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Court-Ordered Foster Family Care Reform: A Case Study

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The authors examine the implications of G. L. v. Zumwalt, a case that resulted in a far-reaching consent decree that mandates specific reforms in policy and practice to be implemented by a public social welfare agency in its delivery of services to foster children and their families.

The 1970s saw an unprecedented increase in federal civil rights litigation on behalf of pre-trial detainees, prisoners, mental patients, and the mentally retarded. Over the course of the decade these lawsuits have had a profound effect upon the way such persons subsequently were treated by state and local governments. Court orders, for example, required extensive physical renovations of prisons, jails, and mental institutions; in some cases unsuitable facilities were even closed by court decrees. Judicial review held up to close scrutiny—often for the first time—the administration of these important governmental services [1].

Until recently, however, virtually no similar litigation was brought to affirm the constitutional rights of foster children to adequate care. Litigation in this area usually dealt with only one or two foster children, rather than an entire

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system, and focused on relatively narrow issues [2]. Moreover, most of these cases sought damages rather than a judicial order to reform the foster care system [3].

In *G. L. v. Zumwalt*, for the first time, a federal court approved a consent decree mandating specific widespread improvements in the policies and practices of the entire foster care system of a major metropolitan area—Jackson County, Missouri, which encompasses Kansas City [4]. A *consent decree* is a binding judicial order resulting from an agreement negotiated between the parties to the lawsuit. In this respect, the defendants in *G. L.* deserve recognition for voluntarily agreeing to the changes and to being bound by the order that resulted from the negotiations. The *G. L.* decree marks a—perhaps dramatic, perhaps evolutionary—change from past judicial noninvolvement in this area that has important implications for the child welfare community [5]. Because of its significance, the case was widely reported in the press [6], and, in a highly unusual step, the judge directed that the consent decree be published in the official national reporter of the federal district court [7].

The *G. L.* case may be a harbinger of the future. Indeed, just four months after the *G. L.* decree was approved, another federal court decree was issued placing the operation of the foster care system of an entire state under federal court supervision [8].

This article places the *G. L. v. Zumwalt* case in context by examining its background, the individual factual charges that led to the filing of the complaint, the legal framework that provided the basis for the court's involvement, the evidence uncovered concerning the treatment of foster children by the agency, and the specific provisions of the consent decree. The article concludes with a brief discussion of the implications of the case for the child welfare field, intended to provide child care professionals with information about how such lawsuits can arise, why they are heard by the courts, what kind of evidence is significant, and what the results of this new development can be.

Background of the Case

In the mid-1970s, attorneys from a local Legal Aid Society who were regularly assigned as guardian ad litem to represent abused and neglected children in juvenile court proceedings became alarmed that many children who had been placed in foster care for their own protection were not receiving the care that the state had an obligation to provide. Children who were removed from their biological families, often because of allegations of abuse and neglect, were further harmed, physically and emotionally, while in state custody.

The following are examples of some of the children represented by Legal Aid lawyers who became the named plaintiffs in this lawsuit [9]:

G. L. was a 3-year-old child who had been in foster care since he was an infant. Although at an early age he had exhibited severe behavior problems that were known to the foster care agency, no effort was made to provide counseling to assist his foster parents in coping with his problems. Five months after he was placed in his second foster home he was admitted to a hospital emergency room with first- and second-degree burns on his hands, massive bruises on his buttocks, and other lacerations scattered over his body. A subsequent investigation determined that the injuries were caused by his foster parents. Before the abuse occurred, the foster parents had tried unsuccessfully to obtain help from the agency because of the difficulty they were having with the child.

D. T. was a 15-year-old foster child. Her foster mother repeatedly, and in the presence of other foster children, told the child, who was white, that her mother was a tramp and a whore because she had given birth to another child by a black man. The foster mother also refused to obtain medical attention for D. T. despite her frequent fainting spells, dizziness, recurring headaches, and menstrual problems. As a result, D. T. suffered a ruptured ovarian cyst that inflamed her appendix; an emergency operation was necessary for the removal of one of her ovaries and appendix.

When he was placed in foster care, T. W. was a 3-year-old child with a speech impediment, language problems, and learning disabilities. At school-age, he was enrolled by the agency in a special education program. The school told the agency that his foster mother refused to cooperate with the school program, which required that she supplement the child's education at home. The foster mother threw the teachers out of her house when they tried to show her how to work with T. W., and subsequently told the agency that the teachers would not be allowed in her house again. The agency was also informed by the school that the foster parents were physically abusing the child, who frequently came to the school with unexplained bruises. Furthermore, during this time, T. W.'s foster father was suspected of having sexually abused K. W., T. W.'s sister, who was about 6 years old at the time. Yet, the agency, which had noted that the foster mother was disorganized and had an unclean home, did not place the children in a new foster home, allowing both to remain in this home for more than a year-and-a-half, during which time a worker rarely visited the foster home despite knowledge of these very serious problems.

R. M. was a 3-year-old child with emotional problems who was moved six

times by the agency during the first six months of placement. Although he had obvious and severe behavioral problems, there was no evidence that the agency had provided any special assistance to any of the child's foster parents or any treatment for the child. His failed placements included one family that had specifically informed the agency beforehand of its inability to handle children with behavioral problems, and another family that had four of its own children and eight other foster children at the time R. M. was placed.

Frustrated by their inability to provide help for children such as those we have described, either from the agency or in individual juvenile court proceedings, lawyers for Legal Aid turned to the federal court. The Legal Aid lawyers subsequently were joined by lawyers for the Children's Rights Project of the ACLU.

In the lawsuit that the attorneys filed they claimed that these cases were not unusual. The amended complaint charged that harm to foster children was inevitable because the foster care agency did not adequately select, license, train, and supervise foster parents; it did not match foster children with suitable homes; it overcrowded foster homes; it failed to provide adequate medical, psychological, and educational services; and it assigned excessive caseloads to child care workers [10]. The complaint sought to have each of these problems rectified, and sought monetary damages on behalf of each of the named plaintiffs [11].

The Legal Basis for Judicial Involvement

Prior to *G. L.*, a federal court had never before dealt with a class action lawsuit that sought such sweeping changes in a foster care system as those described above, based upon allegations of violations of foster children's constitutional rights. It was therefore necessary to establish a legal basis for the federal court, which has only limited power, to entertain the lawsuit.

A doctrine of key importance for the *G. L.* lawsuit grew out of litigation on behalf of mentally retarded persons. In a famous case concerning the Willowbrook State School for the Mentally Retarded in Staten Island, New York, Judge Orrin Judd enunciated a new doctrine called simply "the right to freedom from harm." Judd held that "a tolerable living environment is . . . guaranteed by law" for persons who are taken into state custodial care [12]. Two years later, in approving a consent judgment in that case, Judd went even further: "protection from harm requires relief more extensive than this court originally contemplated, because harm can result not only from

neglect but from conditions which cause regression or which prevent development of an individual's capabilities" [13].

Judd's doctrine of "the right to freedom from harm" is tailor-made for foster children. The purpose of foster care is to provide care and sustenance to children whose parents have been unable, for one reason or another, to care for them [14]. Foster care places the government in the role of a parent. Having assumed the mantle of protector, the state can hardly escape responsibility for behaving in ways that replicate the conduct of harmful parents [15]. Yet there were two possible distinctions between the *G. L.* case and cases in which the protection-from-harm doctrine was developed.

The first was that, in *G. L.*, much of the harm was inflicted by licensed foster parents, who are not technically state employees. Nevertheless, the conduct of foster parents is the responsibility of the state that selects and licenses parents and should also train them. The state places the foster child, for whom it has legal custody, with the foster family and is obligated to supervise the home and the care the child receives. The judge in *G. L.*, therefore, refused to credit the distinction regarding nonemployee status with having any legal significance [16].

The second possible distinction was that the foster children in *G. L.*, unlike the plaintiffs in the Willowbrook case or other such cases, were not in a single institution where state supervision is more direct and abuses may be more readily apparent. But foster children are not immune from abuse simply because they usually are not institutionalized. *G. L.*'s third-degree burns were no less severe because they occurred in a foster family's home rather than a dormitory or cell. The critical factor that unites foster care with other state custodial arrangements is that in both situations the government has undertaken a special caretaking relationship with the individual.

In sum, by the late 1970s, the evolution of constitutional law under the Eighth and Fourteenth Amendments had moved to encompass protection from mistreatment for persons in state custody. The corollary evolution of the doctrine of the right to freedom from harm made it almost inevitable that the federal court would assert its power to hear the *G. L.* case. Indeed, it would have been anomalous for the federal court to hold that the plaintiffs in *G. L.*, who were innocent children, had less constitutional rights to protection while in state custody than adults [17].

Marshalling the Evidence

The plaintiffs in *G. L.* had to do more than show that they had a constitutional right to freedom from harm. To prevail in a civil rights class action, sporadic

and individual violations are not sufficient; there must be a pattern and practice of injury [18].

In *G. L.*, plaintiffs' attorneys attempted to meet this burden by commissioning an empirical study of the treatment provided to foster children. A random sample was selected of 194 children who had entered the foster care system within the last five years. Casereaders (who were graduate students in sociology) used a 61-page survey instrument to record information from 715 case files. The files included one for each sample child, one for the child's biological parents, and one for the first and second foster homes (if the sample child had been placed in more than one home). Data were collected concerning key elements of proper foster care services such as those set forth in nationally recognized standards of foster care services as promulgated by the Child Welfare League of America (CWLA) [19] and the American Public Welfare Association (APWA) [20]. The data were then analyzed and reported in a 105-page study filed with the court [21].

The results of the study demonstrated that the mistreatment that *G. L.*, *D. T.*, *T. W.*, *K. W.*, and *R. M.* received was not atypical. In every key area of service significant breakdowns in the delivery of essential care occurred. Key findings of the study included the following:

Stability of care [22]

1. Twenty-nine percent of the sample children were in four or more homes (in less than five years).
2. Thirty-one percent of the sample children had four or more caseworkers.
3. The longer a child remained in care, the more likely he/she was to experience movement from home to home and turnover in caseworkers.

Provision of essential services to foster children [23]

1. In 20% of the cases in which the caseworker noted a physical, emotional, or intellectual problem, the agency failed to provide services to address that problem.
2. In 74% of the cases there was no record of face-to-face caseworker visits with the child during the past year. In 25% of the cases there was no record of any caseworker contact with the child, even by telephone.
3. A large number of cases lacked medical records. In 59% of the cases, there was no record of a medical examination in the past year. In 87% of the cases, there was no documentation of a dental examination in the past year.

Permanency planning [24]

1. Sixty-three percent of all open cases were in care for over two years.

2. The most common case plan for these cases (55%) was long-term foster care, and only 23% of these children were teenagers.

3. The study identified two possible explanations for the high number of children in long-term foster care: (a) the agency rarely pursued adoption as an alternative—only 9% of the sample children had adoption as a case plan (89% of these children were under the age of six); and (b) the agency did little work with biological parents. In 77% of the cases there was no record of caseworker contact with the parent in the past year, and written service agreements were entered into with less than 30% of the parents during that time.

Suitability of the foster home and licensing, supervision, and training of foster parents [25].

1. Forty-three percent of the sample children were placed in a foster home described as unsuitable during their first or second foster home placement. Foster homes were denoted by the study, based upon caseworkers' notes in the case files, as being "unsuitable" because (a) the foster parents had a known history of abuse or neglect; (b) placement of the sample child in that home created a clear danger to the child; (c) the foster parents failed to provide essential care to foster children; or (d) the foster family was known to lack the skills to care for a child with the characteristics of the sample child.

2. Not only were many of the foster homes in which children were placed described as unsuitable, but practices regarding licensing, training, and supervision of the foster families were also found to be inadequate.

a. Placement of a sample child in violation of the restrictions set out in the foster home's license occurred in 14% of the cases for the first foster home placement, and in 15% of the cases in the second foster home.

b. In 92% of the cases there was no recorded caseworker contact with the first foster family in the past year; this was true in 89% of the second foster families.

c. Fewer than 3% of the foster parents had received any foster parent training.

Investigations of suspected abuse or neglect of foster children [26].

1. The study identified 28 cases, 14% of the sample, involving 35 separate incidents, in which there was either a referral for an abuse or neglect investigation of a sample child while in a foster home, or an indication by a caseworker of a clear suspicion that abuse or neglect was occurring to the

sample child in a foster home, or an indication to the same effect by the casereader from a review of the case file.

2. In 63% of the suspected abuse or neglect cases the agency did not refer the case for investigation, although social service workers are mandated reporters. In over 43% of these cases there was no record that even an internal investigation of the suspected child mistreatment occurred.

The Consent Decree

The 44-page consent decree in *G. L.* marks the first time in the United States that high quality standards of foster care administration were mandated by federal court order. The standards of the *G. L.* decree were designed to prevent the systemic breakdown in child protection that was identified in each plaintiff's case and further documented by the study of a random sample of case records.

The decree covers 14 different aspects of foster care service, ranging from licensing of foster homes to medical care and counseling, and from permanency planning to foster parent training.

Many of the consent decree provisions incorporate the standards of the CWLA and APWA. What distinguishes the provisions of the decree from these standards is that the decree is legally binding and can be enforced by the federal court, while the CWLA and APWA standards are only advisory.

Among the important aspects of the decree, several stand out as being particularly noteworthy:

1. An absolute prohibition against the use of corporal punishment of children in foster care, and mandatory training for foster parents and social service staff members in the prevention of abuse and neglect in foster care [27].

2. A limitation on the size of caseloads carried by child welfare social service workers, the maximum figure being fixed as 25 [28]. Similarly, the consent decree specifies a maximum ratio of one supervisor to seven social service workers [29]. The decree also mandates extensive preservice and inservice training for all social service workers and the supervisory staff [30].

3. Social service workers must visit each child in the foster home at least once every two weeks; a telephone contact is not acceptable in lieu of the actual home visit. During the home visit the caseworker is to speak with the child in private as well as in the presence of the foster family [31]. Weekly visits between the child and the biological family are required except where specific factors make such visits inadvisable or physically impossible, and this is noted and incorporated in an approved case plan [32].

4. Each child is to be enrolled in a health maintenance organization or prepaid medical plan [33]. Each child must receive a physical examination within 24 hours after coming into care, and an eye, hearing, and dental examination within 30 days [34]. A treatment plan is required for the correction of any identified problem [35]. Foster parents are to be assisted in meeting a child's medical needs, including the provision of baby-sitting services and transportation expenses, when necessary. When no other arrangements are possible, the agency bears the final responsibility for ensuring that the child is taken for the required examinations and treatment [36].

5. In addition to the treatment of medical problems, the decree requires the agency to assess the psychological, emotional, and intellectual needs of each foster child within 30 days of the child's coming into care. If a problem is identified, the agency must ensure that the child receives adequate professional services [37].

6. A uniform case record system is to be developed to capture essential information about foster children, their biological parents, and the foster parents in a concise and reliable way [38].

7. A preliminary case plan must be developed for each child within 30 days [39]. Long-term foster care is an inappropriate plan for any child under the age of 15, absent special circumstances [40]. Similarly, without special reasons, the agency may not continue to plan to return a child home when there has been no contact between the parent and child for six months [41].

8. The decree mandates supervised preplacement visits in the foster home and an overnight preplacement visit whenever possible [42].

9. Careful matching of the foster child with the foster family is required, and in no case may the placement of a foster child violate the licensing restrictions or stated preferences of the foster parents [43].

To ensure that all of the foregoing reforms are fully implemented, the decree provides several enforcement mechanisms. The defendants must provide plaintiffs' counsel with semiannual reports on the implementation of key provisions of the decree and the status of foster children in Jackson County. Plaintiffs' counsel also has quarterly access to case records to monitor implementation and the right to seek the assistance of the court to enforce the provisions of the decree. This is an essential element of the decree, for without these provisions there would be no mechanism to make the promise of the decree a reality for these children. It also means that the responsibilities of plaintiffs' counsel do not end with having reached a final decree. As much time can be spent in monitoring and ensuring the full implementation of a decree such as this one as in preparation for a trial, and the decree provides

for this role by plaintiffs' counsel for at least five years. In fact, case readings similar to the type discussed under "Marshalling the Evidence" will be necessary to monitor the implementation of many sections of the decree, as well as frequent communications and discussions with the defendants to resolve problems with implementation. If such problems cannot be resolved, either party may petition the court to enforce or modify specific provisions of the decree.

Implications of the *G. L.* Case

The *G. L.* consent decree may have been the first comprehensive court order regulating a large foster care system, but it is hard to imagine that it will be the last [44]. Indeed, the federal judge who approved the decree directed that it be reported nationally "because of the assistance this case may render other courts considering similar questions" [45].

Although judicial involvement may be considered by some to be an unnecessary intrusion, in the opinion of the authors of this article, this trend is potentially beneficial to those dedicated to the improvement of the child welfare field.

The judicial process is a way of setting enforceable minimum standards for the child welfare field. Through the *G. L.* court decree, the professional standards set by voluntary organizations such as the Child Welfare League of America and the American Public Welfare Association, which are not by themselves enforceable, have the power of law.

Enforceable standards are a valuable aid to hard-pressed child welfare administrators who often must deal with pressure for budget-cutting at the expense of the welfare of children. Child welfare professionals all too frequently have been driven to despair by the actions of federal and state legislatures with respect to the provision of adequate funding for child welfare services. Before now, local administrators often lacked the power to fight successfully for additional resources even when convinced that they were necessary. An administrator under court order, however, is frequently in a much better position to negotiate with the legislative or executive branch, since failure to provide sufficient funding to comply with a judicial decree can subject the agency and the administrator to enforcement proceedings for violation of a federal court order, as well as to adverse publicity. A court order, therefore, provides an added incentive to provide adequate funding. Viewed in this light, court decrees are a valuable tool for obtaining funding for the important, but often politically powerless, constituency served by the child care community.

Another benefit of the judicial process is that it heightens public awareness and concern for the welfare of foster children. In *G. L.*, the consent decree sparked favorable news coverage and editorials for improvement in the system, and, in addition, helped to influence the state legislature to establish a state children's services commission that was directed, among other things, to report annually to the legislature concerning compliance with the terms of the decree [46].

De Tocqueville observed in 1835 that judge-made law in America is an important source of social change [47]. It has taken over a century for that observation to become true for children in foster care; now that it has occurred, there is far more reason for child welfare professionals to welcome this dynamic development than there is to fear it. ♦

Notes

1. For a comprehensive discussion of these opinions, see the following American Civil Liberties Union handbooks: David Rudovsky, Alvin J. Bronstein, and Edward I. Koren, *The Rights of Prisoners* (New York, NY: Avon Books, 1983); Bruce J. Ennis and Richard D. Emery, *The Rights of Mental Patients* (New York, NY: Avon Books, 1979); Paul K. Friedman, *The Rights of Mentally Retarded Persons* (New York, NY: Avon Books, 1976).
2. See, e.g., *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816 (1977) (concerning the rights, if any, of foster parents to a hearing prior to the removal of foster children); *Drummond v. Fulton County Department of Family and Children's Services*, 563 F.2d 1200 (5th Cir. 1977) (en banc) cert. denied, 437 U.S. 910 (1978) (same); *Moore v. Sims*, 442 U.S. 415 (1979) (concerning the constitutionality of Family Court procedures leading to placement in foster care). Some cases raised broader issues but without success. See, e.g., *Child v. Beame*, 475 F. Supp. 194 (S.D.N.Y. 1977) (concerning the constitutional right to adoption for all foster children).
3. The major cases are catalogued in Douglas J. Besharov, "Malpractice In Child Placement: Civil Liability for Inadequate Foster Care Services," *Child Welfare* LXIII (May-June 1984): 195-204. See also *Doe v. The City of New York*, 649 F.2d 134 (2d Cir. 1981); and 709 F.2d 782 (2d Cir. 1983), cert. den., 104 S. Ct. 195 (1983), reinstating a jury award of \$225,000 to a former foster child who was sexually abused by her foster parent.
4. At the time that the decree was entered, there were 1,200 children in foster care in Jackson County, Missouri.
5. Several previous attempts at establishing substantive constitutional protections for foster children had been unsuccessful. See, e.g., *Child v. Beame*, 412 F. Supp. 593 (S.D.N.Y. 1976); *Joyner v. Dumpson*, 712 F.2d 770 (2d Cir. 1983). *Lynch v. Dukakis*, 719 F.2d 504 (1st Cir. 1983) and *Gary W. v. State of Louisiana*, 564 F. Supp. 1030 (W.D. Mo. 1983) were the only two previous federal court orders that ordered improvements on behalf of foster children. However, neither of these cases provided the type of specificity for changes in policies and practices as did the order in *G. L. v. Zumwalt*. By contrast, malpractice cases, primarily brought in state courts, which seek damages for inadequate foster care services, are by now commonplace. For a thorough discussion of this topic see Douglas J. Besharov, *supra* n.3 at 195-204.

6. See, e.g., "Foster Care Program Now To Be Enforced By Missouri Courts," *Kansas City Times* (March 22, 1983); "State Foster-Care Revision Ordered," *The St. Louis Post Dispatch* (March 27, 1983); and nationally, see, e.g., "Court Specifies Foster Children's Rights in Missouri," *The New York Times*, March 27, 1983.
7. 564 F. Supp.1030 (W.D. Mo. 1983).
8. *Joseph and Josephine A. v. New Mexico Department of Human Services*, 575 F. Supp. 346 (D.C.N.M. 1983) (denying motion to dismiss complaint, denying defendants' motion for summary judgment and the consent decree); see also *Lynch v. Dukakis*, 719 F.2d 504 (1st Cir. 1983) (upholding court order setting limits on caseload size for foster care and protective services agency).
9. The complaint named each of these children as plaintiffs but, as a class action lawsuit, sought changes in policies and practices on behalf of all present and future foster children in Jackson County, Missouri.
10. *G. L. v. Zumwalt*, Civ. No. 77-242-CV-W-3 (W.D. Mo.) (Complaint)
11. As a part of the settlement that resulted in the consent decree, the damage claims were waived.
12. *New York State Association for Retarded Children v. Rockefeller*, 357 F. Supp. 752, 764 (E.D.N.Y. 1973). Under the protection-from-harm doctrine, Judge Judd concluded that residents of Willowbrook were entitled, at the least, to the following rights: protection from assault by fellow patients or staff, the elimination of conditions which offended "human decency," adequate medical care, an opportunity for exercise, and the necessary elements of basic hygiene.
13. *New York State Association for Retarded Children, Inc. v. Rockefeller*, 393 F. Supp. 715, 718 (E.D.N.Y. 1975). The roots of the right to freedom-from-harm doctrine are contained in court decisions from the 1960s and early 1970s in which courts used the Eighth Amendment to the U.S. Constitution, which includes a prohibition against cruel and unusual punishment, as a benchmark for measuring the legality of prison conditions. The amendment was invoked to prohibit such inhumane practices as whipping, prolonged solitary confinement in intolerable conditions, overcrowding, and lack of adequate food, shelter, or medical care. See, e.g., *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968) (corporal punishment); *Wright v. McMann*, 387 F.2d 519 (2d Cir. 1967) (solitary confinement); *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970) (overcrowding); *Hamilton v. Love*, 328 F. Supp. 1182 (E.D. Ark. 1971) (adequate clothing, shelter, health care). For a full discussion of the rights of prisoners to be free of cruel and unusual punishment, see *The Rights of Prisoners*, supra, n.1, at 19-30 and 107-117. In 1973, a Texas federal court extended the logic of these decisions to children. The court's opinion condemned conditions in a juvenile detention facility that were "so severe as to degrade human dignity and were not justified as serving any necessary purpose." *Morales v. Turman*, 364 F. Supp. 166, 173 (E.D. Tex. 1973).
14. When a child is taken into foster care the state invokes its *parens patriae* authority. The *parens patriae* doctrine is an outgrowth of English law granting the king authority to act as "the general guardian of all infants, idiots and lunatics." As sovereign, the king under English law was responsible for the care of "all persons who have lost their intellects and become incompetent to take care of themselves." J.W. Blackstone, *Commentaries*, 304.
15. One court put this thought as follows: "(When) a state assumes the place of a juvenile's parents it assumes as well the parental duties and its treatment of juveniles should so far as can reasonably be required be what proper parental care would provide." *Nelson v. Heyne*, 491 F.2d 352, 360 (7th Cir. 1974). Another court made the same point when it

held that it would be "ludicrous" if the state were permitted to perpetuate the same evils that foster care was designed to prevent. *Brooks v. Richardson*, 478 F. Supp. 793 (S.D.N.Y. 1979).

16. *G. L. v. Zumwalt*, No. 77-0242-CV-W-3, Order denying motion to dismiss at 2 (W.D. Mo. May 2, 1979). See also *Bartels v. County of Westchester*, 76 A.D.2d 517, 429 N.Y.S.2d 906 (N.Y. App. Div. 1980) and *Andrews v. County of Otsego*, 112 Misc.2d 37, 446 N.Y.S.2d 169 (Sup. Ct. Otsego Cty. 1982).
17. The specific right of prisoners to be reasonably protected from physical injury was well established at the time *G. L.* was brought. See, e.g., *Woodhouse v. Commonwealth of Virginia*, 487 F.2d 889 (4th Cir. 1973).
18. *Rizzo v. Goode*, 423 U.S. 362 (1976); *Spencer v. Staras*, 507 F.2d 554 (3rd Cir. 1974).
19. Child Welfare League of America, *CWLA Standards for Foster Family Care* (New York, NY: Child Welfare League of America, rev. 1978).
20. American Public Welfare Association, *Standards for Foster Family Services Systems for Public Agencies*, (rev. January 1979). DHEW Publication No. (OHDS) 79-30231, 1979.
21. David Caplovitz and Louis Genevie, "Foster Children in Jackson County, Missouri: A Statistical Analysis of Files Maintained by the Division of Family Services." (July 1982). (Available from the Children's Rights Project of the American Civil Liberties Union, 132 West 43rd Street, New York, N.Y. 10036).
22. For a discussion of these findings see *Idem* at 18-31.
23. For a discussion of these findings see *Idem* at 32-44.
24. For a discussion of these findings see *Idem* at 45-57.
25. For a discussion of these findings see *Idem* at 59-81.
26. For a discussion of these findings see *Idem* at 82-105.
27. Consent Decree, Section V(B)(1); reported at 564 F. Supp. at 1035.
28. Consent Decree, Section IX(B)(1); reported at 564 F. Supp. at 1036.
29. Consent Decree, Section IX(C); reported at 564 F. Supp. at 1036. Maximum caseload sizes have also been mandated by *Lynch v. Dukakis*, and *Joseph and Josephine A. v. New Mexico Dept. of Human Services*, fn. 8, *supra*.
30. Consent Decree, Section X; reported at 564 F. Supp. at 1036-37. Social service worker training was similarly mandated in the *Joseph and Josephine A. v. New Mexico Dept. of Human Services* consent decree.
31. Consent Decree, Section (IV)(E)(1); reported at 564 F. Supp. at 1034-35.
32. Consent Decree, Section XII(B)(5); reported at 564 F. Supp. at 1038-39.
33. For a more detailed discussion of this issue, see Edward L. Schor, John M. Neffs and Joseph L. LaAsmar, "The Chesapeake Health Plan: An HMO Model for Foster Children," *Child Welfare* LXIII (September-October 1984).
34. Consent Decree, Section XI(D)(1); and (2); reported at 564 F. Supp. at 1037.
35. Consent Decree, Section XI(D)(7); reported at 564 F. Supp. at 1037-1038.
36. Consent Decree, Section XI(D)(9) and (10); reported at 564 F. Supp. at 1038.
37. Consent Decree, Section XII (B) and (D); reported at 564 F. Supp. at 1038.
38. Consent Decree, Section XIV; reported at 564 F. Supp. at 1041.
39. Consent Decree, Section XIII(B)(1) and (2). The permanent plan must be developed within six months. Consent Decree, Section XIII(C); reported at 564 F. Supp. at 1039.
40. Consent Decree, Section XIII(C)(3); reported at 564 F. Supp. at 1039.

41. Consent Decree, Section XIII(C)(5); reported at 564 F. Supp. at 1039. See also Joseph and Josephine A. v. New Mexico Department of Human Services.
42. Consent Decree, Section IV(D)(1) and (2)(d); reported at 564 F. Supp. at 1034.
43. Consent Decree, Section III; reported at 564 F. Supp. at 1034.
44. This is not meant, however to indicate that all such litigation will be successful. The likelihood of success of any litigation always depends upon many variables, such as the strength of the factual evidence and the court before which the case is brought. Therefore, litigation should not be considered a panacea, and those concerned with foster care reform should not necessarily pursue litigation while ignoring other methods of reform such as legislative lobbying and lay advocacy.
45. G. L. v. Zumwalt, 564 F. Supp. at 1030.
46. Missouri, House Bill No. 256 (1983).
47. Alexis de Tocqueville, Democracy in America, vol. I, chap. VI, 89-95 (New York, NY: Harper and Row, 1966).

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