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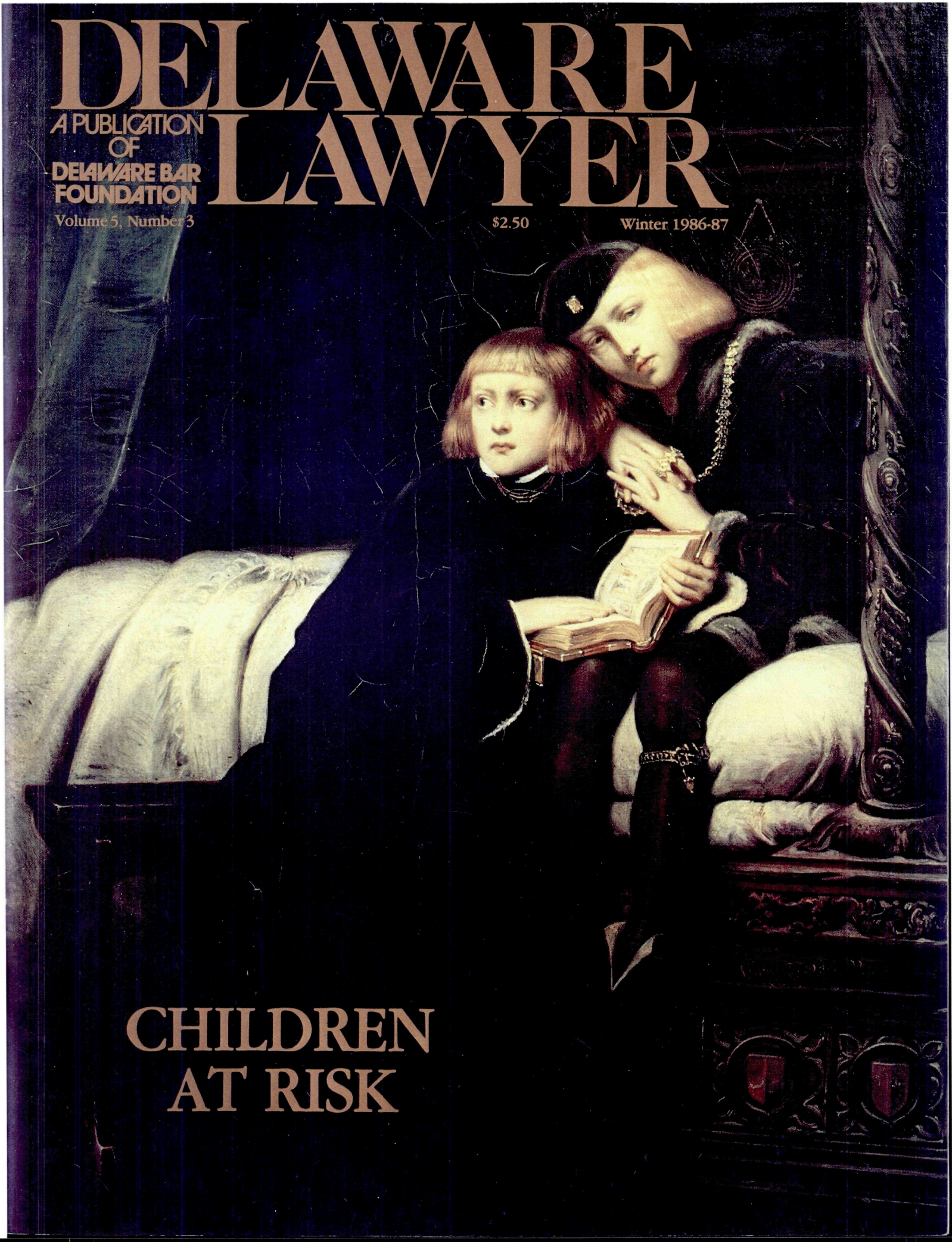

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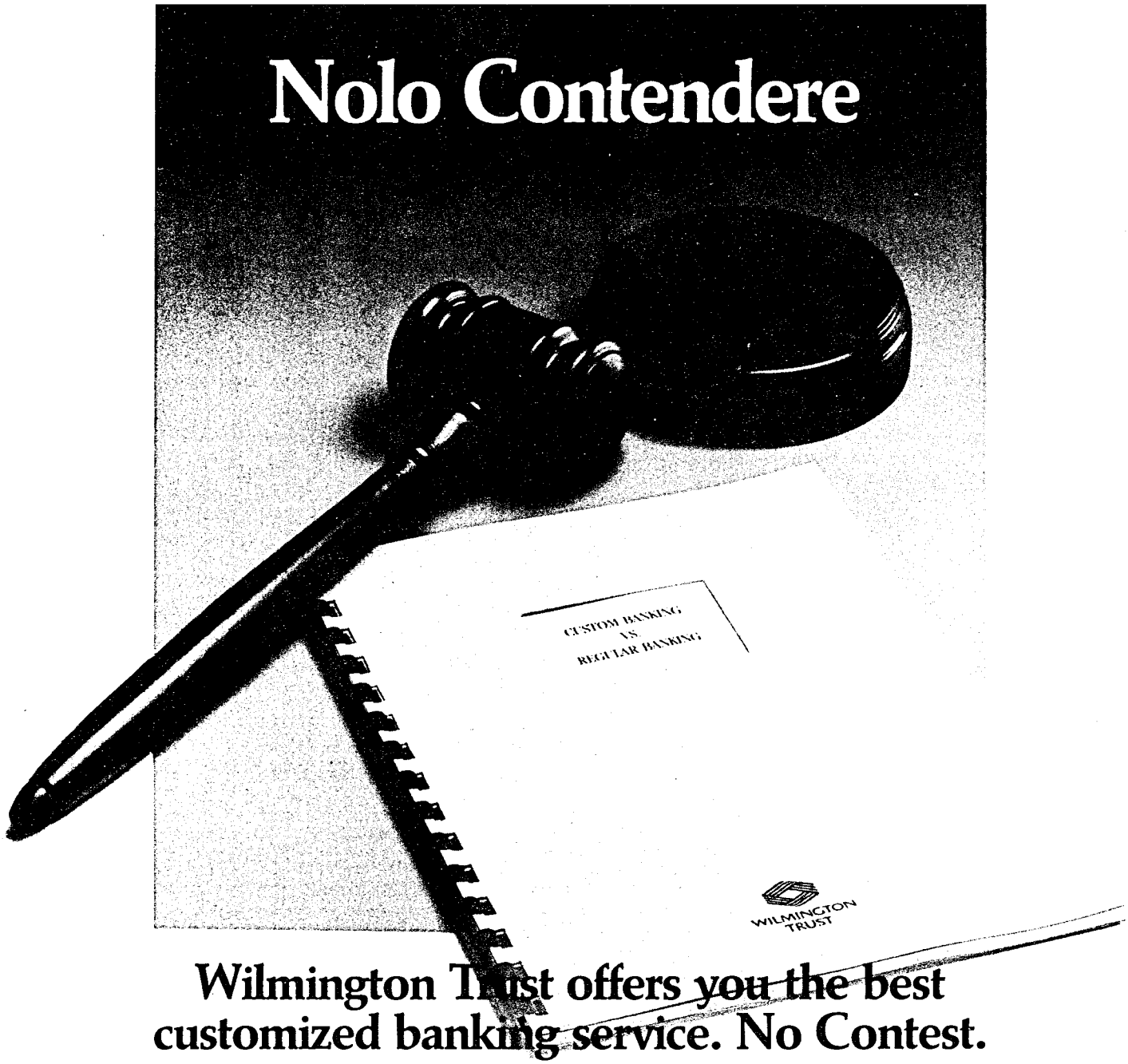

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Contents

Cover: If ever there were children at risk, they would be these. Detail from "Edward V and the Duke of York in the Tower" by Paul Delaroche. Reproduced by permission of the Trustees, the Wallace Collection, London.

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EDITORS' PAGE

Letters to the Editor

Gentlemen:

I was pleased to see that the editorial staff of *DELAWARE LAWYER* used a picture of the Holocaust Memorial in Wilmington, Delaware for its cover. However, I was disappointed that no credit was given to the sculptor Elbert Weinburg. Furthermore, it would have been appropriate to identify the location as "Freedom Plaza".

Sincerely yours,
Stuart B. Young

Reader Young is right. A view of "Freedom Plaza" is indeed fitting for an issue on civil liberties. We were unaware of the name of the sculptor and we thank Stuart for enlightening us.

Elbert Weinburg is a nationally prominent artist whose works are represented in the Museum of Modern Art, the Whitney Museum of American Art, the Hirshorn collection, the Jewish Museum of New York, and museums at Yale, Brandeis, Colgate, and Dartmouth. He holds the Prix de Rome Fellowship in sculpture and the Guggenheim Foundation Award. We are all indebted to the Jewish Federation of Delaware, city, county, and state government and the contributions from the Jewish Community and its friends that brought this work into our midst.

The Editors

To whom it *should* concern!

I visited Elbert Weinburg's studio yesterday and saw a copy of your publication with his sculpture featured on the cover.

No-where was there the identity of the artist mentioned. I couldn't believe it!!

Amazing that such an omission could occur...I hope that you will correct this error.

An admirer of his work and a friend of Elbert's.

Bertha Schulman
8 Dogwood Lane
West Hartford, CT 06117

Oh, very well! Nostra Maxima Culpa!

***From our last issue:** pictured with Ralph K. Durstein, president of Community Legal Aid Society, Inc., are community members sympathetic with Mrs. Jean Jackson's efforts to protect the health of children and free WHA housing of lead paint contamination. See Mary McDonough's article, "WHA Finally Got the Lead Out", DELAWARE LAWYER, Fall 1986.*

And now for a different point of view...

Dear Sirs:

Abominable as Nazi Germany was, it cannot be charged with the "grossest denial of liberty and life ever committed by a 'civilized' government", as you did in your Fall 1986 salute to the Delaware ACLU. The Soviet Union is almost certainly the most murderous tyranny in history (its only rival being communist China), and is now more dangerous to freedom worldwide than the Nazis ever were. Current Soviet policy calls for slave labor and drug torture for dissidents at home, maiming and kidnapping of children in Afghanistan, genocide for rebellious sectors of Ethiopia and Angola, training and logistical support for international terrorism, and above all, subversion of the Western Alliance and of the United States in particular. Anyone who loves freedom must be an enemy of the Soviet Union. Disgracefully, the ACLU is just the opposite.

The case of the young Ukrainian defector, Walter Polovchak, provides a symbolic example. When Polovchak decided that he preferred American freedom to life in the subjugated Ukraine, the ACLU was there to help—the *Soviets*. Fortunately, the court rejected the ACLU's request to send Polovchak back to the Soviet Union.

The nation has been less fortunate with respect to the ACLU's campaign to cripple U.S. intelligence and counter-intelligence operations. Since 1970, in collaboration with the pro-Soviet Institute for Policy Studies and National Lawyers Guild, the ACLU has established numerous groups to lobby for anti-intelligence legislation, to harass intelligence agencies with FOIA requests, and to foment litigation against the agencies and their officials. A key figure in all these activities was Morton Halperin, a friend and assistant to the Cuban agent and CIA traitor Phillip Agee, the North Vietnamese spy David Truong, and the thief of the "Pentagon Papers", Daniel Ellsberg. The spate of recent headlines reflecting the disastrous loss of military secrets to Soviet espionage is one measure of how damaging the ACLU's activities have been.

ACLU's drift toward the Soviet Union, and away from genuine libertarianism, became apparent as early as 1967 and 1974, when the ACLU repealed resolutions which had barred advocates of "totalitarian dictatorship in any country" from the ACLU's governing boards. In 1982, ACLU named Lillian Hellman, a leading apologist for Stalinism, to its national advisory counsel. The left consolidated its grip on the organization in 1985, when ACLU picked Morton Halperin to direct its national office.

(Continued on page 6)

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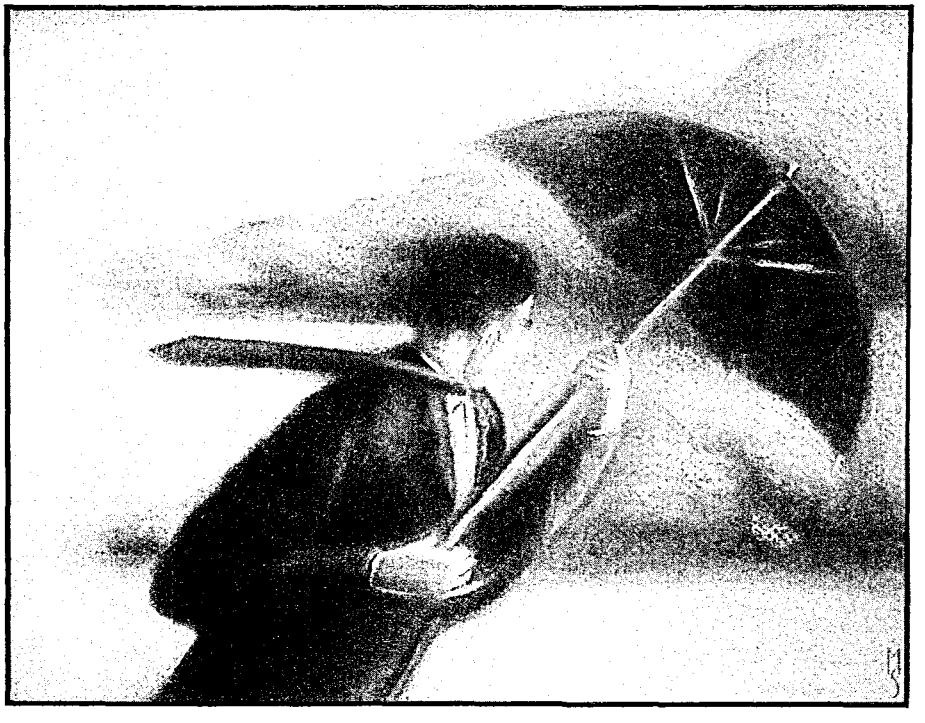

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EDITORS' PAGE

Under Halperin's leadership the ACLU has (1) called upon Congress to take "effective steps" to protect the Libyan tyrant Moammar Qaddafi from the CIA; (2) argued that the First Amendment permits a governmental employee to give top-secret military information to the media (and thus the KGB) with impunity and (3) opposed U.S. aid for anti-Soviet freedom fighters in Nicaragua, Cambodia, Afghanistan and Angola. If the West had not shaken off a similar policy of appeasement in World War II, the Nazis would still be with us today.

To my knowledge and to their credit, none of the Delaware ACLU lawyers celebrated in your Fall issue have supported the pro-Soviet initiatives of the national organization. Still, your publication attached too much importance to ACLU quibbling over whether minorities, feminists, secularists, pornographers and drug users should enjoy incrementally more priviliges in our already extraordinarily tolerant society. The fundamental question is whether we as a nation have the will to defend freedom at home and abroad against expansion of the Soviet tyranny. The national ACLU's anti-U.S., pro-Soviet policies are a massive fraud on the name and cause of liberty.

Sincerely,
Gregory A. Inskip

The ACLU responds:

Dear Sirs:

Lawyer Gregory Inskip has boiled over at positions taken by the ACLU at the National level without pausing to understand, much less fairly state, many of these positions. We agree that a fundamental question involved in the matters referred to in his letter is our national "will to defend freedom at home and abroad".

However, it is grossly myopic, and dangerous, to pretend that the only threat to our freedom is the "Soviet tyranny". That is the view that Senator Joe McCarthy aggressively advocated for many years. Fortunately, it eventually became clear that the McCarthy tactics deprived people of rights and his tunnel vision was no way to preserve our freedoms.

Mr. Inskip's letter evidences many misperceptions and inaccuracies as to ACLU's positions and roles over the years and now, at the national level and in Delaware. We extend to Mr. Inskip a cordial invitation to attend any ACLU-sponsored meeting so that we may discuss our respective positions.

We note that Mr. Inskip, in the opening sentence of his letter, challenges the Editor's comment describing the Holocaust as "...the grossest denial of liberty and life ever committed..." We will not quibble over the comparative degrees of vileness of the Nazi and Soviet systems. ACLU policy is clear and unambiguous: we oppose all forms of totalitarianism and recognize that the Nazis and Soviets have had no monoply in this form of government.

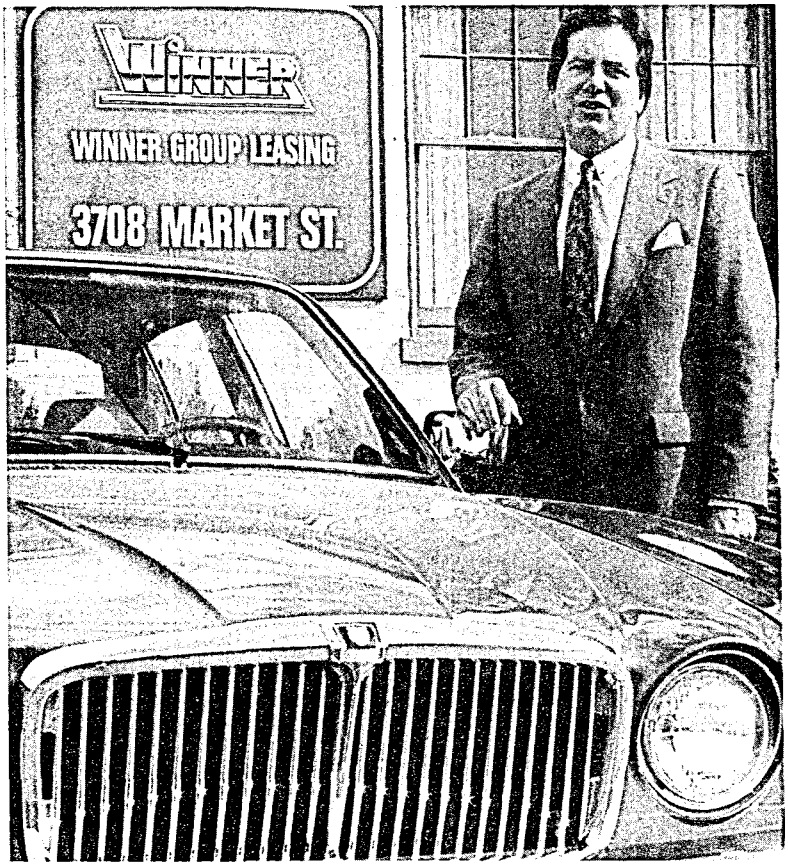
Although we disagree with Mr. Inskip's views on the rights of minorities, feminists, secularists, etc., we stand ready to defend his right to proclaim them. We must rely on others to aid in preventing those views from gaining an ascendancy. That is the ACLU way.

Sincerely,
Max S. Bell, Esquire, President
American Civil Liberties Union—Delaware

Irving Morris, Esquire, President
American Civil Liberties Foundation—Delaware

I should like to add a few words to this stimulating exchange. Reader Inskip portrays Lillian Hellman as a docile Stalinist. If he will take the trouble to read her memoirs he will discover that in 1948 she was urgently warning the naive Henry Wallace that his Progressive Party was in danger of a communist takeover. Some Stalinist! The moral is obvious: one should check the facts before indulging in the luxury of ill-informed vituperation.

WEW



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The Delaware State Bar Association Special Committee On The Needs Of Children: An Attempt To Define Their Plight

The Honorable Jay Paul James and Aida Waserstein

"...I am ...of substance, of flesh, and bone, fiber and liquids—and I might even be said to possess a mind. I am invisible, understand, simply because people refuse to see me.".

The Invisible Man, Prologue
Ralph Ellison

Although the words above were written by a black man in America, they apply with equal force to an invisible minority in Delaware: the children. Unlike adults, children do not control substantial funds, they cannot vote, and they cannot form groups for their common good. Unfortunately, too many children suffer because their needs are treated as secondary to those of adults, because of insufficient funds to comprehensively satisfy those needs, and because of failure to understand them.

The lack of a zealous advocate for children who can press for the necessary reforms led the Executive Committee of the Delaware State Bar Association in the summer of 1984 to ask us to study the feasibility of establishing a Special Committee on the Needs of Children. On October 17, 1984, the Executive Committee adopted a resolution creating the Special Committee and charged it with the following objectives: to secure public input on the needs of Delaware children; to develop methods of addressing those needs; to make advisory recommendations to the Executive Committee for action by the Bar Association; and to report back by June, 1985.

The Special Committee, which we co-chaired for the first two years, included four additional attorneys from the private and public sectors and seventeen non-attorneys, including psychologists, children's agency representatives, state legislators, clergy, health professionals, and educators. The unprecedented combination of lawyers and non-lawyers from diverse backgrounds and employment experiences was in deliberate pursuit of maximum input from and dialogue among those who deal regularly with Delaware children.

The Special Committee's 1985 report to the Executive Committee noted the formation of twelve task forces, each led by a member of the Special Committee but composed of both members and non-members with the expertise required to address the particular children's need studied by the task force. Accordingly, each task force had available the services of numerous people who devoted their time and energies out of a keen interest and strong desire to help. In lieu of a detailed account of the more than sixty (!) needs identified by the Special Committee, a brief discussion of some task force work will demonstrate the Special Committee's primary concerns.

Among the task forces established in the first year, the one dealing with permanency for children identified five services necessary to help keep families intact: (a) transportation; (b) expansion of funds for parent aides, homemakers and visiting nurses; (c) social workers in public schools; (d) child care, nutrition education, and medical treatment for

"What's this, Aida? You say Wiggin has been fooling around with the text of our article?" Left, Aida Waserstein, and right, The Honorable Jay Paul James. ▶

young parents; and (e) emergency "one-time" funds. The special committee then built on the work of this task force during the second year by directly addressing the delivery of services to prevent family breakdown and to reunify families where a breakdown has occurred.

Another early task force organized and presented at the Annual Family Law Seminar in March, 1985 a continuing education program for public and private attorneys on the prosecution and defense of the child dependency, neglect, and abuse cases. It was also instrumental in the drafting and adoption of new Family Court Rules covering procedures in such actions, which have been in use in the Court for more than a year. During the second year of the committee, a different task force presented another program at the annual seminar on the use and abuse of statutes that deal with imperiling family relationships and drafted procedural rules applicable in such cases for use by the Family Court. Adoption of rules in this area is still pending.

In that second year, the Special Committee continued its analysis of the needs of Delaware children and began to explore new ground. It formed a task force on PL 94-142, a federal statute that mandates teaching tailored to the needs of special education students. This task force monitored closely the study made by the federal Office of Education of the Delaware application of special education laws and met with Department of Public Instruction officials. The task force has under consideration a proposal for a state-wide position for the monitoring and training of surrogate parents appointed to authorize special education services for children whose natural parents cannot be located or who are wards of the state.

A legislative task force has also been established to monitor legislation that affects children and to work with advocacy groups on behalf of children, such as the Family and Children's Coalition and the Family Law Commission.

During its second year the Special Committee studied charges of gang activity in the City of Wilmington during the summer of 1985 and consulted with community leaders about this problem.

Now in its third year, the Special Committee has new leadership. Joel Tenenbaum and Barbara Miller, both attorneys in private practice with extensive family law experience, are chair and vice chair, respectively. Although there have been changes in the composition of the Committee to insure a constant flow of new ideas, the categories of positions have remained essentially the same.

Making Delaware an ideal place for children, where no child suffers from lack of services because of inaction or complacency, remains a distant goal, but the Special Committee has helped narrow the gap between identifying and addressing those needs. ■

Aida Waserstein, Esquire and The Honorable Jay Paul James were the original Co-Chairs of the Bar Association's Special Committee on the Needs of Children. Through his services on the Family Court, Judge James has become an expert and eloquent authority on children's needs. Similarly, Aida, active in the Section on Women and the Law, and a former Secretary of the Bar Association, was an ideal choice as original Co-Chair. In 1985, Aida received the New Lawyers Distinguished Service Award of the Delaware State Bar Association. She conducts an extensive domestic relations practice, which brings her in touch daily with the subject of this issue.

We wish to identify for our readers those pictured in the lead photograph.

1. Reverend Calvin L. Jones;
2. Gail Anne Stevens, Pediatric R.N.
3. Paulette Sulllivan Moore, Esq.;
4. Joseph M. Dell'Olio
5. Mary Poppiti, teacher and guidance counselor;
6. Manuelita Olson, social worker;
7. Donald E. Pease, Esq.;
8. Carolyn Schlecker, Esq.;
9. Vivian Ann Houghton, Esq.;
10. Vered Ruben, student;
11. Carol Robinson, Social Worker II;
12. Dr. Capes Riley, school administrator;
13. Aida Waserstein, Esq.
14. The Honorable Jay Paul James;
15. James A. Hart.

How It All Began: *The Founding Father*

In February 1984 the House of Delegates of the American Bar Association adopted a Resolution urging state and local Bars to direct their attention to issues affecting children. The interest of the ABA had been fired by the work of the Family Law Section of the Florida Bar, the first in the nation to establish a Special Committee for the Needs of Children.

The announcement of the House of Delegates' Resolution was accompanied by a very strong article by The Honorable Hugh S. Glickstein of Florida, a Judge of the Fourth District Court of Appeal. Judge Glickstein's experience as a parent, practicing lawyer, prosecutor, and Judge had convinced him of the need for a committee addressing the frequently neglected needs of children. As a result of his leadership the Board of Governors of the Florida Bar approved the formation of the Florida Committee in early 1983. The Committee established an ambitious program for studying and addressing children's needs and responded to Judge Glickstein's call "that this body of 30,000 lawyers and judges roll up its sleeves and start slugging it out with the enemy of children—complacency."

By the summer of 1984, DSBA President Frank Biondi had become actively interested in establishing a Bar Association Committee along the lines of the Florida program. On his recommendation the Executive Committee requested The Honorable Jay Paul James and Aida Waserstein, Esquire to investigate and report back to the Executive Committee about the need for such a committee. They reported favorably and in October 1984 the Executive Committee created the Special Committee on the Needs of Children and designated Judge James and Ms. Waserstein Co-Chairs. The progress of the Committee from that date on is recounted in their article.

Judge Glickstein's original idea has prompted similar efforts in many other states. In addition he has maintained regular contact with the Delaware Committee and has been a genuine source of inspiration, wise advice, and useful information. This issue would be incomplete without a word of recognition and thanks to this splendid child advocate.

The Honorable Hugh S. Glickstein

Delaware State Bar Association Past President, Frank Biondi

Legislative Imperatives For The Rights of Children

The Honorable Myrna L. Bair

We have reached an important point in the history of children's rights in Delaware. We now recognize the rights of children to receive needed services and needed financial support, and we understand the very critical role the family must play in nurturing the "total" child.

I should like to summarize three legislative issues I believe will be urgent in the coming years to ensure the rights of our children. They are: appropriate services for juvenile delinquents, child support enforcement, and family preservation. Although all of these issues concern the rights of the child, they are in reality a reflection of the changes that are taking place within the modern family:

The breakdown of the nuclear family is even more sharply evidenced in the spectacular increase in single parent families. So many divorces, breakups, and separations have occurred in recent years—mainly in nuclear families—that today a staggering one-in-seven American children is raised by a single parent, and the number is even higher—one-in-four in urban areas.

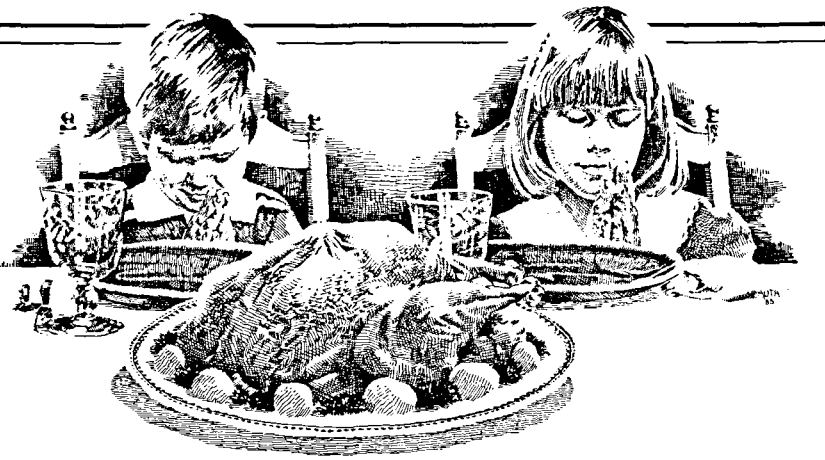
A more likely outcome is that during Third Wave civilization no single form will dominate the family mix for any long period. Instead we will see a high variety of family structures, [and] this rich diversity of family forms won't come into being without pain and anguish."

Alvin Toffler
The Third Wave

The problems that lead to unacceptable behavior, the need for child support, and removal of a child from his or her home, seldom begin with the child, but usually with the family itself.[1] The Delaware General Assembly has made a commitment to protecting the family and to protecting the child when the family can't or won't. The most dramatic example of that commitment was the formation of the Children's Department.

Several years ago, we pulled children's services from the depths of two Departments whose primary concern was with adults and called that Department—The Department of Services for *Children, Youth* & Their *Families.* Admittedly, these beginning years have been rocky ones. Underfunding of some programs and lack of sound management in others have taken their toll. However, developments in the waning days of the 133rd General Assembly indicate that the worst of these "growth years" are behind us and there is broad based community commitment for solving the problems of our troubled children and their families.

The issue that raised not only concerns but also a coalition of support fell upon us in the final days of June. Some years before, the 129th General Assembly acting in compliance with the Federal Juvenile Justice & Delinquency Prevention Act of 1974, passed HB-303 (amending Title 10 of the Delaware



Code) to provide that "a dependent or neglected child shall not be placed in the same facility or institution for children charged with or found to be delinquent." The purpose of the Federal law was to ensure that those children who had *not* violated the law would *not* be placed in juvenile correction facilities. It forced states to find other placements for status offenders (those juveniles who have committed offenses that would not be criminal if committed by an adult), dependent and neglected children who were involved in the juvenile justice system.

When a dispute over emergency shelters arose, the Department of Services for Children, Youth and Their Families requested an opinion of the Attorney General's office for the reverse situation—placing delinquent youth in the same facility with dependent or neglected children. Owing to the language of HB-303 (10 Del.C.§937(g)), The Attorney General's office ruled that placing the two groups of youth together is indeed precluded by the law.

Selective co-mingling of delinquents with non-delinquents has long been a practice in Delaware treatment facilities. Many professionals believe that the criterion for placement should be "behavior" not "delinquency" and the only way to guarantee needed services for delinquent youth and avoid "labeling" and "ping-ponging" for those who have multiple problems is to permit access to the same treatment facilities that serve non-delinquent children. In fact, the Intent & Purpose of the Department (29. *Del.* C. §9001 (b)) contains the following language:

To achieve the consolidation of services to children, youth and their families within the jurisdiction of a single agency in order to avoid fragmentation and duplication of services and to increase accountability for the delivery and administration of these services; to plan, develop and administer a comprehensive and unified service delivery system to abused, neglected, dependent, delinquent, and mentally ill or emotionally disturbed children and youth within a continuum of care, which shall include the involvement of their family, within the least restrictive environment possible.

Several attempts were made to legislate temporary relief for the service providers, but only an impasse resulted. Then, with Executive Order No. 28, Governor Castle established a 21 member Task Force to "recommend state policy and legislation for the placement of abused, dependent, neglected, delinquent, emotionally disturbed and mentally ill children." This Task Force will make its final report to the Governor and the General Assembly by December 1, 1986.

This entire episode reminds me of the old adage "there is no education like adversity". It is hoped that by bringing together 21 people from various disciplines and backgrounds, we shall be able not only to draft legislation that permits selective co-mingling but to address the many problems the Department faces in delivering services to troubled children and youth.

Nothing reflects the changing family more than the attention given—both legislatively and in the courts—to issues of child support. Divorce is not the only circumstance that requires a child support order: there are also children in foster care, children in never formed families and in "informally" formed families.

A staggering statistic is the cost of teenage childbearing. Over 50% of AFDC costs are attributable to households in which the mother was a teenager at the time the first child was born. For 1985, the U.S. expenditure on teenage childbearing was estimated at 16.65 billion dollars.[2,3]

In signing the Child Support Enforcement Amendments of 1984 (PL 98-378), President Reagan noted "It's an unfortunate fact of our times that one in four American children live in single-parent homes and millions of these children endure needless deprivation and hardship due to lack of support by their absent parent...And with billions of dollars still unpaid each year, our child support enforcement system needs new tools, new muscle and new commitment throughout the nation. And that's what this legislation is all about."

PL 98-378 requires states to use the proven enforcement techniques of mandatory wage withholding, expedited legal processes for establishing and enforcing support orders, tax refund offsets, liens, security or bonds, and reports to credit bureaus. It also provides for enforcement of interstate cases, equal services for welfare and non-welfare families and improved incentives for state programs.

Delaware previously had one of the stronger child support statutes. Effective July 1983, our law required automatic income withholding on orders entered after that date if an obligor was seven working days delinquent. When our statute was amended (effective March 1986) to bring Delaware into compliance with federal law by extending withholding to apply to all orders for child support and unallocated alimony and child support, there were several provisions that exceeded the federal mandate: 1) We retained the 7 day delinquency (the federal law only required 30 days accumulated arrears) and 2) our statute defines employer and income in the broadest terms to ensure full application of the remedy.

The Legislature, the Administration, and the Courts have also made a commitment to administer child support enforcement programs effectively and efficiently. The Bureau of Child Support Enforcement was made a Division (within the Department of Health & Social Services) and additional positions have been funded in both agencies. We have committed state funds and secured the maximum in federal funds to bring on line a computerized case tracking system.

While PL 98-378, and subsequent Delaware legislation, were great steps forward, continued modifications are still needed. It is rather like trying to confine a balloon —you get it into place in one area and it pops out in another. As legislators, we sometimes feel a bit frustrated with continual changes in the code to provide child support, but in reality it is a complex and difficult matter and we must keep trying until we "get it right".

Key issues for the next few years will include: finding effective enforcement tools for use when the obligor is self-employed; ensuring the integrity of orders by precluding the cancellation or retroactive modification of an arrears obligation; providing a method for automatic modification of support orders as required to preserve the value of the

award to children; improved interstate establishment and enforcement; location networking to preclude the ability of a parent getting "lost" while children do without; and responding to the critical issue of teenage pregnancy.

The objective, after all, is to provide support for all children at a level that is fair to the parties and the children and paid in a timely fashion. Delaware, by the way, has been a national leader in establishing an equitable method of determining an adequate child support order. All states are required to establish child support guidelines by October 1, 1987 and Delaware's lead is being followed by many.

With almost 5 million children living in households that receive child support[4] and less than half receiving the full amount,[5] we need a system that works. Research tells us the current level of court-ordered child support "greatly undervalues the true cost of raising children" [in 1983, there was a compliance gap of $3 billion, but an award gap* of more than $15 billion],[6] contributes to the "feminization of poverty", and creates "emotional burdens for the children."[7]

"Legislators and attorneys (as well as judges) must understand the economic consequences of divorce and press for changes in divorce-related support awards and enforcement practices."[7] While we have moved forward on child support issues, the legislature still faces the task of coordinating that effort in the broader context of divorce reform to ensure that children receive full and fair treatment.

The third area critical to protecting the rights of children is the right of the child to a permanent home. All too often, past practice of caring for children from troubled families was to remove the child and seek alternative placement—even if it meant placing the child in a temporary setting such as a foster home or group home. On any given day (in fiscal year 1986) approximately 780 children lived in foster homes, group homes and residential treatment centers in Delaware and almost 1,450 children passed through the Delaware Foster Care system. We have begun to realize the tremendous importance of the familly, even if the family itself is in "crisis". Harold Simmons put it best:

The attachment of children to parents who, by all ordinary standards, are very bad is a never ceasing source of wonder to those who seek to help them. Efforts made to save the child from his bad surroundings and give him new standards are commonly to no avail, since it is his own parents who, for good or ill, he values and with whom he is identified. These sentiments are not surprising when it is remembered that, despite much neglect, one or the other parent has almost always and in countless ways been kind to him from the day of his birth onward, and however much the outsider sees to criticize, the child sees much to be grateful for.[8]

While recognizing that "high quality foster home care and institutional care continues to be vital to our service system"[1] the professionals are stressing the development of family based services and family preservation:

*Incidentally, in measuring this award level gap, researchers took national statistics on income levels and family structures and applied established child support formulas—including Delaware's.

Legislative Imperatives

(Continued)

Family based service is a means of avoiding out of home placement by providing "intensive protective, comprehensive service mainstreamed to the child and his/her family on their own turf.[9]

Several model programs such as the "Homebuilders" in Tacoma, Washington; and Iowa's "Families, Inc." have shown us the value of preserving the natural family not only in cost savings but in human resource benefits.

What is the legislative impact? Again, Delaware had begun its programs before action was taken at the federal level. We had in place a Foster Care Review Board and, within Family Court, a Court Appointed Special Advocate (CASA). Then, in 1980 Congress passed the Adoption Assistance and Child Welfare Act (PL 96-272) which provides for the prevention of foster care placement, attempts to reunite foster children with their biological parents, and seeks permanent adoptive families for children who cannot return home. If the states want supplemental funds, they must commit to efforts aimed at preventing the removal of children from their homes and at establishing preventative services.

Conforming to PL 96-272 and implementing family preservation programs has taken different forms at the state level. In 1983, Delaware joined the efforts of the National Council of Juvenile and Family Court Judges in forming a Permanent Families Task Force. (Chief Judge of Family Court, Robert D. Thompson is Chairman.) In 1985 we passed legislation codifying the Court appointed Special Advocate (CASA) program in Family Court; in 1986 we passed SB-432 authorizing the Foster Care Review Board to review 100 percent of the foster care cases; and in fiscal year '87, the Department received a grant from the U.S. Department of Health & Human Services and the Edna McConnell Clark foundation for a pilot project on family preservation. Additional legislation (or removal of barriers in current law) may be needed as we explore more family preservation options in Delaware.

In addressing the issues of the rights of children—the right to financial support, the right to services, and the right to a permanent family, we have uncovered many issues and weaknesses in our own child care system. While addressing the compliance issues of child support, we must also maintain the adequacy of orders. While addressing the co-mingling of delinquent and non-delinquent youth, we uncover many deficiencies in the entire service delivery system. And while trying to provide permanent homes we find that foster homes and group homes are inadequately funded.

Does it ever end? Probably not. For indeed we are attempting to improve a system that will never be perfect. But, if we care enough about the rights of children, we will keep trying to address the very complex and changing issues (1) as cooperative effort between the child welfare agencies, the legislature, the courts and the private sector, (2) through the law as well as through administrative/court procedures, and public policy, and (3) with an open mind to try new ideas and to accept changes as a challenge to find new solutions:

"The responsibility for change lies with us. We must begin with ourselves, not close our mind prematurely to the novel, the surprising, the seemingly radical. We must fight off the idea assassins who rush to kill any new suggestion on grounds of impracticality, while defending whatever now exists as practical, no matter how absurd, oppressive, or unworkable it may be. It means fighting for our freedom of expression, the right to voice your thoughts, ideas. Be open to the future."

Alvin Toffler
The Third Wave

■

The Honorable Myrna Bair, Minority Leader of the Delaware Senate, has taken an active role in improving the lot of children in Delaware. In addition to being Co-Chair of the Committee on Services to Children and Youth, she is a member of the Governor's Task Force on Placement of Children. She brings to her role as legislator an impressively wide background as a professor of chemistry, education, and energy education, most recently at the University of Delaware. A summa cum laude graduate of the University of Cincinnati, Senator Bair has received many awards. She holds a Master's degree and a Doctorate in inorganic chemistry from the University of Wisconsin. She is a widely published author on chemical and environmental matters, a community activist, and, perhaps most important for this issue, she is a parent. We are honored to have an author of her distinction among our contributors.

Delaware has an impressive record of legislative concern for the well-being of children. This month the Delaware State Bar Association will honor two legislators for outstanding public service. One of these, Representative Jane Maroney, will be cited particularly for her vigilant scrutiny of child welfare issues.

[1] "Keeping Families Together: The Case For Family Preservation", The Edna McConnell Clark Foundation, 1985.

[2] Kristin A. Moore & Martha Burt, "Private Crisis, Public Costs: Policy Perspective on Teenage Childbearing," Urban Institute Press, 1982.

[3] Martha Burt, "Estimates of Public Costs For Teenage Child-bearing: A review of Recent Studies and Estimate of 1985 Public Costs," Center for Population Options, 1985.

[4] Sanford N. Katz, *Juvenile & Family Court Journal*, Fall 1985 Vol. 36, No. 3.

[5] Census Bureau, Child Support and Alimony: 1981 Advance Report No. 124, prepared by Ruth Saunders (1983), p. 23.

[6] Roger G. Williams, *Juvenile & Family Court Journal*, Fall 1985, Vol. 36, No. 3 and Statement to the Select Committee on Children Youth & Families, U.S. House of Representatives.

[7] Carol S. Bruch and Norma J. Wilder, *Juvenile & Family Court Journal*, Fall 1985, Vol. 36, No. 3.

[8] Harold Simons, "California Mental Health; The Struggle For Turf" (Sacramento: General Welfare Publication, 1978).

[9] Marvin E. Bryce and June C. Lloyd, "National Resource Center on Family Based Services, School of Social Work," the University of Iowa.

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Child Welfare Reform in Delaware
Where We Stand

Joseph M. Dell'Olio

On July 6, 1983, Governor Pierre S. duPont IV signed into law Senate Bill 255 creating a Department of Services for Children, Youth and Their Families (DSCYF). On June 30, 1984, this legislation brought together into a single department, the following state services: Child Protective, Children and Youth Diagnostic, Children's Mental Health, and Youth Rehabilitation.

Much of the credit for the development and passage of S.B. 255 must go to State Senator Harris B. McDowell III, who chaired the Senate Special Committee on Services to Children and the Vice Chairperson, Senator Myrna Bair.

The idea of creating a central department of services for children and their families was not new. In 1971, the National Council on Crime and Delinquency, had recommended the development of an "umbrella" state agency that would offer comprehensive services to children and families. Throughout the 1970's, studies and reports continued to recommend a single state agency offering comprehensive diagnostic, mental health, correctional, and child protective services.

During this period, CHILD, Inc. and the Mental Health Association, both private, non-profit organizations, kept alive the proposal for a single department for children.

In 1980, the U.S. Department of Justice awarded a three-year children and youth advocacy grant to CHILD, Inc., enabling CHILD to join with the Community Legal Aid Society and the Delaware Council in forming the "Speak Out for Youth" (SOY) consortium. Since one of the objectives of SOY was the creation of the DSCYF, it was only natural that it work with the (McDowell-Bair) Senate Committee on Services to Children.

While we should not delude ourselves into thinking that the new DSCYF will be the end all and cure all in child protective, juvenile corrections, and mental health services to children, we can expect the following with this new and improved management design:

- For the first time, the responsibility for these services will be under one person—a cabinet level Secretary.
- The fragmentation, overlapping, and gaps in the continuity of services to children and their families should be identified and remedied.
- Children should no longer fall through the cracks of governmental agencies.
- Children should no longer "ping pong" from agency to agency—as they did under the preceding system of Mental Health and Child Protective in one Department, and Juvenile Corrections in another.
- We should now be in a position to plan in a comprehensive way for the multiple-problemed youngsters who enter the system and offer them the services that are needed.
- We can now expect regular use of the family treatment methods we have long espoused but less frequently practiced.
- Perhaps now, we can begin to spend more time on prevention—Keeping children from coming into the system and costly institutional care.

Since the DSCYF is only a beginning, our next major task is to work toward improving its services.

Children and families who come in contact with the child welfare system do not constitute a powerful or articulate constituency. Accordingly, reform will require time, effort, resources, and dedication on the part of concerned organizations, private citizens, and public officials.

The following is a review of past reforms and reformers in the Delaware child welfare system.

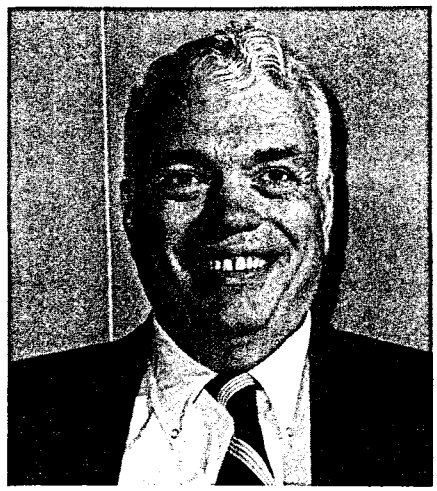
- On July 1, 1969, the Governor Charles L. Terry, Jr. Children's Psychiatric Hospital opened. This was a major improvement in mental health services for children up to the age of 12 years. Governor Charles Terry was the driving force behind it. The Mental Health Association was also instrumental in this effort. Over $300,000 in federal funds was awarded initially to this program. (Additional federal funds followed.)
- In June, 1971, Governor Russell W. Peterson signed into law a comprehensive child abuse reporting law. The responsibility for administering the child abuse program was assigned to the (then) Division of Social Services. The major impetus for this reform was the Delaware Chapter of the American Association of University Women (AAUW). Lillian Cobin lead the AAUW study on unfilled needs of dependent and neglected children, which was documented in a widely circulated report entitled "Where Do Children Go?".
- Also in June, 1971, Governor Peterson signed into law statewide Family Court legislation. It consolidated the New

Castle County Family Court System with the one in Kent and Sussex Counties. It doubled the number of judges from five to ten. Today, there are thirteen. A broad-based committee chaired by attorney Edmund N. Carpenter II developed this legislation and worked for its passage. Former State Senator Margaret Manning introduced and shepherded this major reorganization bill through the state legislature.

- During the years 1971-72, Martha V. duPont brought a class action suit against the Department of Health and Social Services, Division of Adult Corrections, on behalf of youth who were incarcerated with adults, and prevailed. Superior Court Judge Robert O'Hara defined the youthful offender age and ruled that youthful offenders in the adult corrections system be turned over to the Division of Juvenile Corrections.
- February 27, 1974, Governor Sherman Tribbitt ordered the Secretary of the Department of Health and Social Services, the Directors of the Division of Social Services, and Juvenile Corrections to develop a plan to reduce the overcrowding of children at the Bridge House Detention center. He also ordered the removal from that facility of juveniles who were not delinquent but neglected or dependent. Private agencies and the press, especially columnist Bill Frank, had been prodding the Governor about overcrowding at Bridge House. This move resulted in the opening on August 1, 1974, by CHILD, Inc. of the Governor Charles L. Terry, Jr. Emergency Shelter for neglected, dependent, and abused children.
- In July, 1975, Governor Tribbitt signed S.B. 487, legislation creating a Department of Corrections. The Division of Adult Corrections and the Division of Juvenile Corrections were transferred from the Department of Health and Social Services and became the Bureau of Adult Corrections and Bureau of Juvenile Corrections in the new Department. This was a regressive move for juvenile corrections. Fears expressed by reformers who had opposed this move proved to be justified: the pressing needs of the adult prison system would absorb the attention of the administrators, juvenile resources would be "raided", and the philosophy of the Bureau of Juvenile Corrections would reflect the custodial emphasis of the adult system.
- In December, 1975, Delaware received a two-year grant from the U. S. Department of Justice, Law Enforcement Assistance Administration, in the amount of $987,083 to deinstitutionalize status offenders (runaways, truants, etc.). The Division of Services to Children and Youth, under the directorship of Judy Drexler, administered the grant. Other agencies involved in developing the proposal were the Delaware Family Court, the Division of Social Services, the Bureau of Juvenile Corrections, and CHILD, Inc.
- On September 18, 1978, Governor duPont signed into law H. B. 303, an act to deinstitutionalize status offenders. This law prohibits the incarceration of juveniles who are runaways, truant, or uncontrollable. This was considered a milestone in juvenile correctional reform nationally as well as in Delaware. Of all the delinquency cases disposed of by juvenile courts in the United States in 1977, 29% were status offense cases.
- In Delaware, this legislation had a dramatic effect on juvenile correctional institutions. There followed a marked decrease in the population of the Woods Haven-Kruse School for Girls. That institution closed in 1985. Although several private and some public agencies advocated this reform, the Delaware Criminal Justice Planning Commission played a key role in the passage of H. B. 303.
- On July 13, 1979, Governor duPont signed legislation creating the Foster Care Review Board and calling for the periodic case review of children in the custody of the Division of Social Services. This reform came about because of the advocacy efforts of the Junior League of Wilmington. State Senator Herman Holloway and Representative Robert Gilligan were the key legislators involved in the passage of this legislation.
- On April 2, 1982, Governor duPont formalized the split of the Division of Social Services into separate Divisions of Economic and Child Protective Services. In 1979, CHILD, Inc. offered a blueprint for a separate child protective agency and continued to advocate this change.
- In July, 1982, the Department of Health and Social Services issued a report that called for the phasing out of the Governor Bacon Children's Village and replacing it with community-based residential treatment and out-patient services. This would have a major impact on mental health services for adolescents in Delaware, which had been grossly neglected and centered around institutional care. This move was accomplished with constant prodding and the support of private citizens and organizations.

This legislative progress is typical of a long standing pattern of reform.

- The private sector and the media have been a major influence in changes in government service for children and their families in Delaware. This is consistent with our tradition: for example, in 1874, Mary Ellen, a child who was cruelly treated by her step-parents in New York, received help from the Society for the Prevention of Cruelty to Animals, a private organization. At that time, there



Joe Dell'Olio has a long and distinguished career of service to children. Since 1973 he has been the Executive Vice-President of Child, Inc., an agency that serves neglected, dependent, and abused children, their families, and victims of family violence. He is also the former Executive Director of the Delaware Agency to Reduce Crime and of the Delaware Council on Crime and Justice. He has been a leader in the appraisal of the criminal justice system and has served on many important bodies, including the American Bar Association Commission on Statewide Jail Standards and Inspection Systems. In 1973 Joe received the Good Government Award for Outstanding Government Worker from the Committee of 39 and the Outstanding Service Award from the State of Delaware. He is today an active member of the Bar Association Special Committee on the Needs of Children. We are very happy to have him share with us his experience and his accumulated wisdom.

Child Welfare Reform in Delaware
(Continued)

was no Society for the Prevention of Cruelty to Children. Private citizen Dorothea Dix influenced reform in Massachusetts jails and insane asylums.

- Federal dollars have supported progressive changes in services to Delaware children. Examples are the Governor Terry Psychiatric Center, the Status Offender Program, Speak Out for Youth, and other projects funded through the Delaware Criminal Justice Planning Commission.
- The Legislature has assumed a major leadership role in bringing about reform. Some outstanding examples are the most recent work of Senators Harris B. McDowell III and Myrna Bair, former State Representatives Sandra Worthen who piloted H. B. 303—Deinstitutionalization of Status offenders and Buzzy Siebel, who worked diligently on the child abuse reporting law. Not to be forgotten is the contribution of former State Senator Margaret Manning who worked for Family Court consolidation in the early 1970's.
- The staff of the Criminal Justice Council has played a vital part in bringing a systems approach to services for children. Many of the professionals who deliver these services are trained to work and think within the context of a single organization. This tunnel vision has been a major reason for the fragmentation of our non-system. The Criminal Justice Council, which is not directly involved in service delivery, has not only identified service gaps but has also provided resources to fill them.

The history of child welfare reform in Delaware is a mixed record of backward and forward, but the establishment of the DSCYF should enable us to move aggressively in providing the best possible services for our children, youth, and their families. Continued child welfare reform in Delaware depends on all of us. Where could we better invest our resources? ■

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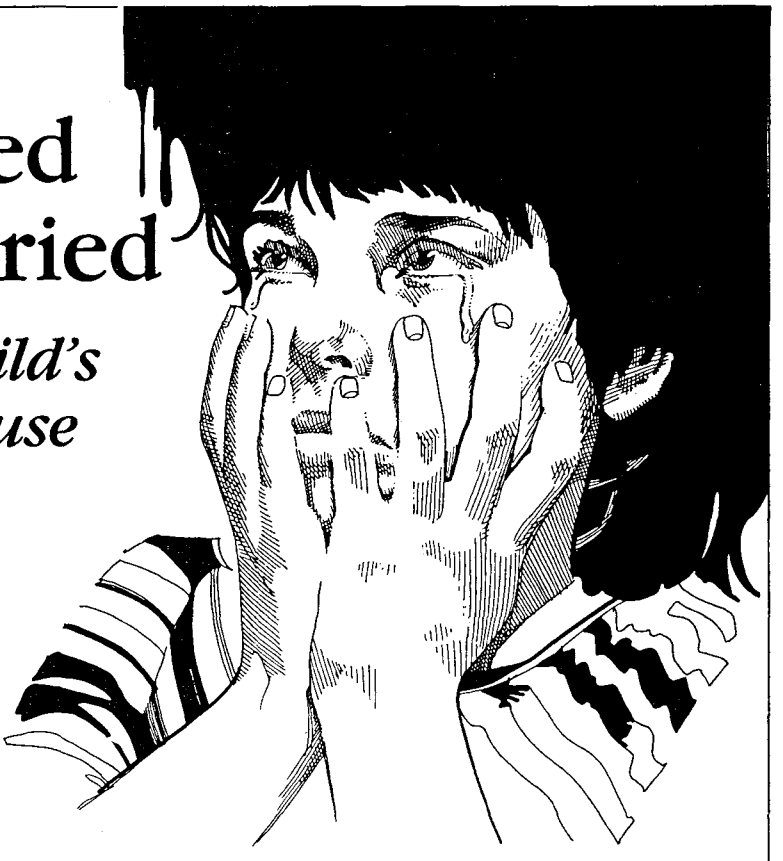
What Happened When Jenny Cried

The Story of One Child's Report of Sexual Abuse

Robert J. Prettyman



The following article is a collective effort, which probably explains its extraordinary immediacy, strength, and richness of procedural detail. It furnishes a shocking yet heartening picture of how the allied disciplines of experts in Delaware confront a painful problem. Under the leadership of Robert Prettyman, an Assistant Attorney General, the talents of Doris Schnee, Sally Cantor, Vickie Jackson-Kelly, Mike Peyser, Detective John Humphrey, and Detective Dennis Godek have been combined into one of the most vivid and instructive accounts it has been our privilege to print.

Ring! The bell that signaled the end of school rang and Mrs. Harrison's fourth grade class dashed through the door that led to a weekend of freedom. Mrs. Harrison sighed with relief and turned to wipe the blackboard. As she turned, the teacher noticed one of her students, Jenny Maxton, coming back into the room. "Did you forget something, dear?"

The nine year old began to sob. "Daddy hurt me. Daddy hurt me," she said.

Mrs. Harrison ran to the girl and hugged her trembling body. "What happened, Jenny?"

"Daddy hurt me...Daddy hurt my... my...my privates," cried Jenny.

After calming and reassuring Jenny, Mrs. Harrison called the Division of Child Protective Services and told them of the sexual abuse allegation.[1]

Although Jenny is one of the approximately two hundred children who reported intra-family sexual abuse in New Castle County in 1986, no one knows how many children are actually suffering from unreported abuse. Sexual abuse cases can be as varied as the men, women, and children who are participants and individual allegations of child sexual abuse may take a variety of routes through the Criminal Justice System. This article will follow one victim's story from the time of the original report of sexual abuse through the trial and sentencing stages of the Superior Court process.

Reports of intra-family child sexual abuse have risen dramatically. In 1981, the Division of Child Protective Services (DCPS) identified ten such cases in New Castle County. In 1985, the number rose to 213. The Division of Child Protective Services is mandated to receive and investigate all reports of child abuse, neglect, and dependency. Additionally, DCPS assesses the needs of the reported family and assists that family in establishing a plan to meet those needs. The goal is to protect the child, while maintaining the integrity of the family unit, if possible.

To attain the above-mentioned goals, the child protective worker must interview the victim. The ability to obtain information from the child victim is complicated by a variety of factors. First, the worker must understand and compensate for the stress that any victim suffers in the reporting of the abuse. This stress is heightened in situations when the victim has mixed feelings for the perpetrator—she loves him, but hates what he did. The perpetrator's prior physical abuse, his threats, or instructions not to tell, also increase the victim's stress in revealing the abuse.

Second, if the victim is a child, the worker must deal with the limited verbal skills, intellectual development, and attention span associated with children. To cope with these problems, workers have developed interviewing techniques and tools. In situations involving very young children or victims who are too embarrassed or too afraid to speak, the worker often will use anatomy sketches or anatomically-correct dolls. The anatomy sketches are very useful in ensuring that both the victim and the worker understand each other's terminology.[2] The anatomically-correct dolls allow the child victim to demonstrate the physical acts constituting the sexual abuse. Such a demonstration relieves the anxiety of young victims who have intellectual or emotional problems describing the acts.

Additionally, if the victim is capable of responding, the DCPS worker asks questions concerning the circumstances surrounding the abuse. As with the techniques involving the anatomy sketches and dolls, the worker employs general, open-ended questions. This assures that the child's report of sexual abuse comes

from his or her memory and is not prompted or contaminated by leading questions or suggestions.

Next, the worker will interview the family members, with the exception of the perpetrator. The purpose is to accumulate information to determine whether the complaint is valid and to ascertain the needs of the family.

In Jenny's case, she told Mike Gusher, the DCPS worker who responded to Mrs. Harrison's report, that she was afraid. Mike knew that threats of physical abuse from the perpetrator often cause such fear. Moreover, Mike observed a bruise on Jenny's arm. When questioned, Jenny stated that her Dad squeezed her arm when she refused to pull down her pants that morning. At that point, Jenny started crying and the interview was interrupted until she regained her composure. Following the break, Jenny indicated that, for the past four years, her father had been touching her vagina. Furthermore, this year, since she began fourth grade, he repeatedly hurt her "privates" by inserting his "private", his penis, into her. Gusher next conducted a preliminary interview with Jenny's mother. Following these interviews, Mike validated the complaint of sexual abuse and called the police. Detective Gophrey answered the call and arranged to meet Jenny and Gusher at the hospital, where the child would be examined by Dr. Roberts.

A victim is taken to the hospital for a number of reasons. The most important is the need to know if the sexual abuse has injured the victim. A doctor will examine the victim for trauma, as well as test the victim for venereal diseases. Also, the exam may reveal evidence of the sexual abuse. During a pelvic exam, the doctor tests for the presence of seminal fluid and inspects the condition of the vagina, including the presence or absence of a hymen.[3]

In cases in which the victim promptly reports the sexual abuse, the doctor and nurse can collect evidence from the victim that may verify the victim's complaint. A swabbing of all the victim's orifices might indicate the presence of seminal fluid. The nurse may also collect the victim's clothing. If it has not been washed, the police may transport the items to the Federal Bureau of Investigation's laboratory for analysis. Such analyses can identify sources of hair and fiber found on the clothing and attempt to match such items to the perpetrator.

When Jenny Cried
(Continued)

Additionally, the FBI chemist can identify and match seminal stains. The police will interview the hospital personnel after they have completed the examination.

Dr. Roberts informed Detective Gophrey that Jenny's hymen was jagged and that such a finding was consistent with the reported abuse. After the exam was completed, Detective Gophrey, Mike Gusher, and the victim went to the police station. They entered a private room and, after everyone was comfortable, the Dectective turned on a tape recorder. The purpose of tape-recording is to preserve the conversation as evidence. Next, Gophrey questioned Jenny about the abuse. As in the interview with the social worker, this interview also contained general, open-ended questions to protect against suggesting answers to the victim. Jenny said that her father would enter her bedroom at night, while her mother was working. He would lift her nightgown and lower her panties. She described how he would insert his hard "private" partially into her and keep it there until runny stuff got all over it. After the taped interview, Detective Gophrey talked with Jenny's mother. Mrs. Maxton told him that she worked the night shift for a brief period and, during that time, Mr. Maxton would have been alone with Jenny.

Next, with Mrs. Maxton's consent, the police searched the family dwelling for evidence of the crime. However, since the abuse had been repeated and the report had not been prompt, the bed covers, as well as the victim's clothing had been laundered. Consequently, no physical evidence was obtained.

The police then went to interview Mr. Maxton to obtain his side of the story. However, after the Detective read Maxton his rights, Maxton declined to speak with the police.

Following the meeting with Maxton, Detective Gophrey reviewed his investigative notes and decided that Jenny's complaint was valid. The Detective went to Justice of the Peace Court II and signed an affidavit stating the results of his investigation. The Magistrate considered the facts stated in the officer's affidavit and determined that probable cause existed for the arrest of Edward Maxton.

On the Monday following Maxton's arrest, Detective Gophrey called the Attorney General's Office and scheduled an intake appointment for the following Thursday. That day, Detective Gophrey and Mark Gusher met with a prosecutor and a social worker from the Rape Response Unit of the Department of Justice, as well as with the DCPS worker, for the intake interview. The prosecutor reviewed the police report, the statements of the victim and all witnesses, and the results of scientific or medical tests. Additionally, the prosecutor, social worker, police, and child protective worker discussed the factors that endangered the well-being of the child and the problems of the prosecution. They evaluated the need for further medical and psychological examinations of the victim, the feasibility or desirability of removing the victim (or the offender) from the home, the removal of persons or forces that could exert pressure on the victim, and the need for further investigation. Solutions were devised and appointments were scheduled with the victim and her mother.

Three weeks later, Jenny and her mother went to the State Office Building for the scheduled interview with the prosecutor and social worker. The object of this interview was to ascertain the extent of the alleged sexual abuse and to make an independent determination of the truthfulness of the allegation.[4] It also was an opportunity for the victim to meet the social worker who would accompany her in all necessary court appearances. Consequently, the prosecutor and social worker interviewed the victim separately from her mother. This process ensured that the discussions would be free from pressure, allowing each person to speak freely. Additionally, the prosecutor did not employ leading questions during the interview, in order to assure that it was the victim who related the specific allegations of the sexual abuse.

Jenny was nine years old and, therefore, was able to verbalize specific allegations without the use of anatomically-correct dolls or body diagrams. Jenny stated that her father entered her bedroom at night when her mother was at work. He climbed onto the bed, lifted her nightgown, and lowered her panties. Subsequently, he removed his pajamas and hurt her by putting his hard "private part" into her "private part" and moving back and forth until sticky stuff came out

of his "private part" and ran on her legs. He cleaned her up and cautioned her not to tell anyone or he wouldn't love her anymore.

Next, the prosecutor and social worker interviewed Jenny's mother. Mrs. Maxton verified that she periodically worked the midnight shift and that her husband was home alone with Jenny. Also, Mrs. Maxton and the prosecutor discussed the crime with which her husband was charged, the penalty for that crime, the various stages of the prosecution, and the charge to which Mr. Maxton might plead guilty. Mrs. Maxton and Jenny left after being told to call the office if any problems arose.

In view of the specificity of the victim's allegation, the prosecutor verified the complaint and prepared the formal charging document, the indictment, for presentation to the grand jury. The charge was Rape First Degree.[5] In New Castle County, the grand jury meets every other Wednesday. Grand jurors are selected randomly from lists of New Castle County residents who are either registered voters or holders of a valid Delaware driver's license. Grand jury hearings are secret and not open to the public. Neither the alleged offender nor his attorney may be present.[6]

On the last Wednesday in December 1986, Detective Gophrey entered the grand jury room on the third floor of the Courthouse. After being sworn to tell the truth, he related the results of his investigation. Next, the grand jurors asked the detective questions about the victim's age, the family relationship of the victim to the offender, and the location of the offense. When the grand jurors received all the relevant information, they voted on whether probable cause existed to believe that the alleged offender committed the act stated in the indictment.[7] After hearing Detective Gophrey's recitation of the victim's statement, the grand jury returned a true bill against Mr. Maxton and the Case Scheduling Office of the Superior Court set the matter for arraignment and trial.

Seven days after the indictment, Mr. Maxton appeared before a Judge of the Superior Court. The Judge gave Maxton the option of having the indictment read in open court or waiving that right. Since Superior Court is open to the public and a reading of the charge would tell all onlookers that Maxton was charged with having sex with his daughter, the defense attorney waived a reading of the indictment and entered a plea of not guilty for his client. Subsequently, the Judge informed Maxton of two court dates—Case Review and Trial.

Approximately one month after the arraignment, Maxton and his attorney came to Court for Case Review. At this stage, the prosecutor and defense attorney met and discussed whether the case could be settled without a trial. The factors that most often are reviewed at Case Review are the defendant's statement to the police, if any,[8] the physical evidence, the attitude of the victim and his or her guardian toward the prosecution of the charge, the defendant's degree of remorse, and whether the defendant is attending counseling for help with the problem underlying the assault.[9]

Maxton refused to give a statement to the police at the time of his arrest and, during conversations with his lawyer, he denied the sexual abuse allegation. Consequently, the defense attorney told the Prosecutor that the victim was lying. He further advised him that the reason for the false accusation was Jenny's anger at Maxton for his failure to give her a pony as a birthday present.

The Prosecutor countered with a copy of the victim's medical records. He emphasized that Jenny's hymen membrane was jagged and that Dr. Roberts would testify that penetration of a penis

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into a nine-year-old girl's vagina can cause such jagged tears in the hymen. Finally, the prosecutor told the defense attorney that the family, police, and State were not seeking to persecute Maxton, but rather to punish him for the physical and psychological harm he inflicted upon the victim and to rehabilitate him so that Jenny and other young girls would be protected. The prosecutor suggested that Maxton plead guilty to Rape Second Degree, a Class B Felony[10] and attend sexual abuse counseling during his incarceration and any subsequent period of probation.[11] However, Maxton refused to acknowledge guilt and the plea offer was rejected. Consequently, both counsel asked that the case be set for trial. Given the large number of cases handled in Superior Court, the trial date was scheduled in March, 1987.

In the three month period before the trial, victim and the prosecutor were very busy. Jenny was occupied with trying to regain the normal childhood that she enjoyed before the sexual abuse started. In accord with the growing consensus that individual therapy, coupled with separate group therapy, is the ideal initial treatment, Jenny received counseling with the Cantjax Agency. This approach provides an important therapeutic context for the victim and other participating family members. It allows them to begin internalizing the changes necessary to function in an emotionally healthy way. Meanwhile, the prosecutor kept abreast of the ups and downs of the victim's counseling sessions by speaking with the therapist and DCPS worker. He also met with a child sexual abuse expert, Mrs. Jackie Singer, and reviewed the common reasons why victims react in certain ways. Next, shortly before the trial, the prosecutor talked with Jenny again. There were two purposes for the repeat interview. One, the prosecutor reviewed the victim's statement with her in a manner akin to cross-examination by a defense attorney. This rugged questioning was yet another step to guarantee that the allegation of sexual abuse is truthful. The second purpose was to give the victim an idea of what the trial would be like.

In the final pre-trial interview, Jenny's recitation of the facts was consistent with her previous statement. Moreover, she admitted that she wanted a pony for her birthday and was disappointed by her failure to receive it. However, she denied that she would lie about such a serious allegation in an attempt to seek revenge. The social worker took her to the Public Building and showed her the courtrooms. Jenny Maxton was ready for trial.

On trial day, the prosecutor and the defense attorney waited their turn to pick the jury that would decide *State v. Edward Maxton.* The State's witnesses, including Jenny and her mother, waited in the Courthouse accompanied by the social worker, Mary Johnston. The social worker continued the relationship that was developed in the prosecutor's initial interview with the victim. Mary knew the answers to the questions and concerns that Jenny and her mother were experiencing. For example, Mary knew that the victim loved her father, but hated what he did to her. She told Jenny that such feelings are normal and

acceptable. Moreover, Mary told Jenny about some of the therapy programs that were available to help her father so he would not hurt her anymore. The social worker was also important in assisting Jenny's mother in dealing with the situation. Mrs. Maxton loved both her husband and daughter and was being pulled apart in her attempt to be faithful to both sides. Mary explained that Mrs. Maxton could be true to both her daughter and husband by being attuned to the special needs of each. Mrs. Johnston tried to help them cope with the normal anxiety all victims feel when waiting to testify.

Following jury selection, the lawyers addressed the jury in opening statements, outlining what testimony and evidence would be presented during the trial. Next, the State called its witnesses. Jenny was first. The prosecutor began with some preliminary questions concerning Jenny's age and also had her demonstrate her ability to differentiate between the truth and a lie.[12] Subsequently, through another series of questions, the prosecutor asked the victim to explain how her father sexually abused her. Jenny answered in her own words, just as she had previously answered in the earlier interviews.

When the prosecutor finished questioning Jenny, it was the defense attorney's turn. First, he asked about Jenny's failure to report the sexual abuse immediately upon its completion. Next, the defense asserted that Jenny's motive to give false testimony against her father was in retaliation for his failure to give her a birthday pony. Following the cross-examination, the prosecutor asked several questions to clarify the responses she had made to the defense attorney's questions. Jenny's duties as a witness ended and Mrs. Johnson took her from the courtroon.

Subsequently, the prosecutor called the teacher, Mrs. Harrison, and then Detective Gophrey to the witness stand. They told the jury about Jenny's statements to them.[13] Dr. Roberts' testimony followed Detective Gophrey's and he explained the victim's medical history and the vaginal examination. He also discussed the significance of the jagged hymenal ring. Lastly, the prosecution called Jackie Singer, the child abuse expert, to the witness stand. She explained that children who are victims of intra-family sexual abuse seldom report the abuse promptly. Mrs. Singer discussed the common reasons for that failure. A young child usually has complete trust in the abusing parent because the parent provides the necessities of life, as well as some of its pleasures. The adult uses this special relationship and closeness to manipulate and exploit the child's trust. And, either by words or actions, the parent usually informs the child that the abuse must be kept private. Coupled with the confusion and sometimes fright that accompanies the abuse itself, fear of the consequence of disclosure results in the child's not revealing the abuse immediately.

Moreover, Mrs. Singer stressed that a failure to make a prompt report did not indicate that a child was lying. In fact, her experience demonstrated that non-occurrence of reported abuse happened in only approximately one percent of the cases in which she performed counseling. Thus, 99 percent of child victims of intra-family sexual abuse tell the truth![14] Next, the defense presented its case. The only defense witnesses were Maxton, who denied committing the offense, and several character witnesses.

Finally, the attorneys made their closing statements to the jury. The Judge then charged the jury by reading them the applicable principles of law, reminded them of the presumption of innocence and the need for unanimity in their findings. The Judge then sent the jury to its deliberation.

Three hours passed. The jury informed the judge that they had agreed upon a verdict. Guilty as charged!

The next step was the Judge's order for a pre-sentence investigation. This takes several weeks and involves compiling a criminal history and an employment background check on the defendant, interviewing representatives of the victim and the defendant to ascertain their positions concerning the sentencing, and an evaluation of the need for substance abuse, psychological counseling, or both. To determine whether the defendant needs psychological counseling, the pre-sentence officer compared the *Maxton* case with the common characteristics of intra-family sex offense cases. For example, the defendant's marital relationship is usually marked by conflict and estrangement, whether overt or covert, and the marital sexual relationship typically is unsatisfying or nonexistent. Moreover, the abusing parent may be an alcoholic,

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chronically unemployed, or facing life stresses that produce feelings of incompetency or vulnerability. In most cases, he has not learned to express his feelings in productive ways and needs a source of unconditional love—a love without criticism, control, or expectations. Consequently, the adult turns to a much younger sexual partner. Sadly, Mr. Maxton possessed many of these characteristics, but was unwilling to admit problems and unwilling to undergo therapy. The pre-sentence investigator accumulated the information and wrote his report to the Judge.

At sentencing, the defense attorney made his recommendations for an appropriate disposition. Next, the prosecutor addressed the same topic.[15] Then the Judge gave Maxton an opportunity to be heard. Finally, the Judge pronounced sentence. The Judge determined that Maxton's denial of the sexual abuse despite overwhelming evidence revealed at trial, his complete lack of remorse, and his unwillingness to obtain counseling, made the statutorily mandated life imprisonment appropriate.[16]

In conclusion, as mentioned earlier in this article, sexual abuse prosecutions are as varied as the participants and cases may take alternate routes through the justice system. However, Jenny's case illustrates the major steps of the Superior Court process, as well as the complexities that accompany each step. These cases are among the most difficult to prepare for prosecution and to defend because of the intimate nature of the facts and, often, the relationship between the parties. Nevertheless, with the addition of specialized police units and social workers to the prosecution process, resolution of these cases has become less stressful and more effective for the victims.

[1] The mandatory reporting law requires any individual who knows or suspects that a child is being abused or neglected to report his suspicions to the Division of Child Protective Services. DCPS has two mechanisms to receive such reports. During office hours, two Human Service Workers gather and organize referral material, screen inappropriate calls, and forward relevant information to the investigating units. During the evening, weekend and holiday hours, the Division has a toll free, 24-hour hotline (1-800-292-9582) which will screen calls. A Social Worker is available in emergency cases.

[2] Children do not always use the commonly accepted medical terms for the body's private parts. It is more common for child victims to use slang or the perpetrator's pet names for the sexual organs.

[3] The hymen membrane is located a short distance within the victim's vagina. Contrary to popular belief, the presence of an intact hymen membrane does not negate sexual abuse. The reason is two-fold. Since the membrane is located a short distance inside the vagina, penetration of the penis into the vagina can occur without touching the hymen. Second, the hymen possesses elastic qualities. Thus, if the penetration is not too violent, the hymen may stretch to adapt to the entry of the penis without breaking.

[4] It is not uncommon for child victims of intra-family sexual abuse to reveal increasing severity and additional accounts of abuse after they have made an initial report. The reasons for this phenomenon are discussed *infra* at n.14.

[5] 11 *Del. C.* Section 764.

[6] *See* Superior Court Criminal Rule 6 (e).

[7] *See* Superior Court Criminal Rule 6 (f). In New Castle County, if nine grand jurors determine that there is probable cause, the grand jury returns a true bill and the case is sent to Superior Court for arraignment and trial. However, if the grand jury does not find probable cause, the processing of the case is aborted. In that situation, the prosecutor and police must re-evaluate the facts and either further investigate in an attempt to corrobrate the victim's story and re-present the case to the grand jury or abandon the prosecution.

[8] The Fifth Amendment to the United States Constition and Article I, Section 7 of the Delaware Constitution of 1897 give a person accused of a crime the right not to give a statement to the police.

[9] Superior Court Criminal Rule 16 controls what information must be provided to opposing counsel but, in his/her discretion, counsel may exchange additional information.

[10] In pertinent part, Rape Second Degree is defined as a male who intentionally has engaged in sexual intercourse with a female who is less than 16 years old. *See* 11 *Del. C.* Section 763, 767(3).

[11] A person who pleads guilty or who is convicted of Rape Second Degree must be incarcerated pending his sentencing. *See* 11 *Del. C.* Section 4331. The sentence for Rape Second Degree is three to thirty years of incarceration, any or all of which may be suspended for probation. *See* 11 *Del. C.* Section 4205(b). The Court may also impose a fine. *Id.*

[12] A child under ten years old is not prohibited from testifying on the ground that he or she does not understand the witness oath. *See* 65 *Del. Laws* 111 (1985). *See also State v. Ricketts*, Del. Supr., 488 A.2d 856 (1985). The ability to understand the difference between the truth and a lie relates to credibility and weight of testimony, not admissibility.

[13] The voluntary out-of-court statements of an in-court witness are admissible at trial as substantive evidence. *See* 11 *Del. C.* Section 3507.

[14] The research that indicates that 99 percent of child victims of intra-family sexual abuse tell the truth considers several factors symptomatic of the abuse. First it is not unusual for the initial disclosure to be very vague. In fact, even the discussions with Child Protective Workers and police officers often do not reveal the entire extent of the abuse. The vagaries and occasional inconsistencies in the child's early reports often may be a result of constriction in the child's thought processes. One must remember that children store and recall events based on their own perception of time. Frequently, it is not until the victim has undergone therapy and built a trusting relationship with the therapist, that the child divulges the total range of abusive acts, as well as the number of incidents.

Additionally, it is symptomatic for child victims of sexual abuse to recant their allegations at some point in the stages of prosecution. Approximately 30 percent of child victims recant or otherwise alter or minimize the extent of the abuse they have disclosed. The reasons most often discovered for the recantation are: 1) pressure from the Mother because the family has lost the Father's income after the disclosure; 2) fear of retaliation from the offender; 3) conflicting feelings of love for the offender and hate for what he did; and 4) embarrassment concerning the details and discussion of the sexual abuse. Most child victims return to the true story after the above reasons are isolated and the victim feels safe.

[15] Under Superior Court policy, a victim or the victim's representative may address the judge in open Court during the sentencing of any felony sex crime for which the sentence is not mandatory.

[16] *See* 11 *Del. C.* Section 4209 A. ■

Farewell To The Phantom Parent

Joel D. Tenenbaum

In July of this year the Supreme Court of Delaware issued a ***per curiam*** *opinion permitting the termination of the parental rights of a father who had received no notice of the termination proceedings. Indeed, he was unaware of the existence of the child he had sired. The Court observed, ".....Should we refuse to terminate his rights, [his child] would face the possibility of perpetual foster care, a result that we cannot sanction."*

Over the past few years the detrimental effects of indefinite foster care have been the subject of belated recognition.

In deciding *In the Matter of Karen A.B.*, Del. Supr. No. 325, 1985, an opinion rendered on July 28, 1986, after rehearing *en banc*, the Delaware Supreme Court ruled that the putative father of a child up for adoption does not have a due process right to notice of the hearing held to terminate his parental rights when the mother refuses to disclose his identity and when refusal to terminate those rights would not be in the child's best interests.

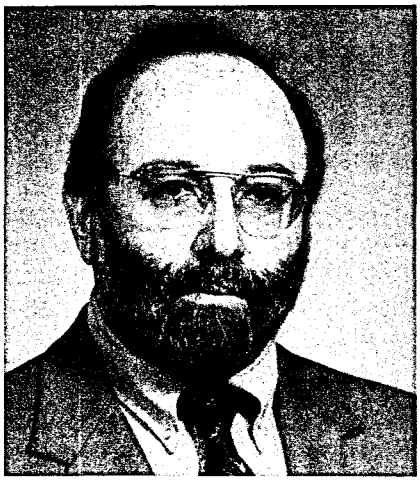
This result is consistent with the Delaware statutory scheme regarding termination of parental rights. Pursuant to 13 *Del.* C., §1105(a) (5) a petition for termination of parental rights may state that the mother knows the name of the father but is unwilling to disclose it. If the name of the father is not included, the petition must describe the petitioner's efforts to identify and locate the father. 13 *Del.* C., §1105(a) (9). If it is established on the record that the mother and father are not openly living together as husband and wife and have not done so since the birth of the child, the Court may, after a hearing and consideration of the social report, dispense with the father's consent in accordance with 13 *Del.* C., §1113. See 13 *Del.* C., §1106. If there is a conflict between the best interests of the parents and those of the child, the paramount objective is the latter. 13 *Del. C.*, §1113.

In this case the mother of Karen A.B. had a non-marital relationship with an unnamed man for two months in the summer of 1984. The father was described as a nineteen year old with no steady job and a history of brief stints working at restaurants and gas stations.

The mother has had no contact with him since this brief affair and knows nothing of his job, his home, or his friends. She delivered Karen at home, then was taken to St. Francis Hospital for post-natal care. Initially, she denied ever having engaged in sexual activity and refused to see the child or to name her. She readily consented to placing the child for adoption. At the hearing in the Family Court she presented a letter from her psychologist stating that she was emotionally fragile and should not be compelled to divulge the father's name. She also testified that she was afraid of harassment and vandalism if the father, who was pugilistic, were contacted, and that she was sure he would not want or be able to raise the child.

Previous to this case it had been common practice in Family Court to terminate parental rights where the mother refused to disclose the name of the father. But on this occasion the Family Court declined to terminate the father's rights out of deference to whatever due process rights he might have.

Four United States Supreme Court cases address the issue of the putative father's due process rights in a termination of parental rights proceeding: *Stanley v. Illinois,* 405 U.S. 645 (1972); *Quilloin v. Walcott,* 434 U.S. 246 (1978); *Caban v. Mohammed,* 441 U.S. 380 (1979); *Lehr v. Robertson,* 463 U.S. 248 (1983). The United States Supreme Court has found the parent's rights



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linked to the responsibilities he assumes.

In *Stanley,* the Court found an unwed father had the right to a hearing on his fitness as a parent when his parental rights were at stake, since he had lived with the mother and raised the children until her death, although state law gave him fewer due process rights than those awarded a father who had been married to the mother.

In *Caban* the Court found that the father's rights were entitled to equal protection where both parents had raised the children, although State law had provided greater protection to the mother who sought adoption of the children by the stepfather. However, on his dissent, Justice Stewart addressed the due process argument of the father thus:

"Even if it be assumed that each married parent after divorce has some substantive due process right to maintain his or her parental relationship, cf. Smith v. Organization of Foster Families, *431 U.S. 816, 862-863 (opinion concurring in judgment), it by no means follows that each unwed parent has any such right. Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." 441 U.S. at 397.*

The dissent was quoted in the *Lehr* decision, discussed below.

In *Quilloin,* the father had never legitimated the child and had never sought any parental responsibility until the mother's new husband sought to adopt the child. The Court found that the child's best interests must determine what the father's rights were, and in that case found termintion of his parental rights to be consistent with due process. The Court stated: "[W]e cannot say that the state was required in this situation to find anything more than that the adoption ... was in the best interests of the child." At 434 U.S. 255.

In *Lehr,* the Supreme Court found that the putative father of an illegitimate child is *not* always entitled to notice of the hearing held to terminate his parental rights. In that case, as here, the father had never lived with the mother or the child after the child's birth, and never provided them with financial support, and had never offered to marry the mother. Under the statute challenged in that case only several categories of fathers were entitled to notice of a termination of parental rights hearing, including fathers who had registered with a putative father registry. The categories of fathers entitled to receive notice in New York (where *Lehr* arose) are similar to the categories of those presumed to be fathers in 13 Del. C., §804, a provision of The Uniform Parentage Act. The United States Supreme Court ruled in *Lehr* that a biological father who has not asserted his right to establish a relationship with his child by accepting some measure of responsibility for the child's future is not entitled to notice of adoption proceedings involving termination of his parental rights. The Court stated that to require notice be sent to all biological fathers regardless of the degree of responsibility assumed by them "would merely complicate the adoption process, threaten the privacy interests of unwed mothers, create the risk of unnecessary controversy and impair the finality of adoption decrees." *Lehr,* supra, at 264. The Court further stated:

"When an unwed father demonstrates a full commitment to the responsibilities of parenthood by com[ing] forward to

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participate in the rearing of his child, his interest in personal contact with his child requires substantial protection under the Due Process Clause. At this point it may be said that he act[s] as a father toward his children. But the mere existence of a biological link does not merit equivalent constitutional protection." Lehr, supra., *at 261 (emphasis added).*

In *Lehr,* the Court stated that the best interests of the child should take precedence over the interests of the unwed father. After *Lehr,* it is clear that the State may constitutionally omit notifying or allowing the participation at a hearing even by unwed fathers whose lack of interest has never been officially established and may even deny them participation in the preliminary stage of determining that they are without interest. Buchanan, E., *The Constitutional Rights of Unwed Fathers before and after Lehr v. Robertson,* 45 Ohio State L.J. 313, 363 (1984). In addition to the Delaware statutory scheme, buttressed by United States Supreme Court decisions, Delaware case law has established that the best interests of the child must take precedence over the rights of a parent. *Three Minor Children,* Del. Supr., 406 A. 2d 14 (1970); *Daber v. The Division of Child Protective Services,* Del. Supr., 470 A. 2d 723 (1983). The Delaware Supreme Court found in *Daber* that if there is no showing of accepting responsibilities, there is no concomitant presumption that rights automatically accrue. The *Daber* case stated at 726:

This places in the balance issues of parental rights versus responsibilities. And when there is an absence of performance of the latter, there is no presumption or compelling rule that the former are entitled to any overruling or paramount considerations in the scale of human values and relationships.

The Court went on to say at 728: "It is the best interests at stake that must control."

This is true even where, as here, the father may not know of the child's existence, for he is put on notice by the act of coitus itself that he may have fathered a child. It is axiomatic that the reasonably prudent man must know the consequences of his act. Furthermore, pursuant to 13 *Del. C.,* §807(b):

A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to any action brought under this chapter with respect to a child who may have been conceived by that act of intercourse.

In essence, this is a long-arm statute. The casual fornicator is put on notice that his acts have consequences.

The unwed mother has no obligation to notify the biological father who has not assumed any parental responsibility toward the child of the existence of the child. Pursuant to the Delaware statutory scheme, the mother has an unqualified right to privacy and cannot be compelled to divulge the father's name. The United States Supreme Court has even found that she cannot be prevented from aborting a fetus without the father's knowledge and consent, much less place a child for adoption. In the instant case the mother might have removed

the child from the State to place it for adoption in another state if prevented from doing so in Delaware, thus depriving a local couple of the opportunity to adopt. In other cases, the mothers would be encouraged to lie about their knowledge of who the father was, if they could not place the child for adoption without divulging the name.

And what of the rights of the child? If the mother refused to care for the child and refused to disclose the name of the father as she had the statutory right to do, and the child could not be placed for adoption, the child would remain in the limbo of permanent foster care without the opportunity to form permanent bonds with an adoptive family or to receive inheritance rights, Social Security Benefits, etc.

The question decided by the Delaware Supreme Court was one of exceptional importance. If the Court had decided differently, the Court would have brought into question the constitutionality of 13 *Del. C.*, §§1105(5) (b), 1106(2) (a), 1107 and 1113. It would have placed the interests of a biological father (who has no absolute right) above the best interests of the child. It would have threatened the privacy interests of unwed mothers, which include the right to choose between abortion and bearing a child, the right of anonymity in adoption, and the right of non-disclosure of personal information. It would have complicated or defeated the adoption process in cases like this, thereby leaving children in foster care until they attained majority. It would have burdened the State with the financial obligation of unnecessary foster care contrary to the intent of 42 *USC*, §670, et seq. It would have deprived the adoptive child of the benefit of a permanent home and inheritance and other attendant rights that accompany family status. It would have created the risk of unnecessary controversy and impaired the finality of adoption proceedings. It would have imposed a standard of due process exceeding that found sufficient by the United States Supreme Court in *Lehr.*[1] In deciding this case, the Supreme Court ruled consistently with Delaware statutory law, with its own previous decisions and with the United States Supreme Court cases, all of which require that the best interests of a child take precedence over the interests of a parent in termination of parental rights.■

Mary Starkweather, a paralegal with the firm of Woloshin, Tenenbaum & Natalie, assisted Mr. Tenenbaum in the research and writing of the foregoing article.

[1] And in order to achieve the humane results for which the statute was designed, it would have furnished a lively incentive for maternal falsehoods. A statutory construction that makes lying under oath the shortest route to a legislative goal is a judicial oddity at best. The Editors.

Home Nursing Intervention With Failure-To-Thrive Infants And Their Mothers

Gail Anne Stevens

When an infant exhibits impaired physical and psychosocial growth that cannot be associated with organic disease, the pediatric health care provider may refer the family to a child protection agency for assessment of possible abuse or neglect and to public health nursing services for home health visits. With many professionals intervening, the infant's mother not only can become confused about each provider's role, but can also feel so alienated that a lack of trust and a breakdown in communication may arise. The nursing professional can play a key roll in a therapeutic plan for a family by first establishing and maintaining a sense of trust and communication with the mother; and secondly, by acting as liaison between the family and other professionals. Bear in mind that in planning care for the young child who is failing to thrive, one must also consider treatment and care for the mother, since it is primarily through the mother's interactions that her infant responds.

Failure-To-Thrive. Definition And Characteristics

Failure-to-thrive is a syndrome of infancy and childhood often characterized by slowed physical growth, malnutrition, as well as retardation of motor and social development.[1] Recent studies have shown that most young children who fail-to-thrive do not suffer from organic disease.[2] Non-organic failure to thrive has often been attributed to maternal deprivation, or a lack of "mothering". A mother's inability to nurture her infant can be related to a number of factors such as environmental stress, the economic situation of the family, a limited or non-existent support system, a lower level of education of the mother, and maternal age.[3] One psychiatric study conducted on mothers of infants who failed to grow found maternal characteristics such as depression, anger, emotional instability, a dim outlook for the future, troubled interpersonal relationships, and low self-esteem.[4] Studies of younger adolescent mothers have shown that they express less realistic developmental expectations of their children.[5]

Maternal infant communication is essential for optimum growth and development of the infant, and reciprocal response from the mother. Behaviors such as verbalization, touch, eye contact, and sucking affect both the mother and her infant.[6]

The behavior of both infant and mother needs to be observed and assessed along with other factors that may affect and impair maternal-infant bonding.

Planning Care for the Infant and Family

Once a child is diagnosed with failure-to-thrive, professionals working with the mother should develop a plan of care and goals. Often the physician, social worker, Family Court judge and nurse may be involved professionally. It is important to identify one or two central figure(s) to whom the mother can relate in establishing trust and communication. The nurse is often identified because of frequent visibility to the family and the ability to interact with the mother in familiar surroundings. The nurse, as an effective communicator, thus takes on a dual role not only by establishing rapport with the family but by linking the mother to other team members. The nurse can reinforce instructions and keep the physician and social services abreast of the family's progress. Goals for both the infant and mother should be established. A typical infant goal is increased weight gain followed by steady growth. A maternal goal may be achievement by the mother of the ability to express positive feelings toward her infant. A plan of care not only includes routine and consistent home visits, but a patterned plan or procedure for each visit to enable the mother to develop a sense of trust based on the reliability and consistency of the professional.

Family And Environmental Assessment

On the first home visit the nurse begins by observing how the mother and infant interact and the quality of their environment, including immediate living conditions, the family's access to transportation, the distance from stores and health care, and relationships with other family members and neighbors.

After an initial assessment of the infant, the nurse should become aware of the mother's verbal and non-verbal expressions of frustration. Does the mother acknowledge the infant's presence and respond to his cry? How does the mother hold the infant? A visit scheduled around feeding time will also alert the nurse to possible problems.

Effective communication includes questioning and listening. The nurse's questions to the mother should be presented in a non-threatening manner. Open-ended questions are beneficial as they allow the mother to explore and express her feelings. The nurse, as a listener should maintain eye contact with the mother and should allow adequate time for the mother to answer. Time should also be set aside during the visit for the mother to ask questions.

The nurse should paraphrase and clarify to make certain he or she understands the mother's concerns.

During patient education it is essential that the mother be encouraged to actively participate while learning techniques such as bathing or feeding. The nurse should use positive reinforcement and never reprimand the mother for incorrect methods, but suggest other ways to handle the situation. However, the nurse should be honest with the mother. Dishonest praise or failure to advise the mother of referrals that need to be made will only serve to alienate the mother and foster mistrust.

Continuity of care with the same nurse is very important. The nurse and mother should work out a schedule of visits including specific times; when the mother has less distractions and when the infant is awake and active. In the beginning the nurse should allow at least an hour for visits.

The nurse must keep in touch regularly with the physician and social worker to advise them of progress or concerns. Again, the nurse should explain to the mother that he or she will be speaking with the other professionals involved with the family's welfare. Above all, the nurse should stress that the focus of welfare is for *both* the child and the mother. It is only through working with both mother and child, helping to promote communication between them, that better bonding will take place. ■

[1] Stevens, G.A., "Failure-To-Thrive: A Challenge to the Health Care Team". *Clinical Proceedings, Children's Hospital Medical Center,* November/December, 1977, p. 209.

[2] Casey, P.H., Bradley, R. Wortham, B., "Social and Non-Social Home Environments of Infants with Non-organic Failure-To-Thrive". *Pediatrics,* March, 1984, p. 348.

[3] Casey, P.H., *Ibid.,* p. 349.

[4] Fischoff, J., Whitten, C.F., Pettit, M., "A Psychiatric Study of Mothers of Infants with Growth Secondary to Maternal Deprivation". *Journal of Pediatrics,* Vol.79, 1971, pp.209-215.

[5] Levine, L., Coll, C.F., Oh, W., "Determinants of Mother-Infant Interaction in Adolescent Mothers". *Pediatrics,* January, 1985, p. 23.

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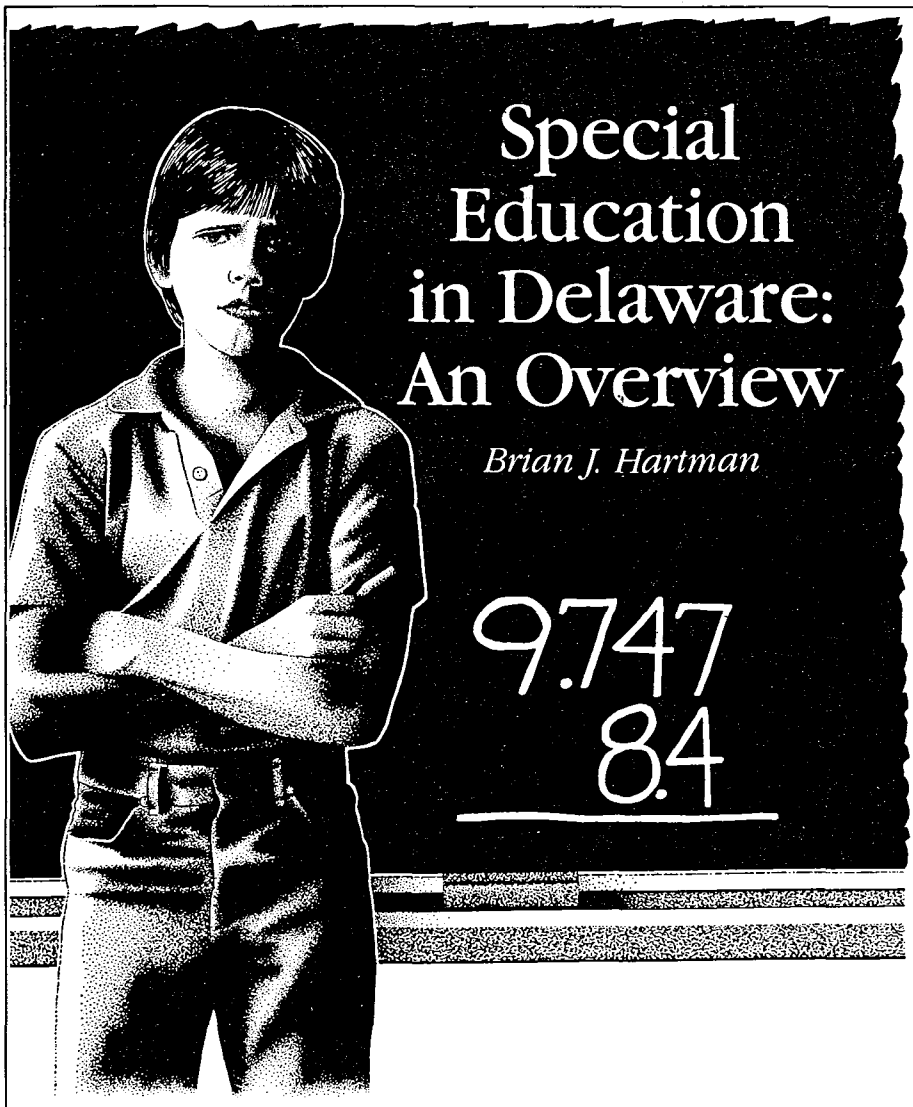
Gail Stevens, by profession a nurse, has wide experience in pediatrics and a special interest in failure-to-thrive infants and their mothers. For eight years she has worked for Delmarva Rural Ministries Migrant Help Program, and today is Clinical Director of the Peninsula Wide Program. Ms. Stevens testified before Senator Harris B. McDowell's Committee on Child and Youth Services in Delaware. Welcome, Ms. Stevens, to the pages of DELAWARE LAWYER.



Special Education in Delaware: An Overview

Brian J. Hartman

The education of handicapped children in Delaware has changed dramatically in the past decade. Second-rate programs and closed school house doors have been replaced by a comprehensive array of services. Gaining full access to these services, however, can be a perplexing experience for even the most persistent parent or advocate.

The Not-so-distant "Old Days"

As recently as the mid-seventies, available statistics reveal that less than half of the eight million handicapped children in the nation were receiving suitable education.[1] Indeed, over one million handicapped children were totally excluded from public educational programs.[2]

Faced with this intolerable situation, concerned parents turned to the courts in increasing numbers. Results were generally favorable. When Congress reviewed the nationwide case law in 1975, it concluded that "...(M)ore than 36 court cases in the States have recognized the rights of the handicapped children to an appropriate education."[3]

In 1975 parental complaints prompted the American Civil Liberties Union to file a class action in the Delaware U.S. District Court.[4] The named plaintiffs included children with learning disabilities, mental retardation, and autism. The children had either been relegated to public day care facilities or offered tuition vouchers to attend private schools. These vouchers covered less than one quarter of the tuition costs at such schools. The case was dismissed after the passage of federal legislation made the controversy moot.

Current Entitlements

The passage of the federal Education for All Handicapped Children Act ["EAHCA"] revolutionized education for special needs students.[5] The EAHCA, supplemented by State law, created a firm legal foundation for ensuring the provision of a suitable program for each handicapped child in Delaware.[6]

A. Who is entitled? In general, handicapped persons between the ages of four and twenty are entitled to services.[7] Services are available to children younger than four if certain handicaps are present.[8] Persons with a laundry list of conditions are covered, including the mentally retarded, seriously emotionally disturbed, learning disabled, and those with hearing, visual, orthopedic, speech, language, or health impairments.[9] In Delaware, in excess of eleven percent of public school children are classified as special education pupils.

B. What is available? The basic canon of the EAHCA is that each eligible handicapped "child" is guaranteed a "free appropriate public education", often referred to as a "FAPE."[10] A FAPE has two parts: 1) special education and 2) related services. Both must be provided at no cost to parents, meet State standards, conform to an individualized education plan established for each child, and include services at preschool, elementary school, and secondary school levels.[11]

Special Education. "Special education" is what most people would regard as classwork or instruction. It must be tailored to the needs of the child.

Related Services. Related services are broadly defined to include "transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education..."[12] The full range of related services is one of the most overlooked benefits of the EAHCA.[13] It includes many services not traditionally associated with conventional education. Medical diagnostic testing is available. Physical, occupational, and speech therapy are covered. The term includes psychological counseling not only for children, but for parents. It is still an open issue whether psychiatric care may qualify as a related service, since medical care apart from diagnostic testing is generally excluded from coverage. In a prominent New Jersey case, psychotherapy administered by a psychiatric social worker under the supervision of a psychiatrist was held to be a related service.[14] In all cases however, a program component can only be considered a "related service" if it can be linked to assisting the child in his education.

C. What are some other key features of special education law? Although a full explanation of all entitlements under the EAHCA and implementing State law is beyond the scope of this article, several key features should be noted.

Identification and Evaluation of Children. The public school system has an affirmative obligation to identify and screen children with special needs.[15] The Delaware program is generally referred to as "Project Childfind". Comprehensive evaluation procedures have been established.[16] If parents dispute the validity of school evaluations they may have separate independent evaluations. In general, the school district must pay for the independent testing unless it requests a hearing and proves the appropriateness of its evaluation.[17]

Individual Education Plan. An individual education plan, commonly referred to as an "IEP", is required for each special education student.[18] Revised at least annually in a give-and-take meeting of parents and school staff, the IEP outlines all instructional and related services to be provided. Since the district is required to provide only the services listed in the IEP, it can be the subject of considerable negotiation. Parents wish to maximize the extent and quality of services provided, while school districts are necessarily influenced by constraints of budget and staff. The knowledgeable and assertive parent, of course, will ordinarily be more successful in IEP negotiations than his uninformed or timid counterpart.

Integration of Students. Consistent with contemporary principles of "normalization," handicapped students are to be educated with non-handicapped students whenever possible.[19] Segregation in special schools and facilities is discouraged by both federal and State standards. Unfortunately, Delaware has not been exemplary in this respect. Of the fifty states, Delaware has the highest percentage of school age handicapped children in separate schools.[20]

Resolution of Disputes

Disagreements between parents and school districts can be resolved in several forums with considerable variation in formality.

A. IPRD Committees. With few, if any, exceptions, Delaware school districts have established "IPRD" (identification, placement, review, dismissal) committees to review major proposed changes in a student's program. Some districts have multiple layers of such committees, *e.g.* at school and district levels. A parent can request the scheduling of a relatively informal IPRD meeting to resolve many individual placement and program issues.

B. Administrative Hearings. Most disagreements concerning a special education student's programming may also be resolved through an administrative hearing system.[21] Since 1983, Delaware has used panels of three (including an attorney, an educator, and a layman) to preside over hearings. Hearing rights include advance disclosure of evidence, subpoena power, examination and cross examination of witnesses, and a written decision within forty-five days of receipt of the request for hearing. Review is available in Family Court or in the United States District Court.[22]

According to a recent study, about sixty administrative hearings have been convened in Delaware since 1979.[23] Only one hearing resulted in a panel decision in the 1985-86 school year. Other hearing requests were resolved through settlements.

C. Advisory Council Committee. The Governor's Advisory Council on Exceptional Citizens ["GACEC"] provides another forum for reviewing parental concerns. Established specifically to monitor the implementation of the EAHCA within the State, the GACEC has established a "Parental Concerns" committee to address issues raised by parents.[24]

D. State Complaint System. As required by federal law, the State Department of Public Instruction receives and investigates complaints alleging noncompliance with the EAHCA by any public agency in Delaware.[25] All complaints must be resolved within sixty days. If findings of noncompliance are made, a hearing before the State Board of Education is authorized. There is a right to further appeal to the federal Department of Education.

E. Federal Complaint System. Perceived noncompliance with federal special education standards may lead to a direct administrative complaint to the federal Department of Education. Such complaints are generally referred to the Department's Office for Civil Rights.[26] Most are resolved through negotiated settlements. The issuance of formal findings of noncompliance can result in the suspension of federal funding to the district or agency.

Attorney's Fees

Until 1983-84 it was an open question whether parents who prevailed in formal special education administrative and judicial proceedings could recover their attorney's fees from the losing party. The Supreme Court ostensibly resolved the issue in 1984 by disallowing such recovery.[27] Congress had the final word, however, with the recent enactment of the Handicapped Children's Protection Act of 1986.[28]

The Act authorizes parents in EAHCA proceedings to recover a reasonable attorney's fee. The legislation applies retroactively to actions filed after July 3, 1984 or earlier cases pending on July 4, 1984. Passage of the fee awards bill should promote the availability of private counsel to parents of handicapped students.

Special education has changed dramatically in the last decade, and a wide array of services is now available. Likewise, a variety of forums for resolving disputes over services have developed. With the passage of the fee awards bill, private counsel may increasingly engage in this specialized practice.

Brian Hartman has been associated with Community Legal Aid Society, Inc. for more than a decade. Today he is Supervising Attorney in a state-wide program representing handicapped clients in matters such as education, employment, public benefits, civil rights, and domestic relations, to name a few. His very broad experience in the law includes clerkship in the Philadelphia Court of Common Pleas and an adjunct professorship at the Delaware Law School in both the clinical and legal writing courses. Brian's work has brought him honors from the New Castle Coalition for Special Children and Adults, the Delaware Association for Retarded Citizens, and Parent Information Center, Inc. He is also the author of legislation now found in the Delaware Code, and bearing on special education and fair housing for the handicapped. He is today a member of the Governor's Advisory Council for Exceptional Citizens.

Special Education
(Continued)

[1] S.Rep. No. 168, 94th Cong., 1st Sess 8, *reprinted in* 1975 U.S. Code Cong. & Ad. News 1425, 1432 [hereinafter cited as Senate Rpt.]; 20 U.S.C. §1400(b).

[2] *Id.* For additional statistical data, *see* D. Haggerty and E. Sacks, *Education of the Handicapped: Towards a Definition of an Appropriate Education,* 50 Temple L.Q 961, 961-962 (1977).

[3] Senate Rpt. at 7, 1975 U.S. Code Cong. & Ad. News at 1431. For additional statistical data on litigation during this period, *see* S. Blakely, *Judicial and Legislative Attitudes Toward the Right to an Equal Education for the Handicapped,* 40 Ohio St. L.J. 603, 615 n.82 (1979). Since many cases resulted in consent decrees or other non-precedential dispositions, most commentators view the Congressional statistics as somewhat overstated. *Id.;* M. Krass, *The Right to Public Education for Handicapped Children: A Primer for the New Advocate,* 1976 U. Ill. L.F. 1016, 1044-1063 (1976).

[4] *Beauchamp v. Jones,* C.A. No. 75-350 (D. Del.)

[5] The Act is codified at 20 U.S.C. §1400 *et seq.* Implementing regulations appear at 34 C.F.R. Part 300. The EAHCA is also buttressed by the regulatory scheme adopted pursuant to Section 504 of the Rehabilitation Act, 29 U.S.C. §794. *See* 34 C.F.R. Part 104. The U.S. Supreme Court, however, has underscored the primacy of the EAHCA in the special education context. *Smith v. Robinson* _____U.S. _____, 104 S. Ct. 3457, 3473-4 (1984).

[6] State Law is codified at Title 14. *Del. C.* Ch.31. Unpublished State regulations are compiled in the Department of Public Instruction's *Administrative Manual for Programs for Exceptional Children* [hereinafter referred to as "Administrative Manual".

[7] 34 C.F.R. §300.122; Title 14. *Del. C.* §3101(4). Eligibility for services may terminate earlier since receipt of a high school diploma renders a person ineligible for further programming.

[8] Eligibility begins at age three for children classified as severely mentally handicapped, trainable mentally handicapped, orthopedically handicapped, or autistic. Title 14 *Del. C.* §3111(4); *Administrative Manual* at Section III. F. Eligibility begins at birth for hearing impaired, visually impaired, and deaf-blind children. Title 14. *Del C.* §703(k)(m); *Administrative Manual,* Section III. F. In future years, educational services to all handicapped children commencing with birth may be available. On October 8, 1986 legislation was enacted authorizing federal grant support for services to younger children. EAHCA Amendments of 1986, §2294.

[9] 20 U.S.C. §1401(a)(1).

[10] 20 U.S.C. §1412(2).

[11] 34 C.F.R. §300.4.

[12] 34 C.F.R. §300.13.

[13] *Id.; Irving Independent School District v. Tatro,* _____U.S. _____, 104 S. Ct. 3371 (1984).

[14] *T.G. v. Board of Education of Piscataway, N.J.,* 567 F. Supp. 402 (D.N.J. 1983), *aff'd,* 738 F. 2d 425 (3d Cir. 1984) *cert denied sub. nom. Pisacataway Township Bd. of Education v. T.G.,* _____U.S. _____, 105 S. Ct. 592 (1984). An informal Delaware Attorney General's opinion, after an analysis of applicable caselaw, contains the following prediction: "I tend to think that [if] a lower court would rule in favor of the position that psychiatric therapy in a hospital setting is necessary *for a child to be educated at all* then the State Board of Education must be responsible for that cost." Opinion letter from Marcia Rees, Deputy Attorney General, to Dr. William Keene, State Supt., Department of Public Instruction, at 7 (October 4, 1984).

[15] 34 C.F.R. §300.128.

[16] 34 C.F.R. §§300.530-300.543.

[17] 34 C.F.R. §300.503; *Administrative Manual,* Section I.C.13.

[18] 34 C.F.R. §§300.340-300.349.

[19] 34 C.F.R. §§300.361, 300.550-300.556; *Administrative Manual,* Section I.D. 1.

[20] U.S. Dept. of Education, Eighth Annual Report to Congress on the Implementation of the Education of the Handicapped Act, G-62 (1986).

[21] 34 C.F.R. §§300.506-300.510; 14. *Del C.* §§3135-3143.

[22] U.S.C. §1415; 14. *Del. C.* §3142; 10. *Del. C.* §921(12).

[23] Governor's Advisory Council for Exceptional Citizens, Report of Special Subcommittee on Due Process (June, 1986).

[24] 34 C.F.R. §§300.650-300.653; 14. *Del C.* §3111.

[25] 34 C.F.R. §§76.780-76.782. *Administrative Manual,* Section A V-1,2.

[26] For an overview of other compliance options available within the federal Department of Education, *see* Policy Letter of M. Will to Honorable Paul Trible, Jr., 2 EHLR 211:395 (July 23,1986).

[27] *Smith V. Robinson,* _____U.S. _____, 104 S. Ct. 3457 (1984). Delaware's district court anticipated the *Smith* holding by disallowing such recoveries a year earlier. *Rollison v. Biggs,* 567 F.Supp.964 (D. Del. 1983), *appeal dismissed,* No.83-1644 (3d Cir. October 12, 1984).

[28] The Handicapped Children's Protection Act, §.415, was enacted on August 5, 1986. For an analysis of the legislation, *see* R. Luckasson, *Attorneys' Fee Reimbursement in Special Education,* 52 Exceptional Children 384 (1986) and 1985-86 EHLR DEC. at SA-225-231 and SA-250 to 258 (1986).

Foster Care As A Family Service

Barbara A. Brown

Although the definition and role of the family has changed over time, it continues to be the primary vehicle that nourishes and ensures the continuation of society. The majority of children in Delaware grow up with the benefit of a permanent family, which provides a continuous, caring relationship with at least one adult. Yet some children, through no fault of their own, are separated from their family of origin, removed from their homes, and made the responsibility of public child care systems. These are the foster children. For some, separation from their family may be short term, but in other cases out of home placement becomes a way of life. According to one former foster care child, "a person's identity is profoundly related to and affected by his sense of connection to his family of origin." In his reminiscings of his experiences as a foster child and of his subsequent reconnection with his biological family, he stressed the "primacy of the child's experience of biological familial continuity in establishing his sense of self and personal significance."[1]

The history of foster care can be traced back to the Elizabethan Poor Laws. Over time, there has been a dramatic transformation of the theoretical and philosophical bases of foster care. Norman Polansky refers to foster care as "the ultimate form of parental prosthesis". "It is the actual operational response to the problem posed by the concept of *parens patriae,* which suggests that society has ultimate parental responsibility for all children in the community."[2]

Since the passage of the Social Security Act in 1935, the federal government has supported a range of programs to serve poor children and families. The 1961 amendments to the Social Security Act provided states with substantial reimbursements for foster care to poor children (Aid to Families with Dependent Children—Foster Care Program). During the 1960s and the 1970s, this country saw a tremendous increase in the numbers of children in foster families, group homes, and residential institutions.

Children Without Homes, published in 1978, the product of Childrens Defense Fund's landmark research, documented the plight of the more than 500,000 children in out-of-home foster placement. The advocates and the public became increasingly alarmed at the costs of the foster care system, both to children's lives (which were unmeasurable) and in rapidly escalating dollar amounts. The philosophy of rescuing the child from a bad family and placing the child in out-of-home placement was being challenged by the research. Children in foster care were drifting and no services were being provided to the families to address the problems that had necessitated foster care. Foster children were experiencing numerous foster family or group settings and many children were left in foster care for years before they were returned home, aged out of the system, or placed for adoption. In too many cases, neglectful families were replaced by a neglectful bureaucracy.

Permanency Planning

In 1977, permanency planning emerged as the solution to the failures and horror stories of the foster care system when Victor Pike at the Regional Research Institute for Human Services, Portland State University, Portland, Oregon, was instrumental in developing the technology for this new approach.

A permanent home is not one that is guaranteed to last forever, but one that is intended to exist indefinitely. When the expectation of permanency is lacking, a child experiences doubt, uncertainty and hesistancy. Permanency planning means clarifying the intent of the placement, and, during temporary care, keeping alive a plan for permanency. When a temporary placement is prolonged, foster care may have the appearance of permanency, but it lacks the element of intent that is critical to permanency.[3]

Permanency planning is a model of service delivery, with placement goals for children in foster care, which is intended to be time limited. Family reunification is the *preferred* goal for all children; next, termination of parental rights and adoption for children for whom return home is not possible; and finally, permanent placements with substitute families, achieved through foster parent guardianship or custody, or long term foster care with a foster family. Permanency planning as a model of child welfare services coincided with landmark federal legislation, The Adoption Assistance and Child Welfare Act of 1980, which ties financial incentives to substantive reforms in services. These amendments to the Social Security Act emphasize prevention of foster care placement, services to reunite foster children as quickly as possible with their biological families, and the provision of permanent adoptive families for children who cannot return home. Historically the development of services for poor children and families have followed the dollars. The Adoption Assistance and Child Welfare Act of 1980 encouraged the adoption of major legislative changes in the funding and direction of public child welfare services.

Foster Care Review Board Role in Permancy Planning

The Foster Care Review Board, composed of citizen volunteers appointed by the Governor of Delaware, was created by statute in 1979 as an independent monitoring system to periodically review children in foster care. To ensure that efforts are being made to provide permanent homes for children, the Board advocates reunification with natural families whenever possible, and, when not, recommends termination of parental rights and adoption to provide a permanent family for a child.

The thrust of the Board's mission is to recognize the difference between the time perception of children and that of adults. One year in the life of an adult is small fraction of the adult's life, however, one year in the life of a two-year-

old is 50 percent of his life. The impetus is to make decisions and achieve plans for permanency for children in accordance with the child's sense of time.

Service Delivery Implications

The Board's experience suggests strongly that intensive prevention and reunification services are the key to maintaining families intact, and that foster care placement as a time limited service is a last resort, to be used only when all other remedies have failed. The solution to the cost of foster care lies in the technology of prevention. In its past three Annual Reports, the Board has stressed prevention and reunification services as critical. Most recently the Board's Fifth Annual Report offered the following as Recommendation No. 1: " 'Keeping Families Together' through preventing unnecessary out-of-home foster placements and ensuring timely reunification of families when out-of-home foster placement is imperative should be the mission of the public and private providers of human services." In the spirit of PL 96-272, The Adoption Assistance and Child Welfare Act of 1980, the Board sees intensive family based services in lieu of out-of-home placements, and swift family reunification when temporary placement is necessitated as the future direction for children's services. The Adoption Assistance and Child Welfare Act requires as a condition of federal funding that before placing a child in foster care "reasonable efforts" be made to prevent, or eliminate the need for, removing him from his home, and to make it possible for him to return home. The Board suggests that the "reasonable efforts" include not only the provision of traditional "soft" services like counseling, day care, and parent education, but the "hard" services such as cash assistance and housing assistance.

Frequently, the precipitating factors that lead to foster care placement affect the entire family unit. But when the child is separated from the family through entry into the foster care system, the primary client becomes the child. The reasons that children enter the foster care system vary from a parent/child conflict to severe abuse, to voluntary placements made by the parents for lack of housing or adequate income. Many families involved with the foster care system are experiencing multiple problems, many of which are associated with poverty. "The fundamental issues of food, shelter, and medical care far too often trigger the unnecessary break up of families. The wrong is, of course, that after the breakup, we often will pay more to help family members separately than we would have spent to keep them together."[4]

The value of a foster care system and the Foster Care Review Board's program is measured by success in achieving permanent homes for children. The reasons children leave foster care system provide criteria for evaluation placement. During fiscal year 1985, 50 percent of the children in the Board's review sample left foster care to return home; 10.7 percent left when relatives became their legal guardians; 11.3 percent were adopted; and 24.7 percent exited by reaching the age of majority or 'aging out' of the system. These data suggest the need for a family-centered approach in the service delivery system.

The Foster Care Review Board's advocacy initiative for fiscal year 1987 is support of state efforts to reduce the number of children in foster placement, through the development and funding of intensive family preservation services. This approach keeps the child in the home whenever possible, using placement as a time-limited service of last resort. Services to the family unit, by reducing the numbers of children requiring placement and the length of time that those who are placed must spend in temporary foster care, will ultimately achieve better placement outcomes.

The Executive Committee of the Board has collected data over the past five years describing the types of children in foster care by age, race, sex, and time spent in foster care. The Executive Committee is planning to expand data collection in 1987 to include more descriptive information about the *families* in the foster care system. Through identification and aggregation of the multiple problems these families and children are experiencing, we can better develop an effective strategy for providing family services.

Major foster care reforms have followed the enactment of The Adoption Assistance and Child Welfare Act of 1980, but much remains to be done. Foster Care is (and probably always will be) a necessary service for some children and families. One responsibility of government to protect children from abuse and neglect will remain. The connection between one's family of origin and one's ability to develop into a healthy adult must be recognized in delivering services to children and families. If society can support and strengthen the family unit, it will contribute greatly to a generation of independent adults. The family, in one form or another, is the link between our past and our future.■

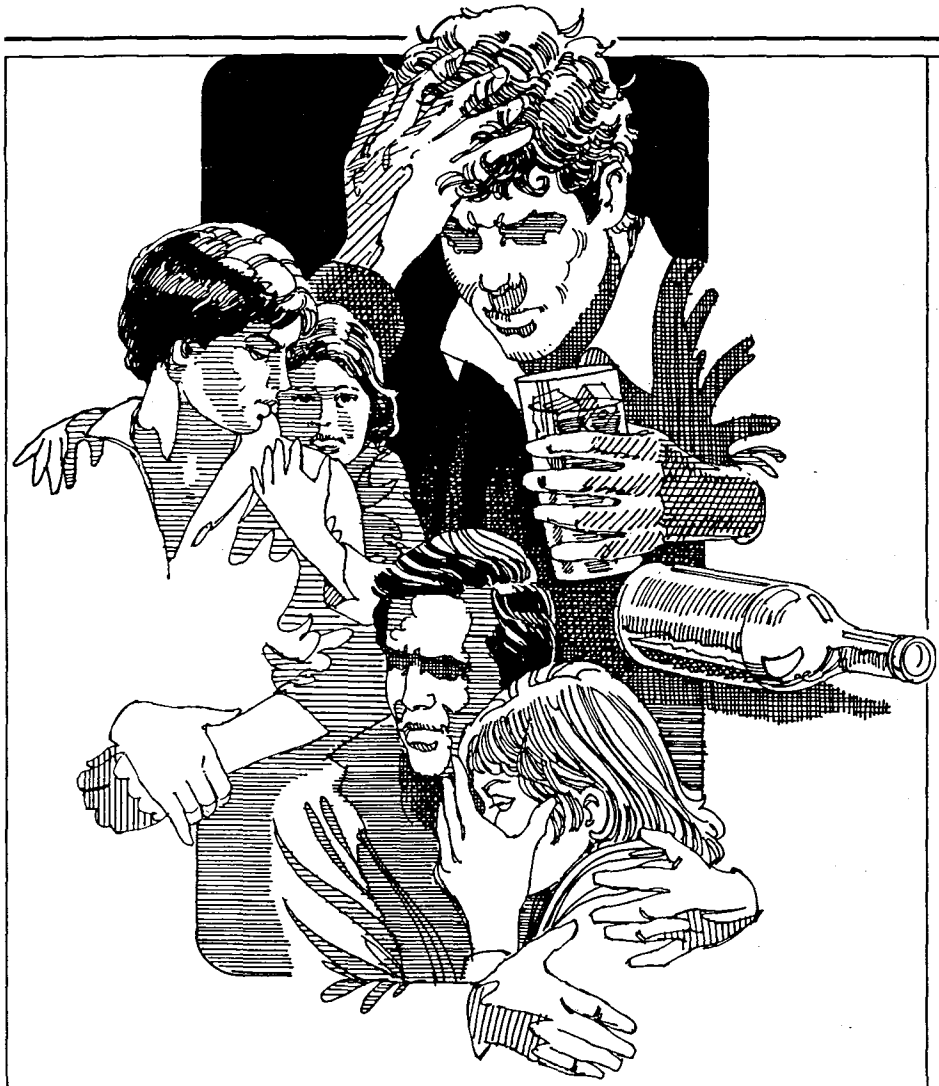
Barbara Brown has a distinguished background in work on behalf of children. Barbara holds a Master's degree in social work from the University of Michigan. She began her career with the Lancaster County Children and Youth Agency, working in the adoption unit, next the adolescent placement unit, and finally as a case work supervisor in the intake unit. Following a brief stint as an administrative officer in the Department of Community Affairs in Harrisburg, Pennsylvania, Barbara came to Delaware to join the Foster Care Review Board as a staff assistant. Following employment as adoption coordinator at the National Adoption Exchange, she became the Executive Director of the Foster Care Review Board in February 1983, a position she holds today.

[1] Stanton, Greta W., "Preventive Intervention with Stepfamilies," *Social Work,* May-June 1986, Vol. 31, Number 3, p. 203.

[2] Festinger, Trudy, *No one Ever Asked Us...A Postscript to Foster Care.* Columbia University Press, New York, 1983, p.xi.

[3] Pike, Victor A., *Permanent Planning for Children in Foster Care,* Permanent Planning Project, Regional Research Institute for Human Services, Portland State University, Portland, Oregon, 1977, p. 1.

[4] Forsythe, Peter, "Enhancing Well Being of Children and Families in the Decade Ahead," page 65, House of Representative's Hearing before the Select Committee on Children, Youth and Families, June 27, 1985.



Unfinished Business: Confronting Juvenile Substance Abuse

David J. Facciolo

Drug abuse is one of the most serious and frightening problems facing America today. Although Delaware drug abuse data are sparse, we have not been spared the ravages of the national epidemic. Worse yet, there is significant drug and alcohol abuse among juveniles and this has never been adequately addressed.

There are three sources of information about juvenile substance abuse in Delaware, although each drastically understates the extent of it. These are the Delaware juvenile crime rate, Family Court data from completed drug/alcohol evaluations, and the Ferris Study conclusions of the Permanency Planning Task Force Subcommittee on Corrections.

There is an established correlation between juvenile crime and drug/alcohol abuse. A recent national study by the Office of Juvenile Justice and Delinquency Prevention found 50.3 percent of adolescents treated for delinquency had drug problems, alcohol problems, or both. The nexus between drug abuse and the commission of other crimes is easily understood. Many cannot obtain drugs without resorting to illegal means. As long ago as 1973, the National Advisory Commission on Criminal Justice Standards and Goals concluded the "[t]his illegal activity usually takes the form of property crime - primarily burglary and shoplifting ..."

Studies of homicide and aggravated assault show that substantial percentages of offenders and victims had been consuming alcohol, and one study of criminal homicides revealed that in almost two-thirds of the cases the victim or the murderer had been consuming alcohol.

Since it is clear that drug or alcohol abuse is a substantial factor in the commission of crime, the actual percentage of Delaware juvenile arrests is a crucial gauge for measuring the magnitude of juvenile drug and alcohol abuse.

The data are startling. The average percentage of juvenile arrests from 1982 through 1985 in each major crime category is as follows:

(1984-1985)	
Arson	42.32
Burglary	34.37
Larceny (non auto)	27.61
Auto Theft	27.58
Robbery	23.58
Murder	5.76
Negligent Homicide	6.97
Forcible Rape	16.16
Assault	11.46
Assault (non aggravated)	11.55
Narcotics	20.44
All other crimes (Felony and Others)	16.69

Furthermore, the Delaware percentage of delinquents with substance abuse problems is certainly within the range of the national averages. The "Statement of Problems" section of a recent grant proposal succinctly states the problem:

"Use of alcohol and drugs by teenagers continues to be a national problem. Studies (both national and Delaware) show that 80-90% of teenagers use alcohol beverages and 30-40% use marijuana regularly. Consequently, many drug/alcohol using teenagers find themselves in trouble with the law..."

The 1983 National High School questionnaire results show that many "non-delinquent" Wilmington youth may be breaking the law by being at least "occasional substance abusers".

If Delaware delinquents are abusing alcohol at the national rate, then approximately 21% of Delaware arson,

17% of Delaware burglary, 13.8% of Delaware larceny, 12% of Delaware robbery, and 8.1% of Delaware rape arrests are directly related to juvenile substance abuse.

Juvenile drug abuse data are also found in Family Court statistics. In 1985, 270 substance abusers appeared in Family Court. Although the term "delinquent" attached to these youths because of their juvenile status, they were all brought before the court for criminal behavior ranging from consumption of alcohol by a minor to the most serious burglaries, robberies, assaults, and other crimes.

In 1985, Family Court completed three hundred thirteen drug evaluations of juveniles. Forty-four were recommended for in-patient programs, and two hundred twenty-six for out-patient services. (Forty-three did not need treatment.) The vast majority of those recommended for out-patient treatment, were referred to community programs approved by the Division of Alcoholism, Drug Abuse and Mental Health. However, thirty-three would have benefited more from in-patient residential treatment. Twelve were not recommended because of their high risk for runaway and uncontrollable behavior, twenty-one for lack of insurance or other resources to pay for treatment.

In 1985 at least 75 juvenile "delinquents" in Delaware suffered from chronic drug/alcohol addiction sufficient to require residential treatment, but only forty-four received it, and the vast majority of them had to find it outside of Delaware. It is equally clear that a much larger category of juvenile substance abusers also exist in Delaware, delinquent youth whose drug/alcohol dependence is sufficient to warrant direct community intervention.

The third major source of evidence that substantial juvenile drug abuse exists in Delaware is the Ferris Study. The Permanency Planning Task Force surveyed approximately 274 non-correctional group care clients as of May 15, 1985 to help determine permanent alternatives to foster care. One of the outgrowths of the initial study was the Ferris School survey covering January 1, 1986 through March 31, 1986.

The survey detailed delinquency history, facility placement, restitution obligations, social history, former placements, family home conditions,

pedigree, number of siblings, treatment goals, special needs, education, agency involvement, and reason for placement at Ferris.

Three startling facts emerged: 64% of the Ferris students surveyed had a history of drug/alcohol abuse, 50% came from dysfunctional families, and 45% were under civil state custody before commitment to Ferris. Although the survey does not show the number of juveniles requiring in-patient rehabilitation, Ferris students have been sent on occasion to residential programs. Furthermore, weekly individual and group counseling sessions are held at Ferris.

The Ferris Study shows that many incarcerated youth need drug and alcohol treatment and a large number of them have never previously received adequate help. At a minimum 66 youths have drug/alcohol problems that were not adequately addressed before the most punitive alternative for rehabilitation was employed, a Ferris commitment.

So much for the problem in Delaware. What has been the response? A community based solution requires government and the private sector to work together in three ways: through legislation, instruction, and treatment. In Delaware there have been significant legislative enactments and educational innovations. The greatest problem in Delaware is the lack of a comprehensive rehabilitation plan, one that would include each mode of treatment from initial detoxication through half-way re-entry into the community.

In July, 1985, the House of Delegates of the American Bar Association approved the "Report of the Advisory Commission of Youth Alcohol and Drug Problems" of the Section of Individual Rights and Responsibilities. That report urges legislation providing: (1) greater criminal penalties for selling alcohol or other drugs to minors than in the case of sales to adults: (2) effective treatment through diversion programs; (3) revocation of a juvenile's driving license until age 21 upon conviction of an alcohol or drug related traffic offense or upon refusal to submit to substance testing under implied consent laws; (4) a minimum age of 21 years for the purchase or possession of alcoholic beverages; and (5) State and Federal prohibitions against transporting drug paraphernalia through the mail and interstate commerce.

The Delaware General Assembly considered or enacted proposals bearing on each of these recommendations. The penalty for selling controlled substances to persons under age 18 is more severe than for sale to adults. Sales of narcotic controlled substances to persons under age 16 carry one-year mandatory jail terms and sales of non-narcotic controlled substances to those under 16 a six-month mandatory term. Such sales to persons under age 14 call for two-year and one-year mandatory terms, respectively. Similarly, sales of alcohol to minors by a licensed establishment can bring fines of $100.00 and up to 30 days imprisonment. Any adult who obtains alcohol for a minor can be fined $100.00 to $500.00 and jailed for 30 days on a first offense with larger penalties for repeat offenders.

Second, although Delaware has not yet enacted a requirement for juvenile substance abuse diversion, legislation had been proposed in 1985 that at least attempted to address part of this problem. Furthermore, the Alcohol and Drug Education and Prevention Training Program (ADEPT) is currently required in New Castle County, as a condition of arbitration or probation for first offense juvenile substance abusers. Thus, non-legislative diversion at least in New Castle County, may provide a model for further legislative design. That program is intended to promote working knowledge about drugs and drug abuse for families and adolescents as well as skill development in good decision-making processes.

Although the ADEPT program is educational and aimed at the earliest stage of substance abuse, similar programs for those further advanced could be useful in combating this juvenile problem. Effective diversion programs will ultimately require legislative action, but some components already exist, and other states have already begun comprehensive programming.

Third, under Delaware law the driving license of any juvenile who violates the Driving Under the Influence statute will be revoked until he reaches the age when he may lawfully drink. This statute was held constitutional in 1983. Although the statute does not extend the license

revocation to age 21 for refusal to submit to substance testing, it is otherwise consistent with ABA recommendation and the report of the Presidential Commission on Drunk Driving.

Fourth, the ABA report noted the problem of "blood border" fatalities, which occur on the edge of states with different legal drinking ages. Delaware has responded by raising the drinking age from 20 to 21.

Fifth, although the ABA recommendation concerning the availability of drug paraphernalia is principally addressed to the federal problem of interstate shipments, the report urges state support of legislation to prohibit such activity. Delaware now prohibits the possession, sale, or delivery of drug paraphernalia. The statutory scheme for defining drug paraphernalia has been held constitutional.

An examination of the Delaware legislative response to these five issues yields two conclusions. When criminal statutes are recommended, the Delaware legislature has generally responded quickly and well, but the legislative response to complex recommendations for substance abuse diversion programs has not yet met the ABA recommendations.

In addition to statutory responses, education is fundamental to a community solution. Cooperation between private sector drug education advocates and school districts throughout the state is resulting in significant drug awareness among Delaware youth. The U.S. Department of health and Social Services program "Here's Looking at You, Two", is gaining acceptance in Delaware curricula. That program and others like it are preventative. They have been established in the belief that education can be very effective in stopping abuse in the earliest phase of substance experimentation. National data on juvenile attitude and perceptions of drug use lend force to that conclusion. In 1978, 34.9% of youth surveyed (nationally) perceived regular use of marijuana as creating a "great risk of harm" in 1984, with the development of drug education programs, 66.9% saw a "great risk of harm". Clearly, increased drug awareness and education is affecting the formerly permissive attitudes of many juveniles.

"Here's Looking at You, Two" uses a

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four point curriculum: (1)information-understanding — the problem and knowing where to find the facts; (2) decision making-recognizing influences and developing the right response; (3) coping-recognizing stress factors and developing methods for dealing with them; and (4) self-concept* -emphasizing strong personal values and behavior skills. An important element in the success of this program has been early initiation, which actually begins in kindergarten! Furthermore, the national success of the program has been documented by at least five independent evaluations showing a reduction in substance abuse among 6th, 7th, and 8th graders after only one year's exposure to the program.

In Delaware, it is estimated that 38% of the State's public school children have been placed in the "Here's Looking at You, Two" curriculum. The developers of the program have targeted 1987 as the year for 100% exposure for Delaware youth, but the estimated cost is nearly $400,000.00. Although drug abuse nationally is declining, the level of alcohol use by high school youth is still glaringly high. Thus, the need for expanded educational efforts is clear. "Here's Looking at You, Two" is but one element in a comprehensive community solution. Nevertheless, it is precisely the type of educational effort currently being urged by the foremost national experts on juvenile drug and alcohol education, and the current 38% level of exposure represents a significant private contribution.

The third element in a community solution is rehabilitation treatment from initial detoxification through halfway re-entry into the community. Delaware has some but not all of the necessary components of such a program. Because

**A term that only a social worker could love. ED.*

adolescence is a critical development period, heavy substance abuse or a drug life style can be far more destructive to an adolescent than to an adult.

Although the components of substance abuse treatment can be divided into many separate modalities, there are five essentials: (1) Community based counseling, a support system including but not limited to long term therapy and Family Counseling; (2) In-patient detoxification centers; (3) Residential therapeutic communities; (4) Half-way Re-entry Houses and Aftercare to ease the transition back to the community; and (5) Hospitalization for the incapacitated or disabled.

The Family Court data show that the majority of juveniles with substance abuse problems can be treated in outpatient programs ranging from Family Counseling to mental health services and substance abuse counseling and support programs. Because the degree of juvenile substance abuse has never been comprehensively analyzed, it is unclear whether they are sufficient.

Transportation and convenient hours for consultation pose serious problems for those who must rely on public transportation or whose work schedules preclude daytime appointments. In Kent and Sussex Counties these problems are even more acute than in New Castle County. Although agencies often accommodate themselves to client work schedules, they are uniformly frustrated by inadequate transportation, owing to their limited resources.

In-patient detoxification centers serve each of the three counties. They provide an isolated environment where substance abusers can free themselves physically and psychologically from substance dependency and be evaluated for rehabilitation.

These centers admit juveniles, but none has a program specifically designed for them. Adolescents are at a stage during which they exhibit characteristics of both adult and juvenile behavior. They are still susceptible to family pressures and educational approaches, and they do not recognize the dangers of substance abuse to the degree adults do (e.g. financial loss, destruction of interpersonal relationships). It is essential that therapy deal at the earliest stages with these special characteristics. A genuine need exists in Delaware for special adolescent detoxification programs in addition to the current services offered to both adults and juveniles.

The Family Court referrals discussed earlier demonstrate the need for residential facilities. For the majority of juveniles residential treatment is accomplished through placements out-of-state. In Delaware, there are three residential therapeutic communities that admit juveniles; the Lower Kennsington Program, Greenwood, and Mondamin Residential Treatment Center. The Lower Kennsington Program and Greenwood have treated 15 and 7 juveniles, respectively, as of October 1, 1986. They are not specifically designed for juveniles, although some have occasionally been treated with a degree of success. Mondamin Residential Treatment Center is designed specifically for juveniles with primary substance abuse problems. It takes a long-term approach to juvenile rehabilitation. Family Court data in 1985 showed that at least 75 juvenile "delinquents" statewide required residential treatment. In addition the Division of Child Mental Health placed eleven non-delinquents out-of-state. Because the Family Court delinquency data and the Division's placement data tend to understate the total need, the eighty-six juveniles in 1985 requiring residential care represented only a portion of the total number throughout the state with similar needs. Delaware residential facilities cannot meet the needs of the documented abusers, much less the large number of unreported juveniles with the same needs. This acute lack of bed space is one of the most serious deficiencies in dealing effectively with juvenile substance abuse in Delaware.

Aftercare following residential treatment is vital to successful treatment. In Delaware, juveniles are often released from residential treatment directly into their original environment of substance abuse. No drug-free transition residence after residential rehabilitation exists for juveniles in Delaware as it does for adults. This is especially serious where family support systems are inadequate or dysfunctional. The transition to the community for juvenile substance abusers returning from residential treatment is abrupt and inadequately supportive. As a result one of the most vital components of treatment is nonexistent in Delaware.

This deficiency is in one respect more striking than the acute shortage of residential beds. Although Delaware does not have adequate residential programs, a significant number of adolescent abusers are sent to out-of-state residential centers and ultimately return to Delaware. The 1985 Family Court and Division of Child Mental Health placement data, show that at least 55 juveniles were placed in out-of-state substance abuse residential treatment facilities and presumably returned to the Delaware community. If national studies are indicative of local needs, the transition to an alcohol and drug-free environment by these juveniles will be severely handicapped by the lack of transitional communities, and consequently their ultimate chances for success will be reduced.

The final component of a comprehensive program is hospitalization for those incapacitated by substance ingestion or psychiatric disorders. This component looks to other forms of rehabilitation upon stabilization of the client's condition. Several hospital facilities in Delaware serve the need. In any comprehensive juvenile substance abuse program, they must be regarded as a primary and essential resource.

The challenge of substance abuse will require more than the enactment of ABA approved legislation. The marshalling of talent, money, and resources for in-house rehabilitation, aftercare, half-way programs, and education are necessary. Delaware is a state with high per-capital income, low unemployment, and a lower than average poverty rate. Because the state is small, it has traditionally relied on the resources of nearby states, especially with regard to residential rehabilitation. This need not be the case. Delaware has the money and the manageably small population sufficient to develop a model plan for assessing and treating juvenile substance abuse. A comprehensive response by government and private sector agencies is necessary, and it is feasible. Many of the fundamental components already exist but unless all are in place the success of current efforts will be impaired and in some cases doomed.

Mr. Facciolo's article is condensed from a longer study, supplemented by extensive references and authorities. Space limitations prevent our publishing these. DELAWARE LAWYER will be happy to make available the full manuscript to readers who wish to pursue the subject in greater depth. ■

Illustration by Don Norman

Adolescent Suicide Some Recent Developments

Ellen S. Zinner

What is known about adolescent suicide is the frequent stuff of newspaper and magazine articles, community programs, professional workshops, television documentaries, and fictionalized presentations. The public is indeed responding, if somewhat belatedly, to the huge rise in adolescent suicide over the past 30 years. What is not known about adolescent suicide continues to frustrate prevention and intervention efforts. Precise indentification and support of potential suicides are still impossible. But recent organized efforts and research insights are increasing our comprehension. Herewith some highlights of these newer currents.

According to the National Center for Health Statistics, the suicide rate for adolescents 15-24 years of age is 1960 was 5.52 per 100,000. The adolescent rate more than doubled and peaked in 1977 at 13.3. Since then it has been dropping slowly. The latest rate (1983) reported by the Center for Disease Control is 11.9.

During these 20 years, suicide rates have increased most sharply for white male adolescents. Within the normally tabulated adolescent age range (15-24), suicide rates are higher, but they have increased more significantly for the 20-24 year age group. At their peak in 1977, suicide rates for the 15-19 year old group were 8.7, with little decline over the next six years. For the 20-24 year old group, the rate reached 18.2 and even now exceeds 15.0. Black male suicides have also risen and, in some areas have surpassed white males rates in the older adolescent age group. These rates translate into almost 6,000 certified adolescent suicides annually.

At first glance, such demographics appear to be easily obtainable and understood, but two recent research efforts may offer new and deeper perspectives on these statistics. Reliability of suicide data has always been considered problematic. Suicide numbers and rates are counted directly from state records of death certificates on which coroners and medical examiners certify the mode of death. The declarations of the cause of deaths as accidents, suicides, homocides, natural, or undetermined are the judgments of these local officials, judgments too often made on minimal investigation, personal biases, and outside pressure. It has frequently been suggested that the actual numbers of suicide are probably double those officially recorded.

New guidelines for coroners and medical examiners are being developed by representatives of at least half a dozen national organizations active in the field of death certification and morbidity statistics. These Operational Criteria for Classification of Suicide (OCCS) explicitly define suicide as a self-inflicted death where the victim intended lethality and understood the consequences of his actions (see box). Efforts have begun to test the effectiveness of OCCS and to use it for greater consistency and accuracy in the certifying process.

A second recent development concerning suicide demographics is the use of a population model as an explanatory hypothesis for the changes in adolescent suicide rates that have been noted across this century. At the National Conference on Risk Factors in Youth Suicide at the National Institutes of Health in May, 1986, Drs. Paul Holinger and Daniel Offer reported that youth suicide has consistently reflected the ratio of 15-24 year olds to the rest of the U.S. population. As this proportion has risen and fallen, so have adolescent suicide rates. The number of adolescents rose from 11 million in 1956 to 21 million in 1975 and their percentage of the population increased similarly. Increased numbers of American youth may mean increased competition for academic and occupational positions and other ego support resources in an otherwise less politically powerful and less socially attractive age group. Or perhaps an increased proportion of youth simply enlarges the relative numbers and negative consequences of young patients with affective disorders, which translate into suicide attempts and deaths. (Interestingly enough, the population model does not show this positive correlation between population proportion and suicide rates for the 35 and older age groups.)

Past adolescent population trends and those foreseen, given present birth rates, presage a continued lowering of adolescent suicides as that age group decreases in relative size. By 1990, adolescent suicide rates should be at 10 per 100,000 and bottom out at approximately 9.5 by 1995. Thereafter, increases in the relative size of the adolescent segment of

the populace should bring a parallel rise in the suicide rate to 10.25 by year 2000.

Adolescent suicide has certainly not been hidden to friends, families, and organizations that have been affected by these tragic losses over the last 30 years. Yet recent focused attention and concern have generated several new organizational efforts that will complement each other in confronting the problem. The Task Force on Youth Suicide is a multiple year project of the U.S. Department of Health and Human Services designed to bring together researchers and educators inside and outside the government. Three working groups have thus far been organized—on risk factors, prevention and intervention, and on future strategies for research and education. Each is charged with putting on a national conference to disseminate its findings. Later working groups will be formed to develop budgets to support continued efforts and to address public concern through nationwide hearings.

The National Committee on Youth Suicide Prevention (NCYSP) was formally organized in June, 1985 through the efforts of Alfred DelBello, former Lieutenant Governor of New York, to create pressure for state and national legislation to mandate and support suicide education in the schools. State committees have been organized in 47 states. Delaware has an active state chapter. Already bills have been brought before several state legislatures calling for a Federal Commission on Youth Suicide. NCYSP is also in the process of compiling a National Resource Directory of Youth Suicide and Intervention Programs. Several fund raisers have been held to gather financial support for NCYSP efforts, and proceeds from Billy Joel's popular record "You're Only Human (Second Wind)" have been donated to the organization.

The Youth Suicide National Center began by co-sponsoring with Health and Human Services a well-attended national conference on youth suicide in Washington, DC in May, 1985. Since then, the National Center has served as a clearinghouse for various local suicide education programs and other resources for professionals and others interested in the topic. For instance, they offer such aids as an annotated list of videos and books helpful to both professionals and teenagers interested in suicide information and prevention. Another aim of the National Center is to develop national models of youth suicide prevention.

These new approaches are directed to bringing current information to the public and supporting public efforts to lower adolescent suicide. These and other recent developments are most welcome responses to a public health problem that threatens so many of our children.

Resources Address List:

The Task Force on Youth Suicide
US Department of Health and Human Service

National Committee on Youth Suicide Prevention (NCYSP)
666 Fifth Avenue
New York, New York 10103

Delaware Chapter NCYSP
Rev. Dr. Marlene Walters
United Methodist Church
850 Mt. Lebanon Road
Wilmington, Delaware 19803

Youth Suicide National Center
1825 Eye Street, NW
Suite 400
Washington, DC 20006

Ellen Zinner is on leave of absence from the sociology department at Towson State University in Maryland in order to pursue a doctorate in clinical psychology at the Virginia Consortium for Professional Psychology in Norfolk. Ms. Zinner has taught extensively on the subject of suicide prevention and intervention. In February 1986 she conducted a workshop in Delaware under the sponsorship of Child, Inc.

Operational Criteria for Classification of Suicide (OCCS)

I. **Self Inflicted:** There is evidence that death was self-inflicted. Pathological (autopsy), toxicological, investigatory, and psychological evidence, and statements of the decedent or witnesses may be used for this determination.

II. **Intent:** There is evidence (explicit and/or implicit) that at the time of injury the decedent intended to kill self or wished to die and that the decedent understood the probable consequences of his or her actions.

A. Explicit verbal or nonverbal expression of intent to kill self.

B. Implicit or indirect evidence of intent to die such as the following:

- Preparations for death, inappropriate to or unexpected in the context of the decedent's life.
- Expression of farewill or desire to die, or acknowledgement of impending death.
- Expression of hopelessness.
- Effort to procure or learn about means of death or rehearse fatal behavior.
- Precautions to avoid rescue.
- Evidence that decedent recognized high potential lethality of means of death.
- Previous suicide attempt.
- Previous suicide threat.
- Stressful events or significant losses (actual or threatened).
- Serious depression or mental disorder.

These criteria were developed by a working group of individuals representing the Academy of Forensic Sciences, American Association of Suicidology, Association for Vital Records and Health Statistics, Centers for Disease Control, International Association of Coroners and Medical Examiners, National Association of Counties, National Association of Medical Examiners, and the National Center for Health Statistics.

Suffer The Little Children: The Economic Consequences of Divorce

Zenaida Otero Keil and
Sheryl Rush-Milstead

Introduction

By 1990 children and women will constitute the vast majority of the nation's poor. Children are the fastest growing segment of the homeless. Several things account for this, among the most significant a 50 percent divorce rate and the associated financial settlements for children and women. In over 90 percent of divorce cases, women receive custody of the children. For a variety of reasons, the earning capacity of women is significantly lower than that of men. The high divorce rate, inequitable financial divorce settlements, and the lower earning capacity of women contribute to poverty for children.

In Delaware important strides have been made on behalf of the children of divorce. Progressive and effective procedures in place in the Family Court and recent child support wage attachment legislative have improved the lives of children and will continue to do so. However, there is much still to be done if we are to reduce the poverty of the Delaware children of divorce. Herewith a summary of the problem and proposals for improving the collection of support payments.

Current Status Of Children In Delaware

The number of children living in poverty increases as a function of the number of divorce cases. In Delaware, as of 1980, half of the approximately 14,000 female headed households with children under 18 were living below the poverty level. This is partly due to the failure of 60 percent of the child support obligors to make their court ordered payments. In 1984, Family Court Chief Judge Robert D. Thompson reported to the Delaware legislature that $10.4 million in child support payments were in arrears. And there are *$4 billion* in arrears nationwide! In general, dereliction in child support is not viewed as a serious crime. Warrants against defaulting child support obligors are seldom served. Recent wage attachment legislation is expected to improve compliance, but it will not protect children whose non-custodial parents are self-employed, or contract employees with multiple employers. In addition, it is extremely difficult to enforce a child support order when the obligor moves outside of the state.

Economic Relationships Between Children And Women

The financial status of children and women are intertwined since women are the major caretakers of children. As stated above, nationwide and in Delaware women receive custody of children in over 90 percent of divorce cases. Family Court awards child support in only 59 percent of the cases, and seldom alimony. This burdens women with the sole financial responsibility for children just when they are experiencing a drastic decrease in available income. Recent data show that the standard of living for children and women a year after divorce

decreases 73 percent while that of men increases 42 percent, that women's earning capacity ranges from 47 percent to 65 percent that of men, and that 2/3 of women who work earn $10,000 or less. Poverty among children and women should not be surprising.

Status Of Child Support In Delaware

In Delaware, the Melson formula, used to calculate child support payments, provides a standardized mechanism for computing the basic financial needs of children. It has been tailored to provide for exceptional financial conditions that may exist for either parent and it provides a coherent framework for an equitable determination of support.

The Family Court can order wage attachments when child support obligors fail to make timely payments. However, as noted above, obligors who are self-employed or contract employees, or who leave the state present major collection problems. In such instances, the only alternative is the interception of income tax refunds. These are not always available and they fail to provide regularly for the financial needs of children.

There are cases in which adequate provisions are made for children after divorce. However, divorce usually brings a drastic decrease in the standard of living for children and it forces a significant fraction of them into poverty. Available data clearly substantiate this claim. Constructive action through the courts and legislation is necessary if we want the next generation to have the resources with which to grow and thrive.

Proposals For Improvements In Child Support Payment Collection

It is important to start with the premise that children have a right to be supported by *both* parents to the best of the parents' abilities. Children are our most important national resource and we must make every effort to secure their welfare. We strongly support the following proposals for improving the collection of child support payments.

- Institution and enforcement of penalties for willful arrearages.
  1. Newspaper publication of the names and addresses of deliquent

Zenaida Otero Keil is president of the Delaware National Organization for Women. She is an engineering consultant and adjunct professor at Glassboro State College (NJ). She has a doctorate in chemical engineering from the University of Delaware and has written various papers for technical journals.

Sheryl Rush-Milstead, admitted to the Delaware Bar in 1983, is in private practice. She is legal counsel to the State Council of the Delaware National Organization for Women. She received her law degree from Delaware Law School.

support obligors would do much to bring attention to the plight of children who live without the financial support of their non-custodial parents. In addition it is likely to serve as a deterrent to default in support payments. This technique has been used successfully against tax and parking ticket delinquents.

2. Weekend incarceration of the delinquent child support obligor (not to interfere with the obligor's employment) would show that the Family Court will not tolerate the neglect of Delaware children. At present delinquent child support obligors can be held in contempt of court. This is not adequate punishment. Family Court masters should be empowered to incarcerate those found in contempt. This will not only streamline the operation of Family Court, but it will also serve as a significant deterrent to delinquent child support obligors.

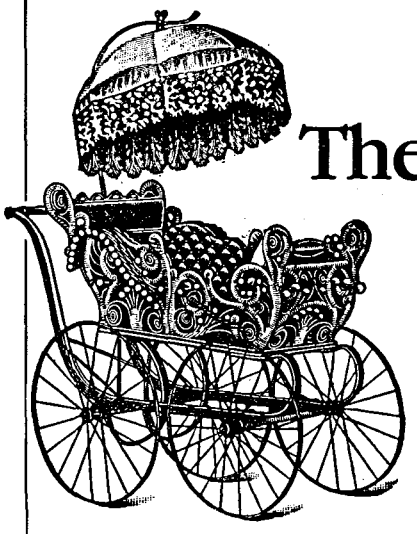
- Collection

1. The Bureau of Child Support Enforcement should serve as a clearing house for all child support payments and be empowered to attach an obligor's wages after seven days of non-payment.

2. A state-funded account should be created to provide the court ordered support payment during the wage attachment order and receipt of the order by the employer.

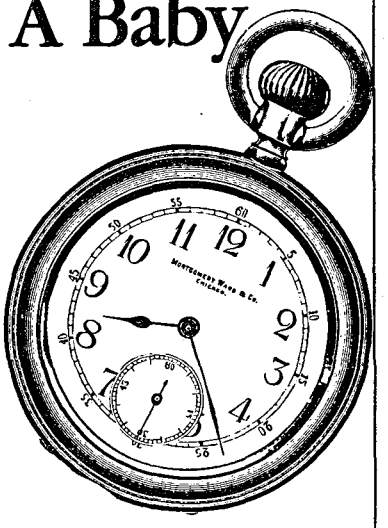
3. Arrearages should be judgment liens against obligors whose wages are not subject to attachment. Obligors would then be subject to levy and sale of their property.

Children are our future. When they are denied their right to support by both parents, we all eventually pay. Treating financial neglect of children as a serious crime is a first step to decreasing the poverty experienced by children in Delaware. The above proposals are within the reach of the legal community to institute. We all have a responsibility to alleviate the present suffering. ■



The Juris Doctor Has A Baby And Loses Four Billable Hours

An Aptitude Test For Lawyers Contemplating Parenthood



Christine M. Waisanen, Esquire

I didn't want to do another light article, but Bill Wiggin twisted my arm. He was so nice. He said I've become the Erma Bombeck of the Bar. He told me this would be a piece on motherhood, and he knew I'd just had my second child. He said it was the Christmas issue.** So, anyway, here goes...*

I have always been of the opinion that lawyers, if they have the desire and aptitude, should have babies. This is contrary to some popular opinion, I know. Some people hope that lawyers will be too busy billing hours to even consider procreating their species. I disagree. For one reason, if lawyers don't have children, the only ones to stand up for the profession in the 21st century will be other lawyers.

Others are of the opinion that babies and law do not mix. These people have never heard of the Great Balancing Act (GBA). They grew up in an era in which society was prosperous enough for people to specialize in only one activity, such as raising children or manufacturing widgets. The economic legacy they left behind, however, makes that particular lifestyle almost extinct.

Add to this the fact that specialists are now of the mind to encourage quality instead of quantity time with children, lots of peer-group interaction, more academic stimulation early, and involvement of both parents in the daily raising process. Perhaps we "ideally raised" Baby Boomers weren't as perfect as we were meant to be. Nonetheless, all these new factors add up to a new requirement for species survival, the creative stretching of time by the GBA.

This is not to imply that one should pity our generation. We did not have to cross the country in a covered wagon. We have had no world wars. What we do have as a generational challenge is the often stressful situation of mixing babies and the professions. But human beings have always adapted to their environments, and so can we.

Theories aside, I personally believe that having children adds an important dimension to a lawyer's life. One of the best ways to get a feel for the real world—a lawyer's duty, in my opinion—is to live it yourself. Children force you to put your priorities in order. And, hugging a child is one of the quickest, least damaging ways I know of unwinding after a difficult day. Giving is good for he soul. You experience the world through fresh eyes, and it seems even more delightful. And that's just the beginning of what children offer.

Let me be clear, however, that I also firmly believe that one must have the aptitude to undertake the GBA if a lawyer is to continue to practice while children are young. How does one know if one has the aptitude? Unfortunately, this is one of the subjects not taught in law school.

To have a high GBA aptitude, one does not need to be able to calmly recite delivery contract terms during labor. Nor must you set up a "people's court" at the dinner table. You certainly do not have to guarantee the world perfect children; there are no warranties whatsoever. You do, however, have to have sufficient desire to be able to generally plan ahead and try keep the upper hand. As in most ventures, you can usually learn these skills if you do not possess them innately.

Following, for your consideration, is an admittedly totally unvalidated GBA aptitude test. These six questions should give you a loose reading of your aptitude in six minutes. NOTE: This test applies not only to women. If you assumed that, you should already deduct three points from your GBA score. Rethink your attitude and try again. ▶

**Wrong. My sobriquet for Chris was "the Dorothy Parker of ICI".*

***Well, sort of.*

GBA Aptitude Test

Here are the questions. You have five minutes. Pick up your pencil. Mark your answers and fill in the time. Scores follow.

1. Your toddler has been clamoring for another story, and you have to proofread more than 20 pages of a bankruptcy petition in the next hour. You look into the teary brown eyes and know that a "not now" will cost you in terms of the relationship. You:

A. Put aside the petition. Read the shortest book you can find, paraphrasing and skipping pages here and there, hoping he won't notice. Then, put him to bed and continue with your work.

B. Explain your predicament and tell him that he will really be a "big boy" if he just went up to bed, and give him a lollipop for good measure.

C. Take him up on your lap and let him rest in your arms. Begin reading the petition aloud in your best "bedtime story" voice. He'll be asleep in ten minutes. Try to stay awake yourself.

D. Resolve to stay at the office in the future. Leave these problems to your spouse.

2. Your spouse just left for an out-of-town conference, and your babysitter just called in sick, the third Friday in a row. You have a backup sitter, fortunately, but want to make your feelings on tardiness and absences known to the sitter. You:

A. Specify in a written contract that the sitter will lose money after a reasonable number of absences.

B. Fire the sitter; look for another and hope for the best.

C. Set up a cooperative "Plan B" babysitting arrangement with other parents you know. Let your sitter know she is treading on thin ice.

D. Call your in-laws. Offer to rake leaves all Fall if they'll sit just stay on call.

3. You are dashing to catch the train to New York for a crucial business meeting. You show the conductor at the doorway your Metroliner ticket, then discover your wallet is missing. You flashback to last night, when you were teaching the kids about finance. They must still be playing with your money and credit cards. If you don't hop on the train now, however, you can kiss your contract goodbye. You:

A. Resolve to sell your Rolex in Grand Central Station. At half-price, you can get around the City all day. Don't tell your kids about your own financial sense.

B. Attempt to get a loan from the conductor. After all, he knows that you are one of Amtrak's best customers. If he balks, grab his hat and offer to "loan" it back to him.

C. Pull out the money-machine card you slipped out of the wallet before beginning the game, just in case. There must be a machine close to the Station.

D. Find a friend on the train. Show pathos. Tell the friend about your irresponsible kids. If you can't find a friend, make one—fast.

4. In the event your kids must visit your office after working hours, you are prepared with the following items.

A. Lots of magic markers and old computer paper, staplers and rubber stamp pads.

B. A candy drawer in your desk.

C. Toys, a first aid kit, portabed and change of clothes.

D. Nothing. My kids would never come to the office.

5. Are you familiar with the following terms?

A. CareBears, Laurie sets, Legos and Mister Rogers.

B. MTV, ShowBiz Pizza, Jams and HeMan.

C. All of the above.

D. None of the above.

6. Your diet/exercise schedule most resembles the following:

A. *Exercise:* mandatory week-end yard work with the kids. *Diet:* whole wheat, granola, sesame seeds and raisins.

B. *Exercise:* calisthenics with the kids, ending with ice cream. *Diet:* various fast foods supplemented with megavitamins.

C. *Exercise:* each night after dinner, we play hide and seek or other games, maybe on a walk. *Diet:* a variety of foods with lots of fresh fruit and vegetables.

D. *Exercise:* one doesn't need exercise if you have kids. *Diet:* any frozen dinner will do.

The Juris Doctor
(Continued)

Congratulations! You finished the test. Anyone who has read this far clearly has the potential, since you show interest, patience, and persistence. Unless, of course, you scoffed, tore up the magazine and yelled at your spouse or kids in response.

SCORING IS AS FOLLOWS. Add two points if you finished in under five minutes. Subtract two if you went over. Hitting five minutes on the button maintains your point score only. Now, score your answers as follows.

Each answer "A" - 2 points.
Each answer "B" - 1 point.
Each answer "C" - 3 points.
Each answer "D" - 0 nothing.

If your total was:

16-20 points: Congratulations! You are destined to be a super-parent. I wish I had your skills before I had begun. Most of your answers were "C's", which show good pre-planning, poise, and kid savvy.

9-15 points: You are definitely on the right track, and if or when you have more experience in planning ahead, you too can be a super-parent or caregiver. Most of your answers were probably "A's" and "B's". A word of warning: "A" approaches work better with judges than kids. One or both parties need alot of maturity or willpower to see them through. "B's" may have unintended consequences.

4-8 points: Do not despair. Kids are forgiving. If you have kids, my guess is that it is not too late to become more involved with them.

0-4 points: You probably prefer the practice of law to relating to kids anyway. Most of your answers were probably "D's". To be a super-parent, you must take control yourself. You probably have the ability if your attitude changes.

Finally, for anyone reading this article, parent or not, just remember that your sanity may depend on keeping your sense of humor. Your profession, as you know, depends upon your sense of poise. Expect your life, if or when you care for children, to be a combination of "Perry Mason" and "I Love Lucy." ■

Thoughtful Heresies

For a long time the Delaware State Bar Association urged the adoption of Mandatory Continuing Legal Education ("MCLE") as an essential ingredient of enhanced professionalism. Norman Monhait, Esquire, former Chair of the CLE Committee, drafted, redrafted, and still re-redrafted a rule to bring this about. The Supreme Court, extremely supportive of this effort, contributed many suggestions to the ongoing formulation of the proposed Rule, and in December 1986 adopted a Rule. MCLE is now a part of our professional future.

The following article, reprinted with the kind permission of the author, Joel Henning, takes a diametrically opposed view of the virtues of what has been adopted. Criticism is always useful, and we believe that our collective faith in MCLE is strong enough to withstand the onslaught of divergent views. More to the point, author Henning is an extremely graceful and entertaining writer. But read for yourself:

Henning on Training

ABA Bustles About Mandatory CLE

Close to 150 years ago Alexis de Tocqueville characterized America's voluntary associations as representing "a thousand...kinds, religious, moral, serious, futile, restricted, enormous, or diminutive."

The American Bar Association can be described by all of these adjectives. It is the largest professional association in the world, but accomplishes nothing easily because it constitutes the sum of many big, little, heroic, petty, progressive and retrograde causes, interests, and subassociations. It is Balkanized with state and local bar groups, legal specialty sections, judges, young lawyers, old lawyers, private lawyers, in-house lawyers, government lawyers, law professors, law students, women lawyers, black lawyers, Hispanic lawyers, and the ABA's own staff of several hundred professionals—many selfless, tireless, and dedicated public servants, and many other Micawber-like bureaucratic job holders.

Because ABA membership is voluntary, each of these interest groups can throw its weight around. Already operating at a deficit, the ABA cannot afford to lose the support of any significant faction. So it should be no surprise that the ABA often appears less than coherent when it attempts to wrestle with policy issues.

Let's take, for example, the issue of mandatory continuing legal education. The movement began in the 1970s when the Supreme Courts of Minnesota and Iowa required their lawyers to undergo CLE amounting to a yearly average of 15 hours. These early gestures followed hard on the heels of Watergate. State legislators and the public were agitating over the number of lawyers who had lost their moral compasses or become felons.

It may have been only coincidence that so many of the Watergate miscreants were lawyers. After all, California was also disproportionately represented among the Watergate thugs. But nobody suggested that Californians be subject to new educational requirements in order to maintain their citizenship. Instead, Minnesota and Iowa, followed now by 20 of their sister states, compelled their lawyers to attend a few hours of unspecified CLE.

In my view, mandatory supplementary education for Californians would have made as much sense as MCLE for lawyers. Watergate may have revealed something important about lawyers' inadequacies. But it revealed nothing that could be corrected by a few hours of CLE bearing no necessary relationship to the attendees' practices and followed by no examination or other means of assessing what—if anything—was learned.

I was wrong in at least one sense. I thought that some enterprising journalist would long since have revealed that MCLE doesn't do much more than raise the cost of legal services. But MCLE seems to have helped the legal profession keep legislators and the public at bay (except, ironically, in California).

Joel Henning practices corporate law in Chicago. He spends most of his time, however, as a consultant specializing in law practice management. He has consulted with many of the nation's major law firms on issues relating to training, managing, and supervising lawyers. He is Publisher of Lawyer Hiring & Training Report, *and writes a monthly column, Henning On Training.*

But that's about all it has done. It is a cosmetic gesture. The current state rules range from a microcosmic nine-hour annual CLE requirement to an embarrassingly modest 15 hours. No study preceded implementation of this quantity of hours. To be a masseur in Virginia requires more hours of continuing professional education. An eighth-grader in Texas must take more law-related education to pass eighth grade civics. Doctors in many states and specialty colleges must take 40 to 50 hours of professional education per year and sit for periodic recertification examinations.

If MCLE leaves much to be desired quantitatively, it is also suspect from a qualitative point of view. First, there is no evidence correlating MCLE and lawyer competence. None. Zero. Second, MCLE often vitiates the quality of programming because CLE providers must wholesale mass programs to meet the demand, rather than craft quality programs to meet real CLE needs and interests. And third, MCLE doesn't even assure the public that lawyers focus on their areas of practice. I know of instances where specialists in insurance law have sat through criminal law courses to fulfill MCLE requirements.

The MCLE accreditation process is also suspect. Some states have designed a clear conflict of interest situation by providing that the director of the state

Henning on Training
(Continued)

bar CLE program also accredit all CLE programs. And, as Professor Lee pointed out last month in these pages, several states systematically deny accreditation to in-house CLE organized by law firms and corporate legal departments to meet the precise needs of their clients ("Does Mandatory CLE Accreditation Process Penalize Firms with In-House Programs?" Lawyer Hiring & Training Report, August 1986).

Will it help reduce malpractice claims? No. Actuaries report that most legal malpractice involves missing filing deadlines or misappropriating client funds, neither of which is the subject of much CLE. And if poor office management or unethical conduct is the problem, why don't the states mandate training in these areas as a solution?

Commission on Professionalism supports evaluation of lawyers during CLE

Into this farcical scene, enter the ABA. For the first decade of the MCLE movement, the ABA was wisely circumspect, taking no position for or against these unfocused, cosmetic gestures. Then last month, the ABA's Commission on Professionalism issued its report to the House of Delegates. It said that "the commission strongly supports compulsory continuing legal education programs with some form of evaluation or examination." Commenting on the current MCLE programs, the commission reported, "There is little question that lawyers, in fact, physically attend these courses in most instances, but the question is what they get out of them." The report said that the evaluation process need not involve written exams in all cases (trial skills courses, for example). "Still, some method of evaluation, where practical, seems essential."

Unfortunately, as the commission pointed out, no models for such "essential" examinations currently exist. In presenting the report to the House of Delegates, the commission's chairman, Justin A. Stanley of Chicago's Mayer, Brown & Platt, took pains to suggest that he was seeking no action at that time. Rather he sought the creation of a committee to review the commission's recommendations and later make appropriate proposals for action. And yet, during the same meeting of the House of Delegates at which the commission filed its report, the ABA Young Lawyers Division, along with a few of the states already in the MCLE game, pushed through a resolution urging all states to consider adopting MCLE programs (see "ABA Nudges States to Consider Mandatory CLE,").

Current programs accomplish little toward improving competence

The question is: What MCLE programs? None of the current ones have accomplished more than two purposes. First, they satisfy the Pharaonic compulsions of bar presidents to leave monuments commemorating their terms of office. Second, they meet the short-term public relations goals of the legal profession. The bar appears to be doing something about the very real problem of lawyer competence, yet no lawyers are seriously put out by the effort.

But, say MCLE proponents, what's wrong with taking the first steps to competency before the ultimate steps have been charted? First steps tend to be last steps. In a decade, the state of Minnesota has done essentially nothing to beef up its MCLE program.

Now, urged on by the ABA, more states will create superficial MCLE programs. When better models are developed, lots of states will argue that they already have all the MCLE they need. The states, after all, are a crucible of legal experimentation. Why impose national policy when we don't know what—if anything—makes sense? For the ABA to urge adoption of MCLE now is like the Congress urging further shuttle flights before the problems that brought Challenger down are corrected.

On the brighter side, the same ABA resolution that urges state bars to consider MCLE also requests the Standing Committee on Continuing Education of the Bar to do some serious thinking about guidelines for truly effective MCLE programs. The Standing Committee can do the profession a great service by taking this responsibility seriously. Let's hope that the aimless bustle recommended by the Young Lawyers and the mandatory states does not obscure real efforts to do something truly effective about lawyer competence. ■

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IMPORTANT ANNOUNCEMENT

Working in close cooperation with CNA and its National Managing General Agent, Poe & Associates, PLI has arranged for CNA to become a filed carrier for Lawyers Professional Liability Insurance in the State of Delaware. Special thanks should go to David Levinson, Insurance Commissioner, and the Delaware Insurance Department for their expeditious ratification of CNA's presence.

The Delaware Bar Association should also be commended for its support and guidance in facilitating CNA's entry into the Delaware marketplace which requires the presence of a Lawyers Professional Indemnity underwriter of the quality and experience of CNA and Poe.

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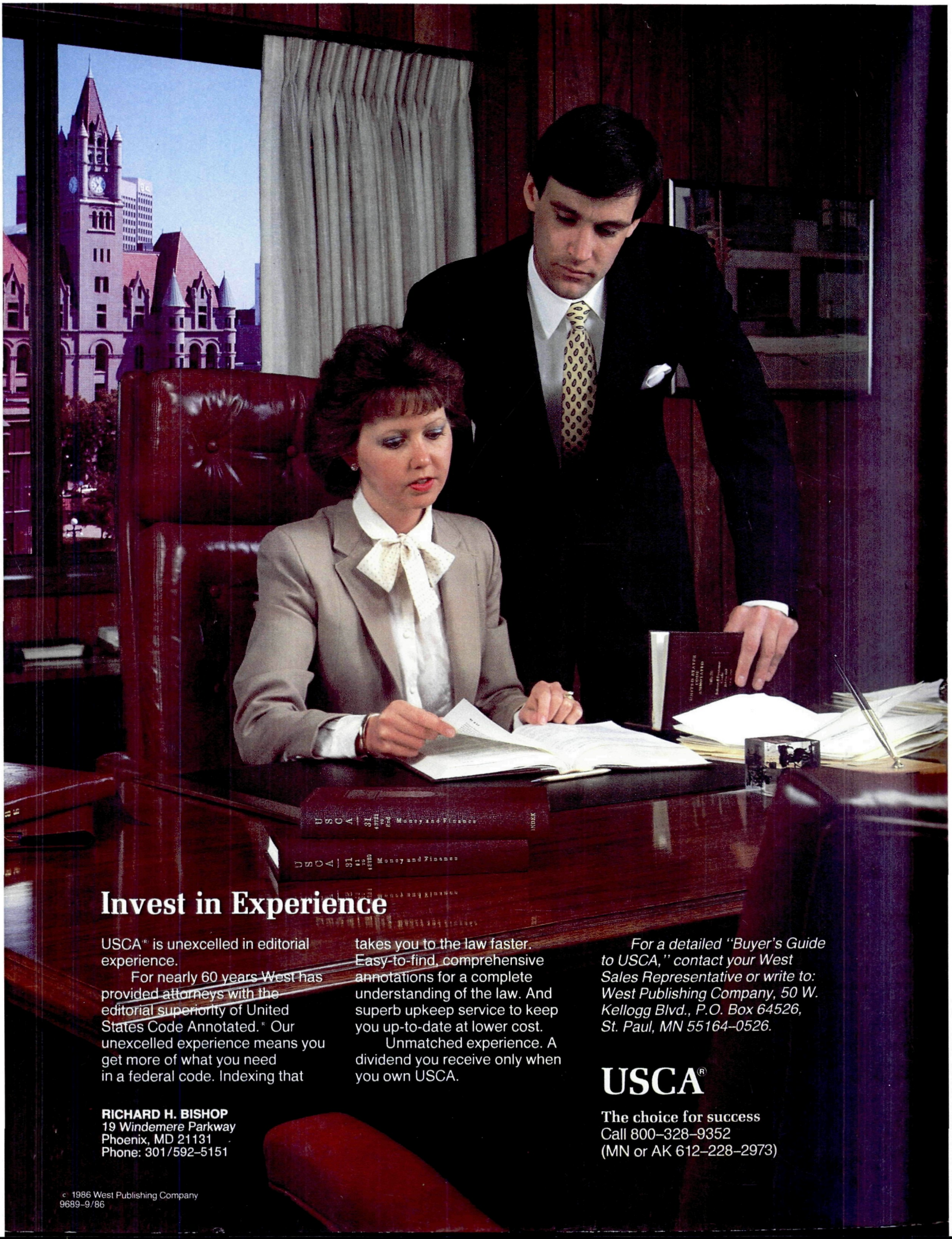

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