Children's Bureau or the federal National Resource Centers to assist them in making the necessary changes in day-to-day casework practices. In particular, the use of different definitions by caseworkers and attorneys of what constitutes actions in a child's best interests makes application of the act and the amendment to casework practice difficult. Furthermore, while the county caseworkers we interviewed were aware that the act and the amendment do not allow denial or delay of placements related to race, color, or national origin, some caseworkers were unsure how and when, if at all, they are allowed to consider such factors in making placement decisions. Thus, the paucity of practical guidance contributes to continued uncertainty about allowable actions under the amended act.

The third challenge we identified is the need for agencies to develop information systems to monitor compliance with the amended act's restrictions on the use of race in placement decisions. Developing such systems will be particularly difficult because neither federal administrative data in the Adoption and Foster Care Analysis and Reporting System (AFCARS) nor case files are likely to contain needed information related to placement decisions. AFCARS data are not sufficient to determine placement patterns related to race that may have existed before the 1994 act's effective date. Furthermore, our examination of the data indicated that future use for monitoring changes in placement patterns directly related to the amended act is unlikely. For example, the database lacks sufficient information on the racial identity of foster and adoptive children, and their foster parents, to conduct the type of detailed analysis of foster care and adoption patterns that would likely be needed to identify discriminatory racial patterns. While case files are another source of information about placement decisions, our review of a very limited number of case files in one California county, and our experience reading case files for other foster care studies, confirmed that it is unlikely the content of placement decisions can be reconstructed from the case files.

Even if sufficient data on placement decision-making are obtained, analysis of them will be hampered by inherent difficulties in interpreting the results. Data showing a change in the percentage of same-race placements would not, alone, indicate whether the amended act was effective in restricting race-based placement practices. For example, an increase in the percentage of same-race placements for black foster children could indicate that the amended act is not being followed. Conversely, the same increase could mean that the amended act is being followed, but more black foster and adoptive parents are available to care for children because of successful recruitment efforts. If relevant information on changes in the pool of foster and adoptive parents is not available for analysis--as is the case with AFCARS data--then it would not be possible to rule out the success of recruitment efforts as a contributor to an increase in same-race placements.

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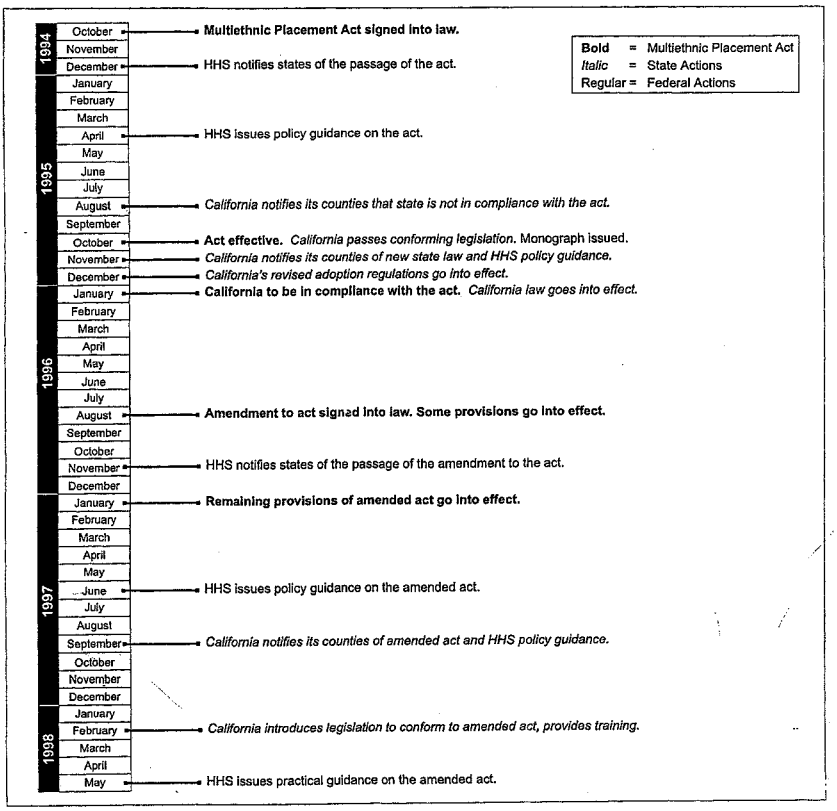
Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or other members of the Subcommittee may have.

TIMELINE OF KEY FEDERAL AND STATE IMPLEMENTATION ACTIONS



Chairman SHAW. Thank you, Dr. Nadel. I apologize, but we are going to have to recess for just a few minutes. As you have noticed, the Members have been going out to vote. I don't want to miss this vote either, so we'll recess for just a few minutes, whatever time it takes to get some of the Members back to start off with you, Dr. Simon.

[Recess.]

Mr. CAMP [presiding]. Let's proceed.

Dr. Simon.

STATEMENT OF RITA J. SIMON, PH.D., PROFESSOR, AMERICAN UNIVERSITY

Ms. SIMON. Thank you. I am pleased to be here. I have studied transracial adoptees and their families for almost 30 years. For example, I followed a cohort of families from 1971 through 1992 in which I interviewed parents or my team of interviewers interviewed parents, birth children, and the transracial adoptees from the time the children were four years old until they were young adults who were mostly not living in their families' homes. The results of that study showed that the black children who were adopted and lived in white homes are aware of and comfortable with their racial identities. They are secure in their ties with their families. They are aware of black history. They were comfortable in their relationships with white and black people, and very scornful of being called oreos, as they were labeled by many of the people in the National Association of Black Social Workers. The label implies that they are black on the outside but that they have white psyches or white souls. They said that's just ridiculous. There are many ways of being black and African-American in this society. The notion that because they were reared in white families they were not really black was very insulting and hurtful to them.

I want to emphasize that it is not only the research that I and my colleagues have done which have produced these findings, but all of the major empirical research that has been done on transracial adoption have shown that these children come out healthy, aware of their identities, and committed to their adoptive families. Even researchers such as Joyce Ladner, who in her book "Mixed Families," says I was skeptical of the practice when I first went in to do the research, came out as an advocate. Ruth McRoy, who does not on a policy basis support transracial adoption, but her research findings do.

The overall point is that the case for transracial adoption as a practice is based solidly on research. The case against transracial adoption, I'm sorry to say, is based on rhetoric and ideology. There are no systematic studies that show that transracial adoptions do not serve the children's best interests.

Even public opinion data, and we have been collecting these data on a national basis since 1971, show that the American public, the black public and the white public, support transracial adoptions overwhelmingly. The last poll in 1997 reported that 77 percent of the American public supported having children of one race adopted by a family of another.

Now I know that your major focus is on what impact the Multiethnic Placement Act of 1996 is having. Let me say that over the

past 30 years, I have testified in about 50 cases involving families who very often were foster parents who were allowed to take care of their black, in some instances Hispanic or Korean child for years and years. When the family went to an agency, a public agency and said you know, we have grown very attached to this child, we would now like to adopt him or her, that's when trouble began. The public agencies wanted to remove the black child from carring, stable home white.

In addition, even though the act has been in effect since January 1, 1997, the number of phone calls that I have gotten and the number of requests that I have had to come and testify and describe my research has not in any way lessened. I was an expert witness in the Pixley case, and in the case that was referred to in Rhode Island. The judge in that courtroom said to me, "You know, I will take race into account if I want to. There's nothing that will prevent me from taking race into account in that case."

I also testified in a case in St. Louis a few months ago where again, a white family had been allowed to take care of a little black child almost since birth. When they said they wanted to adopt, again, a distant relative from the Washington area came in and said no, I want the child. The State was supporting the right of that distant relative, years after the black child had been with the white parents and as far as the child was concerned, they were the only parents he knew.

I am very concerned at the absence of data on what impact the current law might be having. And because I am concerned about the lack of systematic information I am presently conducting a survey. In the past couple of weeks I have sent out over 1,000 questionnaires to heads of public adoption agencies, private adoption agencies, attorneys who have made adoption matters their major focus, to family support groups and other relevant groups, to find out what is happening, specifically the questionnaire ask about the number of transracial adoptions that have occurred since the passage of the act, what obstacles have been encountered, the number of cases that are currently in the courts, and so forth. I am hoping to have those data in the next few weeks.

Thank you very much.

[The prepared statement follows:]

Testimony on Transracial Adoption

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The fall of 1971 marked the beginning of my research about the impact of transracial adoptions on the children and parents involved in such adoptions. The work I did involved following the same cohort of families, all of whom lived in the Midwest from 1971 through 1991. In the course of the study, we conducted in-depth interviews with the parents, the birth children, and the transracially adopted children. Before describing the details of that study, I shall review the other major research that has been done on transracial adoption. The bottom line on all of the studies that have been done is that transracial adoption serves the children's best interests.

The work of Lucille Grow and Deborah Shapiro of the Child Welfare League represent one of the earliest studies of transracial adoption. Published in 1974, the major purpose of Black Children, White Parents was to assess how successful the adoption by white parents of black children had been. Their respondents consisted of 125 families.

On the basis of the children's scores on the California Test of Personality (which purports to measure social and personal adjustment), Grow and Shapiro concluded that the children in their study made about as successful an adjustment in their adoptive homes as other nonwhite children had in prior studies. They claimed that 77 percent of their children had adjusted

successfully, and that this percentage was similar to that reported in other studies. Grow and Shapiro also compared the scores of transracially adopted children with those of adopted white children on the California Test of Personality. A score below the twentieth percentile was defined as reflecting poor adjustment, and a score above the fiftieth percentile was defined as indicating good judgment. They found that the scores of their transracially adopted children and those of white adopted children matched very closely.

In 1977, Joyce Ladner--using the membership lists of the Open Door Society and the Council on Adoptable Children as her sample frames--conducted in-depth interviews with 136 parents in Georgia, Missouri, Washington, D.C., Maryland, Virginia, Connecticut, and Minnesota. Before reporting her findings, she introduced a personal note:

> This research brought with it many self-discoveries. My initial feelings were mixed. I felt some trepidation about studying white people, a new undertaking for me. Intellectual curiosity notwithstanding, I had the gnawing sensation that I shouldn't delve too deeply because the finding might be too controversial. I wondered too if couples I intended to interview would tell me the truth. Would some lie in order to coverup their mistakes and disappointments with the adoption? How much would they leave unsaid? Would some refuse to be interviewed because of their preconceived notions about my motives? Would they stereotype me as a hostile black sociologist who wanted to "prove" that these adoptions would produce unhealthy children?

By the end of the study, Ladner was convinced that "there are whites who are capable of rearing emotionally healthy black children." Such parents, Ladner continued, "must be idealistic about the future but also realistic about the society in which they now live."

To deny racial, ethnic, and social class polarization

> exists, and to deny that their child is going to be considered a "black child," regardless of how light his or her complexion, how sharp their features, or how straight their hair, means that these parents are unable to deal with reality, as negative as they may perceive that reality to be. On the other hand, it is equally important for parents to recognize that no matter how immersed they become in the black experience, they can never become black. Keeping this in mind, they should avoid the pitfalls of trying to practice an all-black lifestyle, for it too is unrealistic in the long run, since their family includes blacks and whites and should, therefore, be part of the larger black and white society.

Charles Zastrow's doctoral dissertation, published in 1977, compared the reactions of 41 white couples who had adopted a black child against a matched sample of 41 white couples who has adopted a white child. All of the families lived in Wisconsin. The two groups were matched on the age of the adopted child and on the socioeconomic status of the adoptive parent. All of the children in the study were preschoolers. The overall findings indicated that the outcomes of the transracial (TRA) placements were as successful as the in-racial (IRA) placements. And Zastrow commented:

> One of the most notable findings is that TRA parents reported considerable fewer problems related to the care of the child have arisen than they anticipated prior to the adoption. . . . Many of the TRA couples mentioned that they became "color-blind" shortly after adopting; i.e., they stopped seeing the child as a black, and came to perceive the child as an individual who is a member of their family.

When the parents were asked to rate their overall satisfaction with the adoptive experience, 99 percent of the TRA parents and 100 percent of the IRA parents checked "extremely satisfying" or "more satisfying than dissatisfying." And on another measure of satisfaction--one in which the parents rated their degree of satisfaction with certain aspects of their adoptive experience--out of a possible maximum of 98 points, the mean score of the TRA

parents was 92.1 and the IRA parents, 92.0.

Using a mail survey in 1981, William Feigelman and Arnold Silverman compared the adjustment of 56 black children adopted by white families against 97 white children adopted by white families. The parents were asked to assess their child's overall adjustment and to indicate the frequency with which their child demonstrated emotional and physical problems. Silverman and Feigelman concluded that the child's age--not the transracial adoption--had the most significant impact on development and adjustment. The older the child, the greater the problems. They found no relationship between the adjustment and racial identity.

W. M. Womak and W. Gulton's study of transracial adoptees and non-adopted black preschool children found no significant differences in racial attitudes between the two groups of children.

In 1983, Ruth McRoy and Louis Zurcher reported the findings of their study of 30 black adolescents who had been transracially adopted and 30 black adolescents who had been adopted by black parents.

In the concluding chapter of their book, McRoy and Zurcher wrote:

> The transracial and inracial adoptees in the authors' study were physically healthy and exhibited typical adolescent relationships with their parents, siblings, teachers, and peers. Similarly, regardless of the race of their adoptive parents, they reflected positive feelings of self-regard.

Throughout the book, the authors emphasized that the quality of parenting was more important than whether the black child had been in-racially or transracially adopted: "Most certainly,

transracial adoptive parents experience some challenges different from inracial adoptive parents, but in this study, all of the parents successfully met the challenges."

In 1988, Joan Shireman and Penny Johnson described the results of their study involving 26 in-racial (black) and 26 transracial adoptive families in Chicago. They reported very few differences between the two groups of eight-year-old adoptees. Using the Clark and Clark Doll Test to establish racial identity, 73 percent of the transracial adopted identified themselves as black, compared to 80 percent for the in-racially adopted black children. The authors concluded that 75 percent of the transracial adoptees and 80 percent of the in-racial adoptees appeared to be doing quite well. They also commented that the transracial adoptees had developed pride in being black and were comfortable in interaction with both black and white races.

In 1988, Richard Barth reported that transracial placements were no more likely to disrupt than other types of adoptions. The fact that transracial placements were as stable as other more traditional adoptive arrangements was reinforced by data presented in 1988 at a North American Council on Adoptable Children (NACAC) meeting on adoption disruption. There it was reported that the rate of adoption disruptions averaged about 15 percent. Disruptions, they reported, did not appear to be influenced by the adoptees' race or gender or the fact that they were placed as a sibling group.

In 1993, Christopher Bagley compared a group of 27 transracial adoptees with a group of 25 inracially adopted whites. Both

sets of adoptees were approximately 19 years old and were on average about two years old when adopted. Bagley concluded his study with the following statement:

> The findings of the present study underscore those from previous American research on transracial adoption. Transracial adoption... appears to meet the psychosocial and developmental needs of the large majority of the children involved, and can be just as successful as inracial adoption.

In 1994, the Search Institute published Growing Up Adopted, a report that describes the results of interviews with 715 families who adopted infants between 1974 and 1980. When the survey was conducted in 1992-93, the adoptees' ages ranged from 12 to 18. A total of 881 adopted children, 1262 parents, and 78 non-adopted siblings participated in the study. Among the 881 adoptees, 289 were transracially adopted, of which the largest single group were 199 Koreans, who made up 23 percent of the total sample. The search study reported that 81 percent of the "same race" adoptees and 84 percent of the TRAs (of whom 68 percent were Korean) said, "I'm glad my parents adopted me."

Various "tests" of "mental health," "self-esteem," and "well-being" were given to the inracial adoptees and TRAs. The results are shown in the charts presented below:

Percent of Adolescents with High Self-Esteem

	Boys	Girls
National Sample*	51%	39%
All Transracial Adoptees	55	51
Asian TRAs	53	53
Same-Race Adoptees	63	53

[*National sample of public school adolescents; N=46799.]

Four Measures of Psychological Health
For Transracial and Same-Race Adoptions

Measure of Psychological Health	Range	Scale Average		Scale Average (in comparison to same-race group)
Index of Well-Being	0-16	All TRA	11.23	No difference
		Asian	11.40	No difference
		Same-race	11.08	
At-Risk Behavior	0-20	All TRA	1.80	No difference
		Asian	1.55	No difference
		Same-race	1.78	
Self-Rated Mental Health	1-5	All TRA	4.10	No difference
		Asian	4.07	No difference
		Same-Race	4.11	
Achenbach	1-120	All TRA	44.63	No difference
		Asian	43.94	No difference
		Same-race	42.29	

On attachment to their families, the Search study found that transracial adoptees are more likely than same race adoptees to be attached to their parents -- 65% for Asian, 62% for all TRAs, and 52% for same race adoptees.

In 1971-72 I contacted 206 families living in the five cities in the Midwest who were members of the Open Door Society and the Council on Adoptable Children (COAC) and asked whether she could interview them about their decision to adopt nonwhite children. All of the families but two (which declined for reasons unrelated to the adoption) agreed to participate in the study. The parents allowed a two-person team composed of one male and one female graduate student to interview them in their homes for 60 to 90 minutes at the same time that each of their children, who were between four and seven years old, was being interviewed for about 30 minutes. In total, 204 parents and 366

children were interviewed.

The number of children per family ranged from one to seven; this included birth as well as adopted children. Nineteen percent of the parents did not have any birth children. All of those families reported that they were unable to bear children.

Sixty-nine percent of the first-child adoptions were of children less than one year of age, compared to 80 percent of the second-child adoptions. One explanation for the greater proportion of younger adoptions the second time around is that adoption agencies were more likely to provide such families--who had already proved themselves by their successful first adoption--with their most desirable and sought-after children, than they were to place such children in untried homes.

In 1972, only a minority of the families had considered adopting a nonwhite child initially. Most of them said they had wanted a healthy baby. When they found that they could not have a healthy white baby, they sought to adopt a healthy black, Indian, or Korean baby--rather than an older white child or a physically or mentally handicapped white child or baby. They preferred a child of another race to a child whose physical or mental handicaps might cause considerable financial drain or emotional strain. About 40 percent of the families intended or wanted to adopt nonwhite children because of their own involvement in the civil rights movement and as a reflection of their general sociopolitical views.

During the first encounter with the children in 1972 (adopted and birth) they were given a series of projective tests in-

cluding the Kenneth Clark doll tests, puzzles, pictures, etc., that sought to assess racial awareness, attitudes and identity. Unlike all other previous doll studies, our respondents did not favor the White doll. It was not considered smarter, prettier, nicer, etc., than the Black doll either by White or Black children. Neither did any of the other tests reveal preferences for White or negative reactions to Black. Yet the Black and White children in our study accurately identified themselves as White or Black on those same tests. Indeed, the most important finding that emerged from our first encounter with the families in 1971-72 was the absence of a White racial preference or bias on the part of White birth children and the nonwhite adopted children.

Over the years, we continued to ask about and measure racial attitudes, racial awareness and racial identity among the adopted and the birth children. We also questioned the parents during the first three phases of the study about the activities, if any, in which they, as a family engaged to enhance their transracial adoptee's racial awareness and racial identity. We heard about dinner-time conversations involving race issues, watching the TV series "Roots," join Black churches, seeking Black Godparents, preparing Korean food, traveling to Native American festivals and related initiatives. As the years progressed, especially during adolescence, it was the children, rather than the parents, who were more likely to want to call a halt to some of these activities. "Not every dinner conversation has to be a lesson in Black history,: or "we are more interested in the next basketball or football games than in ceremonial dances" were comments we heard frequently from transracial adoptees as they were growing up.

In the 1983-84 phase, all of the children were asked to complete a self-esteem scale," which in essence measures how much respect a respondent has for herself or himself. A person is characterized as having high self-esteem if she or he considers herself or himself to be a person of worth. Low self-esteem means that the individual lacks self-respect. Because we wanted to make the best possible comparison among our respondents, we examined the scores of our black TRAs separately from those of the other TRAs and from those of the white born and white adopted children. As shown in Table 1 the scores for all four groups were virtually the same. No one group of respondents manifested higher or lower self-esteem than the others.

Table 1: Self Esteem Scores

Categories of Respondents	N	Median	Mean	Standard Deviation
Black TRAs	86	17.8	18.1	3.49
Other TRAs	17	18.0	18.3	3.66
Birth Children	83	18.1	18.0	3.91
White/Adopted	15	18.0	18.5	3.16

The lack of differences among our adolescent responses was again dramatically exemplified in our findings on the "family integration scale," which included such items as the following: "People in our family trust one another;" "My parents know what I am really like as a person;" "I enjoy family life." The hypothesis was that adopted children would feel less integrated than children born into the families. But the scores reported by our

four groups of respondents (black TRAs, other TRAs, white born, and white adopted) showed no significant differences; and indeed, among the three largest categories (not identical: 15.4, 15.2, and 15.4.

In 1983, we had asked the respondents to identify by race their three closest friends; 73 percent of the TRAs reported that their closest friend was white. Among the birth children, 89, 80, and 72 percent said their first, second, and third closest friends were white. In 1991, 53 percent of the TRAs said their closest friend was white, and 70 percent said their second and third closest friends were white. For the birth children, more than 90 percent said their three closest friends were white. Comparison of the two sets of responses--those reported in 1983 and those given in 1991--show that TRAs had shifted their close friendships from white to nonwhite and a higher percentage of the birth respondents had moved into a white world.

The next portion of the interview focused on a comparison of the respondents' perceptions of their relationship with their parents at the present time and when they were living at home during adolescence; on their reactions to their childhoods; and--for the TRAs--on how they felt about growing up in a white family.

Respondents' answers to the following question: "When you were an adolescent--and at the present time--how would you describe your relationship with your mother--and with your father?" The data indicate that, for the adopted as well as the birth children, relations with both parents improved between adolescence and young adulthood.

During adolescence, the TRAs had a more distant relationship with their mothers and fathers than did the birth children; but in the young adult years, more than 80 percent of both the TRAs and the birth children described their relationship to their mothers and their fathers as very or fairly close.

We asked the TRAs a series of questions about their relationships to family members during their childhood and adolescence, many of which focused on racial differences. The first such question was this: "Do you remember when you first realized that you looked different from your parents?" to which 75 percent answered that they did not remember. The others mentioned events such as "at family gatherings," "when my parents first came to school," or "on vacations," or "when we were doing out-of-the-ordinary activities," and "immediately, at the time of adoption." The latter response was made by children who were not infants at the time of their adoption.

That question was followed by this one: "How do you think the fact that you had a different racial background from your birth brother(s) and/or sister(s) affected your relationship with them as you were growing up?" Almost 90 percent of those who had siblings said it made little or no difference. The few others were divided among those who said that it had a positive effect, or a negative effect, or that they were not sure what, if any, effect it had.

We continued with this question: "Was being of a different race from your adoptive family easier or harder during various stages of your life?" Forty percent responded that they rarely

found it difficult; eight percent said they found early childhood the easiest; and another eight percent said they had a difficult time throughout their childhood and adolescence. Twenty-nine percent said that people of the same racial background as their own reacted "very negatively" or "negatively" toward them during their adolescence. The other responses ranged from "neutral" (37 percent) to "positive" (10 percent) and "very positive (15 percent).

We asked the birth children how they felt about living in a family with black or other nonwhite siblings. Only one respondent reported "somewhat negative" feelings about having a sibling of a different race, and this same respondent felt his parents had made a mistake in their decision to adopt a black child. Thirty percent acknowledged that there were times during their childhood when they felt out of place in their families--for example, when their families participated in "ethnic ceremonies" or attended black churches. But when asked, "How do you think being white by birth but having nonwhite siblings affected how you perceive yourself today?" all but 13 percent answered that the experience "had no effect." The others cited positive effects such as "it broadened my understanding and it "made me think of myself as part of the human race rather than of any special racial category."

Among those children whose parents lived in the same community, all of the TRAs and the birth children said they saw their parents at least two or three times a month; most saw them almost every day or a couple of times a week.

On the 1983 survey, we asked the children a modified version

of the following question: "If you had a serious personal problem (involving your marriage, your children, your health, etc.), who is the first person you would turn to; who is next; who is the third?" Two other problems were posed: "money," and "if you were in trouble with the law." In 1983, 46.8 percent of the TRAs chose a parent or a sibling; 45 percent of the birth children chose a parent or sibling; and 25 percent of the white adoptees chose a parent or a sibling.

In 1991--eight years later--when we again asked the children, "If you had a serious personal problem...," we found no evidence that TRAs were less integrated into their families than were the white children. The TRAs were as likely, or more likely, to turn to parents and siblings as were the birth or white adopted children. But in almost all instances, the first persons that children in all three categories turned to were their adopted parents or birth parents. For the TRAs, a sibling was the next person. For the birth children, spouses and/or girlfriends or boyfriends constituted the second likely choice. The birth children and the white adoptees were older than the TRAs (median age 26 and 25 vs. 22), and this may explain their lesser likelihood to turn to their parents for help or advice.

We believe that one of the important measures of the parents' unselfish love and concern about their adopted children may be found in their responses to the question about the birth parents. In 1983, approximately 40 percent of the parents told us that their children expressed interest in learning about their birth parents. Of those, seven percent also wanted to locate and

meet one or both of their birth parents, and additional ten percent of the parents had already provided their adopted children with whatever information they had--even prior to, or in the absence of, the children's request. Out of the 40 percent whose children asked about their birth parents, only three parents were sufficiently threatened by the child's interest to refuse to provide the information they had.

Looking at the issue from the adoptees' perspective, we found that 38 percent of the TRAs had already tried or were planning to try to locate their birth parents. The others said that they had not decided or did not plan to try to find them. The most typical response was: "I am happy with my family. My other parents gave me up." Most of the adoptees did not have deeply rooted feelings about their reasons for wanting to locate their birth parents; curiosity seemed to characterize most of the feelings. Many said, "I would like to see what I will look like when I'm older." Those for whom the issue was more traumatic were children who were adopted when they were three or more years of age, had some memory of a mother, and felt a sense of abandonment or betrayal. They expressed their feelings in this rather muted phrase: "I'll feel incomplete until I do."

In the 1991 phase of the study, the transracial adoptees, who, by this time were young adults, were asked how they felt about the practice of placing nonwhite--especially Black--children in white homes, what recommendations they might have about adoption practices and what advice they might offer White parents who are considering transracial adoption. We also asked the respondents to evaluate their own experiences with transracial

adoption.

We opened the topic by stating, "You have probably heard of the position taken by the National Association of Black Social Workers (NABSW) and several councils of Native Americans strongly opposing transracial adoption. Do you agree or disagree with their position? Eighty percent of the adoptees and 70 percent of the birth children disagreed with the NABSW position. Among the latter, 17 percent agreed and 13 percent were not sure. Only 5 percent of the transracial adoptees agreed with NABSW's position. The others were not sure how they felt about the issue. The reasons most often given for why they disagreed were that "racial differences are not crucial," "TRA is the best practical alternative," and "having a loving, secure, relationship in a family setting is all-important."

One Black male adoptee said, "My parents have never been racist. They took shit for adopting two Black kids. I'm proud of them for it. The Black Social Workers' Association promotes a separatist ideology."

Another Black female commented, "It's a crock--it's just ridiculous. They [the NABSW] should be happy to get families for these children--period. My parents made sure we grew up in a racially diverse neighborhood. Now I am fully comfortable with who I am."

Another commented, "I feel lucky to have been adopted when I was very young [24 days]. I was brought up to be self-confident --to be the best I can. I was raised in an honest environment.

In response to the question, "Would you urge social workers

and adoption agencies to place nonwhite children in a white home?" 70 percent of the TRAs and 67 percent of the birth children said yes without qualifications or stipulations. Almost all of the others placed some stipulations, the most common of which was that it should not be the placement of first choice--that a search should be made to find appropriate families of the same racial background as the children. The second most frequently mentioned stipulation was that the children should be placed with those white families who are "willing to make a commitment to exposing the child to his or her native culture."

We then shifted to a more personal note and asked, "How do you think being black (or where appropriate, Korean or Native American) and raised by white parents has affected how you perceive yourself today?" One-third of the TRAs thought the adoption had a positive effect on their self-image. One-third thought it had no effect, and one-third did not know what effect the adoption had on their self-image.

One male adoptee said, "Multicultural attitudes develop better children. I was brought up without prejudice. The experience is fulfilling and enriching for parents and children."

Our next question was this: "All things considered, would you have preferred to have been adopted by parents whose racial background was the same as yours?" Seven percent said yes; 67 percent said no; four percent said they were not sure or did not know; and 22 percent did not answer. When asked by they held the position they did, most said, in essence, "My life has worked out very well;" "My parents love me;" and/or "Race is not that important."

One female black adoptee believed she "got the best of both worlds. I can be myself and have black and white friends. I don't look at people for their race."

Another said, "The transracial adoption experience gives us an open view of the world. Prejudice comes from ignorance."

When asked what advice they would give to parents who have the opportunity to adopt a young child of "your racial background," and about how she or he should be reared, 91 percent advised mostly that such parents be sensitive to racial issues; nine percent advised that they reconsider.

One of the transracial adoptees who agrees with the position of the NABSW said, "I feel that I missed out on Black culture. I can sit and read a book about Martin Luther King, but it is not the same." His advice to white parents who adopt black children is this: "Make sure they [the TRAs] have the influence of Blacks in their lives; even if you have to go out and make friends with black families. It's a must--otherwise you are cheating them [the TRAs] of something valuable."

In the summer of 1997, the Princeton Survey Research Association, under the sponsorship of the Adoption Institute, conducted the first ever national survey of Public attitudes toward adoption. It consisted of 1,554 adults. Included in the survey were the following two questions:

1) Do you approve of a married couple who is white adopting a baby who is African American?

2) Do you approve of a married couple who is African American adopting a baby who is white?

Eighty percent of the respondents answered "yes" to the first question and 77 percent answered "yes" to the second question.

On August 20, 1996, President Clinton signed into law a provision that prohibits "a state or other entity that receives federal assistance from denying any person the opportunity to become an adoptive or a foster parent solely on the basis of the race, color, or national origin of the persons or of the child involved." The provision also prohibits a state from denying or delaying the placement of a child for adoption or foster care solely on the basis of race, color, or national origin of the adoptive or foster parent of the child involved. The federal statute went into effect on January 1, 1997.

In the more than eighteen months that have gone by since the statute went into effect, there are no systematic data available as to its impact. In the beginning of September, 1998 I initiated a study that seeks to provide systematic data on the impact of the federal statute. The study involves a mail survey to the following groups of people:

State Directors of Human Resources, and other persons directly involved in adoptions	71
Public Adoption Agencies	233
Private Adoption Agencies	529
Members of the Academy of Adoption Attorneys of America (AAAA)	257
Public Support Groups	52

In total 1142 letters and questionnaires have gone out to the target population listed above. In addition to relying on

the responses to the mail surveys, phone calls will be made to collect more detailed information about the number of minority children available for adoption, the number of minority children in foster care and institutions, the number of transracial placements, the obstacles that parties seek to adopt across racial lines (i.e. foster parents and others seeking to adopt) have encountered, and the number of instances in which parties involved have gone to court. Along with the mail survey, and the in-depth telephone interviews, the print media will be searched for stories about transracial adoption, and personal interviews will be conducted with parties involved in a transracial adoption.

On a personal and anecdotal level, I can report that the law does not appear to be making it easier for children to be adopted across racial lines. Since January 1997 I have testified in three cases in three states in support of granting a white family custody of the right to adopt an African-American or mixed race child for whom they have served as foster parents. In two of those cases the request was denied, the third case is still pending.

In closing, I believe it is important to emphasize that all of the research findings support transracial adoptions and show them to serve the children's best interests. The case against transracial adoptions is built primarily on ideology and rhetoric. There is no empirical or scientific evidence to demonstrate that transracial adoptions work against the best interests of children.

Mr. CAMP. Thank you very much.
Dr. Barth.

STATEMENT OF RICHARD P. BARTH, PH.D., PROFESSOR, UNIVERSITY OF NORTH CAROLINA, CHAPEL HILL

Mr. BARTH. Thank you, Chairman Shaw and honorable committee members. My name is Richard Barth and I'm privileged to testify today. I have two objectives. First, to describe research which indicates that we continue to need new ways to create opportunities for children in foster care to get adopted. Second, to make the case that adoption services research has failed to provide adequate information for policy makers and needs a permanent loving home if it is to develop into a more useful contributor to society.

The principal study that I will discuss shows how far we have to go in creating equal opportunity for children in foster care. Exhibit 1 at the back of my written testimony shows pie charts that capture the outcomes from more than 38,000 children who entered non-kinship foster care in California between 1988 and 1992. Young children in non-kinship foster care were chosen for this study because their need for adoption—should they not be able to return home—is least equivocal. We followed each of these children for four years to understand whether or not they had been reunified with their biological parents, adopted, or remained in foster care.

For caucasian children, the total percentage of young children who are adopted following entry into foster care is about 21 percent within four years. If we compare this percentage to that of other children, it appears that they are significantly more, but not greatly different, in the chance of adoption for children of different ethnic or racial groups. The percentage for caucasians is about twice as high as the lowest group. But this is an over-simplified analysis, which has been the kind of analysis too common in the adoption field, which could leave us with the impression that we could equalize access to adoption by simply improving the ways that we recruit same-race adoptive families.

If we look more closely at these pie charts, we see that those children have grossly unequal access to adoption depending on their race or ethnicity. Each of these pie charts allows us to directly examine the likelihood that children who do not go home will be adopted. This can be done by isolating the children who went home or had other outcomes from the analysis and by comparing the two remaining groups. With this method we see that the proportion of caucasian children who are adopted is 1.16 times greater than that of those who remain in foster care. For Hispanic children, the ratio is less than one, it's .79. For American Indian children, it's .52. For African-American children, only .34. The latter figure means that our African-American foster children have only a little better than one-fourth the chance of being adopted as do our white foster children and less than half the chance of Hispanic foster children.

When we refine this analysis further, as shown in Exhibit 2, by controlling for age at the time of placement, we observe that the situation for African-American children is still worse in contrast to other children because they also come into foster care at the young-

est ages, which should make them more likely to be adopted. Yet they are less than one-quarter as likely to be adopted.

It is worth mentioning here too that the odds ratios for age are even steeper than they are for race. That is, there are larger differences in the likelihood of adoption versus remaining in foster care by age than by race, but both are major factors in determining adoption.

Because my other research has convinced me that adoption provides a far more satisfactory setting for growing up than does long-term foster care, it seems terribly unfair that children's access to this valuable resource depends so much on their race. Clearly adoption reform like MEPA and its amendments are much needed. Previous efforts to improve adoption opportunity for all children were simply not successful.

Whereas additional recruitment of minority adoptive parents is an important contributor to more placements for African-American children, as there is no doubt a preference by many adoptive parents to adopt a child like them, it is unlikely to be sufficient to redress these longstanding imbalances in adoption. A successful approach must be broader and include ways of engaging a far larger proportion of the American public in welcoming foster and adoptive children of all types into their homes.

I expect that MEPA and its amendments will be implemented. I appreciate the efforts of this committee to see that they are. I expect the implementation to be slow, but I am concerned that even at the end of that implementation the gains in adoptive placements for America's foster children will be small unless we work to better understand the responsiveness of the general public to interethnic adoption.

The only barriers to adoption are not those imposed by agencies on families. Some families also impose barriers on themselves because they are concerned about how they will be perceived if they were to adopt across racial lines. Some of them instead go on to adopt children from other continents, including South America and Asia. If these barriers are more perceived than real, we need the public to know that. In general, we simply must have a better understanding of the public's attitudes about race and adoption in order to maximize the likelihood that children in foster care (who will not be going home) can find permanent lifetime families.

To do this, adoption services research in the United States needs a home, preferably a permanent and resourceful one. In my written testimony, I discuss some options for adoption research. At the rate that we are going, future hearings about the Multiethnic Placement Act and the Interethnic Adoption Provisions are unlikely to be able to tell us much—the data for those hearings will not be powerful or compelling unless more is done to frontload the adoption research agenda.

Wherever it is located, Congress and the administration should search diligently to find this permanent home for adoption research and begin a systematic approach to funding adoption research. They might resolve in so doing that we would never again allow our country to go through such a long spell during which adoption research is helpless to identify the errors of our ways. We had virtually no evidence to inform us how badly some children were

faring when we made service decisions so heavily weighted by race. A generation of foster children grew up without permanent homes as a result. We need to pay closer attention to what we do in the future through MEPA and more saliently, because it's a larger program, to the ambitious new Adoption and Safe Families Act. This should be done systematically through a comprehensive adoption services research program.

Thank you for your attention.

[The prepared statement follows:]

SCHOOL OF SOCIAL WORK
THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

Research Regarding the Multi-Ethnic Placement Act and Amendments

Richard P. Barth, Ph.D.
Frank A. Daniels Professor

Before the

Subcommittee on Human Resources
Committee on Ways and Means
United States House of Representatives

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Research Regarding the Multi-Ethnic Placement Act and Amendments[1]

Chairman Shaw and Honorable Committee Members, my name is Richard Barth and I am privileged to testify today. I am the Frank A. Daniels Professor of Human Services from the School of Social Work at the University of North Carolina at Chapel Hill and was previously the Hutto Patterson Professor at the University of California at Berkeley. My first adoption study began in 1982 with support from the Children's Bureau to study the disruption of special needs adoptions. I have written and lectured extensively on adoption since then.

I have two objectives today: (1) to describe research which continues to indicate how much we need new to create additional opportunities for children of Color who are in foster care (especially African American children) to get adopted and (2) to make the case that adoption services research has failed to provide adequate information for policy makers and needs a permanent loving home if it is to develop into a more useful contributor to society.

The principal study that I will discuss shows how far we have to go in creating equality of opportunity for children in foster care to be adopted and demonstrates the kind of research that needs to be continued to help us develop improved adoption services. Exhibit 1, shows pie charts that capture the outcomes for more than 38,000 young children (ages 0-6) who entered non-kinship foster care in California between 1988 and 1992 (adapted from Barth, Webster, & Lee, 1998). Young children in non-kinship foster care were chosen because their need for adoption, should they not be able to return home, is least equivocal. We followed each of these children for four years to understand whether or not they had been reunified with their biological parents, adopted, or remained in foster care. (A few had other outcomes.) For Caucasian children, the total percentage of young children who are adopted following entry into foster care is about 21% within four years. If we compare this percentage to that of African American (13%), Hispanic (16%), or American Indian/Alaskan Native (11%) children it appears that there is no great difference in the chance of adoption for children of different ethnic or racial groups. The percentage for Caucasians is less than twice as high as the lowest groups. This is, basically, the kind of adoption services research that has dominated our field and for too long left the impression that we could equalize access to adoption by simply improving the ways that we recruited same race adoptive families (Barth, 1997a).

Yet, if we look more closely, we see that these children have grossly unequal access to adoption depending on their race or ethnicity. Each of these pie charts allows us to directly examine the likelihood that children who do not go home will be adopted. This can be done by isolating the children who went home or had other outcomes from the analysis and by comparing the two remaining groups (those who remain in foster care and those who are adopted) with a simple ratio. So, among children who have not gone home by four years and remain in nonkinship foster care, the proportion of Caucasian children who are adopted is 1.16 times that of those who remain in foster care. For Hispanic children the ratio is .79, for American Indian children .52, and for African American children only .34. The latter figure means that our African American foster children have only a little better than one-fourth the chance of being adopted than our white foster children.

When we refine this analysis further by controlling for age at the time of placement, we observe that the situation for African American children is still worse in contrast to other children because they also come into foster care at the youngest ages (see Exhibit 2). In this analysis we selected

infants and American Indian children as the standard, giving them a value of 1.00. Odds ratios that are higher indicate a greater likelihood of adoption and those that are lower show a worse chance of adoption. The odds ratios for African American children are about half those for American Indian/Native Alaskan children and about one-third of those for Hispanic and Latino children, and less than one quarter of those for Caucasian children. It is worth mentioning that the odds ratios for age are even steeper than they are for race—that is, there are far larger differences in the likelihood of adoption vs. remaining in foster care by age category than there are by race/ethnic category.

Although other investigators have not used as direct a strategy to understand this question, Rosemary Avery's (1998) study of the foster care and adoption dynamics in New York state shows that African American children are significantly less likely to be freed for adoption and when freed for adoption take a significantly longer time to be adopted. The hopeful news from the New York study is that the median length of stay in foster care prior to adoption has been halved since 1980 indicating that past child welfare and adoption reforms have had a major impact on the likelihood of adoption.

Because my research has convinced me that adoption provides a far more satisfactory setting for growing up than does long-term foster care (Barth, 1997b), it seem terribly unfair that children's access to this valuable resource depends so much on their race. Clearly, adoption reform like MEPA and its amendments are much needed. Previous efforts to improve opportunity or adoption for all children were not sufficient. Whereas, additional recruitment of minority adoptive parents is an important contributor to more placements for African American children–as there is clearly a preference by many adoptive parents to adopt a child like them–it is unlikely to be sufficient to redress these longstanding imbalances in adoption. A successful approach must be broader and include ways of engaging a far larger proportion of the American public in welcoming foster and adoptive children of all types into their homes.

This challenge is growing greater every day as we are becoming an America where every adult is working outside the home; where family size is dropping; understanding and misunderstanding about the contribution of genetics and pre-natal environments are making adoptive parents more wary; where reproductive technologies are promising more alternatives to adoption; and the cost of raising a child is soaring. Given the lengthening preparation period to adulthood that children are now experiencing, the value of a permanent family that can support them until they are on their own is growing. Adoption is clearly the ultimate public private partnership on behalf of children and offers them impressive opportunities and resources (Barth, 1997b). We will need far better information in the future to guide us in maximizing the use of this very valuable yet scarce resource.

I expect that MEPA and its amendments will eventually be implemented but I am concerned that the gains in adoptive placements for America's foster children will be small unless we work to better understand the responsiveness of the general public to interethnic adoption. My research and experience tell me that there is considerably more acceptance of interethnic and cross-racial placements among the general public than among the professional adoption community (Brooks & Barth, 1998). Indeed, in California, African American children who are placed for adoption by their own biological parents are about three times more likely to be placed into homes with at least one white parent than are children placed by adoption agencies (Barth, Brooks, & Iyer, 1996).

The only barriers to adoption are not those imposed by agencies on families. Some families considering adoption across racial lines impose barriers on themselves because they feel guilty about adoption or worry about their capacity to provide culturally competent care giving for a child who is ethnically or racially different from them. These families would be willing to adopt a child of color and raise that child in a multi-cultural environment, but they are concerned that they will be castigated by their African American friends, colleagues, and acquaintances for doing so. Some of them go on to adopt children from other continents, including South America and Asia. If these barriers are more perceived than real, we need the public to know that. We simply must have a better understanding of the public's attitudes about race and adoption in order to maximize the likelihood that children in foster care who will not be going home can find permanent lifetime families.

We need to better understand the pathways to adoption for children and parents. To do this, adoption services research in the United States needs a home—preferably a permanent and resourceful one. There are currently just a few adoption services research efforts under way. The Children's Bureau was once the home for adoption services research, but has not had significant support for intramural or extramural adoption research in the last two decades. The advent of the Adoption and Foster Care Analysis and Reporting System (AFCARS) should help improve the capacity of the Children's Bureau to monitor adoption legislation. The Multi-state Data Archive project at Chapin Hall Center for Children is also developing the capacity to look at foster care to adoption dynamics but lacks data on the adoptive families. The *National Survey of Child and Adolescent Well-Being*[3] will study a random sample of children investigated for child abuse and neglect and to understand the services they receive and their path through child welfare services—including some who will ultimately experience the outcome of adoption. Still, there is a pressing need for competitive, extra-murally funded adoption services research.

The National Institute of Health might seem like a logical source of support for such research but it has not had substantial involvement in adoption research. This could change now that NIMH is developing more services research capacity but mental health is not the primary issue for adoption. OAPP has funded some adoption research focused on adolescent parents. ASPE has substantial potential to support and oversee adoption research. Wherever it is located, Congress and the administration should search diligently to find a permanent home for adoption research. They might resolve in so doing that we would never again allow our country to go through such a long spell during which adoption research was unable to help identify and correct the errors of our ways. We had virtually no evidence to inform us how badly some children were faring when we

made service decisions so heavily weighted by race. A generation of foster children grew up without permanent homes as a result. We need to pay closer attention to what we do in the future through MEPA and, more saliently, through the ambitious new Adoption and Safe Families Act (PL 105-89). This should be done systematically through a more comprehensive adoption services research program.

As part of the adoption services research approach, we need to invoke the most powerful scientific approaches to test out new methods for recruitment and retention of adoptive families. For too many years, practice in this field was guided by the notion that we already knew what was best. New efforts must be instituted to rigorously test methods for recruiting families into the adoption pool, for supporting families during the adoption process, for paying for adoption subsidies, and for providing post-adoptive services. The tax credit for adoption that was instituted in 1995 was an attempt to encourage recruitment, but one that has probably had little impact on adoptions of children from foster care (since most costs of such adoptions are absorbed by public agencies not by adopting parents). Would other financial incentives help more? For example, many states provide child care assistance for young children in foster care and scholarship funds for adolescents in foster care–these are generally not available for families adopting foster children. Would such options make a difference in the recruitment of foster families into adoptive families?

Also, some adoptive families eventually require a residential treatment program for their adopted children but the federal government does not provide for this cost. Basic research would help us know if such an option would increase the adoption pool and by how much.

Research can also help us understand the best way to allocate the scarce resource of adoption services. In the pre-MEPA era, public agencies used the race of those inquiring about the possibility of adoption to screen families out? This was clearly an unfair but simple strategy for determining who would get the valuable resource of a home study. Given the limited availability of resources to conduct home studies, agencies cannot provide them to all prospective adoptive parents and must target those who are most likely to adopt the children needing homes.

Research can help by standardizing the assessment of families that apply to adoption agencies and then following their paths to better understand which families do, ultimately, adopt a child in foster care. This would mean, for example, that in some study-agencies, for some period of time, every family who inquired would get a full home study and adoption preparation package in order to determine which ones eventually adopted.

The primary goal of MEPA and its amendments is to reduce the time that children wait for adoptive homes. Unfortunately, it will not be easy to determine whether or not this has occurred over a short time frame. The median time to an adoption of a foster child is exceeds 3 years. Thus, MEPA and its amendments cannot yet have rapidly or sharply reduce the elapsed time for many adoptions. The combination of ASFA, MEPA, and its amendments can eventually make a major difference in the odds of adoption and the time to adoption, *if* we can generate a pool of adoptive families for our foster children. This is not an insignificant condition. Recent changes in child welfare policy may not significantly affect the number of children waiting for homes unless we

develop a far richer understanding of potential adoptive families and how to recruit and retain them. When we are finally able to raise our eyes and look beyond MEPA and ASFA's implementation, this is what I believe we will see as our most pressing need. Thank you very much.

Notes

[1]Support for the research and analysis described herein came from the U.S. Department of Health and Human Services, ACF, Children's Bureau; the Stuart Foundation; the California Department of Social Services; and the Frank A. Daniels Chair. The author thanks Jill Duerr Berrick, Barbara Needell, Devon Brooks, Sharon Ikami, and Daniel Webster II of the Child Welfare Resarch Center, School of Social Welfare, University of California, Berkeley for their efforts.

[2]The National Survey of Child and Adolescent Well-Being was authorized under PL 104-193. It is being conducted under the Children's Bureau by Research Triangle Institute, University of North Carolina, University of California at Berkeley, and Caliber Associates. This multi-year study involves the first national probability sample of child abuse and neglect cases that includes assessments of children, parents, and caregivers. The sample overwieghts young children, children entering foster care, and children in foster care for at least one year, so the sample--if followed long enough--will yield a sizeable population of children who will be adopted.

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Exhibit 1. California: Outcomes at Four Years from Non-Kin Care for Children < 6 at Entry

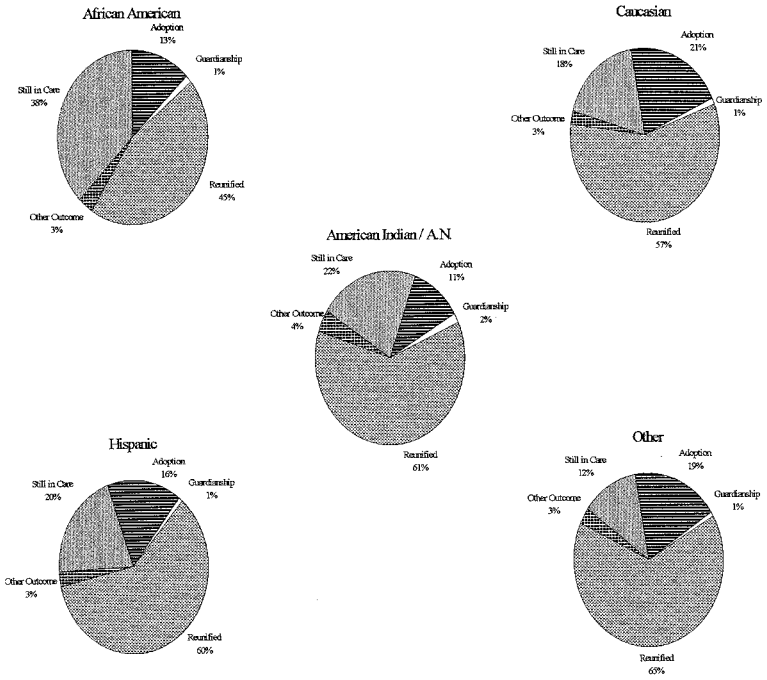

Table 1

	African American		Caucasian		Hispanic		American Indian/AN		Other		Total	
Outcome	n	%	n	%	n	%	n	%	n	%	n	%
Reunified	5,267	44.8	9,375	57.8	5,535	60.0	278	61.6	448	65.3	20,943	54.5
Adopted	1,510	12.8	3,362	20.7	1,480	16.0	50	11.1	138	18.5	6,540	17.0
Guardianship	173	1.5	192	1.2	78	0.9	8	1.8	7	0.9	458	1.2
Other	401	3.4	408	2.5	264	2.9	18	4.0	22	3.0	1,113	2.9
Still in care	4,420	37.6	2,894	17.8	1,873	20.3	97	21.5	92	12.3	9,376	24.4
Total	11,771	100.0	16,231	100.0	9,230	100.0	451	100.0	747	100.0	38,430	100.0
Adopted/Care Ratio	.34		1.16		.79		.52		1.5		.70	

Exhibit 2. Effect of Variables on the Relative Odds of Adoption Versus Still in Care at 4 Years for 15,686 Children Less Than 6 Years Old in Non-Kinship Homes

Variable	Beta	SE	*P*	Odds Ratio
Intercept	-.0790	.1847	.6680	.
AGE AT ENTRY INTO CARE				
Preschooler (3 – 5 year old)	-1.7348	.0520	.0001	.18
Toddler (1 – 2 year old)	-1.0392	.0464	.0001	.35
Infant (< 1 year old)				*1.00*
ETHNICITY				
African American	-.6737	.1861	.0003	.51
American Indian/Alaska Native				*1.00*
Hispanic/Latino	.3255	.1870	.0817	1.39
White	.7744	.1853	.0001	2.17
Other(Primarily Pacific/Asian Is)	1.0052	.2326	.0001	2.73
GENDER				
Male				*1.00*
Female	.0873	.0351	.0129	1.09

n = 15,686; -2 Log Likelihood χ^2 = 21556.22; Goodness of fit significance = .15

Groups with an odds ratio of 1.00 were selected as the reference group. Odds ratios are presented in order of likelihood that a child will have been adopted as compared to remain in foster care.

Children who enter foster care as pre-schoolers are about one-half as likely as those who enter as toddlers to be adopted rather than remain in foster care and they are about one-third as likely as infants to be adopted rather than remain in care at four years post-adoption.

African American children with an odds ratio of .51 are about half as likely as American Indian children to be adopted as remain in care and American Indian children are about half as likely as White children to be adopted or remain in foster care.

Gender has a modest impact on adoption rates--females are approximately 9% more likely to be adopted.

There are no interactions between age and race, race and gender, or age and gender. That is, children of different ethnicity's are no more or likely to be adopted as a result of their age or gender. Each of these factors seems to be independent of the other.

These factors are, however, multiplicative, so that a white (2.17), female (1.09), infant (1.00) would have odds of adoption vs. remaining in long-term foster care that is about 26 times higher than that of an African American (.51), male (1.00), toddler (.18). The odds for adoption vs. remaining in foster care for an African American, female, infant would be about 1.4 times greater than those of a white, male, toddler.

Chairman SHAW [presiding]. Thank you.
Professor Kennedy.

STATEMENT OF RANDALL KENNEDY, PROFESSOR, HARVARD LAW SCHOOL

Mr. KENNEDY. Thank you very much, sir. Whether MEPA and as amended will effectively assist real live people or become a mere hollow symbol of good intentions depends on enforcement. Among the many impediments to enforcement that confront MEPA as amended, three stand out.

The first is simple recalcitrance. In some jurisdictions, welfare agencies continue to attempt to delay or prevent certain prospective adoptions or foster care placements out of a conviction that it is better if possible to place children of a given race with adults of the same race. One way to address this problem is through education and moral suasion. Members of Congress individually and collectively should make it known to the public precisely why race matching is bad. As long as substantial portions of the public support race matching, resistance to MEPA as amended will find refuge and nourishment.

Second, the open-ended highly discretionary character of child placement decisions invites evasion. It is quite clear that proponents of race matching are now seeking to sidestep the amendments to MEPA by relying upon considerations that are not expressly racial, but that are easily made into pretexts that camouflage racial decisionmaking. Two of these considerations are preferences for relatives and notions of cultural competency.

The first refers to the policy of preferring to place a child with an adult to whom he is related as against an adult to whom he is unrelated. In some instances, authorities hostile to interracial adoption or foster care use this preference to preclude such placements. Selecting a same-race arrangement with a relative win absent the threat of an interracial placement, the decision maker would not have chosen the arrangement with the relative.

This particular mode of resistance to MEPA as amended has arisen in the most heart-wrenching contexts in which the controversy over interracial adoption has flared. The context in which a foster parent bonds with a child of a different race, seeks to adopt that child, and is then prevented from doing so by child welfare authorities who are hostile to interracial adoption. Such authorities select as the adoptive parent a relative of the same race as the child, even when that relative is not as close to the child as the foster parent and will likely prove to be an inferior adoptive parent.

Another mode of resistance to MEPA as amended takes the form of discouraging or preventing interracial adoption or foster care by recourse to the notion of cultural competency. The idea that children have an established heritage that should be nurtured in ways that adults of a different race are unlikely to know and perhaps incapable of learning. Some observers contend, for example, that white adults should not be able to serve as adoptive or foster parents for black children unless the white adults can show their cultural competency to raise correctly a black child. Evidence of such competency might include living in a racially diverse neighborhood, having a racially diverse set of friends, engaging in certain celebra-

tions, for instance, Kwaanza, knowledge of black history, and a willingness to undergo sensitivity training and other instruction aimed at enabling the white adult to equip the black child with appropriate coping skills and a proper African-American identity.

There are a variety of problems with this notion of cultural competency. For one thing, it puts officials in the position of attempting to prescribe racial correctness. Fortunately, there exists no authoritative criterion by which to measure what sort of ideas or conduct can certifiably be deemed to be properly black or white or yellow, et cetera. African-Americans, for example, like the individuals constituting all groups in American society, vary tremendously. Many like Gospel music or rap, many do not. Many celebrate Kwaanza, many do not. Many live in predominantly black neighborhoods, some do not. Many are Christians, many of Moslems.

The idea that public or private child welfare officials would homogenize the varied African-American community and then impose that homogenized stereotype upon white adults seeking to provide children with adoptive homes or foster care is a frightening prospect. Worse will is that this dubious concern with cultural competency is often nothing more than a pretext for race matching, a way to continue indirectly the racial steering of needy children.

A third impediment to the enforcement of MEPA as amended stems from the mixed feelings toward the law felt by officials within the Federal agency most involved in its implementation, the U.S. Department of Health and Human Services. The memorandum that Mr. Camp referred to earlier with respect to the department's understanding of MEPA shows a real ambivalence. In certain parts of that memorandum there is a laudable inclination to follow the statute, but there are other aspects of that memorandum that quite clearly indicate that the department is not following the statute. For instance, there are aspects of the memorandum that indicate that the department is giving the green light to agencies to continue to take race into account in contexts that clearly controvert MEPA as amended. That is a problem that really requires the attention of this subcommittee. I am very happy that the subcommittee is paying attention to this entire issue.

Thank you very much.

[The prepared statement follows:]

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September 15, 1998

From: Randall Kennedy, Professor, Harvard Law School, Cambridge MA 02138; 617 495 0907

To: Subcommittee on Human Resources, Committee on Ways and Means, House of Representatives, Washington, D.C. 20515

That the Subcommittee on Human Resources of the House of Representatives is conducting a hearing on the implementation of the 1996 interethnic adoption amendments to the Multi-Ethnic Placement Act of 1994 is an encouraging and useful development. The hearing indicates the Subcommittee's awareness that effectively addressing a deeply-ingrained social problem requires more than the mere enactment of good legislation. It also requires attentiveness to the means by which legislation is enforced.

The social problem at issue is race-matching — the practice of preferring, if not requiring, that parentless children be put into the care of adults deemed to be of the same race as the children. In the 1996 amendments to the Multiethnic Placement Act, Congress sought to abolish race matching. That effort was worthwhile and long overdue because race matching is a hurtful practice. It harms needy children materially by needlessly narrowing the pool of adoptive or foster parents potentially able to nurture them. Racial matching, in other words, cruelly orphans children who have already been orphaned. Unsurprisingly, the disastrous consequences of race matching fall most heavily on racial minority communities since the percentage of minority

children in need of adoptive homes and foster care is far greater than the percentage of racial minorities in the population. Nationwide in 1994 there were about 100,000 children eligible for adoption; forty percent were black, though blacks constituted only about ten to fifteen percent of the overall population. While two years and eight months was the median length of time that children in general waited to be adopted, the wait for black children was often twice that long.

Race matching also harms the entire society morally and spiritually by reiterating the baneful notion, long entrenched in law and custom, that people of different races should not be permitted to disregard racial distinctions when creating families. A preference — any preference — for same race adoptions or foster care stigmatizes interracial child placements as second-rate alternatives, the arrangement authorities turn to when other, "better" possibilities are foreclosed. A preference for same-race placements buttresses the notion that in social affairs race matters and should matter in some fundamental, unbridgeable, permanent sense. It belies the belief that love and understanding can be boundless and instead instructs us that affections must be and should be bounded by the color line.

Proponents of race-matching assert that parents of the same race as a child can, on average, better prepare that child for this society than parents of a different race. This rationale is faulty. Except in the most extraordinary circumstances, racial generalizations cannot properly justify racial discriminations even if the generalizations are accurate. If an employer used race as a basis for preferring white applicants on the grounds that, on average, white people have access to more education than blacks, the employer would rightly be condemned and in violation of scores of state and federal laws --even if the generalization upon which the employer relied was accurate. That is because our society, properly fearful of the tendency of racial generalizations to blind decisionmakers, insists that individuals should be evaluated regardless of race. Thus, even

if one believes that, on average, same-race adoption or foster care is more effective for purposes of socialization than interracial adoption or foster care, our commitment to individualized assessment should caution us against the use of racial matching. Furthermore, there is no empirical basis for believing that same-race adoption or foster care is better than interracial adoptions or foster care. The former are more prevalent and more fully reflect existing social patterns and expectations. But that does not make them better.

One need not go this far, however, in order confidently to reject race matching. All one need do is remember two things: (1) that race matching reduces the number of parentless children who will ultimately receive the blessings of permanent adult supervision in an adoptive or foster home and (2) that what parentless children most need are not "white," "black," "yellow," or "brown" parents but loving parents irrespective of race.

The 1994 Multiethnic Placement Act took a step in the right direction by expressly prohibiting child care agencies from using racial difference alone as a basis for preventing or delaying adoption or foster care placements. That Act, however, substantially undercut its own aims by explicitly permitting the racial backgrounds of children and caregivers to be taken into account as one of among several factors in determining where to place a child. This was a mistake in at least two ways. First, by authorizing race to be taken into account at all on a routine basis, MEPA legitimated a moderated form of race matching that still posed a risk of delaying or denying adoptions or foster care placements. Second, by authorizing even a small amount of racial matching, Congress regrettably placed a federal imprimatur upon an unjustified and therefore wrongful racial discrimination — a small and limited racial discrimination, but a racial discrimination nonetheless.

Happily, and to its credit, Congress quickly revisited the issue and erased the authorization for taking race into account along with other considerations. Amending MEPA, Congress provided that

> [N]either the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placement may — (A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved ; or (B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved.

Whether this legislation will effectively assist real live people or become a mere, hollow symbol of good intentions depends on enforcement. Enforcing legislation of this sort that seeks to uproot deeply-rooted prejudices and habits is always difficult. It requires publicizing the law. It requires individuals being willing to spend time, energy, and money to vindicate the rights that Congress has created. It requires administrative and judicial officials being willing to follow the law, even though they might doubt its wisdom. Enforcing the amendments to MEPA, moreover, pose a special challenge because the decisions in question — child placement selections — are highly discretionary, typically made outside of public scrutiny, and generally accorded considerable deference by judges. For these reasons there is good cause to be concerned about whether, or to what extent, the new law has changed decisionmaking on the ground.

Among the many impediments to enforcement that confront MEPA and its amendments, three stand out. The first is simple recalcitrance: in some jurisdictions, welfare agencies continue to attempt to delay or prevent certain prospective adoptions or foster care placements out of a conviction that it is better, if possible, to place children of a given race with adults of the same race. One way to address this problem is through education and moral suasion. Members of Congress, individually and collectively, should make it known to the public precisely why race

matching is bad. As long as substantial portions of the public support race matching, resistance to MEPA as amended will find refuge and nourishment.

Second, the open-ended, highly discretionary character of child placement decisions invites evasion. It is quite clear that proponents of race matching are now seeking to sidestep the amendments to MEPA by relying upon considerations that are not expressly racial but that are easily made into pretexts that camouflage racial decisionmaking. Two of these considerations are (1) preferences for relatives and (2) notions of cultural competency. The first refers to the policy of preferring to place a child with an adult to whom he is related as against an adult to whom he is unrelated -- a Congressional preference stated in Section 505 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In some instances, authorities hostile to interracial adoption or foster care use this preference to preclude such placements — selecting a same-race arrangement with a relative when, absent the "threat" of an interracial placement, the decisionmaker would not have chosen the arrangement with the relative. This particular mode of resistance to MEPA as amended has arisen in the most heart-wrenching context in which the controversy over interracial adoption has flared: the context in which a foster parent bonds with a child of a different race, seeks to adopt that child, and is then prevented from doing so by child welfare authorities who are hostile to interracial adoption. Such authorities select as the adoptive parent a relative of the same race as the child even when that relative is not as close to the child as the foster parent and will likely prove to be an inferior adoptive parent.

Another mode of resistance to MEPA as amended takes the form of discouraging or preventing interracial adoption or foster care by recourse to the notion of cultural competency: the idea that children have an established heritage that should be nurtured in ways that adults of a different race are unlikely to know and perhaps incapable of learning. Some observers contend,

for example, that white adults should not be able to serve as adoptive or foster parents for black children unless the white adults can show their cultural competency to raise correctly a black child. Evidence of such competency might include living in a racially diverse neighborhood, having a racially diverse set of friends, engaging in certain celebrations (e.g. Kwanza), knowledge of black history, and a willingness to undergo sensitivity training and other instruction aimed at enabling the white adult to equip the black child with appropriate "coping skills" and a proper African American identity.

There are a variety of problems with this notion of cultural competency. For one thing, it puts officials in the position of attempting to prescribe "racial correctness." Fortunately, there exists no authoritative criterion by which to measure what sort of ideas or conduct can certifiably be deemed to be properly "black" (or "white" or "yellow" etc.). African Americans (like the individuals constituting all groups in American society) vary tremendously. Many like gospel music or rap. Many do not. Many celebrate Kwanza. Many do not. Many live in predominantly black neighborhoods. Some do not. Many are Christians. Many are Moslems. The idea that public or private child welfare officials would homogenize the varied African American community and then impose that homogenized stereotype upon white adults seeking to provide children with adoptive homes or foster care is a frightening prospect. Worse still is that this dubious concern with cultural competency is often nothing more than a pretext for race matching, a way to continue the racial steering of needy children without expressly saying so.

A third impediment to the enforcement of MEPA and its amendments stems from the mixed feelings towards the law felt by officials within the federal agency most involved in its implementation -- the United States Department of Health and Human Services (the Department). The Department's Administration on Children, Youth and Families has promulgated a

memorandum, including responses to questions from the Government Accounting Office, that articulates its understanding of what the amendments to MEPA require. To a large extent, that memorandum evinces an appropriate understanding of the law. Particularly good is the Department's position that a public agency may not lawfully differentiate between otherwise acceptable foster placements even if doing so will not delay or deny the placement of a child. Notice should be taken, though, that with respect to this matter the Department is silent with respect to adoption. One hopes and that this was an inadvertent omission. Concerning the drawing of racial distinctions, the standard that applies to foster care ought to apply as well to adoptions.

Another aspect of the Department's memorandum that needs clarification is the statement that "agencies are not prohibited from discussing with prospective adoptive and foster parents their feelings, capacities, and preferences regarding caring for a child of a particular race or ethnicity, just as they discuss other individualized issues relating to the child." That statement is unobjectionable so long as it merely declares that agencies may discuss matters related to race or ethnicity that are raised by prospective adoptive or foster parents or prospective adoptive or foster children. That statement is objectionable, however, if it means that agencies are authorized to engage in any sort of cultural competency testing or authorized to portray interracial adoptions or foster care as a special category of child placement that is uniquely problematic and thus uniquely in need of justification. One of the biggest social and psychological difficulties confronting the subject of adoption and foster care is the idea that interracial adoption and foster care constitutes a "problem." As long as interracial child placements are seen as a problem and as long as a burden of persuasion is placed upon people who cross racial lines to create adoptive or foster care families, an unspoken discouragement will inhibit people from acting as freely as

they might otherwise do.

In several places in the Department's memorandum, moreover, there emerge disturbing tensions. On the one hand, the Department acknowledges its understanding that Congress has forbidden racial matching — even when racial matching will not delay the placement of a child. On the other hand, at certain points the Department speaks as if Congress had not categorically repudiated all racial matching. Hence the Department writes that "[a]doption agencies must consider all factors that may contribute to a good placement decision for a child, and that may affect whether a particular placement is in the best interest of the child. . . . In some instances it is conceivable that, for a particular child, race, color, or national origin would be such a factor." This statement flies in the face of Congress' decision to remove race, color, and national origin from the menu of possible items that agencies may lawfully take into account in determining an appropriate child placement. Worse, the Department writes that "[w]here it has been established that considerations of race, color or national origin are necessary to achieve the best interests of the child, such factor[s] should be included in the agency's decisionmaking." Here the Department seems to be engaged, frankly, in a usurpation of the Congress' authority to determine public policy. Inasmuch as Congress has determined that neither race nor color nor national origin should be part of the calculation in determining where to place a child for adoption or foster care, there is no justification for the Department, on its own, to assert that such factors should be included in agency decisionmaking. If the Department believes on the basis of its research that the Congress has made a mistake and should change course it should say so. It should not attempt, however, to reserve a power to disregard MEPA as amended, all the while claiming to enforce that law.

A close and somewhat skeptical reading of the Department's memorandum is warranted

because, as is widely known, influential persons and groups within the Department's bureaucracy are hostile to the aims and ethos of MEPA, particularly the amendments to it enacted in 1996. For this reason, the Congress will have to be especially vigilant in its oversight to make sure that MEPA and its amendments are vigorously enforced. Such enforcement is urgently needed.

Chairman SHAW. Thank you, Professor.

Mr. Kroll.

STATEMENT OF JOE KROLL, EXECUTIVE DIRECTOR, NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, ST. PAUL, MINNESOTA

Mr. KROLL. Mr. Chairman and members of the committee, I thank you for inviting me here today. For the record, I would like to address a question that Representative Camp asked early on. I was alerted yesterday by a staff member of the inconsistency of NACAC policy with Federal law in MEPA and IEPA, and spoke with my policy committee chair. I haven't spoken with the president yet, but we will be amending our policy so that it really reflects the practice of our organization as currently implemented. I think we probably will just take the old one off the Web site until the new one is in place, but I think we could probably do that in a short period of time.

I want to talk a bit about our current practice. I have just distributed the posters that we had put together as a result of the National Adoption Month project that was funded under an Adoption Opportunities grant with the collaboration of the Dave Thomas Foundation for Adoption. Highlighted on the poster are the children from 1997 who have already been placed in adoptive homes. One of the things that you will notice is the heavy preponderance of African-American children on the poster, but you will also notice the heavy preponderance of African-American children who have been placed for adoption. Sixty percent of the African-American children have been placed. Sixty three percent of the children in sibling groups have been placed. These are two groups of children who we have said in the past are the most difficult to place. I think it's clear that when we make the children visible, that we are going to find adoptive families.

We do not have data on all of the races of the parents, but we do know for example, that the two little girls from Colorado who are featured in the cockpit of an airplane were placed as a result of a family seeing the poster in a Wendys, while driving through Montana. The family, from Alberta, Canada, is white. We do know that. We don't have the statistics on other transracial placements.

The other thing the poster tells us is how important the fine work that you did last year with the Adoption and Safe Families Act. Many of the older children who have not been placed are children who have been in foster care for six, eight, and ten years. I think that the changes made in ASFA will have an even greater impact than the MEPA and IEPA changes on their placement because in the future we will have fewer children that are aging in foster care. They will be available for adoption within a year or two.

Going back to my testimony now, I did want to make a point related to the guidances issued by the Federal Government. I think it's safe to say that I differ with most of the other members of the panel. One of the concerns that we have had is that they create a great deal of confusion for workers. That on the one hand we're saying that social work practice is involved. Then in the answers that HHS gave to the GAO report, which I incorrectly identified in

my text but I'll correct in the final version, were very clear. Every time they were asked something specific, the answer was no, you can't do that. But at the beginning there's I guess the 61-line discussion of social work practice. I think in fairness to workers, we have to be more clear in terms of what social work practice means.

The other part of the law that creates a problem for agencies is that on one hand we say we want you to actively recruit families from the communities that kids come from. That translates into recruitment of African-American families, Latino families, Native American families. But then you have workers in some agencies who are afraid to use those families because there are white families who are interested in the same children. That kind of confusion and conflict within the law needs to be addressed more directly by the department because we're saying recruit families, and then we have people who are afraid to use those families if they are available.

The other point that I wanted to make is in terms of outcomes. It is very important that we look at the goal of this MEPA and &IEPA, and the goal of ASFA. The goal of these acts has been to place children. We need to do everything we can humanly possible to place children in permanent homes. We need to put all our resources there. That should be the measure. Because if we start measuring how many transracial adoptions there are, we could get caught into a kind of a funny situation. I'm assuming, there would be very few, although the data is not available to us, white children who are transracially adopted. Does that mean that somehow they are disadvantaged? I think it is something that we have to take a look at.

In closing, I want to say, if you look at the points I made at the end of my testimony that no child should ever have to wait for a family, which is Federal policy across the board and clearly is our organizational policy, that children should not be moved from stable and loving placements for any reasons, including racial matching. But there are other reasons that children are moved that we also are concerned about, and I hope that ASFA will have taken care of. Good foster families who challenge the care of their children have kids removed all the time. That has nothing to do with race. It has to do with practice and supervisory activities. All families of all races should have access to children.

Parents adopting transracially should be made aware of the impact of that on their children. I have lived for 22 years in a transracial adoptive home. We are a successful transracial adoptive home. Our daughter still lives with us. She calls us mom and dad. As a young Korean woman, it appears that she will remain living with us, as she has adopted some of the practices of Korean culture, until she is married. So we have an attachment disorder, but it's a positive attachment disorder. [Laughter.]

Finally, I think that the part of MEPA that we haven't spent very much time on, the recruitment of families from the communities the kids come from, is one that we can't ignore and we must continue to be concerned about that issue. Thank you.

[The prepared statement follows:]

Testimony of

Joe Kroll
Executive Director
North American Council on Adoptable Children (NACAC)

before the

Subcommittee on Human Resources
of the
Committee on Ways and Means

regarding

Implementation of the 1996 Interethnic Adoption Amendments to the Multiethnic Placement Act of 1994

September 15, 1998

North American Council on Adoptable Children
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Mr. Chairman and Members of the Committee, I thank you for this opportunity to appear before you today to discuss implementation of the 1996 Interethnic Adoption Amendments to the Multiethnic Placement Act of 1994.

I am Joe Kroll, executive director of the North American Council on Adoptable Children (NACAC). I also serve as the adoption chair of the National Foster Parents Association and Vice-President of Voice for Adoption, a coalition of over 50 state a local and national adoption organizations. More importantly I am a parent of two children, one a transracially adopted infant from Korea who is now a young women of 22.

NACAC represents adoptive parents and parent groups, adoption agencies, adopted children, and most importantly the 100,000 "special needs children" waiting for families in the U.S. For nearly twenty-five years we have been involved at the local, state, and national level as advocates for these children.

I want to first congratulate committee members and staff for the critical role they played in crafting the Adoption and Safe Families Act of 1997. NACAC fully supports this Act and urges it members, particularly adoptive and foster parents, to work for full implementation in their local communities. When fully implemented it will remove serious barriers to permanence. Waiting children who have faced these barriers will benefit—they need adults to make decisions in a timely fashion so that these waiting children can achieve permanent families.

I am here today, however, to talk about MEPA and how it has been implemented. I think that there have been some problems and there is work yet to be done. I think MEPA has been interpreted by too many as limiting the system's options to place children in families from the communities from which they come. I believe that needs to be changed.

Let me begin by telling you about NACAC's experiences in the transracial adoption debate and what we see and hear about MEPA and IEPA. Then I would like to talk about my own experiences and describe what NACAC believes needs to be done.

NACAC's Role in the Transracial Adoption Debate

The North American Council on Adoptable Children was founded by transracial adopters in 1974 and our membership has faced and struggled with this issue. As late as 1984, our conference plenary sessions were heated battlegrounds over the issue of transracial adoption. As many of our own leaders' children grew into adolescents, we realized that race played an important role in identity and development, and that there was much truth in the arguments made by proponents of same race placement.

We also recognized that minority adoptive parents were in large part invisible and did not have the same opportunities to adopt as white parents. Up until 10 years ago, only professionals spoke out on behalf of the concerns of their community. However, as a result of a 1989 Adoption Opportunities grant for minority recruitment, my organization began to organize minority parent groups primarily in the African American community. Today, NACAC has over 40 active minority parent group members whom have become vocal advocates for their children.

In addition, NACAC's Board of Directors has increased the number of African American, Latino, and Native American adoptive parents to seven of seventeen. All of the white adoptive parents on our board have at least one child adopted transracially, and all of our adult adoptee board members have been placed transracially. In many ways, our organization reflects most of the parties, and the varied perspectives and interests, in the transracial adoption debate.

The key principles we bring to any discussion concerning adoption and race are our beliefs:

1. Every child has a right to a permanent family
2. Race plays a role in identity and child development

MEPA and IEPA

The Multi-Ethnic Placement Act was passed in 1994 after a passionate debate over racial preferences. I met with Senator Metzenbaum three times prior to passage of MEPA. It was clear that he opposed two concepts:

1. Delaying placements while waiting for racial matches, and
2. Moving children who have bonded with families especially because of race matching

With or without race in this equation, I support the Senator's opposition of these concepts. Senator Metzenbaum also understood the argument that families of color were at a disadvantage in adoption, particularly in the private sector, which controls most adoptions of healthy infants.

As reported by *60 Minutes* in 1992, children are at risk in these situations. The tragic example of an African American child who was moved from a white foster family in Ohio to a black adoptive family in New York and was then killed, drew public attention to this issue and helped fuel the passion. It was clear that states and counties moved children from stable foster homes in order to match children according to race. This was clearly not in the best interest of those children.

While the debate was partially about the rights of children to timely permanence, it was also about the rights of adults to parent children. Over 20 cases had been filed with the Office of Civil Rights regarding discrimination in placement decisions. Each of these involve white adults, including both foster and prospective adoptive parents.

At the same time, advocates for families of color knew that these families did not have the same access to adoption as white families. NACAC documented these barriers in our 1991 publication *Barriers to Same Race Placement.* In addition, our study found that 50 percent of the children under two years of age, placed by traditional private adoption agencies, were placed transracially.

As a compromise among competing interests, MEPA attempted to achieve three objectives:

1. To reduce the length of time children wait for adoptive placements;

2. To ensure that no individual is denied the opportunity to become an adoptive or foster parent *solely* on the basis of race, color, or national origin; and

3. To facilitate the identification and recruitment of foster and adoptive families that reflect the racial and ethnic diversity of waiting children.

Before the ink was even dry, there were calls to Congress that the Act did not go far enough. As early as February 1995—not four months after implementation—Representatives were arguing that the Act had failed and was not being implemented. In fact, the Department of Health and Human Services was not required to release rules until April 1995. When these rules were issued, they provided strong statements about placement issues, but a rather weak statement about recruitment of families representative of the racial and ethnic diversity of the waiting children.

In 1996, the Interethnic Placement Act removed the word "solely," thus removing race, color, or national origin as a potential reason to delay or deny placements.

The Act has goals related to children and parents. The goals related to children are clear and unequivocal:

> "that children should not be denied or delayed in placement due to race, color, or national origin..."

Though previously debated, the child welfare community appears unanimous in its support of this outcome for children. However, the goals related to parents may be perceived as in conflict and reflect the competing positions in political debates that led up to passage of MEPA and IEPA. Advocates for parental access to children of all colors argued for absolute language about discrimination against parents. They represented foster families who had their children moved because of racial matching policies, or potential adoptive families who perceived that they were denied access to children of other races.

On the other side, advocates for parents of color argued that they had been denied access to children of their racial and ethnic communities (based on economic status, residence, and race) by the system that had jurisdiction over children from their communities who were in care. States are now required to recruit families from "the communities kids come from" and to not deny or delay placement. But it is not always clear what this means. Let me elaborate.

FEDERAL GUIDANCE

Having carefully read the federal Information Memorandums (I.M.) for MEPA, I would not want to be a social worker. Clear guidelines are simply not provided when workers have multiple families to choose from in making placement decisions.

I.M. 97-04, released June 5, 1997, states that agencies cannot even consider race or ethnicity, except when a "compelling government interest" (a child's best interest) is at stake. Such exceptions, according to the Memorandum, "must be narrowly tailored to advance the child's interests and...made as an *individualized* determination for each child" (emphasis added). The one example given relates to the rights of older children who must consent to their adoptions. A

teenager who objects to being placed with a family of a certain race cannot be forced to join that family against his or her wishes.

The memo also says "other circumstances in which race or ethnicity can be taken into account in a placement decision may be encountered. However, it is not possible to delineate them all." In fairness to workers, HHS needs to describe other "circumstances" where race may play a role in placement.

I.M. 98-03, released May 11, 1998, provides answers from the General Accounting Office (GAO) study on state's implementation of IEPA. After an extensive discussion of good social work practice and "individualized assessment of a prospective parent's ability" the GAO says:

> "As noted in the Department's original guidance on MEPA, agencies are not prohibited from discussing with prospective adoptive and foster parents their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity, just as we discuss other individualized issues related to the child. However, as the Department has emphasized, any consideration of race or ethnicity must be done in the context of individualized placement decisions. An agency may not rely on generalization about the needs of children of a particular race or ethnicity, or on generalizations about the ability of prospective parents of one race or ethnicity to care for a child of another race or ethnicity."

While this answer seems to permit individual assessments, the answer to another question appears to contradict this approach.

Question #10 of I.M. 98-03 asks: "If an action by a public agency will not delay or deny the placement of a child, may that agency use race to differentiate between otherwise acceptable foster placements?" The unequivocal answer is no. What is a social worker to think given these apparently contradictory answers in the same government directive?

NACAC, as a voice for adoptive parents, has articulated and demonstrated a very clear belief that race matters in the placement of children. Because of this belief, we must ask the administration to clarify the role race may play in the placement decision about an individual child. While there appears to be little debate over the appropriateness of placing white children with white families, social workers express concern that the placement of a African-American or Latino child with a family of the same race may be questioned if a white family is also available.

I believe that it is still legal for social workers to place a white child in a white family. In fact, few white children are placed out of race. We don't have and still need data about this, but in the absence of any statistics, my best source of information is the 1200 attendees at our national conference—which includes foster and adoptive parents, workers, and policy makers. I have also consulted with 25 states in the past year, and worked with 30 or more parent groups throughout the U.S. I can identify only three cases where someone told me about a white child being placed in a nonwhite family. But I can tell you about hundreds upon hundreds of children of color being placed in white families—a practice that began in the sixties and which continues in large numbers today.

I have also heard from many social workers in widely varying parts of this country who seem to wring their hands when placing a black or Latino child with a family of the same race. Will they be sued by eligible white families? Does the Department provide adequate guidance to social workers? Some feel that HHS's hands are tied. They seem required to say race cannot matter in placement while good social work practice and the reality of race in this country dictates that it may be in the best interests of that child to place him or her in a family of the same race.

How can we ask states to recruit families from the communities of color and then make workers afraid to place children with them? Interpretations of this policy which imply that race cannot be considered misstates or overstates the law. Further, it seems to have no impact on practice when it comes to placing white children.

OUTCOMES

Many people say that a goal or outcome of MEPA is to be fair to all children—that being "colorblind" about placement is somehow more fair. Would those same people think it a measure of success that children of color are being adopted transracially at higher rates? If so, then hypothetically I would argue that the Act has failed because white children do not have equal opportunity to be adopted by black and Latino families.

Examination of the data when it is available will indicate that more African American and Latino children are placed out of race than white children. Would anyone suggest that the white children are being discriminated against because they do not have the same opportunity to be adopted out of race as children of color? I think not.

As states are held accountable for implementation, are we measuring the outcomes in terms of children for whom "permanence is not delayed" or by counting potential transracial adopters (primarily white) whose placements signify "an increase in transracial adoptions," or by documenting the families of color who represent an "increase in placements in those communities from which the children come." What we choose to count reflects what we think is important and how we measure success.

Obviously, one measure of success is in placing children, including children of color. Since no data is currently available regarding MEPA / IEPA outcomes, I would like to share interesting data about the outcomes of NACAC's Adoption Month Project. Each of you has received Adoption Month Posters from the last two years. These are "special needs" children and no one wishes to delay their placement in permanent homes for any reason whatsoever. However, I would argue that the issues involved in promoting their placement in permanent families are not race-based at all. I am pleased to report that for the group of children featured on each year's poster, the placement rate for children of color and sibling groups is greater than for white children. In 1997, seventy children were featured and to date:

- 60 % of African American children have been placed for adoption
- 13 % of white children have been placed for adoption
- 63 % of children in sibling groups have been placed for adoption

What do theses number suggest? I believe they suggest that the challenges are not due to delaying placement based on race, but in understanding the issues for "special needs" children and aggressively recruiting and preparing parents for their placement. We have learned the following:

1. Child-specific recruitment works. Making our kids more visible to prospective families leads to positive outcomes, such as foster parents deciding to adopt and children being adopted across county, state, and even country boundaries. Though we do not have full statistics on the race of parents from our Adoption Month Poster, we do know that two African American girls from Colorado were adopted by a (white) family in Alberta, Canada.

2. Sibling groups can be placed together if adequate support is provided (most are eligible for adoption subsidies).

3. The characteristics of the white children suggest that they have more serious emotional problems as a result of abuse and multiple placements—and therefore recruitment efforts may need to be even more intense to find families for them.

We have learned a great deal about how to recruit families for placement of special needs children. We have also learned about the issue of racism, and how it affects the children of color who are placed in white families. Let me tell you something about my own background and experience.

RACISM

For the last 22 years, I have been personally and professionally involved with this issue. I helped raise a beautiful Korean daughter who is now a young woman of 22. I have learned much from her and her struggle with issues of race, identity, and adoption. She is probably stronger today for these struggles and her multi-culturism. I know my wife and I are better people for sharing that struggle with her. In many ways, we are among the successful adoptive families that Professors Simon and Barth report in their research.

Though my daughter was adopted internationally from Korea, she continues to feel racial stereotyping and differences. She speaks to prospective adoptive parents about the importance of race and key issues such as language, cultural differences, and the naming of children. Each time she speaks, an uncertain or nervous parent in the audience asks, "Do you have contact with or still speak to your adoptive parents." The answer is yes. She not only speaks to us, but at age 22 lives with us and calls us "Mom" and "Dad." Some might argue that she has a "positive attachment disorder" because in the Korean culture in which she has immersed herself, young adult children live with their parents until they are married (and sometimes after they are married).

Unfortunately, however, the questions from the audience come from people who believe that seeking one's racial and ethnic identity is not accepted or welcome in some adoptive families. My daughter knows young Korean-American adoptees who are estranged or completely cut off from their white adoptive families because they sought out connections with the Korean American community and began to identify with their Korean heritage. In my opinion, it should not be an "either—or" choice for young adults. However, too many white adoptive families enter transracial placements without the knowledge and willingness to make those connections and often fail to understand that a child's search for racial and ethnic identity is both positive and necessary.

As a transracial adoptive father, I must honor my daughter's struggle and the pain we have all been through as we learned the extent to which race has affected her life and her development. And I must also respect and learn from the life experiences and struggles of many other NACAC families who have learned from their children about the role of race in our society.

As transracial adopters in the 70's, my wife and I (and many others) went blissfully into the process thinking we would save children and integrate society by integrating our family. No one asked our infant daughter what she thought. As white adults we had certain privileges that allowed us to pick and choose from where our children would come. White adults have the same privileges today and MEPA reinforces that notion to such a degree that white people threaten lawsuits to assert and protect that privilege.

When we maintain those privileges for white parents, we are asking our transracially-placed children to live in the front lines of societies' efforts to truly integrate. These children are often the only people of color in their neighborhoods, schools, and churches. These locations are racially homogeneous and primarily white. While these young people are growing up and facing the typical adolescent challenges of understanding who they are and learning to be comfortable with how others relate to them, who finds them attractive, and how they feel about themselves, they often live in places where they see no one who looks like them. Why is it that where adults have failed, we have asked children to lead the charge toward integration? This is unfair.

WHAT NEEDS TO BE DONE

Although there are many areas of disagreement surrounding this powerful policy issue, I believe there are also areas where we can agree. In my opinion, there are five common sense guiding principles:

1. No child should ever have to wait for a family;
2. Children should not be moved from a stable and loving placement for any reason, including racial matching;
3. All families, including single parents, (but that's another issue) should have equal access to foster care and adoption;
4. Parents adopting transracially should receive training that prepares them for the impacts that race, adoption, and identity play on children,[1] and have access to services that support them after the adoption is finalized; and
5. We must be committed to recruiting families in the communities from which the children come.

We cannot pretend to be colorblind in placement decisions for African-American and Latino children, while maintaining a rigid color-consciousness for white children.

I repeat, NACAC, as a voice for adoptive parents, has articulated and demonstrated a very clear belief that race matters in the placement of children. Because of this belief, we must ask the administration to clarify the role race may play in the placement decision about an individual child. While there appears to be little debate over the appropriateness of placing white children with white families, there is concern that the placement of a black or Latino child with a family of the same race may be questioned if a white family is also available. Let's end the privileging of white families and recognize the importance of recruiting families for waiting children who are representative of the communities from which they come.

Thank you.

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[1]Through a 1996 Adoption Opportunities grant, NACAC has developed three resources for prospective and current transracial adoptive parents. One of these tools, the *Transracial Training Curriculum*, is designed for agencies and parent support groups who want to educate groups of prospective parents considering transracial adoptions. In light of IEPA restrictions, we encourage parent support groups to organize these sessions so that a free and open discussion of issues can occur outside an agency setting. In this setting, parents can ask honest questions and know they will not be judged by their comments.

Chairman SHAW. Thank you. I might say that I think the experience I have had with my daughter, that's also an Irish tradition. [Laughter.]

The Members have agreed and in order to go forward with the last panel, to submit the questions in writing to this panel and to the next panel. So we would appreciate having that privilege to submit questions to you and hopefully you can respond to us as quickly as your schedule will allow. I want to thank this panel. It's been very enlightening. I think it's an excellent panel. Thank you very much.

[Questions addressed to Mr. Nadel, Ms. Simon, and Mr. Barth, and their respective answers, follow:]

GAO RESPONSE TO QUESTIONS ON THE IMPLEMENTATION
OF THE MULTIETHNIC PLACEMENT ACT OF 1994, AS AMENDED

1. What did state and county officials tell GAO about the kind of guidance that they received from HHS?

A. State and county officials in the California foster care and adoption agencies we reviewed indicated that policy guidance from the Department of Health and Human Services (HHS) was insufficient for them to fully understand how to implement the act and its amendment. State officials characterized the HHS policy guidance as "too legalistic." Furthermore, they are waiting for the HHS Children's Bureau or the federal National Resource Centers to assist them in making the transition from a legal understanding of the law to casework practice. For their part, California officials in two counties--Alameda and San Diego--told us that their implementation efforts were hampered by the lack of guidance and information available to them, in part, from federal sources.

Assisting state and local officials to change social work practice remains a challenge for HHS. Although HHS took two actions to bolster its formal guidance--issuing practical guidance in May 1998 based on our discussions with state and county officials in California, and issuing an updated monograph on the revised act that was prepared by a National Resource Center--HHS' work in guiding implementation of this legislation is not done. At the time of our visits to both California counties, we identified actions taken by county officials that were inconsistent with the requirements of the 1996 amendment. For example, one county drafted an informational document which included permission for caseworkers to consider the ethnic background of a child when making placement decisions even though the 1996 amendment removed similar wording from federal law. Examples such as this are indicative of the lingering confusion by state and county officials that we observed during our review and the need for better guidance. As HHS Assistant Secretary, Olivia Golden, indicated in her testimony before this Subcommittee, implementation of the amended act requires ongoing efforts.

2. Do state adoption agencies know how to put the 1996 law into practice to move more children to adoption?

A. California state foster care and adoption officials understand that the amended act does not allow denial or delay of placements related to race, color, or national origin. In California, however, the knowledge of county officials is at least as important to implementation efforts because counties administer adoption programs. When we reviewed two counties in that state, we found that only one of the two counties has begun to revise its adoption policies in accordance with the 1996 amendment. Furthermore, both counties have taken recent action or issued policies that reflected a lack of understanding of the provisions of the 1996 law. Finally while state training efforts support moving more children to adoption by

training county staff who are responsible for recruiting foster and adoptive families, training targeted at staff who make adoption placement decisions has been lacking. Again, we concur with Assistant Secretary Golden's statement that the focus of HHS' work in the coming years be on affecting change in front-line practice.

Rita J. Simon
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October 1, 1998

The Honorable E. Clay Shaw, Jr., Chairman
Subcommittee on Human Resources
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Shaw:

Concerning your first question about my testimony on transracial adoption and the 1996 act (Why do you think the 1996 law is not having its intended effect?), my best guess is that the social workers and others who work most closely on adoption issues at the state level and in public agencies do not support it. I say "guess" because to the best of my knowledge there are no reliable data available on what, if any, impact the 1996 law is having. As I indicated in my testimony, I am in the process of collecting survey data which I hope to have in the next few weeks. I point my finger at the social workers and administrators in state human services departments because over the past 25 years, in my experience, they have provided the most serious road blocks to transracial adoptions.

The answer to your second question (Do most of the contested legal cases that you are aware of involve foster parents wanting to adopt the child in their care?) is yes. In the 50 or so cases that I have served as an expert witness, the parties involved have almost always been foster parents seeking to adopt versus relatives and/or state agencies.

If I can be of any more help, please contact me.

Sincerely,

Rita J. Simon

RJS/hd

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

RICHARD P. BARTH, PH.D.
Frank A. Daniels Professor of Human Services

SCHOOL OF SOCIAL WORK

October 5, 1998

Honorable E. Clay Shaw, Jr., Chairman
Subcommittee on Human Resources
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Shaw:

I am writing to respond to your follow up inquiry regarding testimony before the Subcommittee on Human Resources on implementation of The Multiethnic Placement Act and its Amendments on September 15, 1998.

Question
The question you raised was: "Some people believe that additional recruitment of minority adoptive parents alone is sufficient to remedy the fact that minority children have to wait longer for adoptive families, yet you seem to disagree, why?

Response
In my answer, I will first address the specific question you ask and also touch on a broader question of great concern to me: "Will there be enough adoptive families of any color to care for the children currently needing a safe and permanent family?"

There remains some debate about whether full scale implementation of recruitment and retention strategies, that have been developed in the last twenty years by the Adoption Opportunities Grantees and others, would result in a sufficient pool of minority families to adopt all of the children in foster care. There are a variety of studies that have been mentioned over the years as demonstrating the willingness of families of color to adopt, but none of them give me much confidence for making estimates. Although I agree that minority families have been exceptionally willing to open their homes to children in need of adoption, I am not clear that this is sufficient to meet the need. In 1993, I did an analysis of my own on this issue for a community based recruitment consortium in California. My own admittedly imprecise calculations of the available pool of households with one or more African American adults in the age group between 25 and 54 in California was that there were about 4,244 households that were likely to adopt (using 1990 Census data and NSFG-derived statistics on interest in adoption). At that time, there were as many as 5,600 African American children needing adoption in California. With sibling placements accounted for, these 5,600 children could be absorbed into these homes. Also, additional homes could be generated among families that did not initially express an interest in adoption

could certainly be generated. In sum, it is *theoretically* possible that vigorous recruitment could help to reach enough same race families to make a difference, but this would require that an extremely high proportion of potential African American adoptive family would be reached, approved, and matched to a waiting child in order to achieve the goal of a timely, matched-race placement for African-American children in foster care. My experience is that human services agencies do not work with this level of precision. In adoption, there is a great need for flexibility, choice, and openness. Each of these factors makes it more likely that a given child will find a permanent loving home but less likely that each child will find a home. If such flexibility and choice is not built in, children can also be placed into adoptive homes that are not suitable or safe. Fortunately, MEPA and IEP have made this discussion all but moot because public policy no longer allows for routinely using race for adoptive decision making.

The larger question for our time is "will there be enough adoptive families of any race to adopt the children who need homes." There are at least a half dozen social trends which suggest that this is going to be a major question for the next decades. There are only a few trends that appear to work in favor of the notion that the children who need to be adopted will be adopted:

FACTORS WORKING AGAINST ADOPTION RECRUITMENT

1. Family sizes continue to get smaller—meaning that there is less room under each family's "cap" to bring in foster and adoptive children.
2. The proportion of parents who are working is increasing, meaning that there are fewer parents who can commit as much time caring for children with the challenging characteristics of former foster children.
3. Housing is becoming more expensive, meaning that moving to larger residences to accommodate sibling groups—a longstanding strategy of adopting families—becomes more difficult.
4. The costs of raising children to adulthood are growing, in part because more parents are paying more for primary, secondary, and post-secondary education.
5. There is growing awareness and concern about the information generated by infant brain researchers that cognitive and affective structures may be substantially determined by the time a child becomes a toddler.
6. Reproductive technologies are becoming more flexible, precise and inexpensive, meaning that families can more readily be created by means other than adoption.

FACTORS WORKING TO INCREASE ADOPTION RECRUITMENT

1. More children will be freed at an earlier age as a result of ASFA, meaning that families will have a greater chance of adopting a younger child.
2. Because of MEPA/IEPA, families will have greater flexibility in adopting children born in the US, which will reduce the likelihood of pursuing international adoptions with their higher costs and greater amounts of inconvenience and uncertainty.

In summary, adoption is a unique and marvelous option for children, but may be becoming a less compelling option for parents. In the next decade, we need substantial efforts to ensure that adoption programs are helping to reach, recruit, and retain interested or potentially interested families. This will require, at least, that we analyze and address issues related to the costs of placement, housing enhancements, adoption assistance levels

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that are commensurate with the real costs of caring for children, support for exceptional educational benefits (including coverage for children who may need residential care), and post-adoptive services.

Thank you for considering these ideas and for continuing to inform yourself, the Committee, and the public about adoption.

Sincerely,

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Chairman SHAW.

The next panel that we have, Elizabeth Bartholet, who is a professor at Harvard Law School. This is Harvard day I think here. We have had Professor Kennedy and now Professor Bartholet. Patrick Murphy, who is a public guardian, Cook County, Chicago, Illinois, and William Pierce, Dr. William Pierce, who is the president of the National Council for Adoption in Washington, D.C.

At the conclusion of your testimony, we will also submit questions in writing and ask that you respond to them.

Professor Bartholet.

STATEMENT OF ELIZABETH BARTHOLET, PROFESSOR, HARVARD LAW SCHOOL

Ms. BARTHOLET. Thank you. I would like to thank all the committee members for being here having these very important hearings.

I have spent over a decade of my professional life on issues of adoption generally and transracial adoption in particular. I have spent a lot of this time trying to analyze what actual policies and practices are being implemented by State agencies, something that is quite different and more important than what written policies reflect. I have spent a lot of time trying to analyze and understand the destructive impact of race-matching policies on children, particularly black children, and trying to advocate for change, and therefore, trying to monitor the effects of legislation like MEPA I and MEPA II, as I'll refer to the Multiethnic Placement Act of 1994 and its 1996 Amendments in shorthand.

I want to applaud this committee. I think that what you are doing in these oversight hearings is extraordinarily important because I think this legislation is so important to child welfare, and particularly to the life prospects of black children in our foster care system. I also think it is important in terms of what it represents in the elimination or attempted elimination of the last vestige of State mandated race separatism.

Enforcement action is vitally important in this area because of the extraordinarily deeply entrenched views and practices throughout the child welfare system, from the top to bottom of HHS, and in child welfare agencies throughout the country. I think that without vigorous enforcement action by your committee, insisting on enforcement by HHS and others, there will be no significant impact of this law, at least in the near or perhaps foreseeable future. Race-matching ideology is deeply entrenched.

I think that the 1996 amendments that you passed to MEPA I are extraordinarily important. They gave us law that at least on paper eliminates the very problematic loophole in MEPA I that allowed race as a permissible consideration. I also think the mandatory financial penalties written into MEPA II give us a real prospect for change. But enforcement action to date has been limited. When I listened to Ms. Golden's testimony, I can only think that when she claims that 29 States have changed their policies, she is referring to changes in written legislation and written regulation, which I have to emphasize to the committee is the least important aspect of race-matching policies in this country.

When I say I think impact to date is extraordinarily limited, what evidence do I have for this, why do I say it? I am giving my impressions based on going around the country, attending a multitude of conferences, talking to people in State agencies, in my own State, Massachusetts, and throughout the country, in attempts to both assess what is going on in terms of the MEPA legislation and also push for meaningful change.

To categorize what I am seeing and hearing out there, first, it's what I refer to in my written comments as the deafening silence. As I listen for the sounds of reaction to MEPA II, and the impact of MEPA II, what I don't hear is very much going on. Now we're talking about a nation in which in 50 States we had State agencies systematically using race to match. That was the name of the game. The single most important criterion for figuring out where kids went was to look at the race of the child and of the prospective parents and make that the first and most important order of business, to put kids with same race families.

If MEPA II was being taken seriously, you would be hearing an enormous amount of noise from around the country—screams of protest and resistance. You would be getting memoranda from HHS on down, from heads of child welfare agencies throughout the country, telling social workers to change their practice in meaningful ways. That is not happening throughout the country. So the fact that mostly it's silence out there, that we got the HHS tough sounding "Guidance" but almost nothing else is extraordinarily telling in itself.

Second, the noises one does hear, the noises I hear, primarily are not anything to do with MEPA enforcement. It's to do with resistance and evasion. Let me give some examples. There are claims that the law doesn't mean what it says it does. It was terrific to hear the Chairman today say that the law means that race can't be taken into consideration. That is the obvious meaning of the 1996 amendments. But if you listen to what child welfare experts and leaders around the country are saying to their followers, much of it has to do with claims that MEPA II can be read to say that actually race can be taken into account as long as it's done in a discretionary way.

Two, there are regular claims made out there that the main purpose and point of the law is actually contained in the recruitment provisions, recruitment on a non-discriminatory basis. So a message that's being put out to social workers throughout the country is the main point of this law is go out and recruit minority race families. The obvious implication of that is that if you do recruit actively enough you can continue to do same race matching without holding kids for intolerable periods of time.

Third, there is code language that's being used—I'm almost finished—to instruct social workers to continue doing what they are doing. So that there is a lot of talk about how we can continue to do, and of course the law wasn't meant to prohibit, "good social work practice." This is clearly understood and meant to convey the sense that good social work practice means of course you take race into account because we all know, we social workers, that that is what you are supposed to do. Cultural competency is I think clearly understood as euphemistic code language designed to convey to

people that they should continue doing the race-matching they have always been doing.

Finally, there are what I categorize in my written remarks as the diversionary tactics, the endruns. You see a renewed reemphasis on the importance of kinship care because everybody knows that if you place with kin, you manage to place with same-race families. There are new practices being promoted out there, family group decision-making, for example, which sounds as if it's only about having families make decisions about where kids go in conjunction with social workers. The first conference I went to on family group decision making, the overhead projection said, "What are the major reasons we want to do this? One, to avoid transracial placement."

So in conclusion, my sense as I look at what is going on today is that it's tremendously familiar from the efforts many of us were involved in the 1950s and 1960s to enforce the mandate of *Brown* v. *Board of Education.* The major difference I see is that we don't have today the group of public agencies and private organizations involved in the business of enforcing the rule of law that we had then, like the NAACP Legal Defense Fund. That is why I think this committee's work is so important, pushing for some organizational support, because without organizational support, there will be no meaningful change.

Thank you very much.

[The prepared statement follows. Articles are being retained in the Committee files.]

WRITTEN STATEMENT OF ELIZABETH BARTHOLET
Hearing on Implementation
of the 1996 Interethnic Adoption Amendments to the Multi-Ethnic Placement Act of 1994
Subcommittee on Human Resources of the Committee on Ways and Means
U.S. House of Representatives

My name is Elizabeth Bartholet. I am the Morris Wasserstein Public Interest Professor of Law at Harvard Law School, where I have served on the Faculty since 1977, specializing in civil rights, family law, child welfare, and adoption issues. I applaud this Committee's action in convening this hearing to consider issues involving implementation of this legislation which has such potential to improve the prospects of children in need of nurturing homes.

I have been actively involved for more than a decade in research, writing, and advocacy related to race and adoption issues, including in recent years work designed to assess the impact and promote the implementation of the Multi-Ethnic Placement Act of 1994 (hereafter MEPA I) and the 1996 Amendments to that Act (hereafter MEPA II). My writings in this area include: "Where Do Black Children Belong? The Politics of Race Matching in Adoption," 139 U. Pa. L. Rev. 1163 (1991); "Race Separatism in the Family: More on the Transracial Adoption Debate," 2 Duke J. Gender L. & Pol'y 99 (Spring 1995); "Private Race Preferences in Family Formation," 107 Yale L.J. 2351 (May 1998); and FAMILY BONDS: ADOPTION & THE POLITICS OF PARENTING, Houghton Mifflin (1993), "Adoption and Race," Chapter 6, pp 87-117. In the Pennsylvania Law Review article I laid out in great detail the nature of the racial matching practices implemented by child welfare agencies throughout the nation, the harm they caused to minority race children as demonstrated by the empirical literature, and their inconsistency with the Constitution of the United States and with Title VI of the 1964 Civil rights Act. I have also written various oped articles and letters to the editor dealing with these issues, two of which are attached hereto.

I have been conscious for many years of the difficulty of enforcing legal rules prohibiting racial barriers in the adoption area, because of the entrenched attitudes held by so many in the child welfare field. Prior to the passage of MEPA I noted that child welfare agencies systematically ignored the established rule of law which at the time made it clear that race should not be used in any absolute or determinative way. See, e.g., Bartholet, Where Do Black Children Belong, supra, 139 Penn. L. Rev. at 1252. I argued then and in connection with the drafting and passage of MEPA I and MEPA II that it was essential for federal law to ban any consideration of race in the child assignment process, because if the law permitted some consideration of race those in the field would use this loophole to continue their systematic race matching practices — practices which have a disastrous impact on black children's opportunities to find nurturing permanent homes. I also believe that for government agencies to favor the formation of same-race families and oppose the formation of transracial families by using race as a consideration in making foster and adoptive placements, is wrong as a matter of principle and inconsistent with federal constitutional provisions governing race,

For these reasons I supported with great enthusiasm the passage of the 1996 Amendments to MEPA I. I saw these Amendments as eliminating a major flaw in MEPA I, by deleting the provision that allowed race as a permissible consideration. I also saw the new enforcement provisions which were designed to subject agencies to mandatory financial penalties as enormously significant.

I continue to believe in the potential of MEPA II to eliminate the racial matching policies that characterize child welfare agency practice throughout our nation. However I do not believe that MEPA II has had a significant impact to date, or that it will have a significant impact without vigorous enforcement action on the part of the federal government. I welcome action by this Committee pressing for such action.

Many assume that the mere passage of MEPA II means that things must necessarily change. This is simply not true. As I wrote recently in the Yale Law Journal:

> There is enormous resistance to the principles embodied in this law, and it appears so far to have had little impact. State social service agencies tend to be committed from top to bottom to preserving their race matching ways. Private foundations and non-profit child welfare groups have joined forces with public agencies to promote "kinship care", in part to help ensure that children in need of homes remain within their racial group. "Cultural competence" is one of the code phrases in the post-MEPA era for assessing whether agencies remain sufficiently committed to same-race matching, and are doing enough to recruit families of color to make same-race placement possible. The United States Department of Health and Human Services, responsible for enforcing MEPA, is peopled with child welfare traditionalists imbued with the same-race matching ideology, and has done little to date to ensure that federally funded state adoption agencies live up to the MEPA mandate. MEPA II *may* someday have a significant impact on public adoption agency practices, but for now race matching by the state is alive and well.[1]

I have written at greater length on these issues in a draft manuscript as follows:

Excerpts from Bartholet, NOBODY'S CHILDREN: RE-VISIONING CHILD WELFARE POLICIES ON ABUSE, FOSTERCARE AND ADOPTION©

> MEPA was clearly designed to achieve massive change in the nation's public foster and adoption agencies' policies. These agencies had been using race in a systematic way to categorize waiting children and prospective parents, and to make matching decisions in the foster and adoption placement process. Race matching had been one of the most important decision-making criteria. It had been considered so important that children had been regularly held in foster or institutional care, rather than placed in adoptive homes, simply because same-race matches were unavailable, even though social workers knew

[1]Bartholet, "Private Race Preference in Family Formation," supra, 107 Yale L.J. at 2354.

that delay and denial of adoptive homes were likely to do children serious damage. Race had outweighed virtually all other parental fitness factors, and social workers had drastically altered their traditional selection criteria for minority race adopters, in their desperation to find same-race matches for the waiting black children.

But MEPA appears so far to have had almost no impact. Nor is there any evidence of the kind of enforcement activity that makes change in the near future seem likely. The U.S. Department of HHS, responsible for administrative enforcement, has been awfully quiet since issuing its tough-sounding Guidance. State officials responsible for bringing their agencies into compliance with MEPA are similarly quiet. Listening to the sounds of child welfare activity coming from around the country one gets no sense that the revolutionary change called for by MEPA is in the works. There is instead a deafening silence. All seems to be going on more or less as usual. There have been some changes in the *written* laws and policies that had demanded race matching, because it is always problematic to have written laws or regulations that are blatantly illegal. But the most common and most extreme race matching policies have always been *unwritten.* For there to be real change federal and state officials have to send forth clear instructions to child welfare workers throughout the systems in the fifty states that a new order prevails, and they are to change their practices accordingly. The 1997 HHS Guidance was a start on the job that needed to be done, but there has been no adequate follow-up activity. The problem seems to be that those in charge of enforcement and compliance are, for the most part, believers in the tradition of race matching.

While enforcement activity is limited, the MEPA resistance movement seems quite active. Soon after MEPA II's passage, newsletters from various child welfare organizations promoted creative "interpretations" of its provisions. They argued that MEPA II could be read to allow some use of race, so long as race was not used to delay or deny placement, conveniently ignoring the fact that the main point of MEPA II was to eliminate the provision in MEPA I allowing race as a permissible consideration. At child welfare organization conferences and meetings it is hard to find any discussion of MEPA *implementation.* There is instead talk about the "problems" posed by MEPA. There is talk about the importance of interpreting MEPA so as not to prohibit what "good social work practice" clearly requires, in a context that makes it clear that such practice should involve race matching. There is talk about the only aspect of MEPA that even arguably supports race matching — the provision in the 1994 act that required that State plans provide for the recruitment of foster and adoptive families that reflect the ethnic and racial diversity of children needing homes. Race matching advocates have seized on this provision, which was unfortunately not repealed by the 1996 act, and often talk as if it was the essence of what MEPA is about. This kind of thinking has even found its way into one part of the federal HHS Guidance. Despite the strong strict scrutiny language incorporated throughout the Guidance, one section of the document states:

> Active, diligent, and lawful recruitment of potential foster and adoptive parents of

> all backgrounds is both a legal requirement and an important tool for meeting the demands of good practice....

What is this supposed to mean other than that "good practice" may demand race matching?

There is also a lot of talk at these conferences and meetings of "cultural sensitivity." The phrase has been carefully chosen. Who can be against cultural sensitivity? Surely it must be a good thing, even if use of race in the placement process is illegal. If you look and listen carefully it becomes clear that cultural sensitivity is being used as a euphemistic cover understood by all those in the field.

Resistance to the MEPA mandate is the order of the day. It comes in an endless variety of forms. Most of them are invisible to those who aren't intimately familiar with the workings of the child welfare system. They are also incomprehensible to those who don't understand the profound commitment that many in the system have to the notion that children belong with their racial and ethnic group. What's easy for all to see is the superficial changes. Thus in California, one of the three states in the nation which had a law requiring race matching, passage of MEPA meant repeal of the race matching law. But this change merely scratched the surface. In California, as elsewhere, it was the unwritten policies on race matching that were the most significant. What is key now is who runs the system and whether they are committed to the fundamental changes required by MEPA. Herein lies the problem.

MEPA I's passage inspired the creation of a privately funded task force in California to consider the adoption and race issues and assist in the development of public policy. This might have seemed a promising development for those interested in MEPA implementation. The "Adoption and Race Work Group" issued its preliminary draft report in 1996, and then its final report, adapted to include reference to MEPA II, in 1997.[21] The Report was supposedly designed to help state and local child welfare policy makers and practitioners understand and implement the new laws. Asked for my comments on the preliminary draft report, I reviewed it and found a manifesto for resistance.[22]

This draft report became the final report, with no significant changes in tone or substance. Although the final report referred to the revisions made by MEPA II, it failed to reflect their real import. According to the report race could and should still be taken into account in placement decision making so long as it was done on an individualized basis.

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[21] Adoption and Race: Implementing the Multiethnic Act of 1994 and the Interethnic Adoption Provisions, A Report by the Adoption and Race Work Group, Convened by the Stuart Foundations, May 1997, San Francisco, CA: The Stuart Foundations.

[22] Letter from Elizabeth Bartholet to Richard P. Barth, 6/27/96.

In Massachusetts I have had more direct personal experience with the resistance to change in race matching policies. DSS has readily admitted that it exercised an across-the-board preference for same-race matching. For many years media stories have documented the extremes to which the State Department of Social Services has gone in order to keep children within their racial, ethnic and other communities of origin. Children have been held in foster care rather than being placed in waiting other-race families. Children have been placed with parents previously found guilty of serious felonies, including physical and sexual abuse, because of DSS' apparent inability to find more appropriate parents within the limited racial community it will consider. While DSS has regularly denied that it kept black children in foster care rather than place them transracially, an internal DSS report helped give the lie to that claim. Together with a handful of other children's rights advocates, I saw MEPA as providing an opportunity for achieving significant change in DSS policy. At a meeting with the DSS officials in charge, their commitment to maintaining the status quo was apparent. They repeated their standard official position that race was not used to delay placement, but admitted that no memo had ever gone out to social workers telling them that this was the policy. They saw nothing in MEPA requiring any action on their part, in the absence of specific instructions by the U.S. Department of HHS, and it was clear that to date HHS had done little to push them. After the passage of MEPA I, HHS had apparently required only that DSS revise their written regulations so as to limit the use of race, telling social workers that they should consider it simply as one among the various other factors they used in decision-making. When we pointed out that MEPA II clearly prohibited such generalized consideration of race, the DSS officials indicated that they planned to take no action to change even their written regulations until specifically instructed by HHS. To date, now more than two years after passage of MEPA II, DSS has put out no general proclamation informing social workers and prospective parents that a new order reigns, and that race will not be used in any categorical way, and will be limited to only the kind of exceptional circumstances indicated by the HHS Guidance. At the end of the meeting we asked whether there was any way in which we could be helpful to DSS in implementing MEPA. They indicated interest in our help only in satisfying the recruitment provisions -- the provisions that encourage recruitment of minority race parents so as to create a parent pool which reflects the racial breakdown of the group of children in foster care, the only part of MEPA arguably supportive of race matching goals.

There is every reason to think that similar stories could be told about other states' reactions to MEPA. Resistance in the form of evasion, avoidance, and non-action, is commonplace.

Resistance also takes the form of promoting policies which serve the goal of keeping children within the racial community, but can be justified in other terms. Kinship care has been promoted over the last couple of decades *both* because it keeps children within the extended family group, *and* because, by doing so, it almost always keeps them within the racial group as well. Policies favoring foster placement in the same community as the child's family of origin have been promoted on the grounds that they minimize disruption

for the child, especially in cases where the child will eventually be reunited with the birth family. But these policies also generally serve to keep the child in its racial community of origin, given neighborhood segregation patterns.

Child welfare traditionalists have been pushing enthusiastically in recent years for the expansion of kinship care. They fought for a broad exception to the Adoption and Safe Families Act's general requirements that children be guaranteed an early permanent home, so that children could be kept in long-term kinship foster care. They are promoting subsidized long-term guardianship, and "Family Group Decision Making."

Child welfare traditionalists have also been pushing in recent years for renewed emphasis on the goal of local placement. They have promoted forms of foster care which can work only when birth and foster families live near each other, such as family-to-family care where foster families are supposed to help birth families develop the capacity to take care of their own children.

Obviously those who support kinship care and local placement policies have a variety of motivations. But there is also no question but that for opponents of transracial placement, these policies function as convenient endruns around the new MEPA mandate.

The resistance to MEPA brings to mind the resistance to Brown vs Board of Education, the 1954 Supreme Court case ruling state segregation of educational institutions unconstitutional. But a major difference is that there were major governmental and private institutions committed to fighting the battle to enforce Brown and dismantle segregation. Race matching ideology is in many ways more entrenched, at least in the places that seem to matter in terms of child welfare policy. The U.S. Department of HHS, responsible for enforcing MEPA, state social service agencies, and private foundations and non-profit groups involved in child welfare issues, all tend to share the race-matching commitment. While there may be generalized *popular* support for knocking down racial barriers to adoption, of a kind that helped make MEPA's passage possible, so far there is not the kind of *organizational* support that makes change happen.

Chairman SHAW. Thank you.
Mr. Murphy.

STATEMENT OF PATRICK T. MURPHY, PUBLIC GUARDIAN, COOK COUNTY, CHICAGO, ILLINOIS

Mr. MURPHY. Thank you. I am the public guardian of Cook County, Illinois, which is Chicago and the suburbs. I supervise a staff of 300, including 150 lawyers. We act as lawyers for abused and neglected children both at juvenile court and then in lawsuits against the State of Illinois. I represent the bottom of the food chain here. I don't know about the large issues. All I can tell you is what goes on on a local level. A, no judge and the State agency do not know anything about this law. In principle they do, but when it comes down to reality, everyone believes that you are supposed to look for a same-race family first before you move on to look for a different race family. It is much like in the old days when real estate agents would direct blacks into a black neighborhood and away from a white neighborhood. That is basically what goes on in the child welfare arena. They direct kids into black homes.

I was in a home a few years ago where there were six infants under the age of one lined up against the wall in a foster home. The foster parents were trying to do a good job. They were decent people. But you can't tell me that you couldn't take those six kids and put them in six separate homes and that they wouldn't do much better than being in a foster home that was really an old fashioned orphanage. But from the agency's point of view, they are able to keep the black kids together in a black culture. You can see where they are coming from.

We have a temporary shelter for infants in Chicago. A few years ago there were 329 kids there, 300 black, 19 white, the rest other race. After six months, there were 75 black, two white. After a year, 20 black, no whites. In other words, the white kids get placed, same race homes. The blacks don't. What happens is we have an enormous white pool, not only in Chicago, but L.A. and New York are the same, and a very tiny black pool for the black youngsters. So you just don't have the resources.

There was another case I had where, this was after the 1994 act was passed, before the 1996 act was passed, a kid named Javonte was skull fractured, six months old. The agency went through 21 attempts to place the kid in black homes. Then a white foster mother came forward and said I'll take the kid. They actually charted in their charts, staff advised the woman that the agency is still seeking same-race placement as the possibility has not been exhausted after 21 attempts and return home goal is still there. Ultimately they did get the kid in a black home. This was after your 1994 act was passed. No matter what the woman from HHS says, it ain't being followed.

It reminds me of my young days as a prosecutor when the judge would say to some cop who brought in some guy which was clearly a bad search, say "Don't do that again, officer" and then he'd wink at him. That is what is going on with HHS. If you folks in Washington sit here and believe it's anything different, you are living in a different world.

I had a case involving a 16 year old black girl who was sent up to Wisconsin because she had been raped in foster care. She had some sexual issues. When it came time for her to be released, she said "I don't want to go back to Chicago. I want to stay here." She did not want to deal with all the bad stuff she had gone through. The agency went up there and actually said no, you have to go back to Chicago because this is a white area you are living in here and a white culture and you have got to go back to your black culture. Ultimately we brought the case back before a judge, who incidently was African-American, and ringed the agency out and said you can't do this thing. The kid did come back, but we filed a beef with HHS about it. What did they do? They come back and say yes, there probably was race discrimination here, but the consideration—then they gave the State agency a guideline. They said in the future, if you are going to discriminate on the basis of race, you have got to do it in a narrowly tailored way to advance the child's best interest and be made as an individualized determination. Now come on. Any person with any reasonable intelligence is going to say well the next time we do it, we're going to have an individualized plan and say this is all part of it. That is what is going on.

So that my suggestion is that the agency—Congress has to come out and tell HHS you have got to get the word that you can not discriminate. I am not one that is going to argue that a white home is no different than a black home for a black kid. I think under most circumstances I would rather have a same race placement. But we have to look at the reality. The number of homes are not there. I went through the figures. In Cook County, for every black kid that's available for placement there are 50 other black people, men, women and children. For every white kid that's available for placement, there's 800 other white men, women, and children. So the odds are stacked against the black kids. Now we go to sibship foster care. It has saved foster care. It is a great idea. I am not against it. But we are stuffing kids frequently into very bad sibship foster homes. Most of the abuse we see in foster care comes out of relative foster homes. That is because it's not unusual for a mother or father to abuse a kid that comes from a highly dysfunctional family. So we take the kid away from dysfunctional mom, give him to dysfunctional aunt. Then we say gee, I wonder why the kid got raped in foster care. So that we have to be very careful of that as well.

I had another example of a black girl—a white girl placed in a black home who was doing extraordinarily well. Again, the agency you could see tried to use the individual treatment plan. They said the girl should be removed from this black home. She wanted to stay. She was six years old. The black couple were wonderful people. We wanted her to stay. They said listen, they sent two social workers down. You could see where they are coming from. They interviewed the black parents on only one occasion, the white parents on five occasions. Never interviewed the black natural children, interviewed the white natural children on two occasions, and said the girl should be brought back, for among other reasons, because she eats her vegetables, picks up all her toys, and is doing extraordinarily well in school that hints she is trying too hard and that must mean she really wants to get out of the home.

We sit back and we say well this is absurd. But that is the kind of stuff we deal—I see my time out, we deal with at the bottom of the food chain. I just ask that you get the word through to those folks. If it goes on like this in Chicago, we're talking 6 million people in Cook County who know what is going on, it's everywhere. Thank you.

[The prepared statement and attachments follow. Additional articles are being retained in the Committee files.]

STATEMENT OF PATRICK T. MURPHY, COOK COUNTY PUBLIC GUARDIAN, TO THE SUBCOMMITTEE ON HUMAN RESOURCES OF THE COMMITTEE ON WAYS AND MEANS
September 15, 1998

As Cook County Public Guardian, I am appointed to represent about 38,000 foster children as attorney and guardian ad litem. I am in charge of an office of 300 people, including 150 lawyers. In addition to our representation of abused and neglected children, we also act as guardian for approximately 400 elderly disabled individuals and $40 million dollars of their assets. I have practiced in the juvenile justice/child welfare system for thirty years. In that time, I have argued and litigated cases at every level of the state and federal judiciary, including the United States Supreme Court. I have written many articles and two books on my experiences.

Eighty-eight percent of our child clients are African American. Having labored on the seamy underbelly of society for more than three decades, I recognize the importance of placing children with foster parents of a similar background, when possible. However, because of the disproportionate number of African American children who need foster care, race matching is often impossible. Nevertheless, many bureaucrats in the child welfare establishment continue to ignore the larger number of available white foster homes and insist on shoving African American children into an overextended and at times inadequate black foster home network, without regard to the quality of care and, more importantly, the future implications for the children.

Bureaucrats who subscribe to this separatist philosophy come from both races. From their point of view, it is better to place an African American child with a succession of black foster parents, or even in an inadequate foster home, than to place the child with white parents who are willing to adopt. They argue that the child will lose his cultural heritage, which appears to be more important to them than the child's mental health. I have seen hundreds and thousands of children chewed up and spat out the revolving doors we call our foster care system, sacrificed on the altar of political correctness, as defined by social workers and bureaucrats.

And what exactly does this altar look like? A few years ago, I visited a foster home where six infants all under the age of one year were crammed, crib to crib, into one bedroom. The foster parents were very decent, hard-working folks, who were trying their best. But you can't tell me that these six infants were better off with these overextended, if well meaning foster parents, than they would have been if each was placed in a separate home--even with white parents.

Because of the large number of cocaine babies who have been abandoned by their parents in Chicago, the Illinois Department of Children and Family Services, DCFS, has resorted to placing infants in temporary shelters until a foster parent of the

"right race" can be found. A couple of years ago, DCFS was warehousing 329 children, ages birth to three, in one facility. Of these children, 300 were African American, 19 white, seven Hispanic and three of unspecified race. The figures were even worse for children who remained at the shelter more than three months—67 were black, three white and three Hispanic. Of the 75 who languished more than six months in the shelter, 70 were black, two white and three Hispanic. All 20 of the children who remained at the shelter for more than a year were African American. All of the white and Hispanic children had been placed in homes by that time. I guess the bureaucrats got their way. At least these black kids were not placed with white foster parents.

Child care workers who subscribe to the philosophy of race matching argue that transracial adoption is detrimental to the black community as a whole because it disperses black children, who are then assimilated into white society. They insist that a black child must grow up in a black family in order to learn how to survive in a racist society. Although there are studies that contradict this notion (see Kleiman, 30 Colum. J. Law and Soc. Prob. 327, 354), I am not here to debate the issue.

The simple fact is that in the juvenile justice/child welfare arena, we are not dealing with the best of all possible worlds. In most situations, we can only try to take the action that we hope will hurt the child the least. Children come to us from neighborhoods, and often homes, that are like war zones, where survival is a daily struggle. Most are born with drugs in their systems. In the majority of cases, the father is uninvolved, if not unknown. Many of the mothers, while well-meaning, have become so overwhelmed that they have given up hope.

If we place children who already have several strikes against them with parents of a different race, will this cause problems? Of course. Will these problems be insurmountable? No. Is a stable home, regardless of race, better for a child than bouncing from foster home to foster home, or being placed in an overcrowded, under-resourced, but same-race home? Absolutely.

In my experience, the federal acts passed in 1994 and 1996, that prohibit racial discrimination in foster placement, are honored more in the breech than in the observance. Let me give you some examples. One of my clients, Javonte, was six weeks old when the court removed him from the custody of his mother, who had abused him so severely that he suffered a dislocated hip and a skull fracture. DCFS specifically limited its search for a home for Javonte to African American foster parents. The caseworker contacted 21 black foster parents--all of whom declined the child. Shortly thereafter a white foster mother, who had heard of Javonte's plight, phoned to offer Javonte a foster placement. Later this foster mother showed up in person at the agency to ask about Javonte. The caseworker discouraged the woman, charting in her notes: "Staff advised [the white foster mother] that the agency is still seeking same race placement as the possibility had not been exhausted and the return home goal

had not been ruled out." Ultimately the agency did find an African American home for Javonte–with five other foster children under the age of five.

In August 1997, we represented a child who was taken from her parents' custody when she was eight years old, due to physical and sexual abuse. After she was sexually abused in a foster home, she was placed in a treatment facility in Wisconsin. At age 16, she was ready for discharge. The girl told her social worker that she did not want to return to Chicago. She explained that she wanted to stay as far away as possible from the place where such bad things had happened to her. The girl was African American; the caseworker white. The caseworker refused the girl's request, insisting that she should return to Chicago from the predominantly white, rural area where she was living in Wisconsin, because she was out of touch with her African American, urban culture. The caseworker also complained that there were too few African American foster homes in Wisconsin. Ultimately, we went to court. After receiving a scolding by a judge, who incidentally is an African American woman, DCFS backed down and allowed the girl to remain in rural Wisconsin. (I attach as Appendix 1 a newspaper article describing the case.)

When we began to realize the pervasiveness and intransigence of DCFS's race matching policy, our office filed a complaint with the Office of Civil Rights of the Department of Health and Human Services (OCR). On August 27, 1998, we received a response from HHS, which I wish to submit as an exhibit. OCR concluded that DCFS "possibly violated certain provisions of Title VI and its implementing regulation...." DCFS signed a resolution promising to correct these "possible" violations. See page 1.

However, in the Remedial Action section of the report, OCR has outlined a plan which is actually just a watered down version of DCFS's own discriminatory practice. The OCR's suggestions mirror HHS's regulations. For instance, Point 1A states that:

> The consideration of race in any particular child's case must be narrowly tailored to advance the child's best interest and must be made as an individualized determination.

Section B explains that the use of race as a criterion "must be based on concerns arising out of the circumstances of the individual case."

Thanks to this broad hint by OCR, in order to avoid placing a child with foster parents of a different race in the future, the worker will only have to make a notation that the placement was the result of an "individualized determination" "narrowly tailored" "to advance the child's best interest." In this way, the worker, like DCFS and the Pharisees, will be abiding by the strict letter of the law, while ignoring its spirit.

Earlier this year I tried a case involving a six-year-old girl who, for two years, had

been placed in an outstanding foster home in the state of Texas. DCFS placed her in Texas in an attempt to reunite her with parents, who tried to suffocate her as a newborn, and had shown only sporadic interest in visiting her before they moved from Illinois to Texas. We objected that the parents were a bad gamble for rehabilitation. When our prognostications proved accurate, DCFS then decided to move the child back to Illinois to live in a former foster home. Since the girl was white and the Texas foster parents were African American, I suspected that institutional racism was at work. The girl desperately wanted to remain in the Texas home, where the parents were providing as good a foster home as I have seen in my 30 years of working in child welfare.

When we went to court to block the move, DCFS sent a team of social workers to interview both sets of foster parents, allegedly to determine what would be in the child's "best interest." After reading the social workers' report, I was convinced that this was a case of institutional racism, with the agency insisting on placing the child with parents of the same race.

In their investigation of the Texas placement, the social workers learned that the child was doing superior work in school, picking up her toys, and eating all her vegetables. I wanted to send my own kids there to see if this family could work the same magic on them. The social workers had a completely different angle. From the sinister evidence of the child's model behavior, they concluded that the child was trying so hard to be good because she was insecure, and deep down she really wanted to return to Illinois. In effect, they devised an "individual plan", that it was in the child's best interest to be removed from the Texas family and redeposited in Illinois. Apparently, they believed it was in her best interest to turn up her nose at vegetables, strew her toys about the house, and perform poorly in school.

To stack the deck even higher against the African American family, the social workers conducted five interviews in a relaxed setting with the white family, two of which included their children. In their report, the social workers referred to all the white family members in a chummy fashion, using their first names.

By contrast, the social workers did not conduct a single interview with the biological children of the African American foster parents, although one is a straight A student in college and the other is an Air Force recruit. Indeed, the social workers failed even to mention these children by name. They referred to the parents, in a pointedly sterile fashion, as "Mr. and Mrs. Jones." The social workers interviewed Mr. Jones once, but only fleetingly. They interviewed Mrs. Jones twice, but only under the most difficult of circumstances.

The social workers barged into the Jones' home and told the six-year-old girl that they had come to decide whether they should send her back to Illinois. When the girl

unceremoniously ferried the social workers' suitcases to the door and clung to her foster mother's legs, the social workers interpreted her behavior to mean that she really wanted to return to the white foster home.

Fortunately, we were able to get before a good judge who ordered DCFS to leave the child in Texas. The judge ruled that the African American couple should be able to adopt the six-year-old. However, an appeal was immediately filed and the case is now languishing in the Illinois appellate courts.

To understand the practical problem with race-matching, you need only look at the numbers. Again, the deck is stacked against African American children. In Cook County, approximately 88% of the 40,000 foster children are African American, while only about one-third of the County's residents are black. In 1995, Illinois had 39,689 black, 10,186 white and 2,191 Hispanic children in state custody. By comparison, about nine million whites live in Illinois, along with 1.7 million blacks and 900,000 Hispanics. To put it another way, for every white child who is in foster care, there are about 900 other white people of all ages who are not in state custody. For every Hispanic kid in the child welfare system, there are 400 Hispanic people who are not in foster care. But for every black foster child, there are only about 45 black men, women and children who are not in foster care. To make matters worse, this small number is reduced by the disproportionate number of black men who are in state custody, as prisoners. Illinois figures mirror the ratios in both California and New York.

Congress has clearly articulated its intent to remove racial barriers to foster placements and to impose penalties on states that insist on race matching. 42 U.S.C. 674(d)(1) imposes penalties when states are found to have violated 671(a)(1) or when they have failed to implement a corrective action plan. The problem is that no state will ever be sanctioned for failure to comply with the statute because HHS has successfully circumvented the intent of this anti-discrimination legislation.

Shortly after the act was signed into law, one of my chief aides attended a child welfare conference in Washington, which was sponsored by the HHS Administration for Children Youth and Family Services. From the podium, HHS officials proclaimed that they had no intention of enforcing the prohibition against racial discrimination, opining that the amendments were unconstitutional. And, they have been true to their promise.

HHS is instructing states that: (a) racial discrimination is permissible, if in the judgment of the individual caseworker racial discrimination is in the best interest of the child; or (b) if the discrimination is based on a difference the caseworker perceives between the child's culture and that of the prospective family. On June 4, 1997, Dennis Hayaishi, Director of the Office of Civil Rights, and Olivia Golden, Principal Deputy Assistant Secretary for the Administration for Children, Youth and Family Services, issued a memo to the regional managers of the OCR, and the regional directors of the

ACYFS. (Appendix 3) The memo provides a blueprint for undermining the federal prohibition against race discrimination.

Superficially, the memo condemns race discrimination, and warns that it will no longer be tolerated. However, the memo is full of loopholes that are large enough to drive a herd of elephants through. For example, the HHS officials explain that racial discrimination is justified if it is necessary to achieve a compelling government interest:

> Consistent with the intent of the new law and constitutional standard, it would be inappropriate to try to use the constitutional standard [i.e. "best interest"] as a means to routinely consider race and ethnicity as part of the placement process. Any decision to consider the use of race as a necessary element of placement must be based on concerns arising outside of the circumstances of the individual case.

Perhaps because I am not schooled in the lexicon of bureaucrats, I find this explanation to be about as clear as mud. I am at a loss to know exactly what circumstances could justify a decision to deny a child stability because of the child's race. By its very nature, each placement decision is made on an individual basis. State officials do not make a single decision, separating hundreds of children like wheat from chaff. Instead states delegate that responsibility to individual child welfare workers. HHS is instructing these individual workers that they can discriminate on the basis of race, as long as they believe that race discrimination would be in the child's best interest.

On May 11, 1998, the ACYFS issued a document entitled "Information Memorandum" with the log no. ACYFS-IN-CV-98-03 (Appendix 4) It is directed to states, tribes and private child agencies, to answer questions raised by the General Accounting Office. The author, a Deputy Commissioner, explains that race discrimination is acceptable, as long as it is done in moderation. For example, his memo provides the following advice:

> Public Agencies may not routinely consider race, national origin or ethnicity in making placement decisions. Any consideration of these factors must be done on an individualized basis where specialized circumstances indicated that their consideration is warranted.

The Deputy Commissioner suggests two defenses for use by agencies caught committing racial discrimination against children in foster care. First, he claims that if the agency can cite a study--any study--that shows that racist practices are in the best interests of children, the agency will be off the hook.

The Deputy Commissioner also encourages state agencies to defend against a racial discrimination charge by claiming that the discrimination is based on the child's

"culture." The Deputy Commissioner intones:

> HHS does not define culture. Section 1808 addresses only race, color or national origin, and does not directly address the consideration of culture in placement decision. A public agency is not prohibited from the nondiscriminatory consideration of culture in making placement decisions. A public agency's consideration of culture must comply with Section 1808 in that it may not use culture as a replacement for the prohibitive consideration for race, color or national origin.

Appendix 4, p. 8.

Would any government bureaucrat have the temerity to suggest that employment discrimination on the basis of culture should be legalized? Should a victim of race discrimination be denied a remedy where the perpetrator is not guilty of routine discrimination, but only exercises his right to discriminate when he believes it is in the victim's best interest?

Based upon my own practical experience and upon the clear inferences of HHS's own pronouncements, it is obvious that if Congress is serious about eliminating the discrimination that prevents children from being placed in the best, appropriate foster home as quickly as possible, then the obligation for enforcing the law must be taken away from HHS. HHS officials have preconceived notions that run directly counter to the law. These officials have and will continue to eschew their enforcement power to thwart the will of Congress.

If this act is to be more than mere window dressing, meant to look good for the folks back home, I suggest that Congress strip HHS of its enforcement obligation and confer authority on another agency, such as the Civil Rights Division of the Department of Justice, to enforce the law. Until this happens, many African American children will languish in a ghetto created by bureaucrats with their own agenda of political correctness--shifting from bad placement to worst--without any hope of finding a permanent home.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office for Civil Rights

Region V
105 W. Adams - 16th Floor
Chicago, IL 60603

FILE COPY

August 27, 1998

Mr. Jim Griffin, Assistant Public Guardian
Office of the Cook County Public Guardian
Juvenile Court
2245 West Ogden Avenue, 4th Floor
Chicago, IL 60612

Mr. Jess McDonald, Director
Illinois Department of Children
and Family Services
406 East Monroe
Springfield, IL 62701

Docket Number: 05973282

Dear Mr. Griffin:
Dear Mr. McDonald:

The Office for Civil Rights (OCR) has completed its investigation of the complaint filed by Jim Griffin (hereinafter, the Complainant) on August 7, 1997 against the Illinois Department of Children and Family Services (hereinafter, the Recipient). The Complainant is an Assistant Public Guardian and the Guardian ad Litem for Tamekia Otis (hereinafter, the Affected Party) on whose behalf he filed this complaint. Specifically, the complaint alleged that the Recipient was using the discriminatory factor of race in deciding the foster care placement for the Affected Party. The complaint was timely filed within 180 days of the act of alleged discrimination.

OCR is responsible for investigating complaints of discrimination on the basis of race, color or national origin against recipients of Federal financial assistance from the Department of Health and Human Services. As a recipient of grants for foster care and adoption, the Recipient is subject to the provisions of Title VI which prohibit such discrimination. OCR is also responsible for investigating complaints under the interethnic adoption provisions found at Section 1808(c) of the Small Business Job Protection Act which prohibits any use of the factor of race in adoption or foster care decisions.

OCR has concluded that the Recipient possibly violated certain provisions of Title VI and its implementing regulation, 45 CFR Part 80, and/or Section 1808(c) but has signed a resolution agreement which will correct all potential violations.

A copy of the resolution agreement, signed by both OCR and the Recipient, is enclosed. The agreement is effective as of the date it was signed by OCR. As a result of this agreement, OCR will take no further action on this case. The Recipient is obligated to comply with the terms of the agreement, and OCR will monitor that compliance. Once OCR has documented that the Recipient has complied with all the terms of the resolution agreement, the case will be closed and OCR will notify the Recipient in writing that all matters for this specific investigation have been resolved. A failure to perform or comply with the agreement will result in a violation and could result in the initiation of enforcement proceedings or other appropriate action.

This determination is not intended and should not be construed to cover any other issues which may exist and are not specifically discussed herein regarding compliance with Title VI of the Civil Rights Act of 1964 and/or Section 1808(c).

If you have any questions, please contact me at 312-886-2359 or Alfred Sanchez, Division Director, at 312-353-5731 (voice) or 312-353-5693 (TDD).

Sincerely yours,

Charlotte Irons
Regional Manager
Office for Civil Rights
Region V

Enclosure: Resolution Agreement

cc: Cheryl Cesario, Legal Counsel, DCFS

OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE
OCR	Brushed	8/24/98	OCR	Irons	8/27/98
OCR	Lucas	8/26/98			
OCR	Sanchez	8/26/98			

RESOLUTION AGREEMENT

In the matter of:

U.S. Department of Health and Human Services
Office for Civil Rights

and

Illinois Department of Children and Family Services

Concerning Docket Number: 05973282

Griffin on behalf of Otis
v.
Illinois Department of Children and Family Services

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SECTION I - BACKGROUND

The U.S. Department of Health and Human Services, Office for Civil Rights, hereinafter referred to as "OCR," is charged with the enforcement of Title VI of the Civil Rights Act of 1964 and the interethnic adoption provisions found at Section 1808(c) of the Small Business Job Protection Act, hereinafter referred to as "the Acts," or "Title VI" or "Section 1808(c)" as appropriate. The Title VI implementing regulation is found at 45 CFR Part 80.

The Illinois Department of Children and Family Services, hereinafter referred to as the "Recipient," does agree that it is a recipient of Federal financial assistance by virtue of its receipt of grants for foster care and adoption.

On September 17, 1997, OCR initiated an investigation pursuant to charges by Jim Griffin, Assistant Public Guardian and Guardian ad Litem for Tameka Otis. Mr. Griffin is hereinafter referred to as the "Complainant," and Ms. Otis is hereinafter referred to as the "Affected Party." Prior to the completion of the investigation, OCR determined there was a possible failure to comply with certain provisions of the Acts and the Title VI regulation.

The parties wish to resolve the matter informally without the necessity of OCR's issuance of a Letter of Findings. Therefore, the parties agree to the terms embodied in this Resolution Agreement, hereinafter referred to as "this agreement," and the Recipient hereby indicates its intention to act in full and complete compliance with the applicable regulation.

On August 7, 1997, the Complainant filed a complaint with OCR alleging that the Recipient was using the discriminatory factor of race in deciding the foster care placement for the Affected Party. This complaint had class implications for other children in foster care under the supervision of the Recipient if the agency's policies or procedures allowed for, or practices showed, the use of race in foster care decisions contrary to the Acts or the Title VI regulation. This agreement was reached prior to the issuance of a Letter of Finding.

The issue subject to investigation was whether or not the Recipient used the discriminatory factor of race in deciding the foster care placement for the Affected Party, in violation of 45 CFR 80.3(a) and (b)(1)(ii), (iv), (v), and (vi) and Section 1808(c).

Pending verification of the Recipient's completion of the actions outlined below, OCR will suspend further administrative action on this complaint. The Recipient accepts the terms stipulated in

the agreement and provides assurances of its intention to act in full and complete compliance with the Acts.

SECTION II - GENERAL PROVISIONS

A. Effective Date of Agreement

The resolution agreement shall become effective on the date it is signed by the OCR Regional Manager. The agreement will remain in effect until OCR has verification that the Recipient has implemented all actions specified in Section III of the agreement.

B. Recipient's Continuing Obligation

Nothing in the agreement is intended to relieve the Recipient of its obligation to comply with any and all provisions of the applicable statute(s) and implementing regulation(s), whether or not specifically addressed in the agreement.

C. Effect on Other Compliance Matters

The agreement does not apply to any other issues, or investigations that may be pending before OCR, other agencies within the Department or another Federal agency regarding the Recipient's compliance with the applicable statute or any other statute enforced by OCR or another agency. The agreement also does not preclude further OCR investigations of the Recipient. Any compliance matters arising from subsequent investigations will be addressed and resolved separately in accordance with the procedures and standards of the statute and implementing regulation applicable to the matter raised.

D. Prohibition Against Retaliation and Intimidation

The Recipient shall not intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, testified, assisted, or participated in any manner in the investigation of the matter addressed in the resolution agreement.

E. OCR's Investigation of Recipient's Compliance with Agreement

OCR may, at any time, investigate the Recipient's compliance with the resolution agreement. As part of such an

investigation OCR may require the Recipient to provide written reports, and to permit OCR to inspect the premises, interview witnesses, and examine and copy documents to determine if the Recipient is complying with the provisions of the agreement. The Recipient agrees to retain the records required by OCR to assess its compliance with the agreement and to submit the requested reports to OCR, as specified in Section IV of this agreement.

F. Enforcement of Compliance with Agreement

If at any time OCR determines that the Recipient has failed to comply with any provision of this agreement, OCR will promptly notify the Recipient in writing. The notice shall include a statement of the basis for OCR's decision and allow the Recipient 15 days to explain in writing the reasons for its actions. The time frames allowed for the Recipient's response may be less than 15 days whenever OCR determines that a delay would result in irreparable injury to the affected parties.

If the Recipient does not respond to the notice or, upon investigation of the Recipient's response, OCR finds that the Recipient has not complied with any provision of the agreement, OCR may request the initiation of administrative or judicial enforcement proceedings or take other appropriate action to secure the Recipient's compliance with the applicable statute and regulation.

Evidence regarding the Recipient's alleged violation of the applicable statute, in addition to evidence regarding the Recipient's alleged violation of the agreement, may be introduced by OCR in any enforcement proceedings or other appropriate action that may be initiated.

Violations of this agreement may subject the Recipient to sanctions set forth in the applicable regulation authorizing enforcement or other appropriate action.

G. Modification of the Resolution Agreement

1. This agreement may be modified by mutual agreement of the parties in writing.

2. This agreement may be modified or invalidated in part or in whole in the event that the statutes or regulations cited in Section III, are amended, repealed, or rendered unenforceable by the action of

any appropriate legislative, judicial or administrative body with jurisdiction over the parties to this agreement.

H. Recipient Completes Implementation of the Agreement

When OCR verifies that the Recipient has completed all actions contained in the agreement, OCR will consider all matters related to this investigation resolved and so notify the Recipient in writing.

I. Offer of Technical Assistance to Recipient

OCR is available to provide the Recipient with technical assistance which may be necessary to meet the requirements of this agreement. (The assistance described here will depend on the specifics of the case. Examples include: aid in locating referral sources, developing nondiscriminatory forms and procedures, consulting on content of notices and advertisements, etc.)

J. Publication or Release of the Resolution Agreement

OCR shall place no restriction on the publication of the terms of this agreement. In addition, OCR may be required to release the agreement and all related materials to any person upon request consistent with the requirements of the Freedom of Information Act, 5 U.S.C. 552, and its implementing regulation, 45 CFR Part 5.

SECTION III - SPECIFIC PROVISIONS

OCR's investigative activities indicated the following possible violations:

Title VI prohibits discrimination on the basis of race in foster care placements. Section 1808(c) generally prohibits the use of race as a factor in deciding foster care placements although it allows for the use of race based on concerns arising out of the circumstances of an individual case. In the presence of the Complainant and another witness, one of the Recipient's Targeted Case Managers made some statements, which interjected race into the Affected Party's situation regarding her placement after leaving treatment in Wisconsin. Similar statements were made in an administrative emergency review in the presence of the Complainant and other staff of the Recipient. A transcript of that review and the summary written by the Emergency Reviewer from the Recipient's Administrative Appeal Unit was

part of the Affected Party's file and therefore known to other staff of the Recipient. Two other documents in the Affected Party's file showed that, despite training by the Recipient, race was still allowed to slip into staff's thinking patterns.

Every employee and supervisor of the Recipient who read the transcript or the Review Summary or the other two documents had an obligation to take appropriate action--bringing it to the attention of a supervisor, taking disciplinary action if needed, or making sure that, if the factor of race could even be considered based on concerns arising out of the circumstances of the individual child, that it was considered as part of a narrowly tailored individualized determination of the best interests of the child over and above the initial, comprehensive, and ongoing assessments that every child must receive in order to make an appropriate placement. (See Glossary below)

Even if some evidence, specifically the refusal by the Wisconsin Interstate Compact Office to supervise placement in Wisconsin, supports that race was not actually used as a consideration in returning the Affected Party to Illinois, the Recipient cannot excuse the interjection of race into this situation nor can the Recipient claim that the use of race, as shown by more than one document, was handled appropriately by its staff in compliance with Title VI and Section 1808(c). OCR acknowledges that Policy Guide 96.12, dated January 1, 1996, complies with Title VI and Section 1808(c) and, upon receipt of this complaint, as a good faith effort even before receiving a decision, the Recipient, on September 15, 1997, decided to reissue the Policy Guide on Title VI and Section 1808(c) and to retrain all staff on the necessity of keeping race out of placement decisions.

Glossary

Title VI and Section 1808(c) prohibit the use of race or ethnicity in the placement decision for any child except in very limited circumstances narrowly tailored to advance the child's best interests and based on an individualized determination of the child's needs. Therefore, in this agreement, the term "individualized determination" refers to a special evaluation, narrowly tailored to a particular child and used only in very limited circumstances, for the purpose of determining whether or not the issue of race needs to be considered in order to achieve a placement in that child's best interests.

Individualized determinations, as used in this agreement, are not the same as the initial, comprehensive, and ongoing assessments of every child required by DCFS Policy Guide 98.1 in order to provide quality casework to every child.

Remedial Action Agreed Upon

The Recipient agrees to voluntarily take the following corrective actions:

1. develop written procedures to ensure meeting the requirements of Title VI and Section 1808(c) regarding when and how race may be addressed in a particular child's case. The procedure will address the following points:

   A. The consideration of race in any particular child's case must be narrowly tailored to advance the child's best interests and must be made as an individualized determination.

   B. Any decision to consider the use of race as a necessary element of a placement decision must be based on concerns arising out of the circumstances of the individual case. Therefore, a narrowly tailored individualized determination regarding the placement of a child is required in situations in which, in staff's professional judgement, the consideration of race is necessary to achieve that child's best interests. This includes therapeutic, foster, and adoption placements or any other placement not with the child's parent(s).

   C. Such individualized determinations may not be used so frequently as to be a means to circumvent Title VI and Section 1808(c)

   D. The Recipient will develop a specific form or format for the individualized determinations and designate which staff must have input

   E. At a minimum, the individualized determinations to meet the standard of "best interests of the child" must:

      i. list the criteria which the Recipient's staff feel is necessary for the child's placement

and which must be used by the staff who are seeking an appropriate placement and by those who approve the placements

ii. be written and include at least a brief background on the child's/family's case and a detailed explanation to justify why race is a specific criteria relevant to that child

iii. attach copies of any relevant school reports, medical and psychological evaluations, disciplinary or police reports, etc. as necessary to contain a complete description of the child's situation and document the conclusions made in the best interests of the child

iv. be signed by all persons having input unless their contribution is an attachment which identifies them

v. be completed at any and all points in the processing of the child's case where a decision is being made regarding change of placement unless the goals of reunification have been reached and the child is going home

vi. be dated and can be considered valid for a placement decision for no more than one year from completion although written, signed, and dated updates rather than a new determination may be made for an additional two years

vii. not be used in any way that circumvents the letter or the spirit of Title VI and Section 1808(c) regarding keeping race considerations out of placement decisions

Draft procedures will be submitted to OCR for approval within thirty days of the effective date of this agreement. The Recipient will disseminate the procedures to staff and the private agencies with which the Recipient has arrangements for providing child welfare services. The Recipient will implement the procedures within thirty days after OCR's approval.

2. send a notice to all staff and supervisors and to the private agencies with which the Recipient has arrangements for providing child welfare services, in

writing, emphasizing their individual responsibility to keep race issues out of any processes dealing with children and their placement and their individual responsibility to request and complete narrowly tailored individualized determinations regarding the best interests of the child should the issue of race arise in any case in any way by anyone. The notice will also make supervisors and the directors of the private agencies responsible for monitoring the casework of their employees to ensure that the employees are not interjecting race into casework either by unwarranted statements or old habits. The draft notice will be sent to OCR for approval within thirty days of the effective date of this agreement and disseminated within thirty days of approval by OCR.

3. conduct training for staff and supervisors regarding the new procedure for individualized determinations in Number 1 above and regarding the notice in Number 2 above. The training will also re-emphasize to staff and supervisors that failure to conduct child placement activities in accordance with Title VI and Section 1808(c) regarding keeping race considerations out of placement decisions will have disciplinary consequences for failure to follow the Recipient's policies and procedures. This training will be completed within thirty days of implementing the procedure and disseminating the notice.

4. conduct training for the private agencies with which the Recipient has arrangements for providing child welfare services regarding the new procedure for individualized determinations in Number 1 above and regarding the notice in Number 2 above. This training will be completed within thirty days of implementing the procedure and disseminating the notice.

5. meet with the staff who were involved in this instant case to discuss when errors were made and what actions should have been taken. This action will be completed within thirty days of the effective date of this agreement.

SECTION IV - REPORTING REQUIREMENTS

The Recipient will submit to the Regional Manager of the Office for Civil Rights, 105 W. Adams St., 16th Floor, Chicago, Illinois 60603, within 10 days following each due date, documentation

confirming the implementation of each of the commitments contained in the Remedial Action section of this agreement as follows:

1. a copy of the final procedures and any forms or formats developed regarding narrowly tailored individualized determinations to ensure meeting the requirements of Title VI and Section 1808(c) regarding when and how race may be addressed in a particular child's case and documentation of the dissemination of the final procedures to staff and the private agencies

2. a copy of the final notice to all staff and supervisors emphasizing their individual responsibilities under Number 2 of the Remedial Action section above and documentation of its dissemination to staff and the private agencies

3. documentation (e.g., copies of the agendas and the sign-in sheets) of the training for staff and supervisors regarding the new procedure regarding individualized determinations in Number 1 of the Remedial Action section above, the notice in Number 2 of the Remedial Action section above, and reemphasizing the disciplinary consequences for failure to follow the Recipient's policies and procedures in these matters

4. documentation (e.g., copies of the agendas and the sign-in sheets) of the training for private agencies regarding the new procedure regarding individualized determinations in Number 1 of the Remedial Action section above and regarding the notice in Number 2 of the Remedial Action section above

5. a dated and written report, identifying all participants, of the meeting(s) with the staff involved in this instant case

SECTION V - SIGNATURES

Approved and Agreed to on behalf of the Illinois Department of Children and Family Services:

By: Jess McDonald
Signature

DIRECTOR - JESS McDONALD
Print Name and Title

Date: 8/21/98

Approved and agreed to on behalf of the U.S. Department of Health and Human Services, Office for Civil Rights, Region V

By: Charlotte Irons
Charlotte Irons
Regional Manager

Date: 8/27/98

OFFICE OF THE COOK COUNTY PUBLIC GUARDIAN
JUVENILE DIVISION

PATRICK T. MURPHY
Public Guardian

2245 W. OGDEN AVENUE
4th FLOOR
CHICAGO, ILLINOIS 60612
PHONE: (312) 433-4300
FAX: (312) 433-4336
FAX: (312) 433-5129
Direct Line: _____

September 28, 1998

E. Clay Shaw, Jr.
United States House of Representatives
Committee on Ways & Means
Rayburn Building, B-317
Washington, DC 20517

RE: Response to Letter from the Department of Children & Family Services

Dear Mr. Shaw:

Thank you for forwarding the letter which Jess McDonald, Director of the Illinois Department of Children & Family Services, sent to your committee to contesting some of my testimony.

First of all, let me state that I have the greatest regard for Mr. McDonald. He is an intelligent, well-meaning man, who is attempting to bring some order to a child welfare system that was in total chaos when he took it over and which still, at the middle and bottom levels, resists all efforts at reform.

Mr. McDonald disputes the facts in two of the five cases I cite. I respect Mr. McDonald's view but two courts have, in effect, ruled in favor of our version of the facts.

Mr. McDonald regurgitates the HHS line that his agency only discriminates in narrow circumstances, when it is in a child's best interest. Unfortunately it must then be

in a child's best interest to discriminate in the vast majority of cases since virtually all DCFS wards are placed in same race homes. Recently, two children were killed in foster care in Illinois. Both victims were African American children who were placed in overcrowded foster homes.

I enclose a copy of a *Chicago Tribune* article from September 27, 1998. The case involves a situation where two-month-old and 18-month-old siblings were placed in a foster home that had birth children ages two and four. Having four children under the age of four and three in diapers was not enough for DCFS. A 15-year-old girl who had long-standing and deep-seeded emotional problems was also placed in the same home. Within four days the two-month-old suffered serious injuries and died. Then DCFS hired lawyers allegedly to protect the children but, in reality, to protect themselves.

There is no way in Illinois that two white siblings ages two months and 18 months would be placed into a home with two-year-old and four-year-old birth children and with a 15-year-old who had long-standing issues and problems. African American children are stuffed in homes like this because the agency refuses to use white homes as alternatives. I believe this article says more about the agency's placement problems than Mr. McDonald's protestations.

Thank you.

Sincerely,

PATRICK T. MURPHY

PTM:amt

cc: Jess McDonald

Chicago Tribune

Metro Chicago

SUNDAY, SEPTEMBER 27, 1998

Cops, DCFS are at odds in probe of baby's death

Agency-hired lawyers control access to 2 kids

By T. Shawn Taylor
TRIBUNE STAFF WRITER

It has been nearly three weeks since 2-month-old Antonio Moseley died in a Chicago Heights foster home as a result of a severe beating that left him with a cracked skull, fractured ribs and bruises on his head and torso.

Chicago Heights police say they are focusing their investigation on the 24 hours before Antonio's death on Sept. 8 and want to question anyone who had access to the baby during that period.

But in a strange twist that follows the circumstances surrounding a 7- and 8-year-old who were questioned by Chicago police without their parents present in the death of 11-year-old Ryan Harris, the Illinois Department of Children and Family Services has hired a private attorney each for a boy and a girl, both 15 and wards of the state, whom police seek to question in Antonio's death.

Now, police and officials in the Cook County public guardian's office say their investigations have been stymied by roadblocks by the very agency that took protective custody of Antonio on July 10 after he was born with illegal drugs in his system.

The attorney for the 15-year-old boy, who lived in foster care next door to where Antonio was staying in the 500 block of Andover Street, has informed police that he will advise his client not to answer their questions, according to Sgt. Gary Miller, Chicago Heights' juvenile officer.

And police have yet to agree with a Chicago attorney on a date and time to interview the 15-year-old girl, who was living in the home with Antonio. Authorities have hinted that the girl has psychological problems.

Miller stressed that neither 15-year-old has been named a suspect in the case.

"There's a big puzzle out there with a hundred or so pieces," he said. "We would simply like to interview" the children.

Cook County Public Guardian Patrick Murphy said investigators and lawyers in his office also have been denied access to interview the two teens.

DCFS officials say they are not trying to stonewall either

SEE MOSELEY, PAGE 2

Moseley

CONTINUED FROM PAGE 1

agency. Instead, legal guardian D. Jean Ortega-Piron says it is the duty of DCFS to protect the legal rights of children in its custody because the agency essentially stands in as the parent for wards of state.

Ortega-Piron said the practice of hiring attorneys for DCFS wards, which has been in place since 1981, is not unusual and is invoked on a case-by-case basis once the agency learns that police wish to question children in DCFS custody.

Murphy said that, in addition to wanting to help find Antonio's killer, he and his staff are trying to determine why the 15-year-old girl was in the home with small children given what he described as her troubling history.

"A professional social worker should have recognized that the girl's many problems should have prevented her from being placed in a multichild foster home," Murphy said.

The foster parents have two biological children, ages 2 and 4. Antonio's 18-month-old sister also was in the home.

Murphy declined to be specific about the 15-year-old girl's alleged problems.

He questioned her placement last week in a letter to DCFS Director Jess McDonald, writing, "It goes against good social work practice to have an unrelated older foster child placed with very young children.

"This should have been particularly true in the present case where the 15-year-old had significant issues."

In response to Murphy's charges, DCFS spokeswoman Maudlyne Ihejirika said that all concerns and questions will be answered when the agency's office of the inspector general's investigation is complete or within 60 days after Antonio's death. The inspector general becomes involved whenever a child dies, she added.

Antonio and his 18-month-old sister had been brought to the Chicago Heights foster home on Sept. 3, after the two children, along with three of their siblings, were removed from foster care with their maternal grandmother in Chicago. A caseworker for Aunt Martha's Youth Service Center, a private foster care agency based in Matteson, discovered the children inadequately supervised, hungry and dirty, officials said.

Andrea Durbin-Odom, spokeswoman for Aunt Martha's, said the grandmother was not present when the caseworker arrived for a scheduled visit, and there was no food in the house.

Durbin-Odom said that Aunt Martha's and DCFS officials and the Chicago Heights foster couple all agreed that placing Antonio and his sister in the same home with the 15-year-old girl was appropriate.

The girl had been staying with the family since May 28, she said.

"When we placed the Moseley children in the home, we knew she was there," Durbin-Odom said. "If there is anything we feel would place the child at risk, we take them out."

After Antonio died, the 15-year-old girl and Antonio's sister were placed in another foster home, and the foster couple's children were voluntarily placed in the custody of a relative, pending the outcome of the investigation.

"All we're doing is saying that she has a right to counsel," DCFS's Ortega-Piron said of the 15-year-old girl. "Just because she's a ward doesn't mean she isn't entitled to counsel."

But Murphy said he has never heard of the policy.

"On occasion, perhaps they've hired a private attorney, but it's very rare," he said, adding that he believes in this case the attorneys were hired to cover up an agency mistake. "They're protecting their butts. They're trying to figure out how to get out from under."

DCFS would not comment on those claims.

Miller, the Chicago Heights police juvenile officer, said he has never had to go through an attorney to interview a ward of the state. He also said that a DCFS caseworker interviewed by police showed up with an attorney, too, and that one of DCFS' internal investigators also was denied access to interview the 15-year-old girl.

Cheryl Cesario, general counsel for DCFS, said the agency investigator was denied access to the teens because those workers share information with police, and there was the potential this could have led to a violation of the wards' constitutional rights.

This "has always been our policy," she said, adding DCFS would like to see Antonio's slaying solved. "We are not trying to hamper the investigation."

Chairman SHAW. Thank you, Mr. Murphy.

And an old friend of this Committee, Dr. Pierce.

STATEMENT OF WILLIAM L. PIERCE, PRESIDENT, NATIONAL COUNCIL FOR ADOPTION

Mr. PIERCE. Thank you very much, Mr. Chairman. Thank you for hanging in there with us and with this issue. We really appreciate your having this oversight hearing.

I have some very positive new and encouraging information to share with you today about this issue. I think many of us have kind of a gut feeling that Americans do care a lot about this issue and are very supportive of it. But there has been a recent opportunity for us to find out exactly how Americans do feel. On August 2 there was a cover story in Parade Magazine entitled It's About Love. It told the story of four families that adopted transracially. As Senator Metzenbaum, who is a real hero on this issue, mentioned to you earlier, there is a little two-inch box in there. They said if you want more information, contact the National Council For Adoption, our organization.

As of September 8, we have received approximately 10,000 unduplicated contacts. That includes mail, phone calls, and E-mails. Of those 10,000, eight, eight were negative or in any way questioning transracial adoption. We had African-American, Latino-Hispanic Asian-American, Native American, inter-racially married families calling the volunteers that were staffing the phones. The callers were ecstatic at the good news, tremendously supportive. So the American people are absolutely in favor of what is going on with transracial adoption.

There was also a side to the response which we did not anticipate. That is, many people volunteered that they had had a difficult time trying to adopt. They had been turned down because they wanted to adopt children of another race. They were told there were no children available to be adopted from other races. We had volunteered comments from residents of 29 States, saying that they were being stiff-armed by the public agency. I have a list of some actual quotes from the people who called or wrote us that I am submitting for the record. A tremendous span of comments from across the country complained.

I would also like to comment just briefly on the issue that you raised, Mr. Camp, in respect to investigations by the Office of Civil Rights. You raised a question about the Boston editorial. In that particular case, Mr. Camp, indeed the Office of Civil Rights investigated, but the reason that they investigated is that the Lapierre family filed a complaint. In that particular issue, there was Rhode Island State money involved. In that particular issue, the couple, who is a blue-collar low-income family, has incurred more than a $50,000 legal bill just to fight the State to require the State to complete the State's original plan, which was to allow this family to be able to adopt this child. The case is still in court.

We are also fighting a Maryland judge who said from the bench that children should not be adopted transracially. I refer to the Cornilous Pixley case here in Montgomery County. In the Pixley case, again HHS said well, we don't think we have any jurisdiction. I think the question should be asked was there any public money

spent in that case? I think there was. I think another question to be asked is, Congress also passed another piece of legislation called the Child Abuse Treatment and Prevention Act, and that was certainly in place in Maryland, and should have been applied.

The fact is that all across the country people want to adopt. There are lots of children waiting for families. The American people are positive about transethnic adoption, they know the positive outcome. It's up to you, I respectfully submit, to please take the steps to require HHS and the States to start obeying the law and get with the rest of the American people. Thank you.

[The prepared statement and attachments follow:]

Testimony

of

William L. Pierce, Ph.D.,

on behalf of the

National Council For Adoption

on

September 15, 1998

on the implementation of the

Multi-Ethnic Placement Act of 1994

Before the Subcommittee on Human Resources of

the Committee on Ways and Means

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202-328-1200
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Mr. Chairman and members of the Subcommittee, my name is William Pierce and I thank you for inviting the National Council For Adoption (NCFA) to testify at this oversight hearing. We have some information to share with you on Americans' attitudes toward transracial adoption that is new and very encouraging.

NCFA is a national voluntary organization whose membership includes professionals involved in adoption, including non-profit adoption agencies and adoption attorneys, as well as interested individuals from all walks of life -- adult adopted persons, persons who have placed children for adoption, adoptive parents, social workers, physicians, educators, researchers -- a true cross-section of the American people. I have served as NCFA's President since its founding. NCFA's current board policy does not permit us to accept federal, state or other public funds. Before the current policy was set about 10 years ago, we accepted just one federal grant, in the amount of $50,000. This was a project focused on the challenge of serving children 'aging out' of foster care, with most of the project money stipulated to be sub-contracted to a public university's research program on independent living.

NCFA's interest in the topic of this oversight hearing dates back to our founding, in 1980. We have sought to align ourselves with those battling discrimination based on racial or ethnic background.

NCFA's first formal policy statement on this matter, approved on Aug. 4, 1984, spoke to the need to focus on the best interests of the child, to avoid unnecessary delays while seeking racial or ethnic "matches," for active recruitment programs and sensitivity to the many complex factors involved in transethnic placements. In our 1984 statement, we sought to set an outside limit on attempts to find ethnically-matching families for waiting children.

NCFA's policy evolved as courts increasingly ruled that using racial criteria in the placement of children is impermissible. In addition, NCFA observed that the numbers of complaints from people who were alleging discrimination were increasing. But most importantly, the surveys and work of the National Committee to End Racism in America's Child Care System, Inc. (NCER) indicated a pattern of non-compliance with the clear intent of Title VI of the federal civil rights legislation.

For these reasons, we joined NCER and others in support of those in Congress, especially former U.S. Sen. Howard Metzenbaum, and Rep. Jim Bunning, who sought to further clarify federal law to ban discrimination. Indeed, NCFA was the only national adoption organization testifying in the Senate hearing in 1994 in support of Sen. Metzenbaum's bill. In that 1994 testimony, we moved formally to a policy of not permitting race or ethnicity to be used to delay or deny a child's placement for adoption and foster care.

Happily, Sen. Metzenbaum was able to pass the Multi-Ethnic Placement Act (MEPA) in 1994. But good-faith implementation of the intent of MEPA was so lacking that, in 1996, with the support of Sen. Metzenbaum and Rep. Bunning, the Congress added even clearer language in its amendments to MEPA. NCFA strongly supported those clarifying and strengthening amendments.

The heart of MEPA is a simple concept: children in the public child welfare system who need adoptive or foster homes should not have their placements denied -- or even delayed -- because an otherwise qualified adoptive or foster family is of a different racial or ethnic background. Adoption and foster care polity, MEPA asserts, is not about color, it's about love.

I am here today to share information with this Subcommittee about the fact that the American people are overwhelmingly supportive of adoption across racial and ethnic lines. I assert this not just because of our strong sense, based on Americans' long history

of adopting children from other countries, that skin color and nationality mean little to most adoptive families. I claim that this is so because of the response to the August 2, 1998, cover story in PARADE Magazine by Lyric Wallwork Winik, entitled, "It's About Love." PARADE's story featured four families who had adopted transracially and reported their positive reactions. The story was illustrated by wonderful photographs of the children and their parents.

When we at NCFA learned that PARADE was preparing the story we volunteered to have our name given in the article, so those wanting more information called NCFA. A small box within the article listed our mailing address, e-mail address and phone number. (In case some in Congress may have missed the PARADE piece, we recently mailed a copy to each office.)

The response, according to PARADE spokespersons, was about average for a cover story. As of Sept. 8, we received 4,290 telephone calls, 3,260 in the first week. Mail responses have reached 2,919. And there have been more than 3,000 e-mail responses.

We estimate that there were approximately 750 duplicate contacts, mostly telephone calls asking when the information had been mailed to their homes. Allowing for this duplication, we estimate that about 10,000 contacts (9,928) were received.

Because the e-mail contacts have not been completely entered into our data base, we have not yet been able to chart e-mail responses by state. We have therefore estimated that the e-mail distribution was about the same as the total of phone calls and regular mail. Totals of mail and phone contacts have been adjusted upward to distribute the e-mails numbers. An accompanying table (Attachment 1) lists actual unduplicated mail and phone contacts, and total actual contacts, by state. An accompanying graph (Attachment 2) shows the state breakdown for mail and phone contacts. Another table (Attachment 3) provides total numbers and percentages of state populations responding and a graph (Attachment 4) shows the same data.

Keeping in mind the technical limitations (see Attachment 5), these data show very substantial differences in responses between the states.

Of the top 10 states, three of the four top-ranked jurisdictions are in close proximity to NCFA's office, least expensive to call and in *The Washington Post's* market area. By top-ranked, I mean that the number of contacts, as a percentage of the population, was highest. The other states show no pattern -- except none are southern states. Here are the top 10:

State	Total Contacts	Percentage of Population
DC	72	.0135
AK	66	.0124
MD	434	.00817
VA	504	.00759
UT	131	.00617
AZ	263	.00583
ND and WY	30 each	.00565
ID	54	.00508
NE	81	.00508

On the other hand, of the bottom four states, Hawaii is the most distant. But the 51st ranking Nevada, at .0000753, had less than one-seventh the response rate of neighboring Arizona, at .00583.

Of the eight largest states, three -- PA (.000407), FL (.000406) and MI (.000391) were above the national average of .000376. One major state was slightly below the average, TX, at .000352. The other four were: OH (.000315); CA (.000287); IL (.000278); NY (.000266).

Minnesota, a state known for its aggressive race-matching laws and policies, ranked .000230, only half as well as its most comparable neighbor, Wisconsin (.000470) and below southern states such as Arkansas (.000398), South Carolina (.000377) and Louisiana (.000330).

The single most interesting number, however, is this: of the 10,000 contacts, only eight complained about or differed with the pro-transracial theme of the article. A few of the eight responses were from individuals one might charitably characterize as "eccentric." A bigot or two made overt or subtly racist remarks. One objection came from a person identifying themselves as a member of the National Association of Black Social Workers.

The only other comment from a person identifying themselves as a member of the National Association of Black Social Workers was from a member who said the article had changed her mind, and she no longer opposed transracial adoption.

Of the 10,000 contacts, we identified all but 537 -- about 95 percent -- as being "routine" requests for more information. Those persons were mailed specially-printed booklets, with inserts of information pertaining to their state of residence. We have no way of determining the race or ethnicity of those who contacted us, unless they volunteered the information.

Most of the 537 "non-routine" contacts were from people who volunteered such information, either about their children or themselves.

For instance, 79 families who'd already adopted transracially -- most of whom were white parents -- said they'd like to adopt again across racial lines.

Inter-racial, multi-ethnic or families of minority racial or ethnic background accounted for 184 of the "non-routine" responses. Sixty-three responses were from couples describing themselves as inter-racial or multi-ethnic. Fifty-four responses were from Black or Black-White couples. Forty-four were from Latino/Hispanic or Latino-Anglo couples.

Sixty-one of the non-routine responses were from couples -- mostly white -- who volunteered their negative experiences with public agencies. The agencies had used race or ethnicity to deny the families children. Most denials pertained to mixed-race or African-American children. At the request of Sen. Metzenbaum, we shared quotations from a sample of these contacts. We believe that, given the relatively small numbers within our sample of calls, no conclusions can be drawn about state-by-state performance. What can be said is that we had contacts from 29 of 51 jurisdictions, alleging public agency resistance to MEPA.

Our conclusion, based on this response, is that Americans -- regardless of their race, ethnicity or state of residence -- overwhelmingly support transracial adoption. At the same time, there appears to be a pattern of resistance to MEPA in the majority of the states. This would suggest to us a need for the Congress to devise new ways to ensure that the Department of Health and Human Services takes steps to carry out the intent of Congress, as reflected in the 1994 and 1996 laws.

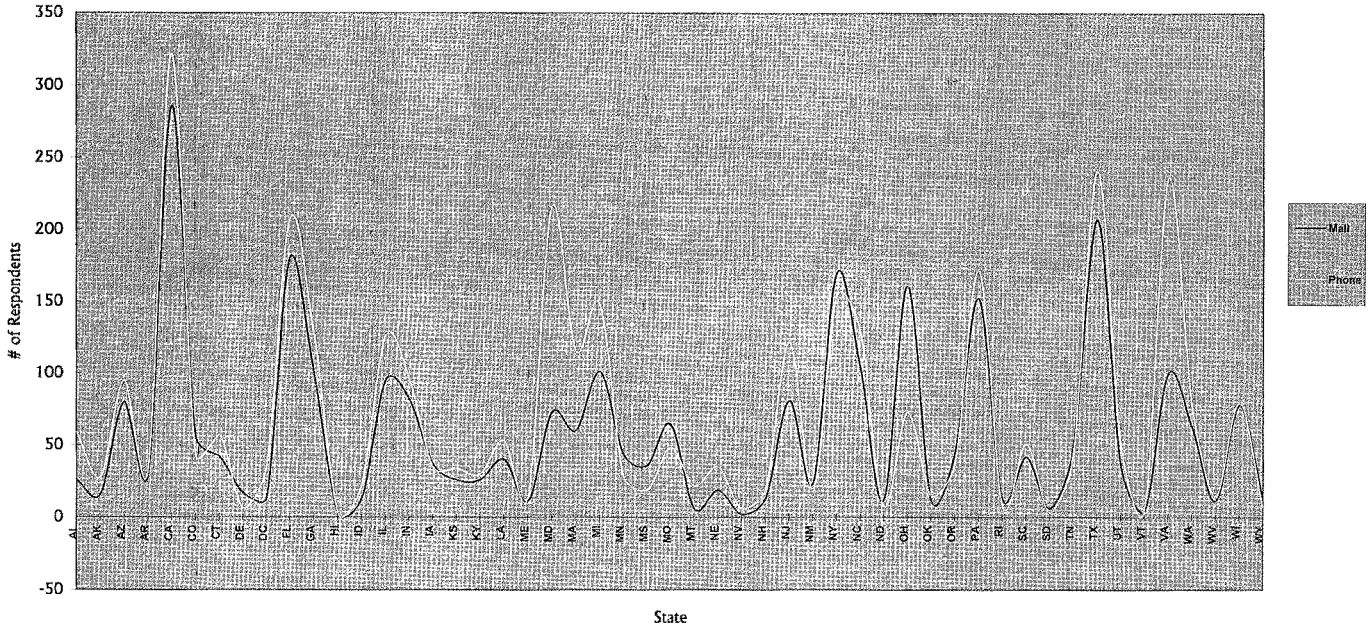
National Council For Adoption
Attachment # 1

State	Mail	Phone
AL	26	59
AK	16	28
AZ	80	95
AR	30	33
CA	286	322
CO	56	43
CT	42	57
DE	17	6
DC	13	35
FL	180	208
GA	99	128
HI	3	3
ID	13	23
IL	95	126
IN	82	96
IA	37	35
KS	26	34
KY	26	30
LA	40	53
ME	11	14
MD	73	216
MA	60	116
MI	101	148
MN	44	29
MS	36	19
MO	65	48
MT	6	22
NE	19	35
NV	2	6
NH	13	20
NJ	81	122
NM	24	20
NY	170	154
NC	103	129
ND	12	8
OH	161	73
OK	12	15
OR	45	38
PA	152	172
RI	13	9
SC	42	51
SD	6	3
TN	49	45
TX	207	241
UT	36	51
VT	4	5
VA	100	236
WA	63	79
WV	11	15
WI	78	80
WY	13	7
subtotal:	**2979**	**3640**

TOTAL: **6,619**

National Council For Adoption
Attachment # 2

State Breakdown by Phone and Mail Responses

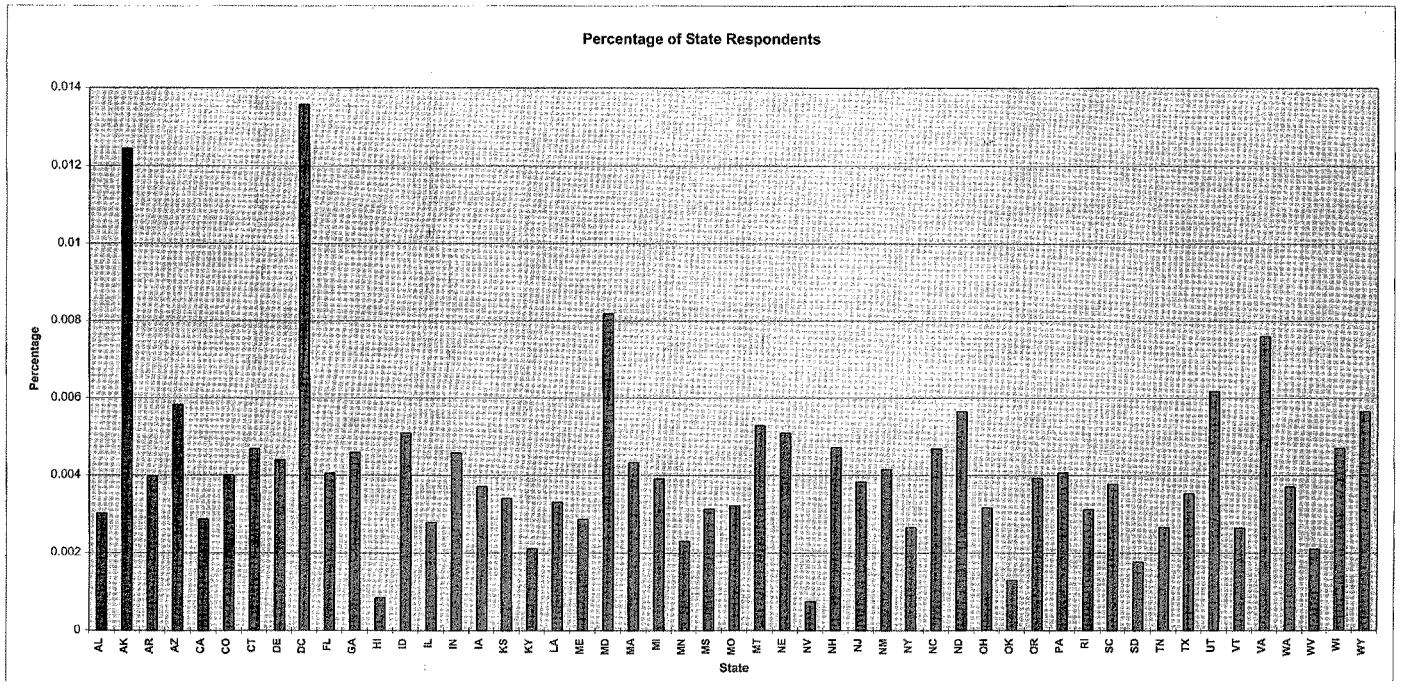


National Council For Adoption
Attachment # 3

States	# of responses	State Population*	Fraction (B/C)	Percentage (B/C)*100
Example	1	2	0.5	50
AL	128	4244544	3.01564E-05	0.003015636
AK	66	530568	0.000124395	0.012439499
AR	95	2387556	3.97896E-05	0.003978964
AZ	263	4509828	5.83171E-05	0.005831708
CA	912	31834080	2.86485E-05	0.002864854
CO	149	3713976	4.01187E-05	0.004011873
CT	149	3183408	4.68052E-05	0.004680518
DE	35	795852	4.3978E-05	0.004397803
DC	72	530568	0.000135704	0.013570362
FL	582	14325336	4.06273E-05	0.004062732
GA	341	7427952	4.59077E-05	0.004590767
HI	9	1061136	8.48148E-06	0.000848148
ID	54	1061136	5.08889E-05	0.005088886
IL	332	11937780	2.78109E-05	0.002781087
IN	267	5836248	4.57486E-05	0.004574857
IA	108	2918124	3.70101E-05	0.003701008
KS	90	2652840	3.39259E-05	0.003392591
KY	84	3979260	2.11095E-05	0.002110945
LA	140	4244544	3.29835E-05	0.003298352
ME	38	1326420	2.86485E-05	0.002864854
MD	434	5305680	8.17991E-05	0.008179913
MA	264	6101532	4.32678E-05	0.004326782
MI	374	9550244	3.91613E-05	0.00391613
MN	110	4775112	2.30361E-05	0.002303611
MS	83	2652840	3.12872E-05	0.003128722
MO	170	5305680	3.20411E-05	0.003204113
MT	42	795852	5.27736E-05	0.005277363
NE	81	1591704	5.08889E-05	0.005088886
NV	12	1591704	7.53909E-06	0.000753909
NH	50	1061136	4.71193E-05	0.004711931
NJ	305	7958520	3.83237E-05	0.003832371
NM	66	1591704	4.1465E-05	0.0041465
NY	486	18304596	2.65507E-05	0.002655071
NC	348	7427952	4.68501E-05	0.004685006
ND	30	530568	5.65432E-05	0.005654318
OH	351	11141928	3.15026E-05	0.003150263
OK	41	3183408	1.28793E-05	0.001287928
OR	125	3183408	3.92661E-05	0.003926609
PA	486	11937780	4.07111E-05	0.004071109
RI	33	1061136	3.10987E-05	0.003109875
SC	140	3713976	3.76955E-05	0.003769545
SD	14	795852	1.75912E-05	0.001759121
TN	141	5305680	2.65753E-05	0.002657529
TX	672	19100448	3.51824E-05	0.003518242
UT	131	2122272	6.17263E-05	0.00617263
VT	14	530568	2.63868E-05	0.002638682
VA	504	6632100	7.5994E-05	0.007599403
WA	213	5770964	3.69089E-05	0.003690891
WV	39	1856988	2.10018E-05	0.002100175
WI	237	5040396	4.70201E-05	0.004702012
WY	30	530568	5.65432E-05	0.005654318

* State Population determined by state percentage of the US population (as of 1996 the US population equals 265,284,000). State demographics obtained from "The Almanac of American Politics 1998" by Michael Barone and Grant Ujifusa.

National Council For Adoption
Attachment # 4



ATTACHMENT 5 -- TECHNICAL COMMENT

Of course, these responses do not provide us with the sort of statistics that would be produced by traditional polling methods. Although the reach of PARADE is vast -- the paid circulation is 37,019,000 and there are an estimated 82 million readers -- one has no way of determining whether the results we are seeing at NCFA would be confirmed by polling.

Among other variables, those who contacted us by telephone -- the largest of the three categories of respondents to date -- had to pay for the call. We did not provide a toll-free number. This may account for some regional differences in response pattern, were it not for the fact that the percentages of responses from Alaska were nearly as high as for the District of Columbia. (NCFA's offices are located in the District.)

In addition, because the story appeared at the peak of the summer vacation season, more -- or fewer -- readers may have taken the time to read the article and respond than if the article had appeared during a non-vacation period on the calendar.

Nor do we know the precise pattern of distribution of PARADE's circulation. Were the responses higher in the District because PARADE is an insert in *The Washington Post*? Was the response in Hawaii low because of distance, PARADE's market penetration, or both factors?

In other words, there are many variables which, taken together, mean that the findings should be used very cautiously, pending confirmation through standard survey techniques. However, until better numbers are available, it may be that the results we report here are the largest sample of Americans' current attitudes toward transracial adoption that is available.

COMMENTS FROM RESPONSES TO *PARADE* TRANSRACIAL ADOPTION STORY (august 2, 1998)

ARIZONA

"Arizona did not allow a white couple to adopt a black child"

CALIFORNIA

"Our family is already transracial since we adopted our youngest daughter from Korea and the rest of us are Caucasian. Our child has been the joy of the entire extended family. As the article stated, most white families are discouraged from adopting transracially here in the states and so we have not looked into that option.."

CONNECTICUT

"For 5 years I waited with a local agency to adopt a child but none was found as many of the children were biracial and the agency discouraged adoption outside of the race. Heartbroken I had given up due to my age and also that I was told other agencies where costly (I was going through a state agency). I am a clinical social worker and a board of education member in my town.

GEORGIA

"We already have looked into transracial adoption of an infant here in the South but to our disappointment there doesn't seem to be a lot of transracial babies available."

FLORIDA

"State HRS turned me down because I live on a house boat"

"My husband and I cannot have children and every agency in Florida that I've spoken to tells me the same things: 'You can't adopt a mixed race child because you are white, or we have no healthy children just special needs.'"

two callers were told by Jacksonville Adoption Info. Center that "if a child is greater than or equal to 51% black, he can go only to a black family"

ILLINOIS

"My wife and I have three children, all boys and we have been interested for some time in adopting a girl. Because of this we became involved in Foster care here in Illinois through the Department of Children and Family Services (DCFS). We began our extensive training three years ago and we have been

licensed foster parents for 2 ½ years. We made it clear from the beginning that we were interested in fostering as an inroad to adoption. So far we have not been successful in our quest. We have been and continue to be open to a girl form 0 to 6 years old , of any race. Unfortunately, we have never had an "adoptable" placement from DCFS. We have attended an "adoption fair" here in the Chicago area. Supposedly the purpose of these events is to connect eligible children with willing potential parents. We expressed an interest in several children, be we never received a call back. It was as if we had never attended the fair. When we called them they had no record of us. This has been a very frustrating process for us."

MARYLAND

"Tried to work Maryland DSS. Social worker made discouraging remarks"

MASSACHUSETTS

I too wanted to adopt one child we have had here over the years, She came to us as a 12 day old baby and we loved and raised her for 18 months. Her mother had disappeared and the state told us they were going to file for termination of her rights. They just kept forgetting or not doing it. By the time the baby was 2 her mother sowed back up wanting her back. I felt it was not in her best interest not just because she had never even visited with anyone in that family ever, but she was happy and loving and she was at that point our child. The social worker prior to the mothers reappearing had discouraged us from adoption because she was biracial and we were white. We had 3 biochildren who were white and did realize that she would always be a black child. I found out later she was part of NABSW members. After 3 moths of supervised overnight visits they sent our baby home to her mother. That was over 2 years ago and we are still foster parents because we want to be here if she returns to foster care. A common thing.

MICHIGAN

"Foster care - not eligible for biracial placement"

MINNESOTA

My husband and I are Caucasian parents of 2 biracial children ages 6 and 4. We adopted them as infants and met with several obstacles, especially from adoption workers in our home state of Minnesota. We adopted our children from out of state agencies as our agency in MN would not place a child cross-racially Therefore, we got a home study in MN and sent it out to other agencies out of state.

MISSISSIPPI

"Our social worker has discouraged us each time we mention a biracial or another race child ... However we feel that we could possible meet the needs of these children.

MISSOURI

"told by state agency - 'I can't adopt biracial child'"

"Approximately three years ago, my husband and I applied for adoption through the State of Missouri. Catholic Charities was subcontracted with to conduct the home study. We stated that we were willing to accept a Hispanic, biracial, Asian, or Caucasian child We also stated that we would like to adopt an infant Because there are so few infants in the State system, we had no luck.

NEW JERSEY

"homestudy - never responded to when mixed-race kids"

"approved for 3 years in state of NJ - was told there are no biracial kids in NJ"

NEW MEXICO

"We are interested in adoption transracial babies or toddlers. We have met with virtual brick walls here in New Mexico."

NEW YORK

"We have always been interested in biracial or transracial adoption, but this has not been available to us through our DSS.

NORTH CAROLINA

"I am a single white mother of a black child that I adopted as an infant . I went through MAP training with the local Department of Social Services almost nine years ago. Unfortunately, this country has a problem with placing non-white children with a white family, especially a single parent."

"We would love to have another child, and have been particularly interested in transracial , but have repeatedly been told that adoption services frown on them." [transracial adoptions]

OHIO

"Summit County Children's Services had discouraged us by saying there were more white families than white children. We told them we would accept any

child of any race and they told us this was not a common practice. They told us these children need to be raised within their ethnic culture, therefore forcing some of their children to stay in the foster care system for years never finding a home.

PENNSYLVANIA

"not enough Blacks and the demographics won't work"; "called three different social workers and one said: 'prove it'; was told "there's a Federal law and President Clinton can say what he wants but you will never adopt"; public agency said "you will never get a mixed race kid.

"We had 3 sisters who were biracial. We had them for 2 years and they went back to their grandmother. WE feel because we were white the African American DHS worker pushed very hard for them to go back to not a good situation When they went for a visit the children came back with bruises and they told the DHS worker before they left and said how happy and attached the girls were. We will never get over losing them. The girls were accepted by our family and friends with open arms even though they were of a different race. They all fought hard for us to keep them.

RHODE ISLAND

"I was told by the Rhode Island Dept. for Children that only children 5 and up in age are available to me and that I should look to adopt from China."

"Our family has adopted several multiracial children. Three of our children were drug exposed infants. We have been searching for another child to adopt with no luck. First, Rhode Island is too small. We are listed with the Mass. Adoption Resource Exchange and have found nothing.

VIRGINIA

"I tried to adopt through local SS - but won't place with white family"

"No black parents, but still no reason for it. Harassed"

"none available in Hampton area"

"We have one daughter 3 years old, multiracial, adopted and have been trying to find an agency willing to work with us to find another child for adoption., Please help!!! We went back to the agency that we adopted her form and they have been no help whatsoever. Our assigned social worker, a member of NBSWA, was not helpful in finding our daughter"

WISCONSIN

"have been attempting transracial adoption, but have been turned down (in FL, OH, MN)"

Chairman SHAW. Thank you, Dr. Pierce. As I said to Dr. Golden I believe it was, that we will be having more hearings next year on this matter. We do want to start looking at the numbers that are out there as to what effect this has had on getting these, particularly these minority kids, out of foster care.

I want to thank this panel as well as the other panels. I think it's been a wonderful hearing. Dave Camp has turned around congratulating our staff on a great hearing, so you know how sincere that is. We very much appreciate it. As the previous panel, we will submit questions in writing and request that you respond to them.

[A question addressed to Ms. Bartholet, and her response, follows:]

Elizabeth Bartholet

When a local judge renders a decision that appears to violate the 1996 law, what is the federal remedy? Can Title VI, of the Civil Rights Act of 1964 be used to reclaim any federal money that the court receives?

The Multiethnic Placement Act, as amended in 1996, clearly applies to courts by virtue of its language making the "state," "any other entity in the State that receives funds from the Federal Government," and the "government" subject to its various mandates. The penalty provisions added by the 1996 amendments apply when a "State's program" in found in violation, and so would seem to apply to violation by a court as well as by a state foster care agency. These provisions mandate reductions in federal funding otherwise due the State. In addition to these penalties, Title VI of the Civil Rights Act of 1964 is presumably applicable, pursuant to provisions of the original 1994 Multiethnic Placement Act.

Thank you very much. The hearing is concluded.

[Whereupon, at 12:43 p.m., the hearing was adjourned, subject to the call of the Chair.]

[Submissions for the record follow:]

Cornelius D. Hogan, *President*

William Waldman, *Executive Director*

TESTIMONY BEFORE

THE SUBCOMMITTEE ON HUMAN RESOURCES OF

THE WAYS AND MEANS COMMIITTE

U.S. HOUSE OF REPRESENTATIVES

FOR THE HEARING ON OVERSIGHT ON IMPLEMENTATION OF THE 1996

INTERETHNIC ADOPTION AMENDMENTS TO THE MULTI-ETHINIC

PLACEMENT ACT OF 1994

SUBMITTED BY

AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION

SEPTEMBER 15, 1998

Representing Public Human Services Since 1930

810 First Street, NE, Suite 500, Washington, DC 20002-4267 • (202) 682-0100 • fax: (202) 289-6555 • http://www.aphsa.org

The American Public Human Services Association (APHSA) is pleased to submit this testimony for the record for the hearing before the Subcommittee on Human Resources regarding oversight on implementation of the 1996 Interethnic Adoption Amendments to the Multi-Ethnic Placement Act of 1994.

Founded in 1930, APHSA[1] is a nonprofit, bipartisan organization of public human service agencies and individuals concerned with human service policy and its delivery. Our members include all state and many territorial human service agencies, more than 1,200 local agencies, and several thousand individuals who work in or have an interest in human service programs. APHSA disseminates information on a variety of human service issues, including the Temporary Assistance for Needy Families Block Grant, child welfare, food stamps, Medicaid, the Children's Health Insurance Program, and other issues involving children, families, and the elderly. The mission of APHSA is to develop, promote, and implement public human service policies that improve the health and well-being of families, children, and adults. It achieves its mission through contact with its members, the U.S. Congress, the administration, the media, and the broader public.

Our testimony addresses state efforts and activities to implement the Multi-Ethnic Placement Act and the 1996 amendments (hereafter referred to as MEPA), as well as reports on the early steps states have taken to implement the Adoption and Safe Families Act. When APHSA members attending the association's National Council of State Human Service Administrators meeting in late July learned of the subcommittee's likely plan to hold a hearing on MEPA implementation, they thought it was important to report how states are implementing MEPA. As the organization whose members are the public agencies responsible for implementing MEPA at the state level, APHSA canvassed child welfare administrators in the 50 states and the District of Columbia in order to provide the subcommittee with survey information for this hearing. Faced with a short turnaround time to prepare and disseminate the survey, we were pleased that 37 states responded to our survey, which included four questions on MEPA implementation.

Changes to State Policy and Practice

The information we received demonstrates clearly that states have undertaken changes in policy and practice around MEPA. Thirty-three (33) of the 37 states responding reported that the state agency had promulgated policy/regulations to comply with MEPA. An additional state is making the necessary policy changes. The three states that responded in the negative indicated that they did not need to promulgate policy/regulations because their policies and regulations were already in compliance with MEPA.

The major areas of policy change described by the states include changes to foster care and adoption selection, placement, and matching policy and practices such as eliminating preferences for same-race placements; removing race from criteria that provide guidance

[1] The association changed its name from the American Public Welfare Association (APWA) in July 1998.

in making foster and adoptive placement decisions; and expressly prohibiting race, color, and national origin as a consideration in placement. Establishment of policy changes expressly prohibiting delay or denial of a placement (such as elimination of waiting periods to locate a same-race placement), or denial of the opportunity to become a foster or adoptive parent on the basis of race, color, or national origin, was also consistently mentioned by survey respondents.

The Title IV-B state plan requirement, enacted in the original 1994 MEPA to provide for the recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed, was not amended by the 1996 provisions, and this requirement remains in effect. Many states reported on changes in recruitment activities and strategies consistent with this provision of the 1994 law. Some of the activities undertaken in support of this provision include directives to counties to use both general and targeted recruitment of foster and adoptive families; plans to increase recruitment of families that reflect the ethnicity of the children in foster care; and adoption promotion and recruitment through television, public service announcements, print media, community events, adoption exchanges, and partnering with private neighborhood and community-based agencies.

Steps Taken to Promote Adherence to MEPA

Clearly recognizing that the goals of MEPA cannot be achieved by changes in law and policy alone, states have undertaken specific activities to ensure that agency workers and staff have the knowledge, skills, and training to ensure that foster care and adoption practice is carried out in accordance with MEPA. Our survey asked states what methods they were using to ensure that frontline workers complied with MEPA policy changes. The 37 responding states overwhelmingly reported that they were providing training to new and current staff and, in most cases, to supervisors and managers. Other major methods for ensuring worker compliance include quality assurance and monitoring activities such as internal case review processes and reports and supervisory monitoring. Several states also cited written notifications, information sessions, and consultation and technical assistance for staff, including private and contractual adoption and foster care service providers.

Grievance and Complaint Procedures

Prospective foster and adoptive parents can take action in several ways if they believe that MEPA has been violated. Our survey explored two such avenues—public child welfare agency grievance processes and complaints to the U.S Department of Health and Human Services Office of Civil Rights (OCR). The survey shows that states have formal grievance procedures for adoptive/foster families who believe they have been aggrieved by a violation of MEPA. Thirty-two (32) states indicated they have a formal grievance process either specifically for MEPA violations or more generally for any issue about which a family has a complaint. (It is likely that the five states that responded in the

negative interpreted our question to mean a grievance process specific only to alleged MEPA violations.) Given the absence of any comprehensive national data on actual violations of MEPA, we asked states if complaints to OCR have been made against them regarding MEPA. Of the 37 states responding to our survey, representing tens of thousands of foster and adoptive placements since the enactment of MEPA, only 13 complaints have been brought to OCR regarding a possible violation of MEPA. These complaints represent reports from nine states. The other 28 states have not had any complaints brought against them. Of the nine states reporting complaints, seven have had only one complaint raised against them since enactment of MEPA. The remaining two states experienced two and four complaints, respectively.

Reviews of these reported MEPA violations conducted by OCR resulted in the following outcomes as reported by the states: three reviews resulted in dismissal of the complaint; three reviews resulted in the public child welfare agency taking corrective action; and seven cases are still pending an OCR decision. A third avenue of central importance in measuring states' compliance with MEPA will be HHS' new compliance monitoring and review system for which proposed regulations are expected to be promulgated this fall. When that system is implemented and states are reviewed, we anticipate that more comprehensive and systematic information on state compliance with MEPA will be available to the subcommittee.

There appears to be a perception among some observers of MEPA implementation that states are not presently complying with the law. APHSA's survey results indicate that states have taken the steps necessary to comply with both the letter and spirit of the law, and are committed to achieving continuous quality improvement. Furthermore, the survey results indicate that MEPA violations are the exception and not the rule, and that anecdotes regarding noncompliance with MEPA, while serious, should be viewed in proportion to the overall compliance demonstrated by the states. Finally, absent regulations on MEPA and an operative federal monitoring system, it is premature to conclude that states are not in compliance with the law.

Early Reports on State Implementation of the Adoption and Safe Families Act

States are committed to increasing permanency for children who are in foster care. MEPA is but one of the many federal requirements designed to advance this end. We know that this subcommittee shares the broader goal of increased permanency for children as evidenced by its key role in the development of the landmark Adoption and Safe Families Act of 1997 (ASFA). State child welfare agencies are actively implementing ASFA, which seeks to decrease the time it takes to achieve permanency for children in the child welfare system, increase adoption and other permanent placements, and enhance efforts to protect child safety. As part of our survey, APHSA queried states about ASFA implementation. We found that states are promulgating policies/regulations and procedures, with 29 of 35 states responding to this question already having done so. Of the six states that responded no, three are in the process of promulgating policy, one

state's policies were already consistent with ASFA, and the remaining two states were awaiting passage of implementing legislation by their legislatures, for which the statute allows time. The majority of states also indicated that they are initiating training to a wide range of parties who are instrumental in implementation of ASFA to ensure that practice is aligned with law and policy. Within their own public agencies, managers, supervisors, and frontline workers are receiving one-time or ongoing training. Many states are also initiating training of key groups outside their agencies, such as attorneys, judges, guardians ad litem, third-party reviewers, and contract agencies.

We also found that states are actively engaged in numerous activities to promote permanency for the children in state custody and are making changes they believe will result in improved system performance and better outcomes for children. One such improvement predicted by the states is the increase in the number of adoptions in the next two years. When APHSA asked states if they anticipate that the number of adoptions of children in foster care would increase in their state in fiscal year 1999, 36 of the 37 states responded yes. When asked if they expected a subsequent increase in fiscal year 2000, 33 of the 35 states responding to this question answered affirmatively. States provided several reasons for these anticipated increases, pointing primarily to ASFA, particularly the provisions on termination of parental rights (TPR), the administration's Adoption 2002 initiative, and their own adoption/permanency laws and state initiatives that preceded these federal efforts. Some other reasons mentioned include an increase in the number of staff dedicated to recruitment for adoptive homes; a continuing state trend of increasing adoptions; more/better resources for preparing/recruiting adoptive families and more/better trained staff; concurrent planning; private partnerships; and use of the Internet to list waiting children. A state that did not expect its adoptions to increase explained that it had already doubled its annual number of adoptions and expected that level to hold steady in 1999 and 2000.

States are using an array of innovative programs and practices to move children more quickly to permanency, either to adoptive placement or safe reunification with their biological family. Thirty-two (32) of the 37 states responding to the APHSA survey are using concurrent planning; 29 out of 37 are practicing expedited TPR; 24 out of 37 are using family group decision making; 29 out of 37 are providing post-adoption services; 32 out of 37 are conducting child specific recruitment activities; 34 out of 37 are engaging in partnerships with private agencies; and 17 out of 37 are engaging in partnerships with substance abuse agencies.

States are using a variety of recruitment strategies to move children whose permanency plan is adoption more quickly into permanent adoptive homes. To achieve this goal, states are undertaking a variety of activities, including:

- contracting and partnering with private and community agencies;
- airing weekly television and radio spots, public service announcements, newsletter/newspapers, and media campaigns;
- partnering with groups such as One Church, One Child and Families For Kids and businesses such as Wendy's;

- raising awareness of waiting children by participating in community and religious events;
- using national and statewide adoption exchanges, web sites, and photo listings; and
- targeting and expanding recruitment, and working with foster and adoptive parent support groups and organizations.

These survey results show early signs of the demonstrated broad-based commitment that states are making to achieve the goals of ASFA. APHSA will continue to track state implementation of ASFA and other activities being undertaken to promote the safety, permanency, and well-being of children in the child welfare system. We will provide you with further information as it becomes available. We look forward to continuing to work with the subcommittee to promote sound policy affecting children and families.

NATIONAL COUNCIL OF LATINO EXECUTIVES

A Child Welfare League of America Advisory Group

TESTIMONY SUBMITTED TO

THE HOUSE OF REPRESENTATIVES

WAYS AND MEANS SUBCOMMITTEE ON HUMAN RESOURCES

ON

THE IMPLEMENTATION OF SECTION 1808,

"REMOVAL OF BARRIERS TO INTERETHNIC ADOPTION,"

AMENDMENT TO TITLE IV-E

BY

ELBA MONTALVO

CHILD WELFARE LEAGUE OF AMERICA NATIONAL COUNCIL OF LATINO EXECUTIVES

SEPTEMBER 15, 1998

The CWLA National Council of Latino Executives is honored to have the opportunity to present testimony regarding the implementation of amendments to Title IV-E, "Removal of Barriers to Inter-Ethnic Adoption." An advisory group the Child Welfare League of America, the National Council of Latino Executives (NCLE) represents the concerns of Latino families as they relate to child welfare policy. Over the years, the NCLE has developed working relationships with legislators and with top administrators within the Department of Health and Human Services. Our central mission is to provide leadership to the child welfare field by influencing and shaping policy, conducting research, and evaluating programs and practice to ensure the inclusion of and responsiveness to Latino issues.

While we agree with the general proposition that children from a particular ethnic or racial group should not languish in foster care because the state or county child welfare agencies cannot find someone from the child's same ethnic/racial background, we feel very strongly that if state and counties are not actively and aggressively recruiting both foster parents and potential adoptive parents, then the state is violating the best interest of the child, according to child welfare provisions.

It is generally understood that while permanency for foster children is a paramount goal of the child welfare system, it must be balanced by an equal commitment to place the child for adoption in a home that is as close to the child's background as possible, in order to avoid any traumatic abrupt changes in the child's life. Ethnic, cultural and community concerns are obvious factors that must be considered in matching the child's needs with the needs of prospective adoptive parents.

By shaping recruitment strategies according to cultural and community make-up, it *is* possible to find minority adoptive homes for minority children, who represent a very significant portion of the children in child welfare. Father Clements, a priest and community leader in Chicago, has demonstrated this convincingly over the years. Through Father Clements' *One Church/One Child* innovative adoption program, the State of Illinois taps community institutions in the minority neighborhoods of Chicago for prospective adoptive parents. The State of Illinois can also be commended for its implementation of the federally mandated Burgos Consent Decree, which requires explicit and formal procedures to ensure that Latino children and families receive services in a manner that is in keeping with their cultural, linguistic and community background.

All too often, states ignore or are indifferent to the minority community strengths to provide care and nurturing to their own children. For example, when Buffalo, which is located in Erie County in Upstate New York, and racially/ethnically resembles New York City in many ways, was investigated by The State of New York Department of Social Services, the State made a report that was highly critical of Buffalo's poor adoption practices. Consequently, the State Department of New York and Erie County inaugurated Father Clements' *One Church/One Child* adoption program and the adoption rates for minority children by minority prospective adoptive parents was significantly improved.

We, the National Council of Latino Executives, represent a variety of child welfare agencies that serve the Latino communities across our nation. We believe very strongly that the Federal government must increase the resources for recruitment of all parents (especially minority parents) to ensure that states have a representative and complete pool of adoptive parents, to truly be able to act in best interest of the child.

The Latino community is very concerned that Latino children in child welfare systems are not getting what they are legally entitled to from many states and cities in our nation. The needs of minority children in particular should become a priority for the Federal government. We should remember that the child welfare system was created to serve the needs of children first and foremost.

We believe that additional resources for the recruitment process should be used for the following objectives:

- **To recruit prospective foster parents (80% of public adoptions come from foster parents), and prospective adoptive parents in new, innovative and creative ways, that tap the strength of minority communities, such as Father Clements' *One Church/One Child* program in Chicago and other innovative approaches to adoption.**

- **Recruitment campaigns should utilize ethnic media, community institutions and grass-root organizations in high-need communities to enhance the effectiveness of the State adoption program.**

- **Each State should evaluate the effectiveness of its adoption efforts by utilizing cultural competency criteria, to ensure compliance with the best interest of child welfare legal provisions. When a significant problem is identified in this area, there should be an attempt to bring minority agencies into the child welfare system. This would enhance the minority community involvement and participation and help deliver more culturally competent and effective adoption programs where they are most needed.**

We thank you for the opportunity to present testimony on the implementation of Title IV E, as amended. We look forward to future communication and extend our services as a resource on matters of concern to Latino children and families nationwide.

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DEPARTMENT OF
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TESTIMONY BEFORE

THE SUBCOMMITTEE ON HUMAN RESOURCES OF

THE WAYS AND MEANS COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

FOR THE HEARING ON OVERSIGHT ON IMPLEMENTATION OF THE 1996

INTERETHNIC ADOPTION AMENDMENTS TO THE MULTI-ETHNIC

PLACEMENT ACT OF 1994

SUBMITTED BY

ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SEPTEMBER 15, 1998

TESTIMONY SUBMITTED BY THE ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES TO BE INCLUDED IN THE RECORD OF THE HEARING ON IMPLEMENTATION OF THE INTER-ETHNIC ADOPTION AMENDMENTS, SEPTEMBER 15, 1998.

The Department of Children and Family Services, one of the country's largest child welfare systems, has 45,563 children placed out of their parent's homes and 9,440 children residing with their parents. The Department provides child welfare and child protection activities in all 102 counties of Illinois.

The primary mission of the Department is safety, well-being, and permanency. The Inter-Ethnic Placement Act states definitely that no child shall be denied a safe, stable, loving home no matter what the race or ethnicity of the persons in that home or of the child. IEPA tolerates no delays in finding that home. I could not agree more with that mandate. Safety must always be the principal concern of child welfare professionals - not the race or ethnicity of the child or the caseworkers or the foster parents or the judges. That safety includes the emotional and psychological safety that is transmitted to children when they when they are provided with a loving, stable and safe home from the start, and are not bounced from home to home or held back from adoption while the perfect new parents are found. That is the safety that the Department attempts to provide to each child.

The Cook County Public Guardian represents that the Department has, in the past, "warehoused" children in institutional facilities, sometimes simply because of their race. That is patently wrong. At its peak, the Department provided care for 51,841 abused and neglected children. The sheer volume of children at that time who needed immediate and permanent protection overwhelmed the best and worst of systems and agencies. Because of state laws and backlogged court systems, some children remained without a permanency plan for too long. But, that is the past. The State of Illinois responded to the stresses on its systems by hiring
more caseworkers, requiring higher academic credentials - a minimum of a Masters of Social Work or a Masters in a related field - from supervisory staff, funding more child welfare and other agencies, expanding the number of judges, increasing the number of court reviews, and passing sweeping legislation mandating quicker permanency decisions by all involved.

The Cook County Public Guardian represents that the Department routinely uses race and ethnicity in its decision-making process. That too is patently untrue. On October 1, 1996, I issued a Policy

Guide to all Illinois child welfare professionals re-stating IEPA and demanding compliance with both the letter and the spirit of the legislation. I outlined, once again, that the best approach for complying with the Multi-Ethnic Placement Act, as well as for all of child welfare practice, is to use care and sound clinical judgment in selecting the first placement for a child who requires a foster home. If that first home is identified with care, with valid information as to the child's individual needs and with valid information as to the home's ability to meet those individual needs, then sound clinical judgment will prevail. And, children will be protected, regardless of whom they live with.

In April 1998, the Office for Civil Rights and the Administration for Children and Families conducted a joint audit of 501 randomly identified case files, from which 287 case files were randomly selected for individual scrutiny. For one week, five staff persons from the two agencies reviewed those individual, original case files, which often included more than 1,000 documents each, looking for violations of IEPA. In case after case they found documentation of the complex issues that face child welfare - the drugs, the mental health issues, the physical abuse, the sexual abuse, the instability of families. In not one case did they find a violation of IEPA or even where race was an issue for consideration. In fact, in several cases, they found documentation of successful trans-racial placements - exactly what IEPA intended to accomplish.

Let me tell you about the children that Mr. Murphy describes and provide you with information about the children and about his own office that was not part of his report.

In August 1997, a 16 year old teen was living in the State of Wisconsin. She was living in a highly specialized residential treatment program for sexually aggressive girls not available within the State of Illinois. When her treatment program was near completion, in July 1997, the Department undertook an extensive review of the case to ascertain what type of placement was appropriate for her. Moving children out of a highly structured residential program requires a lot of planning and takes into account many issues that will face the child in a less restrictive environment.

The teenage girl told casework staff that she did not want to return to Chicago, but only after the staff at the residential program in Wisconsin had erroneously told her that a Wisconsin foster family was available for her, in a city near the residential program. Unbeknownst to the Department, this program planned a pie in the sky dream and discussed with her as if it were reality. In fact, there were two crucial problems with this dream: (1) there was no foster home in Wisconsin and (2) the State of Wisconsin had already declined to authorize leaving an Illinois child in Wisconsin when an appropriate foster placement existed in Illinois.

The Department directed mental health professionals to evaluate all of the information that the Department had compiled. They were charged with recommending not just where the child should live, but also the type of parents, community resources and on-going treatment that she would need. They determined that the teenage girl would benefit most from a two parent home, with no other children present, in a quiet community, and with access to specialized mental health services. The Cook County Public Guardian complained to the court and to the Department's own

administrative hearing tribunal. He later withdrew both complaints, as the facts documented the clinical soundness of the Department's decisions.

One crucial fact was omitted in the Cook County Public Guardian's recollection of the facts of this case. One DCFS employee expressed, in a conversation with his attorney, her personal opinion on the status of race relations in the United States. The attorney also expressed his views - that only a white home could provide for the needs of this African-American child because she had been abused in an African-American home. The DCFS employee was not in a decision-making role, and her personal views were not considered by the mental health professionals in reaching their conclusions. The child was placed, successfully, in a non-rural location in Illinois with qualified foster parents. The race or ethnicity of her foster parents did not affect that decision; only their qualifications to deal with a sexually abused, sexually reactive, highly problematic teenager.

Another crucial omission is that the Department contested the allegations of wrongdoing in Mr. Murphy's complaint to the Office for Civil Rights. Rather than undergo an extensive court fight and tie up the limited resources of both the Department and those of the Office for Civil Rights, I agreed to enter into a Voluntary Compliance Agreement wherein my Department would continue to promote and implement both the letter and the spirit of IEPA. Both agencies are now chided for making a decision to use taxpayer's money to ensure compliance with federal and state laws, rather than to litigate for years whether allegations of wrongdoing were or were not true. The Office for Civil Rights received a great deal from this compromise. The Department must now re-train all of its staff and Illinois private agencies - over 15,000 child welfare professionals, develop even more detailed policies and procedures for its case planning and decision-making processes, and be actively monitored by the Office for Civil Rights for one year. The Department also received a great deal - the opportunity to concentrate its work, its time, and its personnel on the care of and clinical decisions for children - without litigious distractions.

As to Monica, the child in Texas, life has not been uncomplicated. She is extremely fortunate in that two sets of qualified, loving foster parents have fought bitterly to have her placed with them for eventual adoption. Monica came into the Department's care at a very tender age. Monica's mother joined the armed forces and was detailed to Texas; Monica was left in Illinois. Attempts to reunify her with her parents were complicated by their geographical isolation from each other. The Department subsequently placed Monica in a Texas foster home so that she could continue and improve the parental relationship.

When Monica's parents decided to surrender their parental rights, the Department determined that the appropriate permanency plan for Monica was to return her to Illinois, to the first foster family, the one with whom Monica had a primary attachment - a key clinical determinant in a child's life. Since the Illinois family had raised her since birth, it would be like returning her to her own parents. The Illinois couple had continued to be involved with Monica when she lived in Texas, and were willing to adopt her. The Cook County Public Guardian's office objected, claiming that the race of the foster parents was the motivating factor in returning an Illinois child to the State of

Illinois, to the first home she knew, to the first parents who cared for her, to a family who showered her with love and safety.

A highly respected clinical review team conducted an extensive review of Monica's life, her needs, her foster families, and her desires. The clinical team interviewed both the Illinois and the Texas foster families, and asked those families to include in the process the family members whom the foster parents wanted to participate in the assessment. The Illinois couple not only made themselves and their entire family available in Illinois, but also traveled to Texas for additional interviews with Monica present. The Texas couple made themselves available. Their daughter - the straight A college student - who lived at home did not participate. Their son - the Air Force recruit - who did not live in the family home did not participate. Certainly, clinicians cannot be reprimanded for not considering adult children who, for whatever reason, chose not to participate in a clinical evaluation to determine whether the family was responsive to Monica's needs.

This team reported that Monica did not want to leave the Texas foster parents, because, as most children, she did not want to change her surroundings. But, there was no question about the emotional attachment that this child had to her Illinois foster parents, and they to her. In fact, the Cook County Public Guardian's own clinical social work expert concluded that Monica should be returned to Illinois because of her strong primary attachment to the Illinois foster parents, which continued unabated despite a two year separation. Mr. Murphy did not have his expert testify at the trial, since her report obviously contradicted his own intentions.

The case is now on appeal - and not because of the Department. Monica's future remains uncertain, caught in a web of legalities and technicalities as both foster parents battle the Cook County Public Guardian for the right to provide Monica a loving and stable permanent family.

Today's children may no longer be strictly of one race or ethnicity. In fact, in many situations, children are in highly mixed families. For the Department, the change in demographics poses a challenge in providing appropriate services. What it doesn't do, contrary to what is suggested, is to provide an opportunity to use race as a basis for discrimination. That is, and would be wrong, even before IEPA existed.

The only basis for considering a child's race is in the context of a highly individualized determination, such as a 16 year old child requesting to stay with persons similar in race or ethnicity to her, or in how the personal needs of an African-American child might differ from those of non-African-American children. But, even when that extremely narrow basis exists, it does not allow discrimination. It merely requires consideration of the child's individual needs in making clinical placement decisions. For the 16 year old, it might mean a white family who allows her to continue openly a relationship with her African-American friends or a white family who learns special hair care. It might also mean an African-American family who will do the same. What IEPA definitely means is that whichever family is available first to meet her needs becomes her family, regardless of their race or hers.

The Department of Health and Human Services is the appropriate federal agency to oversee implementation of IEPA. It is the agency charged with overseeing the care of abused and neglected children. It is familiar with the processes and issues confronting child welfare agencies. It understands the complexities of dealing with human frailties and imperfect social sciences in predicting the future of children and their families. It knows where the tragedies are, how to prevent them, and the limits on impacting personal behavior, familial relationships, and social work practice.

African-American children deserve the same treatment as every other child. They are entitled to food, clothing and shelter. They are entitled to care and love. They are entitled to a family who cares for them safely, who loves them, as they love their own biological children, who respects their similarities and differences, who recognizes their individuality and who fosters their development as America's future. IEPA requires no less.

Some individuals disagree with the policies of IEPA, and under the First Amendment, they are entitled to their opinion. The Department, however, does not make decisions for personal reasons or bases them on personal opinions. It makes professional decisions, based on sound clinical information and best social work practices. Whether an employee agrees or disagrees with IEPA, he or she is required to comply with IEPA. That is the law at the Illinois Department of Children and Family Services, and is and will continue to be enforced throughout Illinois's child welfare system.

Thank you for the opportunity to share the Department's record on IEPA and to correct the factual inaccuracies presented to you.

Testimony of

ZENA OGLESBY, JR., MSW
Founder and Executive Director
INSTITUTE FOR BLACK PARENTING

Before the

Subcommittee on Human Resources
of the
Committee on Ways and means

Regarding

Implementation of the 1996 Interethnic Adoption Amendments
To the Multiethnic Placement Act of 1994

September 15, 1998

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Mr. Chairman and members of the Committee, thank you for the opportunity to address you on the issues related to the implementation of the 1996 Interethnic Adoption Amendments to the Multiethnic Placement Act of 1994.

My name is Zena F. Oglesby, Jr., founder and executive director of the INSTITUTE FOR BLACK PARENTING, the first fully licensed African American adoption and foster care agency in Southern California.

Creation of the INSTITUTE FOR BLACK PARENTING:

Between the years of 1980 through approximately 1986, the State of California spent substantial amounts of money to fund community based adoption recruitment programs, called the Multicultural Home Recruitment Programs (MCHRP). These programs were churches, Urban Leagues and adoptive parent groups.

These projects were enormously successful in doing what they were funded to do. They recruited literally thousands of African American and Latino families who were interested in adoption. However, one major problem seemed to be insurmountable. Groups and organizations that were not licensed to provide the full processing of the families that were recruited operated these programs. The families were referred to the public adoption agencies that were licensed in the families' general area.

Many of these agencies were not funded or equipped to handle the huge influx of so many new families. Therefore, many families were never contacted, others were held up for years waiting to be processed, and still others were denied approval by culturally insensitive social workers. In sum, the program was not as successful as hoped.

The State Department of Social Services held a series of community meetings, in which community people who worked so hard on recruiting families vented their frustration. They were concerned about having the families they produced dropped due to red tape, not lack of interest. The State personnel, to their credit, recognized that some of the problems could be solved by a different group of strategies:

1. Creating a strong collaboration between public agencies and community groups.

2. Centralized State recruitment efforts supported by an "800" number. This allowed referral of families to public and private agencies that were in a position to respond expeditiously to interested applicants.

3. The creation of specialty agencies that could both recruit minority families and process them so that they were ready to receive children in a much-abbreviated manner.

The INSTITUTE FOR BLACK PARENTING (IBP) is one of those specialty agencies. Over 500 adoptions and 2000 foster child placements later, we are uncertain of our role and even our need to exist.

IBP Position on Transracial Adoption:

The National Association of Black Social Workers, of which we are a member, has been vilified for being anti-transracial adoption. Media people seem to enjoy citing their interpretation of the meaning of a statement made by the organization in 1972, which took a strong anti-transracial stand. The same media will not print the many modifications of that position taken by this organization (5 modifications over the last 26 years).

These modifications simply state that all efforts should be made to place a child of color with extended family first and people from the child's community before considering a transracial adoption. The Multiethnic Placement Act of 1994 made the practice of priority of placement illegal. Many of us felt that if this principle were implemented with some common sense, it would not have been offensive to anyone. That common sense would have included not removing a child from any

parent who had the child for prolonged periods of time simply to make a racial match.

IBP is not against transracial adoption, however, we are for same race placements when families can be found, processed and are available for immediate placement. We sincerely believe that not nearly enough effort has been made to implement the second half of the Interethnic Placement Act, which mandates that families be recruited from the communities from which the children come. There continues to be little evidence that any major effort for the recruitment and retention of families of color is being made in the areas with the highest percentage of children of color awaiting adoption.

We categorically believe that the State (any state) makes a poor parent for any child. We would not wish, and do not wish any child to grow up in foster care, when a loving home is available. We also believe that when a child is placed with a foster parent and left there for a prolonged period of time, that the foster parent becomes the parent of the child, and should only be superceded by biological family members.

We also believe that there are virtually unlimited numbers of families of color who would respond, as cited by Dr. Robert Hill of Morgan State University, with numbers so high that every child of color could have 60 families interested in adoption who were waiting for him or her. This could only occur if the antiquated adoption system were somehow made user-friendly.

Practice Level Interpretations of the Law:

I am active in the State Adoption community. This affords me the opportunity to attend many training meetings, seminars and lectures on adoption-related subjects. I am sometimes privileged to be asked to participate in said training with representatives of federal, state and county level governments and various legal organizations. All of us are attempting to define what exactly can and cannot be done in placing children under this act. Let me give just two of the interpretations:

1. If an agency has an equally qualified African American family and an Anglo family waiting for a child and an African American child is available, how is a social worker to make a decision under this act?

   Answer Given: All things are seldom equal. If race is the only difference, you could flip a coin.

2. Culture was stated to be one area that remains acceptable for consideration. The question was, "How can an infant placement worker use culture in the decision to place a baby?"

   Answer Given: Culture is learned. Therefore, you place the child of color in a transracial adoptive placement at birth, and they will learn the culture of the adoptive family. Thus, culture for an infant can be a non-issue.

My giving of these examples is not meant to demean or to criticize anyone. My purpose is to illustrate the high level of confusion that exists among the rank and file social workers. We hear that a lifetime decision that we are to make, in the best interest of the child, can be reduced to a coin flip. We are asked to believe the placing of a child at birth will somehow negate his or her race, or that the race no longer matters in the real world.

Our Question and Questions of Many Social Workers:

- Is it illegal to place a child of color with a family of color?
- If not, how does a social worker decide without the use of race?
- If it is illegal to place a child of color with a family of color, is it also illegal to place a white child with a white family?
- If not, why are white children not being offered to families of color at the same level as

children of color are offered to whites?

- If recruitment is mandated for families from the communities where the children are from, which children are we to place with them if race cannot be a consideration?

- What role does religion play in a placement decision? It has been suggested that religious preference be permitted. Who determines the religion of the child? The government's answer has been that the biological family cannot make the determination. Then who does?

Possible Solutions:

Something must be done to clarify the government's position on the use of Families of Color in the placement of children for adoption and foster care.

The second half of the law, which mandates recruitment of families that represent the children, must be brought to the forefront and acted on, not left as an afterthought.

Religious preferences must be explained. It should be clear under what conditions religion can be used in placement decisions.

Roughly 50% of the children growing up in foster care are white. They cannot continue to be ignored while we haggle over the merits or demerits of transracial adoption.

Finally, there has to be a genuine good faith effort to facilitate the collaboration of public and private agencies throughout the country to place all children awaiting homes. This effort must include all the underserved communities of color who want and can parent children to whom they did not give birth. The Federal Government can do much to demystify the issues around the legislation being discussed here today.