

## Chapter 2

# The End of Welfare as We Know It

*It is important to recognize that it is not always research that drives policy. Just as often it is societal values.*

*Deanna S. Gomby, et al., 1995.*

On August 22, 1996 President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).<sup>1</sup> The Welfare Reform bill – as it came to be known – fostered a new vision of public assistance; it revoked the 61-year-old Aid to Families with Dependent Children (AFDC)<sup>2</sup> program in favor of capped block grants to the states entitled Temporary Assistance to Needy Families (TANF) program.

Similar to its predecessor, the new welfare program currently provides financial assistance to female-headed, indigent families, albeit only for a limited period of time. In fact, PRWORA requires states to impose a five-year limit for the receipt of benefits. Also, one of the primary goals of the TANF program is to help indigent single mothers to make the crucial transition from dependency to self-sufficiency, by assisting all recipients in finding and keeping employment. As a consequence, and in order to reduce both the magnitude of federal welfare expenses and the number of people on the rolls, being employed or participating in work-related activities has become a requisite for the receipt of cash benefits, and welfare-to-work requirements are currently implemented after 24 consecutive months on assistance. By

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<sup>1</sup>*Personal Responsibility and Work Opportunity Reconciliation Act*, Public Law 104-193, 104th Cong., 2d sess. (22 August 1996), secs. 101-913.

<sup>2</sup>See *supra*, footnote 52, 23.

contrast, enrollment in community service is required after only two consecutive months on assistance. Moreover, in order to be eligible for benefits, recipients must have a minor child, collaborate with the government in pursuing child support and establishing paternity, and sign over child support to the states while on public assistance. Finally, PRWORA has transferred primary programmatic responsibility for welfare from the federal government to the states.

## 2.1 The Welfare Reform Bill and its Reproductive Rights Agenda

Because under AFDC cash benefits were reserved exclusively to single mothers, in the months preceding the enactment of PRWORA, Welfare Reform proponents argued that AFDC had become a powerful disincentive to marriage and to the formation of traditional two-parents families and an equally powerful incentive to out-of-wedlock childbearing, especially among indigent minority women. In the debate over the nature of welfare that followed, the fact that the number of unmarried women depending on AFDC had soared epitomized the problem. Interestingly, amidst this debate, old, derogatory images of welfare mothers as “undeserving poor” surfaced again, while a serious legislative effort aimed at ending widespread reliance on public assistance was envisioned as the only solution to an extensive and pressing welfare problem.

Such a solution reflected long-standing ambiguities characterizing both the concept of dependency and that of motherhood. For example, in 1990, when discussing the issue of poverty and welfare, Linda Gordon, Professor of History at New York University and a nationwide expert in the fields of social policy and women and gender, described the concept of dependency as follows:

“[T]he concept of dependence is an ideological one that reflects particular modes of production. . . . Indeed, women’s dependence (e.g., their unpaid domestic labor) contributed to men’s ‘independence’ . . . Only in the last half-century has the term ‘dependent’ began to refer specifically to adult recipients of public aid, while women who depend on husbands are no longer labeled as dependents. . . . There is also a class double standard for women: the prosperous are encouraged to be dependent on their husbands, the poor to become ‘independent’ . . . [T]he entire dis-

course about dependence makes evident the interdependence of vast numbers of the population in modern societies.”<sup>3</sup>

When welfare-reliant women are referred to as dependent, the term dependent is often used pejoratively, to indicate a specific category of mothers who, in theory, could provide for themselves but because of lack of moral fiber or self-initiative opt to rely on public assistance instead. This peculiar interpretation of the word dependency fails to take into account the many societal factors that are often responsible for indigence, thereby implying that women alone are at fault for their own misery.

The concept of motherhood too is subject to a certain degree of ambiguity. Welfare Reform proponents viewed marriage as the foundation of a successful and functional society. Accordingly, one of the primary intents of PRWORA was to encourage the formation and maintenance of two-parent families.<sup>4</sup> Similarly, Welfare Reform proponents viewed motherhood as a very important government interest. However, they valued such interest only once it had been legitimized through the institution of marriage. Consequently, PRWORA contains a series of specific provisions aimed at reducing the incidence of non-marital births.

Most likely, both legislators’ aversion towards out-of-wedlock childbearing and their willingness to relegate mothers to the roles of homemakers and primary caregivers for their children are based on XIX Century views equating premarital sex and female employment with immorality.<sup>5</sup> Paradoxically, welfare-to-work requirements currently compel mothers who receive cash assistance to be employed, regardless of their marital status and traditional

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<sup>3</sup>L. Gordon, ed., *Women, the State and Welfare*, (Madison: The University of Wisconsin Press, 1990).

<sup>4</sup>PRWORA’s declaration of intent specifies that states may use block grants to achieve one of the following goals:

- “(1) Provide assistance to needy families so that children may be cared for in their homes or in the homes of relatives;
- (2) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) Prevent and reduce the incidence of out-of-wedlock pregnancies, and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) Encourage the formation and maintenance of two-parents families.”

*Personal Responsibility and Work Opportunity Reconciliation Act*. Public Law 104-193, 401(a).

<sup>5</sup>See *supra*, 1.1, 19; and 3.1.1, 87.

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### 2.1.1 “Cut Down on Out-of-Wedlock Births, Win Cash”<sup>6</sup>

Although much of the political discourse surrounding the passage of PRWORA revolved around the concepts of productivity and self-sufficiency, the provisions included in the official version of the Act ended up focusing heavily on the issue of personal responsibility, “and not only in the employment setting.”<sup>7</sup> Under the rubric of personal responsibility, PRWORA reached deeply into the values and morality of the American society in a blatant attempt to alter indigent women’s sexual behavior and to influence their reproductive choices.<sup>8</sup> Such an intent is egregiously illustrated by three provisions that were attached to the final version of PRWORA.

The Bonus to Reward a Decrease in Illegitimacy provision was included in the Act with the intent of reducing the incidence of out-of-wedlock births to indigent women, thereby lowering the welfare caseload. More specifically, this provision, also known as Illegitimacy Bonus, makes a \$20 million incentive available to the five states that show the largest decline in their Illegitimacy Ratio and report a lower ratio of abortions to live births than they did prior to 1996. According to the law, the \$20 million incentive is to be awarded annually and if fewer than five states qualify for the bonus, the bonus is eligible to be risen to up to \$25 million for each state.<sup>9</sup>

The Illegitimacy Ratio was initially defined by PRWORA as “the ratio between the number of non-marital births in the two most recent years and to the number in the two previous years.”<sup>10</sup> Later on, the Illegitimacy Ratio was redefined as “the number of non-marital births to residents in a state divided by the number of all births to residents in the state in the most recent years, compared with the same calculation for the prior two years.”<sup>11</sup>

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<sup>6</sup>T. Lewin, “Cut Down on Out-of-Wedlock Births, Win Cash,” *New York Times*, 24 September 2000, Nation section.

<sup>7</sup>NOW Legal Defense Fund, *What Congress Didn't Tell You: A State-by-State Guide to the Welfare Law's Hidden Reproductive Rights Agenda*, 1-4, 1. Available at <http://www.nowldef.org/html/policy/congress.htm>

<sup>8</sup>Ibid.

<sup>9</sup>*Personal Responsibility and Work Opportunity Reconciliation Act*. Public Law 104-193, 403 (a) (2).

<sup>10</sup>*Balanced Budget Act of 1997, H. R. 2015*, 105th Cong., 1st sess., (7 January 1997), quoted in J. Lawler Dye and H. B. Presser, “The State Bonus to Reward a Decrease in ‘Illegitimacy’: Flawed Methods and Questionable Effects,” *Family Planning Perspectives* 31 (May/June 1999): 142-147, 142.

<sup>11</sup>Lawler Dye and Presser, “The State Bonus to Reward a Decrease in ‘Illegitimacy’: Flawed Methods and Questionable Effects,” 142.

Regardless of whether one agrees with the government's decision to legislate a decrease in out-of-wedlock childbearing, it has often been argued that the Illegitimacy Bonus is not good public policy because "the provision significantly flawed the measurement of its explicitly stated goals, in the lack of program and policy guidelines for states and in the lack of accurate state data."<sup>12</sup> For example, although the provision is part of a bill introducing major changes in the existing welfare system, the Illegitimacy Bonus applies to out-of-wedlock births occurring to all women, and not only to those women who receive cash benefits.<sup>13</sup> Also, PRWORA does not require states to inform the federal government about their intention to compete for the Bonus or to enumerate specific strategies that they may choose to implement in order to be awarded the Bonus.<sup>14</sup> Finally, PRWORA does not even require states to interpret data on births and abortion themselves; in fact, it is the Department of Health and Human Services (HHS) that utilizes data on births and abortion submitted by states for yearly revision to make the calculations necessary to determine the identity of the winners.<sup>15</sup>

The first round of Bonuses was awarded in 1999 to the States of Alabama, California, the District of Columbia, Massachusetts, and Michigan. The second round of Bonuses was awarded in September 2000 to the States of Alabama, Arizona, the District of Columbia,<sup>16</sup> Illinois, and Michigan. In 2000, declines in out-of-wedlock births to welfare recipients ranged from moderate (4.13 percent in the District of Columbia) to infinitesimal (0.022 percent in Illinois).<sup>17</sup> In a *New York Times*' article dated 24 September 2000,<sup>18</sup> Cory Richards, Vice President for policy at the Alan Guttmacher Institute, commented on the effects of the Illegitimacy Bonus as follows: "[W]hat the Bonus really rewards, whether it has anything to do with welfare, and what,

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<sup>12</sup>Ibid., 143.

<sup>13</sup>Ibid.

<sup>14</sup>See P. Donovan, "The 'Illegitimacy Bonus' and State Efforts to Reduce Out-of-Wedlock Births," *Family Planning Perspectives* 31 (March/April 1999): 94-97, 94.

<sup>15</sup>See *ibid.*

<sup>16</sup>Interestingly, both in 1999 and 2000, the District of Columbia consistently reported the highest nationwide decrease in out-of-wedlock births: Over 60 percent. In the nation's capital, the population is mostly African American. While African American women traditionally report the highest rate of non-marital births, these rates have recently started to decline. By contrast, out-of-wedlock births to white women residing in the D. C. area have been on the rise since the year 2000. See Lewin, *Cut Down on Out-of-Wedlock Births, Win Cash*.

<sup>17</sup>See H. Boonstra, "Welfare Law and the Drive to Reduce Illegitimacy," *The Guttmacher Report on Public Policy* 3 (December 2000): 7-10, 7.

<sup>18</sup>Lewin, *Cut Down on Out-of-Wedlock Births, Win Cash*.

if anything, it accomplishes remains murky.”<sup>19</sup> Interestingly, in the same article, Michael Karfen, a spokesman for the Department of Health and Human Services (HHS), seemed to confirm the already widespread view that the Illegitimacy Bonus was a poor policy strategy for the types of results that it had been designed to achieve. When asked to comment on the way the Illegitimacy Bonus measures decreases in non-marital births and abortions and on what segments of the population such effects are truly measured, Karfen affirmed: “Most of what this is based on preceeds the Welfare Reform Act, and most of its demographics... [a]nd it’s true that it doesn’t target the welfare recipients since it’s based on all out-of-wedlock births, and doesn’t distinguish among economic background, or the age group, of the unmarried mothers.”<sup>20</sup>

During a survey conducted by the Alan Guttmacher Institute in 1998, officials with health and social service agencies operating in 34 states and the District of Columbia declared that, in light of the goals set forth by the Welfare Reform, their states had taken some initial steps to reduce out-of-wedlock births.<sup>21</sup> When asked to briefly describe the strategies implemented in their states so far, respondents cited a wide array of activities ranging from the establishment of a task force to study the issue to an increase in the number of available family planning and teenage pregnancy prevention programs.<sup>22</sup> Significantly, many respondents specified that many of the implemented strategies were funded through TANF money even when they were targeted towards welfare recipients. Such a use of TANF money appears to be consistent with the guidelines set forth by the Welfare Reform bill which specifies that states may use their block grants “in any manner reasonably calculated to accomplish the purposes of the statute itself”.<sup>23</sup>

The 2000 survey also revealed that many of the implemented strategies did involve collaborations between state governments and local health and social services agencies and that the extent of the financial resources involved had ranged from modest to substantial.<sup>24</sup> According to the survey, states’ efforts to reduce the number of non-marital births and abortions could be subdivided into three main categories: Programs designed to promote the

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<sup>19</sup>Ibid.

<sup>20</sup>Ibid.

<sup>21</sup>See Boonstra, “Welfare Law and the Drive to Reduce Illegitimacy,” 7-8.

<sup>22</sup>Ibid., 8.

<sup>23</sup>*Personal Responsibility and Work Opportunity Reconciliation Act*. Public Law 104-193, 404(a)(1).

<sup>24</sup>See Donovan, “The ‘Illegitimacy Bonus’ and State Efforts to Reduce Out-of-Wedlock Births,” 94.

use of family planning services among welfare recipients and low-income women, activities and programs designated to expand recipients' access to family planning services, and grants to finance initiatives aimed at lowering the incidence of early childbearing.<sup>25</sup>

**(1) Programs designed to promote the use of family planning services among welfare recipients and low-income women.**

Alabama and Kentucky created reader-friendly brochures describing available contraceptive methods and urging indigent women to consider how an additional pregnancy could compromise their ability to afford a living for their families.<sup>26</sup> In Kentucky, these brochures had then been distributed to social services and health clinics.<sup>27</sup> In addition, Kentucky had sent the same brochures to all TANF recipients, alongside with a letter listing the names and contact information for all statewide family planning clinics.<sup>28</sup> Also, in Kentucky welfare workers had been trained on how to "raise the subject of family planning" with their clients and to refer interested clients to the nearest available family planning clinic.<sup>29</sup> Alaska undertook a similar training effort between the fall of 1997 and the spring of 1998.<sup>30</sup> Finally, Montana trained 450 case workers on how to best approach their clients on the subject of family planning.<sup>31</sup> Apparently, training programs such as the one implemented in Kentucky, Alaska, and Montana were necessary, since welfare caseworkers were often misinformed about contraceptive options and frequently felt reluctant to initiate a conversation on what many of them viewed as a sensitive, personal issue.<sup>32</sup>

**(2) Activities and programs designated to expand recipients' access to family planning services.**

Some states earmarked TANF money to expand existing family planning services or to implement new family planning programs specifically targeting teenagers. For example, in FY1998 and in FY1999, the

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<sup>25</sup>Ibid., 94-5.

<sup>26</sup>Ibid., 94.

<sup>27</sup>Ibid.

<sup>28</sup>Ibid.

<sup>29</sup>See D. Paris and R. Leach, letter to Department for Social Insurance Offices and Local Health Departments, Frankfort, Kentucky, 15 June 1998, quoted in Donovan, "The 'Illegitimacy Bonus' and State Efforts To Reduce Out-of-Wedlock Births," 95.

<sup>30</sup>See Donovan, 95.

<sup>31</sup>See J. Panlsen, personal communication, 23 October 1998, quoted in Donovan, "The 'Illegitimacy Bonus' and State Efforts To Reduce Out-of-Wedlock Births," 95.

<sup>32</sup>See Donovan, 95.

North Carolina Legislature earmarked \$1.6 million to increase funding to existing family planning programs. According to Margaret Woodcock, who in 2000 headed the Women's Preventive Health Branch of the North Carolina Health Department, Counties had used newly appropriated money in a variety of ways.<sup>33</sup> Some had purchased additional contraceptive supplies for their family planning clinics.<sup>34</sup> Others had paid public health staff to work at local social services agencies where they provided TANF recipients with family planning information and referrals.<sup>35</sup> According to Woodcock, at least one County had used TANF money to hire welfare caseworkers to work at the local health department clinic where they assisted clients with welfare application procedures and with the scheduling of much needed appointments with family planning providers.<sup>36</sup>

**(3) Creation of grants to finance initiatives aimed at lowering the incidence of early childbearing.**

States like New York concentrated their efforts on the creation of preventive programs that targeted teenage pregnancy. For example, in 1998, the State of New York allocated \$7 million of its TANF block grant to expand the scope and reach of the existing Community-Based Adolescent Pregnancy Prevention (CBAPP) program.<sup>37</sup> This innovative program, which was designed to target communities where the incidence of early childbearing was particularly high, had the purpose of enabling family planning providers to implement additional education and outreach activities involving teenagers enrolled in the local CBAPP programs.<sup>38</sup> Such activities concentrated on changing minors' attitude towards early childbearing by promoting abstinence, improving teenagers' access to family planning services and counseling, expanding employment opportunities for young adults, and increasing the availability of elective, after-school programs for at-risk adolescents.<sup>39</sup>

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<sup>33</sup>M. Woodcock, North Carolina Department of Health and Human Services, personal communication, 7 October 1998 and 1 December 1998, quoted in Donovan, 95.

<sup>34</sup>Ibid.

<sup>35</sup>Ibid.

<sup>36</sup>Ibid.

<sup>37</sup>See Donovan, 96.

<sup>38</sup>Ibid.

<sup>39</sup>Ibid.



### 2.1.2 Abstinence and Sex Education Programs

The second PRWORA provision that best illustrates the government's attempt to influence individual sexual behavior and reproductive choices is the Abstinence Education provision, also known as Abstinence Only. Under Abstinence Only, funds are made available to all 50 states and the District of Columbia to establish education and outreach programs that have as their primary purpose the promotion of abstinence among people of all ages who are not married. Starting with FY1998, the Abstinence Education provision has been granting \$50 million a year to all states interested in implementing abstinence-related initiatives.<sup>40</sup>

Interestingly, the Abstinence Education provision was added on to PRWORA late in the legislative process and was passed with virtually no discussion concerning its merits, goals, and possible effects.<sup>41</sup> By contrast, PRWORA contains detailed instructions on how states are expected to implement their local Abstinence Education programs.<sup>42</sup> For example, the law specifies that education programs funded through Abstinence-Only money may not always provide enrollees with information about contraception and that such programs must be clearly differentiate themselves from any further state initiative focusing on sex education.<sup>43</sup> More specifically, PRWORA defines abstinence education as:

“[A]n educational or motivational program that:

- (A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

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<sup>40</sup>According to the guidelines for funding set forth by the Abstinence Education provision, all participating states are required to match every \$4 dollar in federal funds with \$3 dollar in state funds, thereby increasing the total amount of Abstinence-Only state funds up to \$87.5 million for each fiscal year. See P. Donovan and L. Kaiser, “Welfare Reform, Marriage, and Sexual Behavior,” *Issues in Brief* (New York: The Alan Guttmacher Institute, January 1997).

Available at [http://www.guttmacher.org/pubs/ib\\_welfare\\_reform.html](http://www.guttmacher.org/pubs/ib_welfare_reform.html)

When the first round of funding for abstinence education was made available to the states in FY1998, California and New Hampshire were the only two states to decline. More specifically, California did not accept its share of Abstinence-Education funds based on the belief that the program as envisioned by PRWORA was ineffective to prevent both unplanned pregnancies and early childbearing. See NOW Legal Defense and Education Fund, *What Congress Didn't Tell You: A State-by-State guide to the New Welfare Law's Hidden Reproductive Rights Agenda*, 3.

<sup>41</sup>See Donovan and Kaiser, “Welfare Reform, Marriage, and Sexual Behavior.”

<sup>42</sup>Ibid.

<sup>43</sup>Ibid.

- (B) teaches abstinence from sexual activity outside marriage as the expected standard for all school-age children;
- (C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;
- (D) teaches that a mutually faithfully monogamous relationship in [the] context of marriage is the expected standard of human sexual activity;
- (E) teaches that sexual activity outside the context of marriage is likely to have harmful consequences for the child, the child's parents and society;
- (F) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and
- (G) teaches the importance of attaining self-sufficiency before engaging in sexual activity”<sup>44</sup>

As envisioned by PRWORA, the Abstinence Education provision raises concerns about its effectiveness, evaluation methods, and potential states' diversions of Abstinence-Only funds to sex education initiatives implemented by religious entities.

In particular, among the concerns related to Abstinence Education's reach is the question of what kind of behaviors the provision really targets. In fact, while the law constantly refers to abstinence from sexual activity it never clearly defines what specific sexual acts fall under this umbrella. As a result, it remains unclear whether the government is seeking to discourage only sexual intercourse, or to impose a broader proscription encompassing milder sexual acts too, such as kissing, petting, oral sex, and masturbation.<sup>45</sup>

The almost complete absence of scientific methods to evaluate Abstinence Education's effects is another aspect that troubles advocates of a more comprehensive kind of sex education. The lack of evaluation methods is especially troubling when considering that over the period 1996-2001 alone, the federal government and the states allocated a grand total of \$500 million to the implementation of abstinence education programs.<sup>46</sup> Research conducted so far to assess the impact of abstinence education programs on

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<sup>44</sup>*Personal Responsibility and Work Opportunity Reconciliation Act*. Public Law 104-193, 510(b)(2).

<sup>45</sup>See Donovan and Kaiser, “Welfare Reform, Marriage, and Sexual Behavior.”

<sup>46</sup>*Ibid.*

adolescent sexual behavior and outcomes has shown that the overwhelming majority of the abstinence education initiatives implemented since the passage of PRWORA have had little or no effect in delaying the onset of teenagers' sexual activity.<sup>47</sup> By contrast, a series of studies has shown that more comprehensive sex education programs – i.e, programs that provide teenagers with information about abstinence and family planning methods, while teaching them how to effectively fend off unwanted sexual advances – have proved to be far more likely to persuade teenagers to postpone the time of their first intercourse.<sup>48</sup> More importantly, comprehensive sex education programs have been linked with higher rates of contraceptive use among adolescents who become sexually active.<sup>49</sup>

Finally, advocates are concerned about the possibility that states may disburse some of their Abstinence-Only funds to finance abstinence education programs implemented by religious entities.<sup>50</sup> More specifically, advocates are concerned that the inclusion of extreme religious doctrine and practices – such as virginity pledges – in abstinence education curricula may have negative effects on adolescents' sexual behavior and choices.<sup>51</sup>

## 2.2 The Child Exclusion Provision

None of the PRWORA provisions better illustrates the intent to use the Welfare Reform as a means to influence individual sexual behavior than the Child Exclusion Provision. Under this provision, also known as Family Cap, states are allowed to deny additional cash assistance to mothers who conceive and bear a second child while on welfare. While under AFDC cash grants increased with family size, since the passage of PRWORA if an additional child is conceived after a family has already begun receiving cash assistance no money for the newborn is added on to the existing family welfare grant.

Interestingly, for Family Cap purposes it is the timing of childbearing that is significant and not the total number of children born into the same family.<sup>52</sup> In fact, two families that both have three children can be granted

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<sup>47</sup>Ibid.

<sup>48</sup>Ibid.

<sup>49</sup>Ibid. For a more detailed discussion of the effects of abstinence education programs on adolescents' sexual behavior see *infra*, Section 5.3.3, 234.

<sup>50</sup>See *infra*, Section 5.3.1, 223.

<sup>51</sup>See Donovan, "Welfare Reform, Marriage, and Sexual Behavior." For a more detailed discussion of the impact of religious practices on teenagers' sexual attitudes and choices see also *infra*, Section 5.3.3, 234.

<sup>52</sup>See S. Stark and J. Levin-Epstein, *Excluded Children: Family Cap in a New Era* (New

different benefit amounts, depending on when the children were born.<sup>53</sup> Paradoxically, as a result of the eligibility criteria imposed by the Child Exclusion provision, a family with children conceived while the mother was already receiving aid are granted less money than a family whose children were all conceived before the family applied for cash assistance.

Under the AFDC program, a state needed to obtain a special waiver either from the Health Care Financing Administration (HCFA) or the Department of Health and Human Services (HHS) in order to implement a Child Exclusion policy.<sup>54</sup> By contrast, under the TANF program states have almost complete discretion over the possibility of implementing a Child Exclusion policy.<sup>55</sup> According to the Center for Law and Social Policy (CLASP), although Congress did not opt to make Child Exclusion policies mandatory, currently 23 states have some type of Family Cap in place.<sup>56</sup> In 1992, New Jersey became the first state to implement a Family Cap policy, after gaining approval for a research and demonstration waiver from the HHS.

Child Exclusion policies vary across the states. Alone the terminology that states use to define the type of policy that they have in place is often controversial, because the terms Child Exclusion and Family Cap do not always reflect the approach chosen by a given state to determine the amount of its recipients' grants.<sup>57</sup> For example, the State of Maryland opposes both terms because although the state government does not provide incremental cash benefits to recipients it does provide some sort of benefits' increment through what is commonly referred to as a third party.<sup>58</sup> The State of

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York: Center for Law and Social Policy, 1999).

Available at <http://www.clasp.org/DMS/Documents/1011371434.13/view.html>

<sup>53</sup>Ibid.

<sup>54</sup>See NOW Legal Defense and Education Fund, *Background on Child Exclusion Proposals*. Available at <http://www.nowldef.org/html/policy/chexp2.htm>

<sup>55</sup>Ibid.

<sup>56</sup>The states that are currently implementing Child Exclusion policies are: AZ, AR, CA, CT, DE, DC, FL, GA, IL, IN, KS, MA, MD, MS, NC, NE, NH, NJ, OK, SC, TN, VA, and WI. See Stark and Levin-Epstein, *Excluded Children: Family Cap in a New Era*. The Center for Law and Social Policy (CLASP) is a national non-profit organization which seeks to improve the economic security of low-income families with children. For more information visit the Center's Web Site at <http://www.clasp.org>

<sup>57</sup>See Stark and Levin-Epstein, *Excluded Children: Family Cap in a New Era*.

<sup>58</sup>The method that states may use to implement a Family Cap is threefold: (1) The state places a cap on recipient's cash grant; (2) the state issues vouchers in lieu of cash; (3) cash grants are allocated to a third party to manage. In case of both vouchers and third party payments, the recipient's family into which a child is born does not receive additional cash benefits. Instead, the child's family either receives a voucher to purchase goods and services for the child, or cash benefits are issued to a third party who will be in charge of managing them. Currently, Maryland, Oklahoma, and South Carolina utilize

New Jersey prefers to classify its policy as Family Cap rather than Child Exclusion because in New Jersey families subject to the Family Cap continue to qualify for other welfare programs, such as Medicaid and Food Stamps.<sup>59</sup>

Unless some sort of exception applies, all children born to welfare recipients are subject to state Child Exclusion policies. In fact, PRWORA explicitly requires states to set their criteria for exemption.<sup>60</sup> Consequently, most states exempt children who were conceived as a result of rape or incest, while all but four states exempt children who were first-born to minor parents.<sup>61</sup> Also, most states allow for an initial ten-month grace period during which parents who bear children while already on welfare can still qualify for incremental benefits.<sup>62</sup> Once again, criteria regulating grace periods vary across the states, and in some states grace periods are no longer allowed. For example, in Arkansas, starting with January 1997, grace periods that accompanied the implementation of the state Family Cap policy have been eliminated.<sup>63</sup> Finally, some states go as far as excluding from the family welfare grant even those children who were born while their parents were not receiving cash assistance.<sup>64</sup> For example, in Arizona a child born after her family has transitioned off welfare is excluded from the family grant in case her families reapplies for assistance later in time,<sup>65</sup> unless the family can prove that they have not relied on public assistance for a minimum of 60 consecutive months.<sup>66</sup> Interestingly, welfare programs not related to TANF, such as Medicaid, WIC, and Food Stamps, do not distinguish between children who are capped for TANF purposes and children who are not when calculating the amount of benefits to grant to a recipient's family. Such an

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vouchers or third party payments to implement their Child Exclusion policies. See Stark and Levin-Epstein, *Excluded Children: Family Cap in a New Era*.

<sup>59</sup>See Stark and Levin-Epstein.

<sup>60</sup>Ibid.

<sup>61</sup>Arkansas (as of July 1997); California (as of August 1996); Delaware (as of January 1, 1999); and Mississippi (as of July 1997). See Stark and Levin-Epstein.

<sup>62</sup>See Stark and Levin-Epstein.

<sup>63</sup>Ibid.

<sup>64</sup>Ibid.

<sup>65</sup>In Arizona, the Temporary Assistance to Needy Families program is known as EMPOWER, Employing and Moving People Off Welfare and Encouraging Responsibility program. Arizona obtained federal approval for this comprehensive welfare reform initiative in May 1995 and six months later, Arizona started implementing its statewide EMPOWER waiver under sec. 1115 of the Social Security Act (SSA). In Arizona, while children born to recipients while on welfare are not eligible to receive incremental benefits they still are eligible to receive subsidized medical assistance and child care. See Stark and Levin-Epstein.

<sup>66</sup>See Stark and Levin-Epstein.

approach suggests that in case of welfare programs other than TANF the government still has an interest in providing help to all indigent families.

In contrast to what happened to the Illegitimacy Bonus and the Abstinence Only provisions, the Child Exclusion provision was hotly debated in Congress. Family Cap proponents argued in favor of mandating Child Exclusion policies based on the assumption that single indigent mothers become pregnant in order to increase the amount of their welfare grants. Family Cap opponents countered this argument by maintaining that the increase in cash benefits that accompanies the birth of an additional child is far too low to representing an incentive to out-of-wedlock childbearing. In fact, in 1997, increases in monthly cash benefits for newborns ranged from about \$24 in Mississippi to \$109 in California – i.e., from \$0.80 to \$3.50 a day per child.<sup>67</sup> In 1995, Family Cap opponents also argued that denial of additional cash benefits would create further hardship for the recipient’s family, while undeniably impairing the family’s chances to achieve self-sufficiency in the future. Finally, Family Cap opponents pointed out how Child Exclusion policies were highly punitive towards the newborn child, the only person bearing no responsibility for her mother’s decision to become pregnant.

### 2.2.1 Welfare Myths v Welfare Facts

Arguments in favor of Child Exclusion Policies often rest on myths about welfare recipients rather than on scientific data. More specifically, most of the debate that preceded the passage of PRWORA and of its Child Exclusion provision was fueled by five widespread assumptions concerning welfare-reliant women and their families.

#### **Myth No. 1: Welfare families are generally large.**

**Fact:** Data describing characteristics and income levels of TANF recipients shows that the number of child-only families<sup>68</sup> has increased steadily throughout the 1990s. For example, in 1996, child-only families accounted for 21.5 percent of the nation’s welfare caseload.<sup>69</sup> In 1998, the number of nationwide child-only families on welfare had increased by 730,000 additional units, thus representing 23 percent of the national welfare caseload.<sup>70</sup> Moreover, according to both NOW Legal Defense and Education Fund (NOWL-

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<sup>67</sup>Ibid.

<sup>68</sup>Child-only families are families comprised of a single parent and one child.

<sup>69</sup>See United States Department of Health and Human Services, *Characteristics and Financial Circumstances of TANF Recipients, October 1999–September 2000*. Available at <http://www.acf.hhs.gov/programs/opre/characteristics/fy2000/analysis.htm>

<sup>70</sup>Ibid.

DEF) and the Department of Health and Human Services (HHS), between October 1998 and September 1999, most welfare-reliant families averaged 2.8 children per family.<sup>71</sup> Finally, according to the HHS, over the same period of time, of the 2,648,462 American families who relied on TANF, 16.7 percent were child-only families, while 33.5 percent were two-children families, 24.7 percent were three-children families, and only 4.4 percent were six-to-ten-children families.<sup>72</sup>

**Myth No. 2: Welfare-reliant women want more children and therefore get pregnant.**

**Fact:** Starting with 1980, research has shown that the majority of pregnancies occurring to welfare-reliant women are unintended.<sup>73</sup> Further, research has shown that fertility rates for welfare recipients are generally lower than fertility rates for higher-income women and that birth rates to welfare recipients become progressively lower the longer women stay on welfare.<sup>74</sup>

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<sup>71</sup>See NOW Legal Defense and Education Fund, *Background on Child Exclusion Proposals*; and United States Department of Health and Human Services, *Percent Distribution of TANF Families by Number of Family Members, October 1998–September 1999*, table 1. Available at [http://www.acf.hhs.gov/programs/opre/characteristics/fy99/tab01\\_99.htm](http://www.acf.hhs.gov/programs/opre/characteristics/fy99/tab01_99.htm). NOW Legal Defense and Education Fund was established in 1970 by the founders of the National Organization for Women – the largest organization of feminist activists in the United States – as the litigating arm of the women’s rights community. Over the years, it has played a central role in establishing legal, legislative, and educational strategies designed to secure equality and justice for women across the country. The Fund’s current name is Legal Momentum. For more information concerning this organization’s past and present mission visit Legal Momentum’s Web Site at <http://www.legalmomentum.org>.

<sup>72</sup>See United States Department of Health and Human Services, *Percent Distribution of TANF Families by Number of Family Members, October 1998–September 1999*, table 1.

<sup>73</sup>See W. J. Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (Chicago, IL: The University of Chicago Press, 1987), 78-9; and D. Ellwood, *Poor Support: Poverty in the American Family* (New York: Basic Books, 1988), 72, quoted in NOW Legal Defense and Education Fund, *Background on Child Exclusion Proposals*.

<sup>74</sup>See M. R. Rank, *Living on the Edge: The Realities of Welfare in America* (New York: Columbia University Press, 1994), 301, quoted in NOW Legal Defense and Education Fund, *Background on Child Exclusion Proposals*. According to this author, comparative studies indicate that the national childbearing rate for women on welfare is lower than the fertility rate pertaining to the rest of the American female population, even when rates are demographically standardized for age, number of children, marital status, race, and education. Additionally, logistic regression analysis conducted for data examined in the above mentioned study has indicated that the longer a woman remains on welfare, the less likely she is to give birth. See NOW Legal Defense and Education Fund, *Background on Child Exclusion Proposals*; see also G. Acs, *The Impact of AFDC on Young Women’s Childbearing Decisions* (Washington, D.C.: The Urban Institute, 1993), 21, 84. Acs argues that reliance on public assistance has a “quite modest” impact on first births and out-of-wedlock births, while other factors, such as education and demographic characteristics,

**Myth No. 3: Welfare-reliant women have more children in order to be awarded additional cash benefits.**

**Fact:** Additional incremental benefits neither reward recipients nor provide an economic incentive for them to bear children. Instead, such benefits are necessary to allow welfare mothers to afford basic necessities such as food, housing, and medical care. In 1993 dollars, the estimated annual expenditures per child of a two-parent family with an annual income of less than \$32,000 a year can be summarized as follows: Clothing expenditures ranged from \$380 to \$730 a month, while expenditures for transportation, recreation, and other items, such as medical care ranged from \$1,120 to \$1,770 a month.<sup>75</sup> In addition, families spent between \$730 and \$1,490 on food, between \$1,870 to \$1,550 on housing, and up to \$930 on health care, child care, and educational expenses.<sup>76</sup> In 1996, AFDC benefits for a family of three averaged \$377 a month, or \$4,524 a year. During that same year, in no state did AFDC benefits raise a low-income family out of poverty.<sup>77</sup> In July 1999, benefit standards averaged \$524 a month. More specifically, in Arizona, California, New Mexico, and New York, cash benefits averaged \$347, \$699, \$489, and \$577, respectively.<sup>78</sup> Prior to the implementation of Child Exclusion policies, the increase in additional benefits for each newborn ranged from \$30 a month in New Mexico to \$109 a month in California.<sup>79</sup> As noted by Brent Bend, a Professor at the University of Arkansas School of Social Work “[i]t would be a quantum leap in faith to believe that \$42 [a month] influence an act that is actually spontaneous and occurs nine months before birth.”<sup>80</sup>

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seem to affect women’s childbearing decisions to a much higher degree. Further, Acs points out that the impact of incremental benefits for newborns on welfare women’s childbearing decisions appears to be “statistically insignificant”.

<sup>75</sup>See NOW Legal Defense and Education Fund, *Background on Child Exclusion Proposals*.

<sup>76</sup>Ibid.

<sup>77</sup>See the Urban Institute, *Ending Welfare as We Know It. Welfare Reform: Myth vs. Fact* (Washington, D.C.: The Urban Institute, 1999): 1-3, 1.

<sup>78</sup>See G. Rowe, *The Welfare Rules Databook. State TANF Policies as of July 1999*, table II.A.3. Available at <http://www.urban.org/url.cfm?ID=310284>

<sup>79</sup>For more detailed information concerning post-1996 benefits amounts see House of Representatives, Committee on Ways and Means, *Overview of Entitlements Programs: 1998 Green Book* (Washington, D.C.: Government Printing Office, 1998).

<sup>80</sup>P. Donovan, “Does the Family Cap Influence Birthrates? Two Studies Say ‘No’,” *The Guttmacher Report on Public Policy*, 1 (February 1998): 10-11, 10.



**Myth No. 4: Women alone are responsible for high numbers of pregnancies.**

**Fact:** Men and women are equally responsible for procreation. Therefore, women alone cannot be blamed for wanted or unwanted pregnancies. It is distorted perceptions like this one that effectively exempt male parents from any responsibility for conception and fuel public policies based on gender stereotypes. For example, Child Exclusion policies deny welfare recipients – 90 percent of which are single mothers – and their children additional benefits. However, Family Cap policies do not impose any financial restriction on non-custodial parents – 90 percent of which are men.<sup>81</sup>

**Myth No. 5: Welfare recipients are a burden for taxpayers and the reason why the national deficit is soaring**

**Fact:** Currently, only one percent of the federal budget and two percent of the average state budget cover welfare-related expenses.<sup>82</sup>

## **2.2.2 The Impact of State Child Exclusion Policies on the Lives of Welfare-reliant Mothers and their Children**

In a 1996 testimony given in front of the New Jersey’s Legislature, attorneys with the NOW Legal Defense and Education Fund described the effects of the state Child Exclusion policy on the lives of three welfare-reliant women and their families. Portions of that testimony are reproduced in the following section of this chapter, with the purpose of illustrating how caps on children born to indigent mothers affect the already precarious financial conditions of welfare-reliant families.

In 1996, Anne, Betty, and Carmen were young women on welfare.<sup>83</sup> Contrary to widespread assumptions, these young women did not like the idea of having to rely on public assistance in order to support their families. Similarly, these women did not consider welfare rewarding, nor did they think that incremental cash benefits represented an incentive to out-of-wedlock childbearing. In fact, Anne, Betty, and Carmen had all been married at some point in their lives. However, their spouses had either become abusive or addicted to drugs or were deceased. Anne, Betty, and Carmen were struggling to make ends meet and they all felt trapped in a vicious cycle

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<sup>81</sup>See NOW Legal Defense and Education Fund, *Background on Child Exclusion Proposals*.

<sup>82</sup>See the *Ending Welfare as We Know It. Welfare Reform: Myth vs. Fact*.

<sup>83</sup>The women cited as examples in the 1996 testimony were and are identified with pseudonyms in order to protect their privacy.

of life circumstances and inadequate benefits that de facto kept them poor despite their strong personal desire to transition off welfare.

In 1996, Anne had three little daughters and was trying to survive on a \$322 monthly grant. She had been on the verge of homelessness for almost a year. Since the lowest rent available in her community for a one-bedroom apartment was \$400, Anne had repeatedly tried to apply for public housing. However, every time she had spoken to her welfare caseworker about applying for subsidized housing she had been advised to postpone filing, as applications were accepted only at certain times of the year. Eventually, Anne was told that applications were no longer accepted, and that she would not be able to benefit from Transitional Rental Assistance (TRA) unless she enrolled in a job training program. However, Anne was also informed that her request to enroll in a job training program could have been accepted only when her youngest daughter had turned one.

Anne was engaged when she got pregnant with her first daughter, but her fiancé became abusive and therefore Anne decided to leave him. Anne's other two daughters were born as a result of failed contraception.

Anne first heard of the New Jersey's Child Exclusion policy on television. Now that she had been denied additional benefits for her two youngest daughters and subsidized housing, Anne had to rely on her \$322 monthly grant to pay her rent and other living expenses, including over-the-counter medications for her children, who in the winter of 1996 had started suffering from severe asthma. Anne was convinced that the New Jersey Child Exclusion policy dramatically reduced her ability to afford a decent living for her family, to find a good-paying job, and to transition off welfare.

Similarly, Betty, who was 29 in 1996, had two sons and was surviving on a \$322 monthly grant. Betty was attending college when she met her husband. When her oldest son was just one year old, her husband began using drugs and abandoned them. Betty became pregnant with her second son after a brief reconciliation with her husband.

Like Anne, Betty first heard of the New Jersey Child Exclusion policy on television. In 1996, she was receiving Medicaid for herself and her oldest son, but not for the younger one. Betty reported having serious problems receiving her benefits on time. She told the NOWLDEF attorneys that frequently her welfare check was late or incomplete. Betty had been able to obtain a child support order for her two children, but her husband had never paid for anything. Despite her critical financial situation, Betty was hopeful. She was enrolled in a job training program so that she could learn English and get employed. She wanted to finish her training and go to work with children suffering from AIDS and finally make the transition from

dependency to self-sufficiency.

Carmen, who in 1996 had a three-year old daughter and was pregnant, was living on a \$290 monthly grant. The father of her children was deceased. Carmen was living in a three-bedroom house with her father, her father's girlfriend, and their two children. She had tried to apply for TRA, but she was told that she was not eligible for it, since she was pregnant. After being denied TRA, Carmen had looked for available slots in community shelters and found out that the majority of the slots were temporary and involved frequent moves. Carmen had then abandoned the idea of living in a shelter because she felt that frequent moves would have represented a problem for her small children.

Carmen was informed about the existence of the New Jersey Child Exclusion policy by her welfare caseworker, who also advised her to get an abortion. But Carmen is opposed to abortion on the basis of religious beliefs.

In 1996, Carmen had completed her first year of community college. Because she was pregnant, Carmen felt that she should find a job as quickly as possible. At the same time, Carmen was not sure that she would be able to complete a full four years of college. Finally, Carmen felt uncertain about whether she would find affordable child care for her newborn baby, given the reported scarcity of subsidized day care slots in New Jersey.

Carmen would have liked to attend Business School or to become a medical assistant, but so far she had not been able to get her caseworker to approve her school enrollment. Carmen wanted to attend school so that she could get a good-paying job and afford a comfortable life for her children.

### 2.2.3 Child Exclusion in State Courts

On 5 September 1997, the NOW Legal Defense and Education Fund (NOWLDEF), the ACLU of New Jersey, and the law firm of Gibbons, Del Deo, Dolan, Griffinger & Vecchione filed *Sojourner A. v New Jersey Department of Human Services*.<sup>84</sup> This class action lawsuit was filed on behalf of a group of welfare-reliant women and their children and challenged the Child Exclusion Provision as contained in the New Jersey's welfare law.<sup>85</sup>

In March 1997, just a couple of months prior to the filing of *Sojourner*, the State of New Jersey had enacted legislation implementing the federal TANF scheme and creating the Work First New Jersey (WFNJ) program.

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<sup>84</sup>*Sojourner A. v New Jersey Department of Human Services*, 177 N.J. 318, 828 A. 2d 306.

<sup>85</sup>New Jersey Statutes Annotated, sec. 44:10-61.

Included in WFNJ was a Child Exclusion provision which states that “[t]he level of cash assistance benefits payable to [a family] with dependent children shall not increase as a result of a birth of a child during the period in which the [family] is eligible for benefits.”<sup>86</sup>

*Sojourner* alleged that the New Jersey Child Exclusion law violated state constitutional guarantees of the right to privacy – including the right to make procreative and childbearing decisions – by seeking to coerce these personal choices and by penalizing welfare-reliant mothers for bearing children. Also, the case alleged that the New Jersey Child Exclusion law violated the Equal Protection Clause of the New Jersey Constitution because it treats indigent children differently, depending on their parents’ reproductive choices and on the timing of the children’s births.

On appeal, the Supreme Court of New Jersey affirmed the decision of the lower courts. Specifically, the Supreme Court of New Jersey held that the New Jersey Child Exclusion law was rationally related to the state interests in breaking the cycle of welfare dependency and in promoting individual responsibility. According to the language used by Chief Justice Poritz when delivering the opinion of the Court “. . . the [New Jersey Department of Health and Human Services] has presented ample justification for the family cap. The records inform us that the resources available as a result of the cap have been diverted to job training, child care, and other program established and expanded under WFNJ. The goals of promoting self-sufficiency and decreased dependency on welfare are laudable; the focus on education, job training and child care should advance those goals and ultimately, result in improving the lives of children born into welfare families.”<sup>87</sup> Moreover, the Court held that the state’s failure to provide additional cash assistance to welfare-reliant mothers and their newborns does not infringe upon a woman’s right to bear a child. According to the unanimous opinion of the Court “. . . even if we assume that procreative choices are influenced by a cap in cash assistance to the family unit we do not find that influence to be “undue,” or that a new burden is thereby created. We expect that the income of a family unit, whatever the source, is likely to influence a woman’s decision to conceive or bear a child.”<sup>88</sup> Finally, in response to the plaintiffs’ allegation that the New Jersey Child Exclusion law treats children born before the family starts receiving welfare benefits and children born ten months after the receipt of that same benefits differently,

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<sup>86</sup>Ibid., sec. 44:10-61(a).

<sup>87</sup>*Sojourner A. v New Jersey Department of Human Services*, (No. A-160 NJ, Aug. 4, 2003).

<sup>88</sup>Ibid.

the Court argued that “. . . [although] the family does not receive additional cash assistance when a new child is born. . . the family. . . does receive additional food stamps and Medicaid benefits. All of the children in the family unit share presumably the total amount of cash assistance available, as is the case in other similarly situated family units.”<sup>89</sup>

The Court concluded that *Sojourner* was not about whether the New Jersey Child Exclusion law infringes upon a woman’s right to choose if and when to bear a child, rather this case was “. . . about whether the state must subsidize that choice.”<sup>90</sup> Also, the Court established a parallel between the allegations presented in *Sojourner* and a legal argument made by the same Court in 1982 when deciding on a case concerning the state’s duty to fund elective abortions.<sup>91</sup> In virtue of that parallel, the Court concluded that in *Sojourner* the state’s failure to provide incremental cash benefits to welfare-reliant families following the birth of additional children did not significantly impair a woman’s right to reproduce.

### California State Sued Over Family Cap Policy

On March 22, 2000, the American Civil Liberties Union of Southern California (ACLU-SC), the Western Center for Law and Poverty (WCLP),<sup>92</sup> and the National Center for Youth Law (NCYL)<sup>93</sup> filed *Nickols et al. v Saenz*,<sup>94</sup> a statewide lawsuit challenging the California Department of Social Services (DSS) for its wrongful implementation of the Maximum Family Grant (MFG) rule<sup>95</sup> – California’s Child Exclusion policy. California, like most states, provides cash assistance to indigent single mothers using a combination of state and federal funds. In August 1997, California enacted legislation implementing the federal Welfare Reform scheme and creating the California Work Opportunity and Responsibility to Kids (CalWORKs)

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<sup>89</sup>Ibid.

<sup>90</sup>Ibid.

<sup>91</sup>*Right to Choose v Byrne*, 91 N.J. 287, 450 A.2d 925 (1982).

<sup>92</sup>The Western Center for Law and Poverty was founded in 1967. Through education, negotiation and litigation, WCLP works to ensure fairness and access to justice for low-income individuals. For more information visit the Center’s Web Site at <http://www.wclp.org>

<sup>93</sup>The National Center for Youth Law (NCYL) uses the law to improve the lives of poor children. NCYL works to ensure that low-income children have the resources, support, and opportunities they need for a healthy and productive future. For more information visit the Center’s Web Site at <http://www.youthlaw.org>

<sup>94</sup>*Nickols et al. v Saenz*, (No. 310867, Cal. Super. Ct., Sep. 14, 2000).

<sup>95</sup>California Welfare & Institutions Code, sec. 11450.04.

program.<sup>96</sup> CalWORKs' benefit levels are based on the number of indigent children residing with each family. Prior to the implementation of the MFG rule, a mother with one child who lived in San Francisco and had no additional income received \$520 per month in cash assistance; a mother with two children received \$626.

The MFG rule was enacted in 1992, but did not become effective until September 1997. Under the MFG rule, a child born to a family who has been receiving welfare benefits for the previous ten months will not be added on to the family's welfare grant. As a result, for families subject to the MFG rule, current CalWORKs grants are lower than the grants that the same families were entitled to prior to the implementation of the MFG rule. For example, in March 2000, a family of three subject to the MFG rule and residing in San Francisco County received \$505 a month in cash assistance. Prior to 1997, that same family was entitled to over \$626 in monthly benefits.

During the press conference that followed the filing of the lawsuit, Rocio Cordoba, Staff Attorney with ACLU-SC declared: "[The] California MFG rule is part of a nationwide trend, and it is based on the mistaken belief that welfare recipients want to have additional children in order to get additional cash assistance. . . the aid – an additional \$28 a week in most cases – doesn't even cover the costs of feeding, clothing, and housing the new child. It is a myth, that the welfare system rewards women for having more children; the . . . reality is that the system punishes them for doing so. Denying subsistence benefits to these babies. . . is irresponsible at best, cruel at worst."<sup>97</sup>

The MFG Statute contains a variety of narrow exceptions under which the MFG rule does not apply.<sup>98</sup> For example, a birth occurred within less than ten months after a family started receiving welfare benefits or a conception resulting from failed contraception, rape, or incest – reported either before or within three months after delivery – are classified by the MFG statute as narrow exceptions. Also, the MFG does not apply if a welfare family does not receive written notice from the California Department of Social Services (DSS) informing them of the existence and implementation of the MFG rule at least 10 months prior to the birth of an additional child. Finally, as a result of the settlement reached in *Nickols et al. v Saenz*, the MFG rule does no longer apply to children born into families who have been

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<sup>96</sup>Ibid., sec. 11320-29.4.

<sup>97</sup>American Civil Liberties Union of Southern California, *News Release. State Sued Over 'Family Cap' Welfare Policy*. Available at <http://www.aclu-sc.org/News/Releases/2000/100203/>

<sup>98</sup>California Welfare and Institutions Code, sec. 11450.04.

off cash assistance for 24 consecutive months.

The *Nickols* case alleged that according to the MFG statute both adult and teenage parents have the right to receive written notification from the DDS informing them of the existence and implementation of the MFG rule. Also, the case alleged that failure on the part of the DDS to comply with the above cited requirement infringed upon California recipients' civil rights. Furthermore, attorneys for the plaintiffs maintained that the DDS has repeatedly failed to comply with the requirement set forth by the MFG statute to notify teenage parents directly, by notifying their adult guardians instead and by failing to specify who the MFG rule would apply to. As a result of this DDS practice, a large number of California's adolescent parents had been surprised by the application of the MFG rule to their newborn babies. Finally, the case alleged that in the case of notifications sent to adult recipients, the DDS had failed to explain the terms under which the MFG rule would apply.

On 14 September 2000, a settlement was reached in the *Nickols* case. As a result of this settlement, relief was provided to teenage parents who were struggling to finish high school and afford a living for their families on as little as \$305 a month. The settlement also required the DDS to provide adult recipients with the required notification in a timely manner. After the settlement was reached, Claire Pastore, attorney for the plaintiffs, declared: "The stated purpose of the Maximum Grant Rule was to influence welfare families' decision to delay having more children. . . but without clear advance notice, the rule wasn't even consistent with its dubious premise, that poor families base childbearing decisions on welfare benefits. . ." <sup>99</sup>

### **Effects of the Maximum Grant Rule on California's Recipients and their Families**

As illustrated by some of the declarations collected from plaintiffs in the *Nickols* case that are going to be reproduced in the following section of this chapter, newborns' exclusion from the family welfare grant had severe economic consequences for all recipients to whom the MFG rule applied.<sup>100</sup>

In March 2000, Lani lived with her mother, stepfather, two brothers, and her two daughters – Consuelo and Veronica – in San Mateo County,

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<sup>99</sup>American Civil Liberties Union Freedom Network, *In Case Brought on Behalf of CA's Poor, ACLU Wins Changes to Punitive 'Family Cap' Welfare Rule*. Available at <http://www.aclu.org/PoorRights/PoorRights.cfm?ID=8116&c=154>

<sup>100</sup>In order to protect the plaintiff's privacy, the names used to identify the women cited in the following section of this chapter are pseudonyms.

California. Lani received cash benefits under the CalWORKs program. Her monthly welfare grant included herself and her daughter Consuelo and totaled \$505. Lani's younger daughter Veronica was born in April 1999 and therefore was excluded from the family's grant as a result of the MFG rule. The first time Lani had heard about the existence of the MFG rule was during a conversation with her welfare caseworker. At that time, Lani was already two months pregnant with Veronica. Prior to the conversation with the caseworker, Lani had not received any written or oral notice from the DDS informing her of the existence and consequences of the MFG rule. Lani and her children were living in overcrowded housing, could not afford winter clothing, and normally ran out of food and other basic necessities before the end of each month.

In March of 2000, Maria G. was living in Bakersfield, California. Maria's two-year-old daughter, Desiree, was denied additional CalWORKs benefits because of the MFG rule. Maria received a monthly grant of \$279. The first time Maria had heard about the MFG rule was in July 1999, more than one year after Desiree was born. Maria was receiving CalWORKs cash assistance as a minor in her mother's household when she became pregnant with Desiree. It was Maria's mother who informed Maria's welfare caseworker about her pregnancy. Maria moved out of her mother's house just before she turned 18, and in June 1999 she applied for aid for herself and Desiree. One month later, in July 1999, Maria received a Notice of Action in the mail stating that she was eligible for cash benefits, but that Desiree had been denied cash aid under the MFG rule. Because of the financial hardship imposed on her family by the MFG rule, Maria was not able to afford diapers for Desiree or pay for clothes, medications, and other basic necessities for her family.

Lisa was the only plaintiff in the *Nickols* case who was no longer a minor. As of March 2000, she was 30 years old and lived in San Francisco with her baby-daughter Kareemha and her four-year-old son Shaquille. Lisa received a monthly grant of \$290 for herself and Shaquille. Due to the MFG rule, cash benefits for Lisa's family did not increase when her baby daughter was born in November 1999. Prior to Kareemha's birth, Lisa did not receive any written or verbal notice from the DDS concerning the implementation of the MFG rule. In fact, it was only after Kareemha was born that her welfare caseworker informed Lisa that her newborn baby would not be added to her family CalWORKs grant due to the MFG rule. Like all previous petitioners, Lisa too declared that she was unable to afford over-the-counter medications, clothes, shoes, as well as a car seat and other basic necessities for her son and daughter.



## 2.2.4 Caps on Kids: What Do State Evaluations Tell Us About Child Exclusion Policies?

Child Exclusion policies were first implemented without any evidence of their effectiveness at reducing out-of-wedlock births among welfare recipients. Research is now available.<sup>101</sup> The findings from state evaluation studies suggest two scenarios: (1) The implementation of Family Cap policies does not reduce out-of-wedlock birthrates among welfare recipients; (2) the implementation of Family Cap policies reduces the number of births to welfare recipients significantly, but it also causes an increase in the recipients' abortion rates.

As mentioned in Sec. 2.2 of this chapter, prior to the implementation of the TANF program in 1996, states could implement family cap policies only after being granted a federal waiver. As a condition of the waiver, the Department of Health and Human Services (HHS) required states to conduct an experimental evaluation in which control-group families continued to receive cash benefits for newborn children, while experimental-group families became subject to the state Child Exclusion policy.

To date, of the early 14 waiver states, seven – Arizona, Arkansas, Delaware, Indiana, Nebraska, New Jersey, and Virginia – have evaluated their Family Cap policies. However, only two of the original waiver states – Arkansas and New Jersey – have published findings from their evaluations. In both the Arkansas and the New Jersey's evaluations, birthrates among recipients subject to the state Family Cap policies are compared to birthrates to recipients who are not subject to the state Child Exclusion policy.

Findings from the Arkansas' evaluation have shown that there is there was “no statistically significant difference. . . in the number of births”<sup>102</sup> occurring to members of the control group and to members of the experimental group over the two-and-a-half years period during which a Child Exclusion policy was implemented in Arkansas. In fact, when compared to families in

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<sup>101</sup>See P. Donovan, “Does the Family Cap Influence Birthrates? Two Studies Say ‘No,’” *The Guttmacher Report on Public Policy*, 1 (February 1998): 10-11; J. Levin-Epstein, *Open Questions: New Jersey's Family Cap Evaluation* (New York: Center for Law and Social Policy, 1999). Available at <http://www.clasp.org/DMS/Documents/1011211646.72/view.html>;

S. Stark and J. Levin-Epstein, *Excluded Children: Family Cap in a New Era* (New York: Center for Law and Social Policy, 1999).

Available at <http://www.clasp.org/DMS/Documents/1011371434.13/view.html>;

and Center for Law and Social Policy, *Caps on Kids. Family Cap in the New Welfare Era. A Fact Sheet* (New York: Center for Law and Social Policy, 1999). Available at <http://www.clasp.org/DMS/Documents/1011210855.11/view.html#notes>

<sup>102</sup>Donovan, “Does the Family Cap Influence Birthrates?,” 10.

the control group, families subject to the Arkansas Family Cap policy averaged 0.16 births, while families in the control group averaged 0.14 births per family unit.<sup>103</sup>

As far as New Jersey is concerned, the HHS authorized the state government to reconfigure its AFDC program through a waiver in 1992. The refurbished AFDC program – titled New Jersey Family Development Program (FDP) – was signed into law in February 1992 and it was officially implemented starting with October 1, 1992. Not surprisingly, the feature of the FDP that attracted the most attention both in New Jersey and nationwide was its Family Cap policy – the first of its kind to be implemented in the country.<sup>104</sup>

As a condition for granting the waiver, the HHS insisted that the FDP be evaluated. Subsequently, the New Jersey Department of Human Services (NJ DHS) contracted the Rutgers University School of Social Work to conduct an experimental evaluation which was carried out between October 1992 and December 1996. Results from the FDP evaluation were published in 1998, two years after the experimental study was concluded.<sup>105</sup>

In order to carry out the evaluation, two samples of AFDC recipients were selected from New Jersey's AFDC caseload. One sample, designated by the evaluators at Rutgers as the control group, included a list of 1,607 randomly selected recipients whose names had been part of the New Jersey's AFDC caseload since before October 1, 1992.<sup>106</sup> These 1,607 recipients were termed by the evaluators "ongoing cases." Similarly, the control group was comprised of 1,285 recipients that had been selected at random and whose

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<sup>103</sup>See C. Turturro, B. Benda, and H. Turney, *Arkansas Welfare Demonstration Project: Final Report, July 1994 through June 1997* (Little Rock, AR: University of Arkansas at Little Rock, School of Social Work, 1997), quoted in Stark and Levin-Epstein, *Excluded Children: Family Cap in a New Era*, 5. Researchers at the University of Arkansas could not evaluate the effect of the Family Cap policy on abortion rates because Arkansas does not pay for abortions under Medicaid. Therefore, the state government has no means of tracking the number of female recipients who choose to terminate their pregnancies. See Donovan, "Does the Family Cap Influence Birthrates?," 10.

<sup>104</sup>According to the Family Cap provision contained in the FDP, AFDC cash benefits were not to be increased for additional children born to AFDC payees if the children were conceived while their mothers were on the welfare rolls. The New Jersey Family Cap provision did not apply to other benefits, such as Food Stamps, Medicaid, and housing subsidies.

<sup>105</sup>Rutgers University Study On The Family Development Program, *A Final Report on the Impact of New Jersey's Development Program: Results from a Pre-Post Analysis of AFDC Case Heads from 1990-1996* (New Brunswick, N.J.: Rutgers University Press, 1998), 1-8.

<sup>106</sup>See *ibid.*, 4.

names had been added to the New Jersey's AFDC lists between October 1, 1992 and December 31, 1994.<sup>107</sup> These additional 1,285 recipients were termed by the evaluators "new cases". All recipients in the control group were not subject to the Family Cap provision contained in the FDP.

A second sample of 5,510 recipients were selected and designated by the researchers at Rutgers as the experimental group.<sup>108</sup> This sample included a list of 3,268 randomly selected recipients whose names had been part of the New Jersey's AFDC caseload since before October 1, 1992. Once again, these 3,268 cases were termed by the evaluators "ongoing cases." The experimental group also included a second randomly selected list of 2,233 recipients whose applications for cash assistance had been added to the New Jersey's welfare rolls between October 1, 1992 and December 31, 1994.<sup>109</sup> The evaluators termed these 2,233 recipients "new cases." The AFDC recipients in the experimental group were all subject to the Family Cap policy contained in FDP.

The evaluators at Rutgers examined the results for the experimental and for the control group separately. Their analysis revealed that for ongoing welfare cases, members of the experimental group reported a birth rate nine percent lower than members of the control group.<sup>110</sup> However, members of the control group had 28 percent more sterilizations than members of the control group.<sup>111</sup> For new welfare cases, members of the experimental group reported a birth rate that was 12 percent lower than the birth rate to members of the control group.<sup>112</sup> However, members of the control group experienced an abortion rate that was 14 percent higher than the abortion rate to members of the control group.<sup>113</sup>

Since its publication, the Rutgers' evaluation study has been criticized for potential flaws, including being described as presenting "week evidence" by the Government Accounting Office 2001 review of all studies assessing the effects of Family Cap policies on welfare recipients.<sup>114</sup> Despite the ongoing

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<sup>107</sup>Ibid.

<sup>108</sup>Ibid.

<sup>109</sup>Ibid.

<sup>110</sup>Ibid.

<sup>111</sup>Ibid.

<sup>112</sup>Ibid.

<sup>113</sup>Ibid.

<sup>114</sup>See J. Levin-Epstein, "Lifting the Lid Off the Family Cap: States Revisit Problematic Policy for Welfare Mothers," *CLASP Policy Brief* 1 (December 2003): 1-5 1; and P. H. Rossi, "New Jersey's Family Development Program: An Overview of the Rutgers Evaluation."

Available at: <http://www.welfareacademy.org/pubs/eval/rossi.shtml>

criticism, the Rutgers' evaluation suggests two possible scenarios deriving from the implementation of a Child Exclusion policy. First, lower birth rates to ongoing cases belonging to the experimental group may be due to a higher incidence of sterilization procedures among members of that same group. Second, lower birth rates to new cases belonging to the experimental group may be due to a higher incidence of abortion procedures among the members of that same group.

The implications of the latter finding are particularly controversial. In the early 1990's, when a number of states began including Family Cap policies in their welfare statutes, their primary goal was to decrease welfare-related expenses by discouraging AFDC payees from bearing children while on cash assistance. All of the early waiver states had fairly conservative views on family formation, pre-marital childbearing, and abortion. In fact, the majority of these states were strong supporters of two-parent families and strong opposers of out-of-wedlock childbearing and abortion. Therefore, strategies implemented by those same states to cut down on welfare costs were expected to discourage single female recipients from becoming pregnant in the first place, rather than on encouraging them to opt for sterilizations and abortions.

### **2.2.5 Is There Any Evidence that Child Exclusion Policies Affect Recipients' Attitudes Towards Childbearing?**

The decision to have a child is a complex one, influenced by many factors. In 1999, researchers with the Center for Law and Social Policy (CLASP) asked welfare caseworkers and recipients residing in a number of the 14 original waiver states to express their opinion on how Child Exclusion policies affect recipients' attitudes towards childbearing.<sup>115</sup> The goal of the survey was to determine whether Family Cap policies influenced recipients' decision to have intercourse, increased contraceptive use among welfare-reliant women, reduced birth rates to indigent mothers, and affected recipients' decision to put a newborn up for adoption.

The results of the 1999 survey show how caseworkers and recipients agree on the fact that Family Cap policies do not alter recipients' childbearing decisions and sexual practices.<sup>116</sup> For example, in Arizona, many of the interviewed caseworkers felt that "... few if any welfare recipients have more children just to increase their grants".<sup>117</sup> In Delaware, caseworkers felt that

<sup>115</sup>See Stark and Levin-Epstein, *Excluded Children: Family Cap in a New Era*, 6.

<sup>116</sup>Ibid.

<sup>117</sup>G. Mills et al., *Evaluation of the Arizona EMPOWER Welfare Reform Demonstra-*

the state Family Cap policy was “unlikely [to] influence clients’ childbearing decisions[,]”<sup>118</sup> since prior to 1996, increases in ADFC welfare grants had never motivated recipients to bear more children.<sup>119</sup> One Delaware caseworker summarized recipients’ most common reaction to the state Family Cap policy with these words: “They’ll still have kids. There are emotional needs, not just money.”<sup>120</sup> In Indiana, the researchers observed that many caseworker did not consider the state Child Exclusion policy as an effective deterrent to childbearing.<sup>121</sup> In fact, caseworkers considered the average \$60 monthly increment in cash benefits unable to affect recipients’ reproductive choices.<sup>122</sup>

According to the CLASP researchers, the Arkansas impact evaluation mentioned in the previous section of this chapter had revealed that nearly all recipients that took part in the evaluation – or 95 percent of the mothers belonging to the control group and 100 percent of the mothers belonging to the experimental group – stated that “they would not get another child in order to get additional benefits.”<sup>123</sup> Moreover, 94 percent of the mothers belonging to the Arkansas experimental group and 82 percent of the mothers belonging to the control group declared that “the amount in cash assistance they received was not a factor in their childbearing decisions.”<sup>124</sup> Similarly, data collected and analyzed for an interim report on New Jersey’s FDP revealed that more than 80 percent of the recipients participating in the survey thought that “not having adequate finances to raise a child was a reason to avoid pregnancy.”<sup>125</sup> However, fewer than 40 percent of the respondents considered a loss of incremental benefits a reason to avoid pregnancy.<sup>126</sup>

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*tion: Interim Implementation Status Report* (Cambridge: Abt Associates, Inc., 1997), 23, quoted in Stark and Levin-Epstein, 6.

<sup>118</sup>D. Fein and T. S. Thompson, *The A Better Chance Demonstration: Report on the First Year Site Visit* (Bethesda: Abt Associates, Inc., 1996), 12, quoted in Stark and Levin-Epstein, 6.

<sup>119</sup>See Stark and Levin-Epstein, 6.

<sup>120</sup>D. Fein and T. S. Thompson, *The A Better Chance Demonstration: Report on the First Year Site Visit*, 12, quoted in Stark and Levin-Epstein, 6.

<sup>121</sup>See Stark and Levin-Epstein, 6.

<sup>122</sup>*Ibid.*

<sup>123</sup>Stark and Levin-Epstein, 6. See also Turturro, Benda, and Turney, *Arkansas Welfare Demonstration Project: Final Report, July 1994 through June 1997*, quoted in Stark and Levin-Epstein, 6.

<sup>124</sup>Stark and Levin-Epstein, 6-7. See also Turturro, Benda, and Turney, quoted in Stark and Levin-Epstein, 6.

<sup>125</sup>Camasso et al., *An Interim Report on the Impact of New Jersey’s Family Development Program*, quoted in Stark and Levin-Epstein, 7.

<sup>126</sup>See Stark and Levin-Epstein, 7.

So far, very few evaluations have examined patterns of contraceptive use among welfare recipients subject to state Child Exclusion policies. Similarly, to date very few studies have attempted to determine whether Family Cap policies are responsible for higher rates of contraceptive use among welfare-reliant women. However, both the Arkansas and the New Jersey's evaluations placed a great deal of attention on these issues. With respect to changes in the use of a preferred method of birth control, researchers with the University of Arkansas found that 80 percent of all mothers of reproductive age that participated in the evaluation reported no change in the method of contraception that they had been using since July 1, 1994 – the date on which the state Family Cap policy was first implemented in Arkansas.<sup>127</sup> With respect to consistent utilization of a birth control method, data from Arkansas showed that between 55 and 60 percent of all respondents of reproductive age – or 61 percent of the experimental group members and 55 percent of the control group members – reported using birth control consistently.<sup>128</sup>

In New Jersey, data collected from researchers at Rutgers University indicated that for both new and ongoing welfare cases members of the experimental group reported using a method of birth control more often than members of the control group.<sup>129</sup> Also researchers at Rutgers determined that over the period 1993-1996, among new welfare cases belonging to the experimental group the projected rate for birth control utilization per 1,000 women was 21 percent higher than for new and ongoing welfare cases belonging to the control group.<sup>130</sup> In other words, findings from the Arkansas' evaluation showed that the Arkansas Family Cap policy had no significant impact on recipients' patterns of contraceptive use. In New Jersey, however, findings from the 1996 interim report showed that New Jersey's FDP seemed to have some positive impact on recipients' family planning practices.

### 2.3 After Welfare: The Second-Shift Moms

One of the primary goals of the Welfare Reform was that of moving recipients out of welfare rolls and into the labor market. Interestingly, in the course of the debate preceding the passage of the Welfare Reform bill, the welfare problem was redefined by policy makers as one of labor participation. In

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<sup>127</sup>See Turturro, Benda, and Turney, quoted in Stark and Levin-Epstein, 7.

<sup>128</sup>Ibid.

<sup>129</sup>See Stark and Levin-Epstein, 7.

<sup>130</sup>Ibid.

other words, policy makers erroneously assumed that if a recipient could get a paying job she could automatically become financially self-sufficient.

Interestingly, the effects of the 1996 Welfare Reform on the lives of poor women are described, depending on the kind of source chosen, either as a stunning success or as an unqualified failure. As already discussed in the introduction to this manuscript, when it comes to the impact of PRWORA on the overall welfare population, contradictory data is the currency of the day. To get a flavor of the amount of disagreement existing around the issue of whether the Welfare Reform bill has delivered on its promises, consider just a few opinions describing the outcomes of PRWORA collected by reporters with major newspapers between 1997 and 1998. Some of those opinions read: “[T]he welfare rolls have been dramatically reduced, with a 26 [percent] reduction nationwide.”<sup>131</sup> “State officials are confident that the majority of welfare recipients will replace lost benefits with earnings from employment.”<sup>132</sup> “We are meeting the Welfare Reform goals with many welfare recipients obtaining meaningful jobs.”<sup>133</sup> By contrast, other opinions read: “We are meeting our goals only in few states willing to provide community service jobs.”<sup>134</sup> “The hopes of welfare officials are artificial[;]”<sup>135</sup> and “we are not meeting the Welfare Reform goals, since the available jobs are low wage for anyone to support a family.”<sup>136</sup>

In 1997, according to ex-President Clinton, “the debate [was] over”<sup>137</sup> and Welfare Reform has reached its primary purpose, while according to Donna Shalala, his Secretary of Health and Human Services, the “real test”<sup>138</sup> – that of keeping recipients in the paid labor market – was still to come.

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<sup>131</sup>J. DeParle, “Getting Opal Caples to Work,” *New York Times Magazine*, 24 August 1997, sec. 6.

<sup>132</sup>L. Halloran and A. Julien, “Welfare Cutoff Looming: Many Recipients Who Work Will Lose Cushion,” *Hartford Courant*, Saturday 26 October, 1997, sec. 1A, quoted in R. A. Salomon, review of *Making Ends Meet: How Single Women Survive Welfare and Low Wage Work*, by Kathryn Edin and Laura Lein, *Yale J. on Regulation* 15 (Winter 1998): 177.

<sup>133</sup>*Ibid.*

<sup>134</sup>J. DeParle, “States Replace Benefit System: Work is Theme of New Welfare,” *New York Times*, 30 June 1997, sec. 1A.

<sup>135</sup>Halloran and Julien, “Welfare Cutoff Looming: Many Recipients Who Work Will Lose Cushion,” quoted in R. A. Salomon, review of *Making Ends Meet: How Single Women Survive Welfare and Low Wage Work*, 177.

<sup>136</sup>DeParle, “States Replace Benefit System: Work is Theme of New Welfare.”

<sup>137</sup>J. Harris and J. Havemann, “Welfare Rolls Continue Sharp Decline: Percentage on Assistance is Lowest Since 1970,” *Washington Post*, 13 August 1997, Section 1A.

<sup>138</sup>*Ibid.*

Despite legislators' assumptions and PRWORA's contradictory results, recipients' praised transition from welfare to work has not always allowed indigent mothers to make the much more crucial transition from poverty to self-sufficiency. Once again, Edin and Lein's book *Making Ends Meet*<sup>139</sup> is a powerful tool to assess how well former welfare recipients and their children are really faring. For example, the first chapter of the book opens with a compelling rendition of an article originally published in the New York Times Magazine on December 18, 1994. The article, written by New York Times' journalist Jason DeParle was about Mary Ann Moore, an African American mother of five, who in 1994 worked a ten-hour shift as a cook in one of Chicago's soup kitchens.

According to Edin and Lein, Moore was paid \$8 an hour and could work up to 60 hours a week. Her job as a cook was by far the best-paying job that Moore had ever had. In order to be hired for the job, Moore was required to complete a training program at Chicago City College and to obtain a food and sanitation license.

Moore, who at the time of her interview with DeParle was 33 years old, declared to have relied on AFDC only periodically since leaving high school. In the course of her interview, Moore told the reporter that in order to stay employed she had to wake up her family at 3:00 am every morning, dress her children, feed them, and then drive eleven miles to bring her children to her mother's apartment. Moore, who maintained to work an average of 56 hours a week for a total of \$1,600 a month, told DeParle that in her opinion, the fact of leaving welfare to work had increased her expenses considerably. Upon hearing about her employment, the Chicago Housing Authority had raised Moore's rent from roughly \$100 to \$300 a month. Also, in order to drive her children to her mother's apartment, Moore had been obliged to lease a used car which cost her about \$300 a month. Further, Moore had to pay for liability insurance and gasoline for a total of \$300 a month. Finally, Moore had to spend \$100 a month in day care for her two-year-old twins. After all these expenditures were taken care of, Moore was left with \$800 a month to feed and clothe for her family of five, buy diapers for the twins, purchase books and school supplies for her two older boys, pay her bills, and put \$67 a month towards a student loan that Moore had taken out to enroll in her job-training program.

According to Edin and Lein, after spending several weeks with the Moores, during which DeParle had observed the family's daily routine, asked

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<sup>139</sup>K. Edin and L. Lein, *Making Ends Meet: How Single Women Survive Welfare and Low Wage Work* (New York: Russel Sage Foundation, 1997).



questions, and tallied up their monthly budget, the reporter had come to the conclusion that even for mothers who can get a good-paying job like Moore's, trading welfare for work is problematic to say the least. To this effect, Edin and Lein further observed that despite her tight monthly budget, Moore was more fortunate than the majority of former female welfare recipients. In fact, Moore earned more money than most single mothers with similar skills, she was able to work more hours per week than the majority of employed single mothers, she had not been laid off, she lived in a subsidized apartment, and her mother provided Moore with child care free of charge. Yet, Moore's fortunate life circumstances and yearly income placed her family just above the official 1997 federal poverty line.

Another article that appeared in the *New Yorker* on April 9, 2001, presented the readers with a similar story.<sup>140</sup> The article described life in the "Shrimp Boat", the most-Eastern tip of the District of Columbia and the nation's capital's hardest ghetto. Over the years, the Shrimp Boat has come to stand for a neighborhood of ten thousand people. In 1996, only three percent of the householders residing in the Shrimp Boat's projects earned the majority of their income, the rest relied on public assistance. By contrast, in 2001, one third of the Shrimp Boat's population earned the greater part of their annual incomes.

The *New Yorker's* article also told its readers about the life of Elizabeth Jones. In 1996, Jones was 26 years old and had been on welfare for nine years. Miss Cookie – as the Shrimp Boat children call her – is the daughter of a single mother who got pregnant at 16 and a father she never met. By the age of 31, together with a high school diploma, she had a history of victimization by rape and domestic violence and sexual abuse and three babies. At 27, after a volunteer clerkship and a course in WordPerfect, Ms. Cookie got the first real job of her life as a receptionist. Concerned about the fact that "the world would have mistaken her kids for ghetto thugs,"<sup>141</sup> Ms. Cookie decided the Welfare Reform was her last chance to rescue her family from poverty and the socially-constructed images that go with it. So, when in September 1998 she saw a recruitment poster for the Metropolitan Police Department on the side of a bus, she decided the time had come to change her life and that of her children. That same year, Ms. Cookie graduated from the police academy and became an officer on the night shift in Southeast D.C., the city's most violent quadrant – her own.

The author of the article described Ms. Cookie as smart, funny, someone

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<sup>140</sup>K. Boo, "After Welfare," *New Yorker*, 9 April 2001, 93.

<sup>141</sup>*Ibid.*

who tells the truth no matter what, describes herself as “a mediocre cop,”<sup>142</sup> and a Shrimp Boat phenomenon.

Despite being a Shrimp Boat phenomenon, Ms. Cookie could never be at home with her children at lunch or dinner time. Her police shift ran all night, and after it ended Ms. Cookie went to work as a security guard in order to make some extra money to meet the car payments. In 2001, Ms. Cookie earned around \$39,000 a year from her two jobs. Compared to the average \$17,000 that welfare recipients received in cash benefits in 2001, Ms. Cookie’s salary was astronomical. However, if compared with the average \$52,000 necessary to meet the basic needs of a family of four in Washington, D.C. in 2001, Ms. Cookie’s salary was not that great after all.

In 2001, rent and car payments consumed \$1,220 of Ms. Cookie’s \$1,600 monthly wage as a policeman. Besides car payments, Ms. Cookie’s monthly bills also included a \$282 monthly payment on a student loan that she took out for a “fly-by-night trade school”.<sup>143</sup>

Elizabeth Jones described her material rewards with pride: A car, a rented frame house “four crucial blocks far away from the East Capitol Dwellings,”<sup>144</sup> – an infamous housing project where Ms. Cookie used to live – no more Payless shoes for her children, a computer, and cable television. In terms of time, however, Ms. Cookie’s schedule did not allow for any reward. In fact, when her police shift ended at 4:00 am, Ms. Cookie slept for two hours, woke up her children – who go to three different schools – took one of them to the bus stop, and drove the remaining two to school herself, together with other four neighbor’s kids. After that she headed towards her part-time job as a security guard. When she finished at 5:00 pm, Ms. Cookie picked up all the children from school and then went straight to the police station to start her shift. On days off, she slept.

The men who fathered Ms. Cookie’s three children live close to the Shrimp Boat, but “they are all, practically, absentees with intervals between their visits often measurable in years.”<sup>145</sup> As of August 2000, Elizabeth had appeared in court ten times to try to secure the \$190 a month in child support that the three men had been ordered to pay. So far, she had collected nothing. “Basically, the same amount of money she had been able to collect since the children were born.”<sup>146</sup>

Wayne’s father was an older man, who picked up Elizabeth from ju-

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<sup>142</sup>Ibid., 94.

<sup>143</sup>Ibid., 95.

<sup>144</sup>Ibid.

<sup>145</sup>Ibid., 102.

<sup>146</sup>Ibid.

nior high and “had left out for the day.”<sup>147</sup> Drenika’s father, a crack user, disappeared soon after the New Year’s Eve on which the child was conceived. Elizabeth was 21 when she met Dernard’s father, who then stayed long enough to earn a conviction for assaulting her. After this traumatic experience Elizabeth went for a tubal ligation and refused to date a man for five years. Eventually, she recovered and took self-esteem classes and two courses in parenting skills.

The author points out that Ms. Cookie rarely talked of fatigue. She did speak of missing her children, of worrying about whether they had taken a bath, eaten a proper lunch or a proper dinner, done their homework, and turned out the lights before going to sleep. Moreover, Ms. Cookie did worry about whether her children had watched something terrible on TV or had gone outside although not allowed to do so while their mother was at work.

Elizabeth’s worries were more than legitimate. In the Shrimp Boat, like in many other poor neighborhoods around the country, non-standard working hours and the desire to earn a living collide with family needs. Welfare families almost always can rely on only one parent. Indigent children rarely have access to after-school activities, and if they do, they have no one to check on their participation. In an interesting 1999 article, Tonya Brito, Assistant Professor of Law at Wisconsin-Madison School of Law, presents the concept of second-shift moms: Working mothers who, like Elizabeth Jones and Mary Ann Moore, come home tired from work only to face a second, even more tiring shift.<sup>148</sup>

This innovative concept depicts former welfare recipients as hard workers, thereby erasing, if only for a moment, all prejudices and stereotypes that fuel the current welfare discourse. Moreover, this concept places emphasis on the fact that welfare families have been shortchanged. Because of welfare-to-work requirements, child-rearing duties are being performed by mothers who are overworked and can only devote to their families a very limited amount of time. All things considered, it appears that the coerced exodus of welfare-reliant mothers into the labor market, while leaving their already precarious economic situation virtually unchanged, has created an army of unsupervised children now at the mercy of their own survival skills and of street violence.

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<sup>147</sup>Ibid., 104.

<sup>148</sup>See T. L. Brito, *From Madonna to Proletariat: Constructing a New Ideology of Motherhood in Welfare Discourse*, 44 Vill. L. Rev 415 (1999).

