

**NY Law School Justice Action Center & NYC CAP  
5<sup>th</sup> Annual Adoption Conference 4/25/08**

**WAITING IN AMERICA: FOSTER CARE TO ADOPTION  
KEYNOTE**

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**INTRODUCTION**

**Adoption always embattled – despite fact seems to many of us so positive for kids in need**

**Today though, coming from IA battlefield, refreshing to look at US domestic Adoption from Fcare**

**– IA is under siege, with numbers down**

**– US developments, such as MEPA, ASFA, concurrent planning model – we're using as weapons in IA battle**

**Will talk today about**

**1. Significant positive steps in U.S.: Why positive, What kind of progress being made**

**2. Resistance and Reaction: Counter-Revolution: Domestic Adoption also under seige, MEPA & ASFA under siege**

## **I. PROGRESS**

### **Definition:**

- not just Adoption,
- but freeing up kids from Birth Ps, and moving earlier to Adoption

### **Examples of Progress: 2 Major Federal Laws in mid-90s**

- MEPA 94/96: remove barriers to Adoption posed by Race
- ASFA 97: focus more on BIC, move more kids faster from Problem Homes to Adoption

**Many comparable changes in State Law not here detailed**

### **Progress because:**

#### **– Ideology:**

**Reduce power of Idea that Child “belongs” in essentialist sense to Birth Parent/Community**

**VS**

**Child as independent Human with Rights – Key right to Nurturing Home**

#### **– Practice: Many important changes in law:**

- Both MEPA & ASFA More focus on BIC & Recognition that BIC means more often Earlier Permanency
- MEPA eliminates one source of delay – race matching
- ASFA:
  - Earlier Removal & TPR (Safety focus, RE not always required, TPR mandated if Egregious Circs & 15/22)
  - RE two-way: both for FP and for Adoption
  - Concurrent Planning approved: Means earlier permanency for many kids
- These changes in Ideology & Practice by MEPA & ASFA should mean more kids move faster out of Harmful Bio Homes, and into Adoptive Homes, with less damage
  - Easier to Place
  - Better prospects for kids

**Progress Actually Achieved? Yes to some degree, though more limited than might hope**

– Gelles will talk re ASFA

– My view generally

- Limited in part bc Law not Magic, takes time, esp when meets Resistance
- EG: MEPA only recently vigorously enforced: 2003 1<sup>st</sup> decision (in my Mats) but \$1.8 million penalty for violation likely to make diff, and law has been making difference in practice (reducing delays... harder to tell.. Too many causal factors)
- But still:
  - ASFA seems to have led to increased adoptions
  - even though parts of it like expedited TPR, RE bypass, not being used
  - Helping produce different attitude in Court decisions...

## II. RESISTANCE & REACTION

### A. Reform moves get undermined:

- ASFA only partially being used
- Concurrent Planning: Around before ASFA: yet most feel hardly any Ch Welf system really doing it in real sense even if saying are

### B. Counter-Revolutionary “Reform” Moves Bypassing, doing EndRun around ASFA/MEPA

#### 1. Community Partnership/ Alternative Track Systems

- Who could be against quality
- Depends on how Designed/Implemented
- But basic idea of many such systems: Divert some 60% of “minor” cases from Coercive CPS system
  - I worry that many of the kind of cases posing BIC issues, parents need coercive pressure eg for drug treatment, and kids may need Removal & TPR

#### 2. Racial Disproportionality Movement

- Hot
- Who?:
  - Casey Fnds have jumped on; other organizations created like “Race Matters Consortium”
  - Enemies of MEPA, ASFA; Friends of Fam Pres
  - Write articles, hold symposia
  - Charlie Rangel in Congress got very sympathetic GAO Rept
- What do: offer free Consultation to state & local CPS systems

- Nature of Movement Claims

- **Race Disp a Problem – meaning disp #s in Foster Care (& at each stage: removal, TPR)**
- **Problem assumed to be Discrimination**
  - **Based on suspect NIS (Nat’l Incidence Studies) claim that CAN rates same**
- **Solutions then: Reduce Discrimination by:**
  - **Reduce #s of Minority Race Kids Removed, TPR’d**
  - **Train Social Workers to remove fewer**
- **MEPA & ASFA seen as part of the Problem: bc push for removal, TPR, placement**
  
- **Problems with the Movement:**
  - **If Removal Rate etc. based on Actual CAN, then kids at risk if reduce Removal**
  - **Many reasons to think CAN is indeed higher in Racial Minority Groups – so say careful researchers like Richard Barth:**
    - **Higher rates of CAN predictors like poverty, single status, substance abuse, mental illness**
    - **Higher CAN death rates (where hard to say official reports biased)**
    - **Higher self-report rates**

**CONCLUSION: The battle goes on. Important that you are here. Much to learn from speakers. Much to do.**