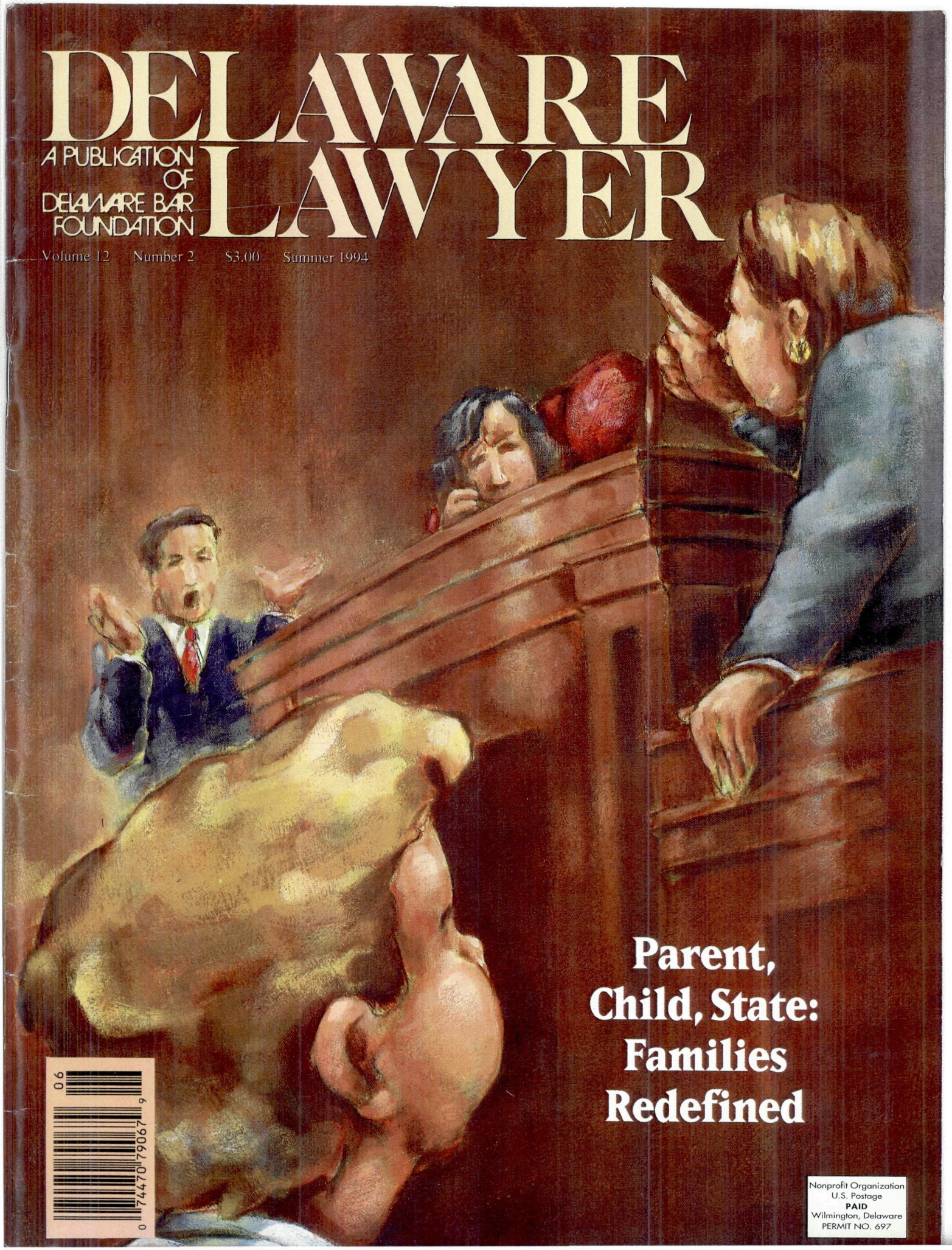
DELAWARE LAWYER

A PUBLICATION OF DELAWARE BAR FOUNDATION

Volume 12 Number 2 $3.00 Summer 1994



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Cover Illustration by Mike Wohnoutka

Top Illustration by Stephanie Shieldhouse Bottom Illustration Dan Yaccarino

DELAWARE LAWYER
A publication of Delaware Bar Foundation
Volume 12, Number 2
1225 King Street
Wilmington, Delaware 19801

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Wilmington, Delaware 19801

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EDITOR'S PAGE

This issue looks at the changing family unit and the role of the state and family law in directing or defining that change. The statistics on family dissolution due to divorce, abuse, and dysfunction are well reported. Similar dramatic increases in out of wedlock births and the resulting impact on children and communities feeds a debate conducted in forums ranging from legislatures to T.V. talk shows. The debate is not always enlightened or enlightening, but always heated.

Obviously, this discussion and the broadening definition of those who will ultimately be embroiled in "domestic disputes" is just a start, designed to spark debate. Each author has independently developed a focus sharpened by his or her belief of what legal changes will best serve the interests of children drawn into the disputes of the adults in their lives.

Anne Goodwin takes on the daunting task of identifying legally "who is Mother" in face of medical breakthroughs unimaginable less than a generation ago. Patricia Dailey analyzes new issues generated by extension of family rights and responsibilities to same sex couples. James Morales sets forth the ABA's advocacy efforts for children expounded in *Children at Risk* and the Report's "call to action" for those serving the nation's children. Mary Ann Herlihy identifies some of Family Court's accomplishments in these areas. Patricia Tate Stewart and Joel Tenenbaum address the existing systems for adoption and foster care. Finally Carolee Grillo outlines the newest Delaware effort to protect family members from abuse and notes the broad statutory definitions of "family" and "abuse".

I thank all the authors so generous with their *interest*, time, and expertise. I thank Bill Wiggin for his kind words, generous support, and pointed red pen. These discussions are important. I urge others to continue the dialogue in future editions.

Susan F. Paikin

Dear Reader:

We regret that the Spring, 1994 issue of the Delaware Lawyer contained certain illustrations that many considered offensive to women lawyers. We apologize to our readers, and especially to Karen L. Valihura, Esquire, whose thoughtful article appeared adjacent to one of the illustrations. They were intended as satire, yet reflected an insensitivity completely at odds with the policy of the Bar Foundation and the Board of Editors.

Sincerely,
The Board of Directors, Delaware Bar Foundation
Board of Editors, DELAWARE LAWYER

Mr. Wiggin wants it to be known that he dissociates himself from the views expressed above.

Everyone's Constitution

by Joel D. Tenenbaum

The Declaration of Independence provides:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among those are life, liberty, and the pursuit of happiness."

A belief in certain rights is the foundation of the Bill of Rights of the U.S. Constitution. Sadly the largest multi-nationality, multi-racial, multi-religious and multi-ethnic group in America is deprived of these rights. There is nothing in the Constitution or the Declaration of Independence that specifically refers to children. Children were considered mere chattels, and their rights were protected only by the concept "family". Theoretically, children's rights were supposed to be protected by adults.

There are a number of explanations for the reasons why our founding fathers did not specifically mention children. It may never have occurred to them that children needed protection. Common law authority and parental power over children were most likely the considerations given for this omission. In early America, a child's major value to the family was his contribution to the family income. With the onset of the industrial revolution and the development of the cities, family structure changed. The number of children in families was reduced. There was a restructuring of the traditional roles in families, especially as they related to women and children. The rural family of the colonial era had eroded and been replaced by an urban family with bleak prospects. Children and their rights were definitely not in the forefront of American consciousness. These rights remained in the background even to the point that the Society for the Prevention of Cruelty to Animals actually was founded before a similar society was founded to protect children. Even corporations in the United States have been deemed "persons" and are eligible for constitutional protection. Adult aliens have greater rights than minor U.S. citizens.

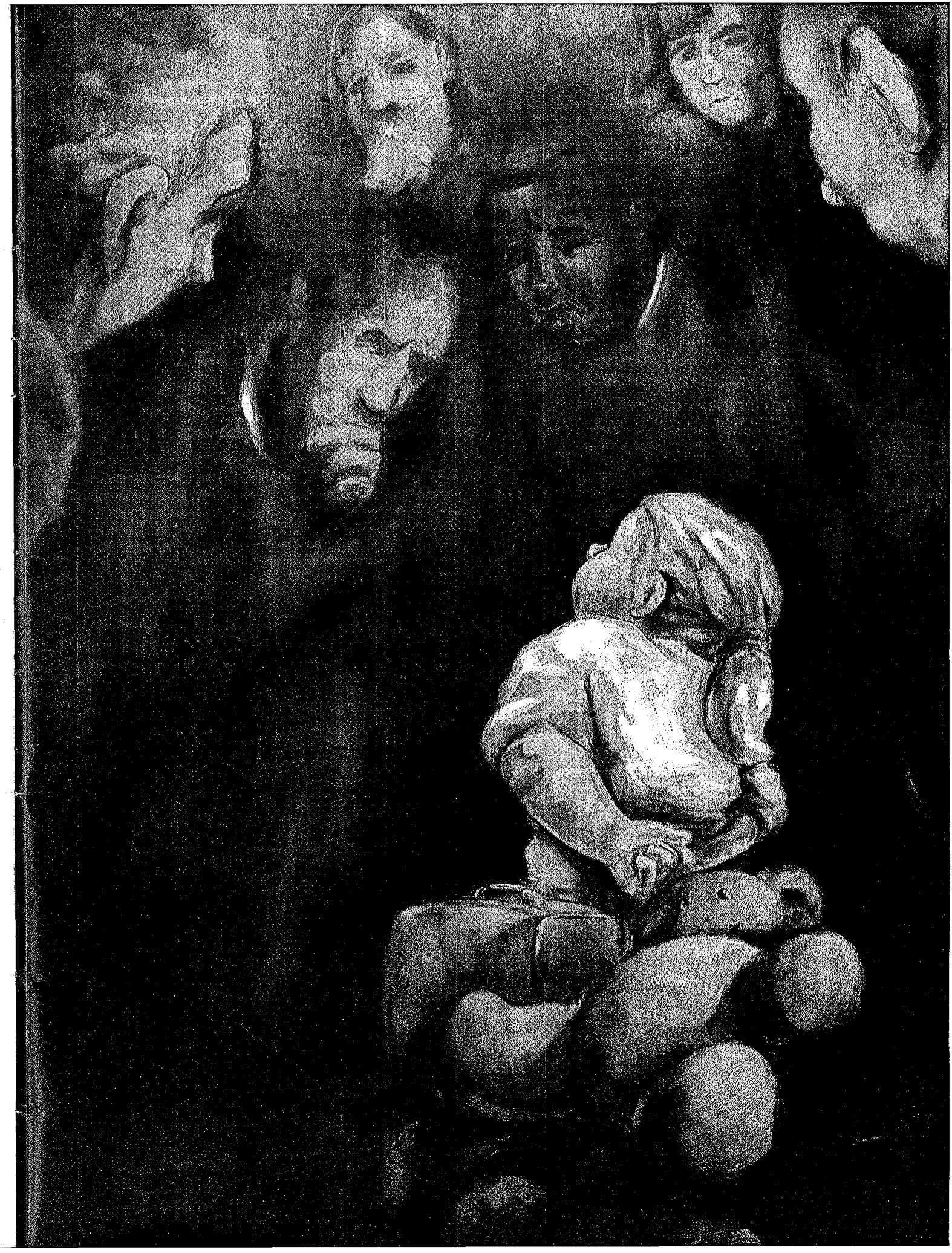
It was only 27 years ago that children's rights to due process in a criminal proceeding were recognized by the U.S. Supreme Court in the landmark case of *In Re Gault*, 387 U.S. 1 (1967). It arose from a juvenile delinquency proceeding in which a fifteen-year old boy allegedly made lewd telephone calls to a neighbor, was arrested, held in a juvenile detention home for a couple of days, and was then committed to a state industrial school until he was 21 years old. At the hearings the accuser did not appear, there was no notice to the parents, no record was created, and Gault was not represented by counsel. On appeal, the U.S. Supreme Court held that compliance with due process requires that children and parents are entitled to timely notice in a juvenile delinquency criminal proceeding. Additionally, Gault and his parents were entitled to representation and could have had court-appointed counsel. Gault was entitled to confront and cross-examine witnesses and he had a Fifth-Amendment right not to incriminate himself. As a result of this decision and its progeny, proceedings for the protection and correction of children were altered to give children the same due process rights as adults in criminal proceedings.

How are rights of children protected in *civil* proceedings? In most cases they are not. To determine if there is a due process issue, one must first look at the constitutional liberty interest. In custody and termination of parental rights cases, a child's liberty interest is always involved. Due process protects the interest a family has in its children. Every adjudication involves a balancing of everyone's rights. Why should due process for parents be more important than protecting the rights of the child? Since children are "persons" as established by our Constitution, they should have these same fundamental rights.

Children should have the same constitutional right to pursue happiness. The rights of a child to pursue happiness should be the controlling issue in a custody dispute or a termination of parental rights proceeding. Whenever the protection of best interests is sought, a question is raised as to *whose* best interests one is really addressing. Is it indeed the best interest of the child or the best interest of the child as it relates to the adults? One federal court has held that the liberty interest in the family relationship is derived from the Due Process clause of the Fourteenth Amendment, and includes family matters.[1] This liberty interest was based on the constitutional right to the pursuit of happiness. Children should be entitled to the pursuit of happiness, not just to being happy. There is no State interest so compelling as to justify limiting or denying this right. Nothing can be more fundamental to a civil proceeding involving a child than protecting this interest.

Once it has been established that these constitutional rights apply to children, children must have an opportunity to protect these rights in court. The protection can only be obtained through the right to counsel and access to the court system. Who has more interest in either a child custody or a termination of parental

Illustration by Mike Wohnoutka



The procedural history of *In the interest of: Kelly Stevens (d.o.b. 11/15/86), et al.* No. 262/276 1993 starts with a child born out of wedlock to Delaware parents. The child was placed by Mother with The Golden Cradle Adoption Agency in Pennsylvania for the purposes of adoption. The agency placed the child with a Delaware couple when she was three-days old. An involuntary petition to terminate Father's parental rights was filed by the agency in Pennsylvania. Father then filed for custody in Pennsylvania. The custody proceeding was stayed pending the outcome of the TPR petition. The termination was eventually denied and the denial appealed. The case was finally decided by the Pennsylvania Supreme Court on 6/12/89 upholding denial of the TPR.

Father's custody petition remained pending. Pursuant to the Uniform Child Custody Jurisdiction Act, the agency and Mother filed a request to transfer the custody petition to Delaware. The transfer was granted and Father appealed. The Pennsylvania Supreme Court affirmed the transfer by decision dated 7/31/91.

Approximately three months later (10/21/91), a Delaware Deputy Attorney General for Delaware Child Protective Services met with Father and his counsel to advise them of Father's rights. Six months after the final decision of the Pennsylvania Supreme Court affirming the transfer to Delaware, Mother filed an action in the Delaware Family Court to terminate Father's parental rights. Father had neither seen nor supported the child. The child had always lived with the foster parents. At the same time the foster parents filed in Delaware to adopt the child. Father then filed an emergency petition for visitation. His visitation petition was stayed pending the resolution of the TPR petition.

A first TPR hearing was held 12/11/92. Father argued that the Pennsylvania decision denying termination was res judicata. He was given the opportunity to obtain counsel and refused. The foster parents and their counsel were excluded. The Court scheduled a second hearing.

The foster parents then filed a Motion to Intervene. Mother filed a Motion to Appoint Counsel for the Child. Both motions were denied.

Before the second TPR hearing Father filed for an injunction in the U.S. District Court in Baltimore (Mother had now moved to Maryland) seeking to stay the Delaware proceedings. Eventually the request for injunction was denied.

A second TPR hearing was held 4/7/93. The decision denied the termination of Father's parental rights and directed scheduling of the custody/visitation hearing. The Court further declared the child dependent, appointed a guardian ad litem, requested a plan for the transfer of the child to the father, and scheduled a visitation hearing. Father did not appear at the visitation hearing. His petition for visitation was denied. Cross appeals are now pending before the Supreme Court of Delaware. Father has also filed a civil rights action in the U.S. District Court of Delaware against the Family Court judge.

S.F.P.

rights proceeding than the child? After all, parents who abuse and neglect their children are entitled to counsel. The same right should be available to the children subject of the same proceedings.

The current practice is to appoint a guardian *ad litem* or Court-Appointed Special Advocate (C.A.S.A.) to protect the interest of the child. This is not the same as permitting independent counsel to protect the liberty interest of children when fundamental constitutional rights are involved. The respective duties of a guardian *ad litem* and of an attorney are different. The role of an attorney is to represent the wishes and interests of the child within the parameters of the law. The role of the guardian is to investigate the child's situation. The guardian will then use the "best interest" analysis to express his preference as to what these best interests should mean for the child. Once again, even with a guardian the true best interests of the child may not be protected. When a matter is between a child and another party, the rights of the child should be given consideration, so that the ultimate welfare of the child is protected.

Another constitutional right to be addressed is the child's right as it relates to his family. The U.S. Supreme Court has recognized that freedom of personal choice in matters of family life is one of the liberties protected by the Due Process clause of the Fourteenth Amendment.[2] This probably explains why there is such a disregard for the individual rights of children. Instead of addressing those rights, there is an exaggerated emphasis on a national policy of family preservation. The family preservation issue is grounded on two theories.[3] First, it is considered less expensive for children to remain with their biological families. Second, it is deemed sound public policy to make reasonable efforts to preserve families. However, these theories are flawed because they subordinate the security, love, and bonding needs of children to the claims of inviolability of the biological family. Blind adherence to a policy favoring the biological definition of family is more often than not contrary to the best interests of the children and - worse yet - violative of those children's individual constitutional rights. The courts and the state must acknowledge that the existence of a family bond does not have to depend on a legal or biological relationship between a child and his parents. 10 *Del.C.* 901(9). The U.S. Supreme Court has never addressed the issue of what constitutes a family. The Court has acknowledged that the importance of family relationships arises from the emotional attachments that are derived from the intimacy of daily association.[4] This is hardly a definition that suggests purely biological relationship. Nonetheless, it is routine to remove children from interim families, even though these are the only parents and families the children have known, in favor of returning them to their biological families. These psychological parents form the same bonds with the children as those formed between children and their biological parents. Removal of these bonds between psychological parents and children is no less traumatic than their removal from their biological parents. Children are repossessed by their biological parents as if they were merely chattels with no constitutional rights or privileges of their own.

There is pending Delaware litigation not unlike the issues in the *Baby Jessica* case. (See box précis.)

A few attempts have been made to bring the rights of children to the forefront. A proposed Bill of Rights for children would have given a child the legal right to "receive parental love and affection, discipline and guidance; the right to receive fair treatment from all in authority; the right to be heard and listened to; and the right to be emancipated from the parent-child relationship when that relationship has broken down and when the best interests would be served."[6] The United States failed to join in the United Nations' Declaration of Rights of Children, which recognizes that such rights are independent of parental rights. This embarrassed the United States delegation to the 1993 Hague Conference on Private International Law. The delegation was the object of understandable reproach by participating nations. At its recent semi-annual meeting, the American Bar Association passed a resolution urging the Unites States to join the Declaration.

With the proliferation of recent cases involving children and their rights,

including *Gregory K.*,[7] *Twigg v. Mays*,[8] and the *Baby Jessica* case, the National Committee for the Rights of the Child has founded the Legal Action Project to help litigate cases that, it is hoped, will substantially alter the constitutional protection of children.

Florida has taken the initiative in protecting children and their constitutional rights in two recent cases, *Gregory K.* and *Kimberly Mays.* The Florida court in *Gregory K.*, entered an "Order on Standing" which declared that minors have the same constitutional rights as adults to due process, equal protection, privacy, access to the courts, and the right to defend life, liberty, and the pursuit of happiness.[9] The case involving Kimberly Mays, which was the basis of the TV show "Switched at Birth", has currently drawn the lines by which "family" should be defined. The relative importance of biological relationships as opposed to emotional and psychological relationships has been addressed by the *Mays* case. Where there is a family relationship based on secure and loving psychological and emotional ties, the Florida courts lean towards this relationship over the traditional biological family. It is hoped that these cases are just a start of granting children the constitutional rights to which they have always been entitled. The constitutional rights of due process, life, liberty, and the pursuit of happiness are as much as two centuries old. It is now time for the courts to extend them to our children. As we approach the 218th anniversary of the Founding of our Republic and in the shadow of the forthcoming millennium should not the courts recognize the civil protection of the constitutional rights of children granted in criminal proceedings 27 years ago? Recently the federal administration has considered a constitutional amendment that would give the symbol of America's promise to provide justice for all, the American flag, constitutional protection. Has not the time come to ask this same protection for children who have been born under the American flag?

* * *

Constraints of space make it impossible to include the footnotes, but the numbers to them appear. They will be available upon request to the offices of this magazine.

Joel Tenebaum had divided a career in family law between legal practice and an impressive accumulation of public services.

Formerly chair of the Delaware State Bar Association Section on Family Law, he has more recently become active in national and international family law circles. Through his membership in the American Bar Association he serves as liaison to the National Conference of Commissioners on Uniform State Laws and as liaison, U.S. State Department Hague Conference on Intercountry Adoptions. Between 1988 and 1993 he chaired that Association's Family Law Section Committee on Stepparents' Rights, and from 1988 to the present he has chaired that Section's Adoption Committee. He also chairs the Adoption Committee of the American Academy of Matrimonial Lawyers.

Mr. Tenenbaum is noted for his many local and national presentations at continuing legal education programs. His extensive pro bono *work in Delaware includes membership on the Governor's Task Force on Teen Pregnancy. In February 1987 Catholic Charities of Delaware bestowed on him its award for Distinguished Legal Services on Behalf of Children.*

Locally he practices family law in his capacity as a director of Woloshin, Tenenbaum & Natalie, P.C. ◆

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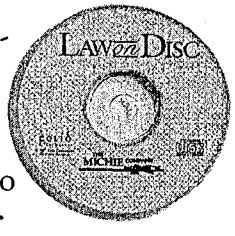

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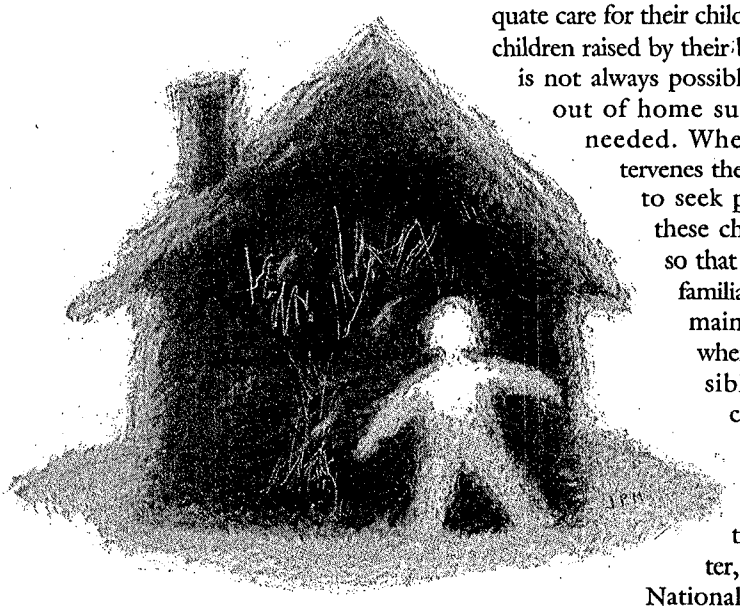
Keeping Families Together/ Reasonable Efforts



As Americans, we assume that children are raised best in families, and accordingly afford constitutional protection for the integrity of the biological family. But children are often neglected or dependent when death or drugs visit a family. At other times parents do not have the ability to provide minimally adequate care for their children. The ideal of children raised by their biological parents is not always possible. In such cases out of home substitute care is needed. When the state intervenes the first approach is to seek placements with these children's relatives so that a certain level of familial integrity can be maintained. In cases where that is not possible, substituted care is required. This might be in a foster care family, a residential treatment center, or group home.

Nationally, the statistics are staggering. According to the American Public Welfare Association (APWA), at the end of fiscal year 1992, 442,000 children were in substitute care. That was a 5% increase from the first day of the same fiscal year.

"The nation's substitute care population rose by 45.4% from FY 86 to FY 90. The rates of increases from one year to another during this four-year period are as follows: 7.1% from FY86 to FY87; 13.3% from FY87 to FY88; 12.6% from FY88 to FY89; and 6.3% from FY 89 to FY90. Finally, the rates of growth in the number of children in substitute care became somewhat smaller after FY90, as follows: 5.4% from FY90 to FY91 and 3.0% from FY91 to FY92.*

*Toshio Tatara "U.S. Child Substitute Care Flow Data for FY 92 and Current Trends on the State of Child Substitute Care Population." APWA August, 1993

According to Kathy Goldsmith of the Delaware Department of Services for Children, Youth and Their Families, at the end of fiscal 1993, there were a total of 707 children in substitute care. During 1993, 663 children entered care and 594 children left. Of the children *leaving care*, the average length of stay was 175 days. However, during that same period the number of children served in cases opened by the Division was 2,595.

In response to the number of children in foster care, the Congress of the United States enacted the Adoption Assistance and Child Welfare Act of 1980, commonly known as P.L. 96-272, (42 USC.§§620 *et.seq.* and §§670 *et.seq.*). The national concern was (and is) that children remain in foster care far too long. This presents two problems. The first is the issue of permanency and stability in the child's life and the second is the financial cost to federal and state tax payers to keep children in out-of-home placement. "Reasonable efforts" is the catch phrase of this multifaceted legislation. Before a child is taken out of the home, the state agency is required to make reasonable efforts to keep the child *in* the home. At the initial court hearing, the judicial officer must determine if such reasonable efforts were made or, if such an emergency exists, that the child is at risk if he or she is not removed. At each and every subsequent hearing the judicial officer must make a further determination that reasonable efforts have been made to reunify the family or that such efforts were *not* made because of the continuing emergency or the goal of the division. If the biological parents' rights have been terminated at a prior proceed-

It is easier to prevent placement than to place a child in foster care and later attempt to reconstitute the family.

Illustration by Jane Marinsky

ing reunification efforts would obviously contradict the goal of the division.

A failure of the Court to make a "reasonable efforts determination" can result in loss of federal funding for foster care services. It also can adversely affect the child subject of the determination, since adoption subsidies may be lost to a prospective adoptive family. Adoption assistance allows payments normally given to a foster parent to be funneled to the adoptive parent if the adoptee is a special needs child and deemed "IV-E eligible" under to the Social Security Act. Also the foster/adoptive parents could receive medical benefits for the child during minority.

10 *Del.C.* §932, provides that: "Any person having knowledge of a child within the state who appears to be neglected, dependent or delinquent, may file with the Clerk of the Court a petition in writing setting forth the facts verified by Affidavit". This statutory provision allows anyone, most often the Division of Family Services or a close relative, to file a petition on behalf of a neglected or dependent child. Family Court Civil Rules 200 *et. seq.* map out the method for proceeding under the statute. If an *ex parte* order of removal is granted by the Court upon petition, within 10 days the Court sets a hearing to determine if there is evidence to show probable cause that the child is dependent or neglected. If a finding is made that a child is in actual physical, mental, emotional danger or that there is substantial risk thereof, custody is continued with the petitioner until the time of the adjudicatory hearing, which is scheduled within 30 days of the probable cause hearing.

Once custody is granted to a relative or *de facto* placement approved, the matter is never addressed again except by petition of the parties or if the Court *sua sponte* determines that review is necessary.

In cases where the Division of Family Services gains custody of a child, the Adoption Assistance and Child Welfare Act requires a judicial review hearing within 18 months of placement and periodically thereafter under 42 U.S.C §675(5)(C). The State of Delaware's interpretation of "periodically" thereafter is every 18 months after the first review. The same federal statute requires that administrative reviews be conducted every six months 42 USC §675(5)(B). The Foster Care Review Board (a citizen volunteer board) conducts six month reviews of every child in care pursuant to 31 *Del.C.* Chapter 38.

As stated above, at each and every hearing the Court determines if reasonable efforts are being made to reunify the family and if continued placement is in the child's best interest.

There are some instances where the family might voluntarily place a child in foster care. There may be a situation where the parents cannot provide care and no relatives are available to take care of the child (example: while a parent is either in the hospital, prison, or a drug rehabilitation program.) In those cases the parent(s) may enter into a voluntary "consent to place agreement" with the Division of Family Services. Under a consent to place agreement the child must be returned to the family within 48 hours of a request to the Division to return the child. A consent to place agreement is good for 180 days. When a child so comes into care, federal payment can be made to the state for up to 180 days or until the judicial determination, whichever comes first. A judicial determination by a Court of competent jurisdiction must determine that such placement is in the best interest of the child. 42 U.S.C. §672(e).

The United States Supreme Court in the case of *Suter v. Artist M*, __U.S.__, 112 S.C. 1360(1992) held that the Adoption Assistance and Child Welfare Act of 1980 does not confer on its beneficiaries a private right enforceable in a §1983 action. The holding reflects the Court's view that the statute and the regulations are not specific enough and provide no notice to the state other than to require that the state submit a plan with certain requisite features.

> "In the present case, however, the term 'reasonable efforts' to maintain an abused or neglected child in his home, or return the child to his home from foster care appears in a quite different context. No further statutory guidance is found as to how "reasonable efforts" are to be measured. This directive is not the only one in which Congress has given to the states, and it is a directive whose meaning will obviously vary with the circumstance of each individual case. How the state was to comply with this directive and with other provisions of the act, was, within broad limits, left up to the state." 118 L.E.d 2d. *et. seq.* at 14.

The federal regulations provide a litany of services, which are suggestive rather than mandatory. 45CFR §1357.15(e)(2)(1990) provides a list of services that *may* be included in the state's propsal:

> ". . . 24 hour emergency care taker, the homemaker's services; day-care; crisis counseling; individual and family counseling; emergency shelters; procedures and arrangements for access to available emergency financial assistance; arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of the plan for preventing the children's removal from the home; other services which the agency identifies as necessary and appropriate such as home-based family services, self help groups, services to unmarried parents, provisions, or arrangements for, mental health, drug and alcohol abuse counseling, vocational counseling or vocational rehabilitation; and post adoption services."

The House Ways and Means Committee Report on the Adoption Act similarly recognized that "the entire array of possible preventive services are not appropriate in all situations. The decision as to the appropriateness of specific services in specific situations will have to be made by the administrating agency having immediate responsibility for the care of the child." H.R. Rep, No. 96-196, p47(1979). The general intention embodied in the statute is found in the remarks of Congressional members. "What the bill attempts to do is to get the states to enact a series of reforms of their foster care laws, because in the past there has been too much of a tendency to use the foster care program. The reason there has been that tendency is because . . . it becomes a little more expensive for the states to use the protective services than foster care. Through this bill, we want to free up a little bit of money . . . so you will have an incentive to keep a family together." 125 Congressional Record 22113(1979), remarks of Rep. Brodhead, *Suter v. Artist M*, supra at note 15.

Therefore the determinations by a judicial officer whether state services are reasonable will vary from case to case. The Court must initially look at the reasons why the child was brought into care and then examine the case plan to determine if the services provided are reasonably calculated to solve the problem requiring removal.

In *In Re Kristina L.*, R.I. Supr., 520 A.2d. 574(1987), the Rhode Island Supreme Court reversed a termination of parental rights decision because of the Family Court's failure to prove parental

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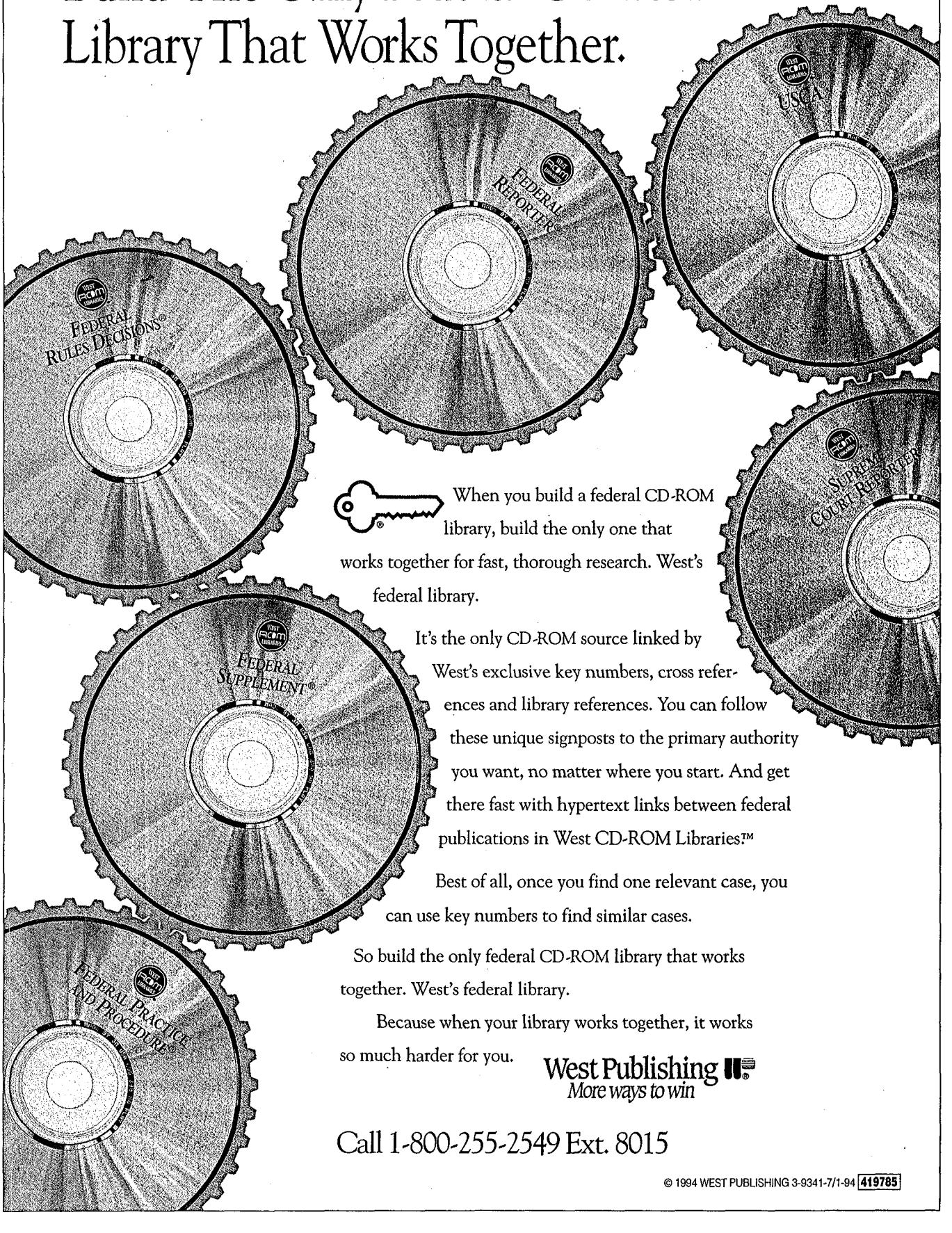

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unfitness and the failure of the social agency to make reasonable efforts to reunify the family. The Delaware Supreme Court, *In The Matter of Derrick W. Burns*, Del. Supr., 519 A. 2d 638 (1986) reversed a termination of parental rights decision, finding *inter alia* that the agency had made neither meaningful case plans for reunification nor reasonable efforts to provide preventive and reunification services, or both. Id. at p.648.

It is clear that the Courts, from the trial to the appellate level are taking seriously congressional concerns about the preservation of family integrity. This is all to the good and for the good of all concerned.

Preventive services to keep families together are fiscally sound. It is easier to prevent placement than to place a child in foster care and later attempt to reconstitute the family. This approach is not only reasonable but it is good for our kids and their families.

* * *

Further Reading: *Keeping Families Together: the Case for Family Preservation*, the Edna McConnell Clark Foundation (1985); " The Adoption and Assistance and Child Welfare Act of 1980: An Introduction for Juvenile Court Judges," the National Legal Resource Center for Child Advocacy and Protection, Foster Care Project of the American Bar Association, Young Lawyers Division, Washington DC., May, 1983; Shotton, Alice C. "Making Reasonable Efforts in Child Abuse and Neglect Cases-Ten years Later", *26 California Western Law Review* 223(1989-1990), "Building a Case Through Permanence: Examining Legal and Social Issues, 12th Annual Conference of the National Court Appointed Special Advocate Association;" Refuse to be Silent: Change a Child's Life" Des Moine, Iowa (1993); Harden, Mark *Foster Children in the Courts*, American Bar Association on (1983).

Patricia Tate Stewart has served as a Master in Family Court for four years and was CASA attorney for seven. She has also been an adjunct professor since 1985 at the Widner University School of Law, teaching domestic relations and "Children and the Law". She has served as an adjunct professor at the University of Delaware, teaching Constitutional law and "Women and the Law". Ms. Stewart drafted the Delaware CASA statute, which won a National award for legislative excellence and which has been used as a model for other CASA Programs throughout the country. ◆

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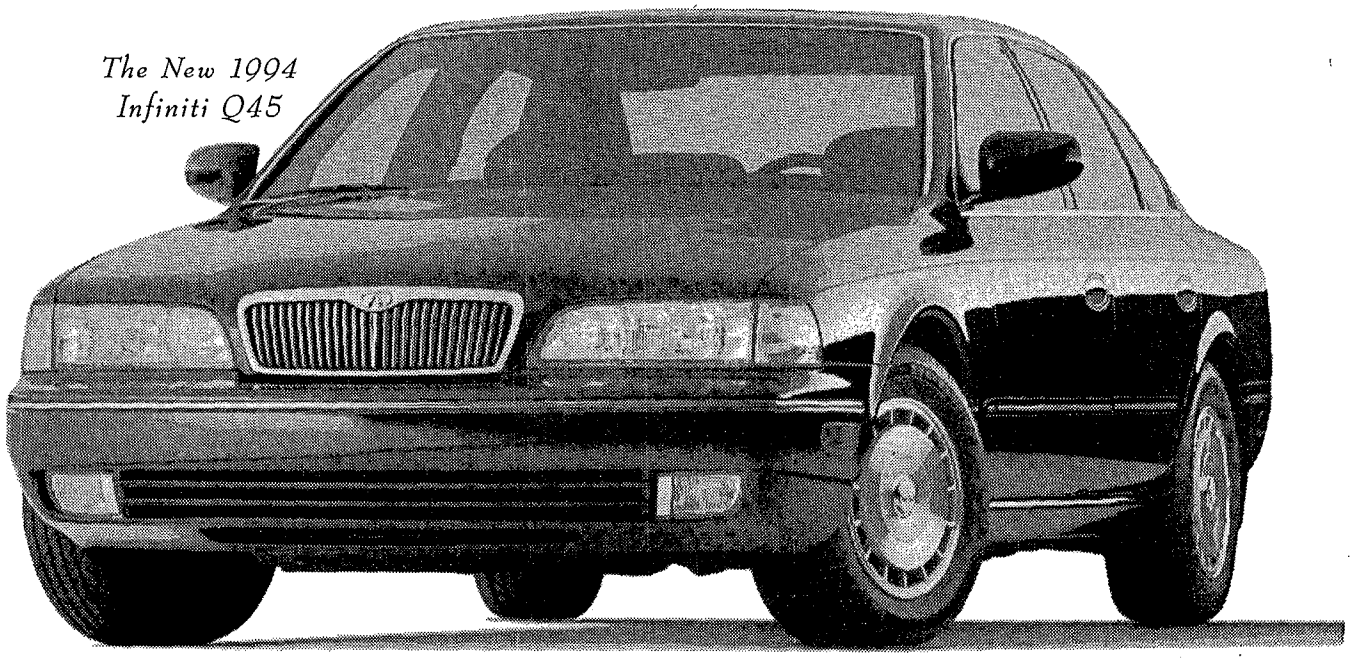

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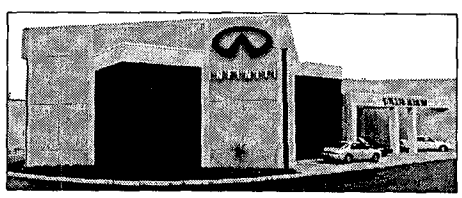

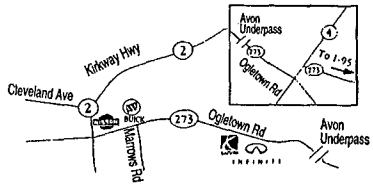

JIM MORALES

Reinventing Children's Rights

ABA Promotes New Advocacy Efforts for Children

The follwing article was originally published in Volume XIV, No. 5 of the Youth Law News *(September-October 1993). The extensive citations to this scholarly article will be found in that publication, number-keyed to the references herein. Those interested in learning about subscriptions to the* Youth Laws News *should consult the National Center for Youth Law, 114 Sansome St., Ste. 900, San Francisco, CA 94101. Telephone: (415) 543-3307.*

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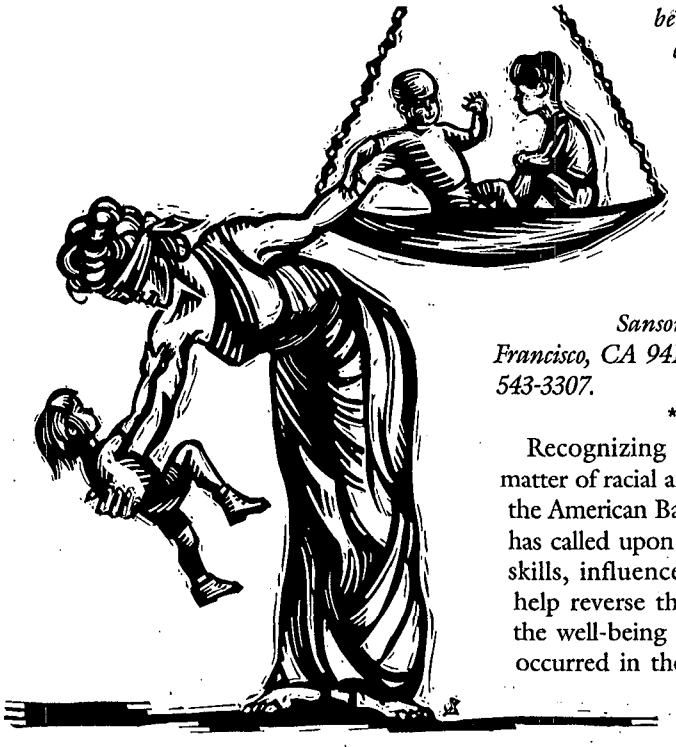

Recognizing children's rights as matter of racial and economic justice, the American Bar Association (ABA) has called upon lawyers to use their skills, influence, and resources to help reverse the drastic decline in the well-being of children that has occurred in the U.S. over the last 15 years. In a report entitled *America's Children at Risk: A National Agenda for Legal Action* (July 1993), the ABA urges lawyers to pursue not only litigation, but also legislative and administrative advocacy and other "preventive" work to help children.[1]

Legal reforms to help children must necessarily help, strengthen, and involve their families.

Significantly, the report rejects the idea that "children's rights" — as promoted by the media in reporting on recent highly visible cases — can be equated with children "divorcing" their parents.[2] The popular fixation with these cases reflects an appropriate recognition of the changing nature of family life and its effect on children, but the focus has been misplaced and bears little relation to the real issues. Children today are more likely than their counterparts of 10 or 15 years ago to be poor, to lack access to health care, to be victims of violence, to become pregnant as teenagers, to be homeless, to be in foster care or juvenile detention. The ABA Report recognizes that these problems are systemic rather than individual in nature, and must be addressed as such.[3]

Defining the Agenda

In December 1992, ABA President J. Michael McWilliams established the ABA Working Group on the Unmet Legal Needs of Children and their Families (hereinafter "ABA Working Group"). He appointed Judge A. Leon Higginbotham, Jr., who is retired from the U.S. Court of Appeals for the Third Circuit, as chair; Catherine Ross, an associate in the litigation department at the New York law firm Paul, Weiss, Rifkind, Wharton & Garrison as Vice Chair; and thirty-seven other lawyers to serve as members of the group.[4] President McWilliams asked the group to recommend legal reforms that would improve the lives of children, that were consistent with existing ABA policy, and that the ABA could present to the Clinton Administration and other public officials.[5] In July, the ABA Working Group released *America's Children at Risk* at the ABA's Annual Convention in New York. Members of the ABA Working Group met privately with Hillary Rodham Clinton, Attorney General Janet Reno, and other high ranking governmental officials, all of whom expressed their support for the effort.

The ABA Report is a lengthy document that makes broad recommendations in the areas of income and child support, housing, education, health care,

Illustration by Stephanie Shieldhouse

child welfare, juvenile justice, child care, and the court system. To support the recommendations, it relies on a large body of information that is now familiar to many advocates for children and low-income people. For example, the Report notes that more than 20% of the children in the United States live in families with incomes below the poverty level; 50% of African-American and 40% of Latino children under the age of six live in poverty; and many families in which one parent works full time at the minimum wage are below the poverty level.[6]

In light of the dismal economic condition of children, several themes emerge from the ABA Report:

- Children are at risk in the United States because of the deteriorating economic condition of their families.
- To a great extent, promoting children's rights is an economic issue requiring legal reforms to ameliorate poverty.
- Since children of color suffer disproportionately from poverty, advocacy to improve children's lives is a matter of racial justice.
- Legal reforms to help children must necessarily help, strengthen, and involve their families.
- Many laws already exist to assist children and their families, but they are not enforced.
- In assisting children, lawyers must use techniques and strategies similar to those they use in handling other cases, including preventive approaches that attempt to resolve problems before they lead to judicial proceedings. Where appropriate, lawyers should seek changes in the law that will benefit their clients.

These themes form the backdrop for the numerous recommendations of the Report, which are described below. Although the Report highlights only twenty broad recommendations, the text contains numerous other specific suggestions for changes in policy and the reallocation of resources to benefit children. To assist in implementing all of these recommendations, the ABA President has appointed a "Steering Committee", which will remain in existence over the next several years.[7]

"Lawyers Committee for Children"

The ABA Report strongly recommends that new national and local organizations be formed to increase the availability of legal representation for children. The initial step would be "to devise a mechanism for encouraging lawyers to donate free legal services to individual children who need them."[8] The Report mentions three possible structures for this national children's group: an existing entity within the ABA, a new entity within the ABA, or an independent group.[9] The group's primary purpose would be to "marshall legal talent to represent children, especially low-income children and children of color, without charge."[10] It would recruit lawyers to represent children, provide the lawyers with resources and expertise, and possibly oversee, or at least encourage, the creation of local organizations to provide legal services to children. The Report recommends that "each state and major city should have a Lawyers Committee for Children or its equivalent which will recruit commitments of time from law firms, individual members of the bar and corporate in-house counsel."[11] These local groups would have full-time staff to coordinate and support the work of the volunteer attorneys.

While the Report promotes volunteer attorney efforts, it recognizes that volunteers "are no substitute" for attorneys who are paid for representing children and who have an expertise in children's advocacy.[12] It thus calls for increased public resources to be devoted to the representation of children who have a

Delaware leads in two areas detailed in AMERICA'S CHILDREN AT RISK and should be proud of its prescience.

First, the ABA Presidential Working Group, recommending every state create a unified Family Court system, suggests a jurisdictional model virtually analogous to the Family Court of Delaware. Though a need clearly exists for more funding and space, the Family Court of Delaware has gained jurisdiction "over all cases involving children and relating to family life." To meet statutory qualifications, judges of the Family Court must demonstrate "an interest in and understanding of family and child problems." 10 Del.C. §906(c). Its pioneering use of mediators, masters, and commissioners has enabled dispute resolution with minimal use of judges. As noted in the Report, the expanded use of such professionals has enabled the Court to contain to date its ever increasing case load. An automated case tracking system will soon increase the Court's ability to exercise that enlarged jurisdiction.

The Court recognized that there are cases requiring full hearing before a judge but provided for orders for interim financial support and protection from abuse until that final resolution. The Child Abuse, Prevention and Treatment Act, requiring appointment of a guardian ad litem "in every case involving an abused or neglected child", demands additional personnel resources and the expanding case load demands additional facilities. Nonetheless, the hard won recognition of the Family Court of Delaware as a national leader is well deserved.

Second, the Report recommends nationwide adoption of a uniform child support guideline, modeled substantially upon the Melson Formula created by Family Court Judge Elwood F. Melson, Jr., and adopted by the Family Court judiciary in 1978. The Report comments that the Melson Formula incorporates critical factors that ensure both adequate support for children and equity for the parties. (See Appendix E of the Report.)

Delaware has long served as a model in the development of child support laws and procedures. Its masters system and child support guidelines are the models for subsequent federal mandates that all states adopt expedited procedures for handling child support cases and establish guidelines applicable as rebuttable presumptions in all child support matters.

Delaware's child support laws have traditionally been forceful. They will be more so if recommendations of the Governor's Welfare Reform Task Force and the Task Force on Child Support are enacted. As the ABA's Task Force recommends, Delaware has taken the first step in adoption of the Uniform Interstate Family Support Act. As of this writing HB 11 has passed the House of Representatives and is awaiting action in the Senate.

The Commission on Delaware Courts 2000 in its recent report addresses the magnitude of the case load, the effect on the citizens, and the honor due the Family Court of Delaware. It recommends Family Court remain a separate unit but become an equal, constitutional court. Clearly, these recommendations are consistent with those outlined by the significant ABA Report designed to improve the quality of life for America's children and families.

Mary Ann Herlihy Susan F. Paikin

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constitutional or statutory right to counsel. It also reaffirms the ABA Institute of Judicial Administration (IJA) Standard expanding the right to counsel and to expert and other supportive services in pending cases.[13]

Increasing the quantity and quality of legal resources for children already enmeshed in court proceedings is an important goal. The ABA Report, however, seeks to expand advocacy efforts for children substantially beyond this focus. "[W]e can no longer confine our vision to a narrow focus on 'law,' but must look for ways in which legal changes may redress broad social problems."[14] Lawyers must "play a more visionary role for children....[They] must learn, and must help legislators and other citizens to understand that prenatal care, preventive health care, safe physical environments and quality child care are needed...to prevent children from getting into trouble with the justice system later.[15] Lawyers, the Report notes, are most effective when they keep their clients out of trouble and out of court, solving problems and resolving disputes without resort to litigation. "America's children need the same kind of help."[16]

Expanding effective advocacy for children is a daunting task, requiring more resources than are available from volunteer attorneys who work on individual cases but ultimately must report back to the law firm. In addition, effective child advocacy requires that the lawyer assist the entire family, although the political support that exists for helping children may not translate into support for helping adults as well.[17] Nonetheless, the formation of new child advocacy organizations, along with the efforts of existing groups, have the potential to promote new strategies, resources, and attention to this issue.

Redefining Children's Rights

The ABA Report divides its recommendations on policy reforms into two parts: those designed to improve the family's economic condition and meet basic needs, and reforms that are necessary to help families and children who become enmeshed in judicial proceedings. As noted above, the Report's overriding theme is that government intervention into a family is frequently the result of poverty. "Children in poor families are too often separated from their families because of problems essentially caused by poverty — not 'bad' parenting — such as inadequate food, poor housing or lack of child care."[18] Just as preventive medicine maintains a person's health and avoids hospitalization, legal advocacy promoting a family's economic and social well-being prevents child abuse, juvenile crime, and other problems requiring government intervention.

Of local note: The Delaware State Bar Association Committee on the Needs of Children is reviewing the ABA Report for application to Delaware needs and calls on lawyers to act. See *In Re*: April 1994

Significantly, the first substantive policy recommendation of the Report is for "legislation designed to ensure that all families with children have enough income to meet their needs for the basic essentials of life."[19] The Report suggests several ways of ensuring an adequate income to families: raising the minimum wage, enacting a refundable tax credit of $1000 per child, creating jobs and public work programs, increasing funding for public assistance programs,[20] strengthening the collection of child support payments, and enacting programs for child support assurance whereby every child is guaranteed minimum benefits even if the non-custodial parent fails to make required support payments.[21]

The ABA Report notes that, in light of recent cutbacks, most families receiving public assistance are unable to provide adequately for their children. "Not one state in the nation provides AFDC families with income sufficient to meet their basic needs for food, health care and housing."[22] It thus recommends not only that public assistance be increased, but that the organized bar "work to defeat any proposed changes that penalize recipients" of AFDC and other public assistance programs.[23]

Moving on to housing, the ABA Report recognizes that many families have limited housing options, live in substandard dwellings, and spend a disproportionate amount of their income on housing. Unfortunately, the federal government, over the last 12 years, has slashed funding for low-income housing programs while maintaining housing programs for higher income groups. "As a nation, we must recognize that we spend far less to make housing affordable for low- and moderate-income renters than we do to subsidize housing for homeowners through tax benefits."[24] To reverse the trend, the Report makes numerous recommendations to increase the supply of housing:[25] increasing funding and incentives for the construction of affordable units; removing restrictive land use policies that impede the development of affordable housing; requiring private developers to replace affordable housing units that they demolish; implementing "aggressively" the McKinney Act's provisions on making unused federal properties available for homeless families; and increasing funding for the Family Unification Act, which provides housing assistance to families to avoid the placement of children in the foster care system.

In addition, the ABA Report emphasizes preserving, improving, and expanding access to the existing housing stock, which is usually less expensive than newly-constructed units. It urges the government to preserve publicly subsidized housing by "vigorously" enforcing the 1990 National Affordable Housing Act, remove lead paint from all public housing units, and appropriate funds to assist low-income landlords in removing lead paint from units occupied by children. The Report recommends that HUD improve administrative prosecutions of housing discrimination complaints and strengthen fair housing regulations.[26] In addition, the government must increase its enforcement of laws against "redlining."[27] Fair housing laws, the Report says, should be expanded to prohibit housing discrimination against families receiving public assistance. Finally, the Report recommends that "[a]ll localities with significant homeless populations should provide counsel to prevent illegal and wrongful evictions."[28]

Recognizing that "millions of children

have no health insurance,"[29] the Report broadly addresses health care issues for children.[30] It calls for universal health care to cover, among other things, prenatal care, immunizations, preventive "well-child" care, mental health care, services for chronically ill children, substance abuse treatment, and reproductive health care. Such a plan should control administrative costs, allow choice of health care providers, and "provide fair, accessible and speedy means for appealing denials of benefits."[31] Prior to the enactment of this plan, the ABA Report recommends that Congress expand eligibility for Medicaid to all parents and children in households earning less than 200% of the federal poverty levels and that the states increase their portion of health care funds for low income families.

Finally, recognizing the importance of education in breaking the cycle of poverty, the ABA Report broadly addresses a number of educational reforms. These include ensuring equitable funding to school districts with large numbers of low-income children; amending federal regulations to improve the quality of, and access to, vocational training; fully implementing special education requirements that children with disabilities be educated in the least restrictive environment; improving enforcement of federal law ensuring free and appropriate education for homeless children; ensuring student safety in school but allowing searches only upon reasonable suspicion that a particular student possesses weapons or drugs; eliminating corporal punishment in schools; relying on alternatives to suspensions and expulsions; providing supportive services to students who are pregnant or are already parents; and enacting legislation and funding demonstration programs to guarantee parents the right to participate in setting school policies.

Protecting Children Already in the Legal System

Although the overriding theme of the ABA Report is keeping children out of court proceedings and institutions, it recognizes that this is not always possible and that numerous reforms are necessary in both the juvenile justice and child welfare systems. The second part of the Report addresses these reforms.

There can be little question that society has increasingly turned to the courts to resolve some of our most difficult problems, such as child abuse or neglect, juvenile misconduct, or custody dis-

putes. The legal system, however, is often ill-equipped to handle the problems quickly, treat the families with respect, and provide appropriate services. Burgeoning caseloads have prevented judges, attorneys, and other child welfare personnel from spending sufficient time and resources on individual cases.

The ABA Report recommends comprehensive reform so that a single court handles all cases involving families and children. This "unified family court" would consolidate jurisdiction over dependency and divorce proceedings, criminal complaints against youth, and some probate matters. The judges in these family courts would have the authority to order that necessary services actually be provided to families and would be assisted by a "case management unit, staffed by trained professionals."[32] For example, "if a court believes that adequate housing will help avert a foster care placement, it should be able to order the appropriate government entity to provide that housing."[33] These courts should be adequately funded to provide appropriate services and to allow judges or other professionals sufficient time to review the case and make appropriate decisions. Furthermore, judges would not have to hear all cases, but might have an intake unit refer certain cases, such as those that are uncontested or some custody and visitation matters, to voluntary mediation.[34]

Focusing on abuse and neglect cases, the ABA Report emphasizes increasing the availability of "hard" resources, such as housing, food, and homemaker assistance, which often will effectively prevent child abuse and neglect.[35] Other services, such as counseling, treatment for substance abuse, and help with practical problems facing the family, can also promote a healthy and safe family environment. The ABA Report recommends increasing funding for preventive services, allowing states to combine funds from various child welfare programs to develop a "comprehensive social service system,"[36] and strengthening the federal requirement that requires child welfare agencies make "reasonable efforts" to maintain family integrity. Reasonable efforts should include the provision of "specified essential services within a set period of time to families that need them."[37] In addition, families should have the right to sue a child welfare agency if it fails to comply with the reasonable efforts requirement and or other provisions in the Adoption Assistance and Child Welfare Act.[38]

The ABA Report recommends that lawyers promote safe and appropriate foster care through litigation, legislative advocacy, and cooperation with child welfare agencies. It notes that children of color, particularly African-Americans, are disproportionately represented among foster children, and calls reform of the system "a matter of racial and economic justice."[39] It urges that additional efforts be made to recruit foster and adoptive parents of color through culturally appropriate outreach programs and to

The ABA Report emphasizes increasing the availability of "hard" resources, such as housing, food, and homemaker assistance, which often will effectively prevent child abuse and neglect.

recruit judges, case workers, and lawyers who are racially and ethnically representative of the communities they serve.

In the area of juvenile justice, the ABA Report criticizes all levels of government for failing to implement the laws and programs designed to deal effectively and humanely with youthful offenders. The goals of these laws are to rehabilitate youth as well as to protect society, but the trend has been toward harsher penalties, transfer of more children to adult courts, and secure confinement lacking "the most basic security, health care, mental health and education services and sanitary living conditions to which [the youth] are entitled."[40]

The ABA Report suggests that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) should undertake new programs and research on effective alternatives to incarceration. OJJDP should develop and implement objective criteria for detention based on an assessment of the treatment and services that the child needs and of the child's security risk. The criteria should include "performance-based standards" for facilities that detain youth.[41] Moreover, the Depart-

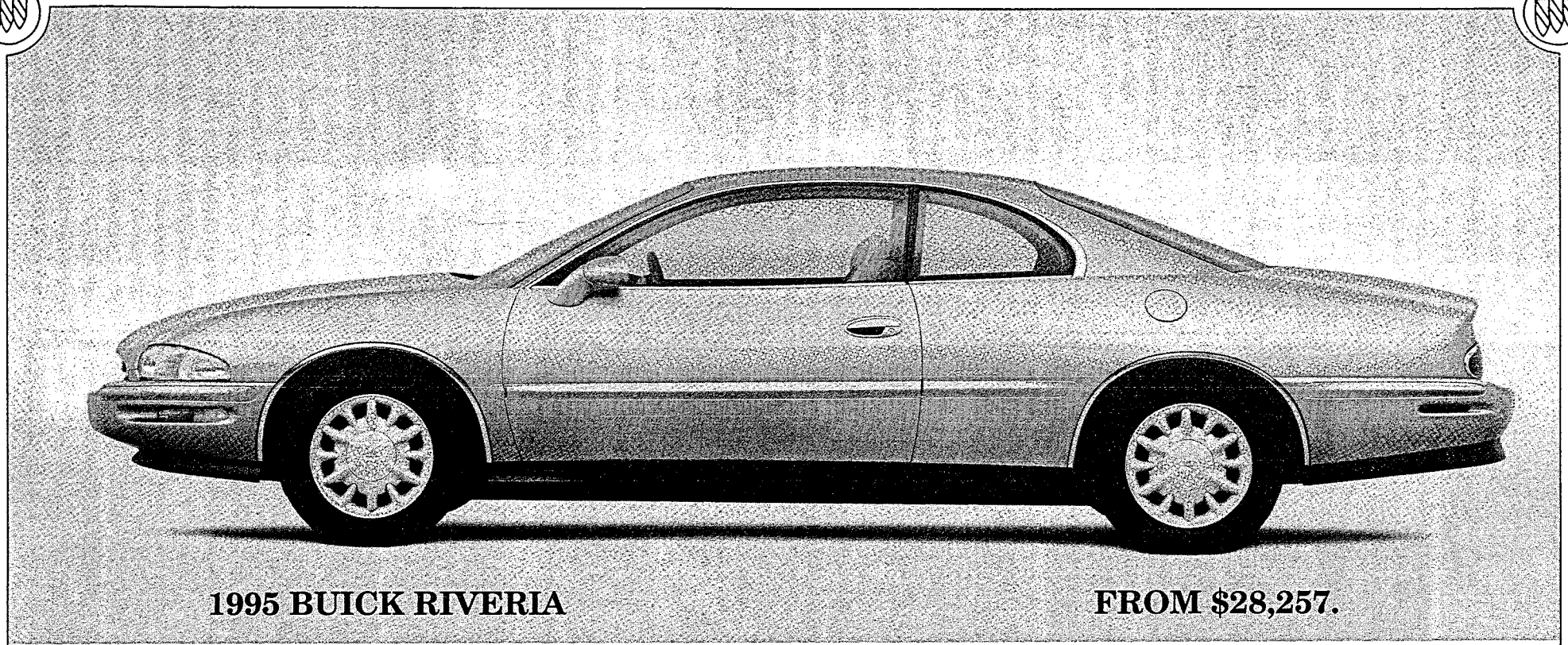
ment of Justice should develop "model programs to reduce the number of juveniles waived into adult court."[42]

Even without new initiatives, strict enforcement of the Juvenile Justice and Delinquency Prevention Act (JJDPA) would improve conditions of confinement and, more importantly, expand the availability of effective alternatives to secure confinement. For example, the JJDPA requires states to ensure funding "for approaches designed to strengthen the families of delinquent and other youth to prevent juvenile delinquency"[43] and for "community-based alternatives (including home-based alternatives) to incarceration and institutionalization."[44] Noting that "during the last decade, the Executive branch has allowed the JJDPA to remain largely unused and unenforced," the Report recommends vigorous enforcement of the law and "sanctions" against non-complying states.[45]

The Report focuses on the special problems of several classes of youth in secure confinement: children of color,[46] status offenders,[47] undocumented youth in detention awaiting immigration proceedings,[48] and children in psychiatric hospitals.[49] Enforcement of the JJDPA would address some of these problems because it requires reductions in the incarceration of children of color and prohibits the secure confinement of status offenders.[50] The Report also recommends that the federal government initiate collaborative efforts with local government and community organizations to address racial bias at all stages in the juvenile justice system, to provide culturally sensitive training programs for law enforcement personnel, and to increase the racial and ethnic diversity of all professionals in the juvenile justice system. It urges the Immigration and Naturalization Service to release undocumented youth to responsible adults and to hold those youth who are not released in facilities licensed to care for abused or neglected children. Regarding children in psychiatric facilities, it notes, among other things, that confinement of status offenders in such facilities is never appropriate "absent clear evidence that such treatment is necessary."[51]

Many youth who are accused of criminal wrongdoing do not receive competent legal representation, because of their attorneys' enormous case loads, limited preparation time, and lack of adequate training. The report suggests:

> Many of the problems that plague the juvenile justice system — including



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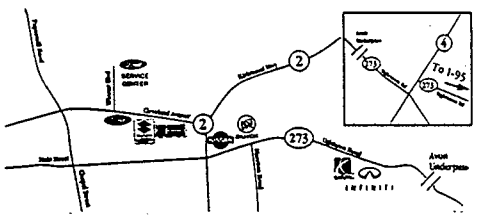

appalling conditions in confinement, inappropriate transfer to adult court, overrepresentation of children of color, and inadequate health and educational services — could be remedied if every child accused of a crime was well represented by competent counsel.... [52]

Competent counsel would give the court critical information about the youth's background and suggest alternatives to secure confinement. The ABA Report thus calls on the Department of Justice, states, and the organized bar to ensure that minors receive "competent counsel at all proceedings arising from or related to a delinquency action."[53] Finally, the ABA Working Group reaffirms the existing ABA policy against capital punishment for persons who were under the age of eighteen when they committed a crime and against the expansion of privatizing juvenile correctional facilities.

* * *

The ABA Report is a clarion call for lawyers to engage in additional advocacy efforts on behalf of children, and its emphasis on the economic problems facing families suggests that effective reforms must address poverty. In the past, lawyers have played significant roles in advancing civil rights and addressing societal inequities. These efforts are by no means complete, but they demonstrate the abilities and obligations of lawyers to change the law and institutions to improve the lives of oppressed people. In some respects, the ABA Report is a continuation of the struggle for civil rights; in other respects, it takes on a new dimension and urges lawyers to challenge the tremendous inequities that many children face merely because they are born into families with limited resources.

Constraints of space make it impossible to include the footnotes, but the numbers to them appear. They will be available upon request to the offices of this magazine.

Jim Morales is a staff attorney at the National Center for Youth Law and was a member of the ABA Working Group on the Unmet Legal Needs of Children and Their Families. He is also a member of the steering committee that will assist the ABA in carrying out the recommendations of the Working Group. Copies of the America's Children at Risk *(catalog no. 5490241) may be obtained by calling the ABA Service Center, at (312) 988-5522 (fax no. (312) 988-5528), or by writing to: ABA Billing Services, 750 N. Lake Shore Drive, Chicago, IL 60611. Cost of the Report is $10.00, which includes shipping and handling.* ◆

PATRICIA A. DAILEY

Domestic Partnerships in the Nineties

"Leave It to Beaver", "The Brady Bunch", "My Two Dads", "Murphy Brown" and "Roseanne" - the evolution of the American family; perhaps life really does imitate art. For better or worse the definition of a family has changed significantly. Current trends indicate that the American family, may no longer be the typical man, woman and 2.5 children. Rather, single parents, both male and female, same sex couples (childless or raising biological or adopted children), cohabiting unmarried heterosexual couples, and grandparents raising grandchildren are becoming more and more the families in our neighborhoods.

As Prof. Marjorie Schultz recognized more than ten years ago:

> "Only a small percentage of American families still have the characteristics associated with the nuclear family ideal. In place of a single socially approved ideal we have compelling demands for autonomy and privacy, and multiple levels of intimacy, single parents, working wives, house husbands, homosexual couples living together, arrangements without marriage, serial marriage, step-children. The changes are legion and their message is clear: the destruction of traditional marriage as the sole model.[1]

The Courts have long protected the family; the United States Supreme Court eloquently explained the reason for the intense protection of family in *Moore v. City of East Cleveland*

> "Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural."[2]

The law has been slow but sure in its response to the changing family structure in the United States. The next decade will doubtless provide more definition and protection, both through case law and statutes, to the non traditional family. The rights of cohabiting couples have been acknowledged by nearly 20 municipalities which have Domestic Partnership ordinances[3] and many states have prohibited sexual orientation discrimination by virtue of statutes or executive orders. Some employers have similarly agreed to extend benefits to domestic partners[4] and some states have allowed recovery by unmarried cohabitants on consortium claims.[5]

The New York Court of Appeals in *Braschi v. Stahl Associates*, 543 N.E. 2d 49 (N.Y. 1989) dealt directly with the issue of whether homosexual partnerships may be identified as family relationships for purposes of protection from eviction from a rent controlled apartment. The regulation in question provided, in part, that a landlord could not evict "either the surviving spouse of the deceased tenant or some other member of the deceased tenant's family who has been living with the tenant."[6] The term family was not defined in the statute or legislative history. The Court concluded that the appellant should have the opportunity to demonstrate that he and the decedent were more than "mere roommates". The Court held that:

> "In the context of eviction a more realistic, and certainly equally valid, view of a family included two adult life-time partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence. This view comports both with our society's traditional concept of "family" and with the expectations of individuals who live in such nuclear units."

The Court was clear however to limit the definition to the particular statute in question.[7]

Courts, while recognizing written and even oral agreements between cohabiting partners, of both the same and the opposite sex, have not embraced the concept of same sex marriage. The Supreme Court in *Bowers v. Hardwick*.[8] declined to extend the right of privacy to homosexual sodomy. The United States has not been receptive to the idea of same sex marriage and there is no state that sanctions such marriages. However, the Supreme Court of Hawaii recently concluded that their statute, which required that marriage partners be of opposite sexes, is subject to strict scrutiny. The Court, in remanding the case, concluded that the state must show that the statute "furthers compelling state interests and is narrowly drawn to avoid unnecessary abridgements of constitutional rights."[9] The constitutional analysis was based upon the Hawaiian Constitution, not the Federal. However, the heightened scrutiny test has not been applied in the context of a federal cause of action involving homosexuals.

Domestic partnership ordinances may be the conservative response to many of the issues surrounding same sex relationships, and the inability of the parties to marry.

Many believe that domestic partnership ordinances, state statutes, and executive orders that prohibit sexual orientation discrimination in housing and employment are the most significant strides that homosexual couples, who do not have the option of marrying, have secured in their quest for protection from discrimination and recognition as families. Yet the gay community remains without federal protection and still faces a nation where nearly half the states have criminal statues that prohibit consensual sodomy.

The domestic partnership ordinances generally allow partners, to participate in health care plans and other employee benefits normally reserved for married couples. Some allow protection in housing; others include sick and bereavement leave when a domestic partner is involved. Most municipalities require that the couple execute an affidavit of domestic partnership, which states that the couple reside together, are each other's "sole domestic partner," "share common necessities of life," are responsible for their "common welfare." Most ordinances require the partners be age eighteen or older, and require six months or a year of residency together. San Francisco allows the registration of couples, and has extended unpaid family leave to include domestic partnerships and even hospital visitation rights. While each of these domestic partnership initiatives is different in scope and effect, the ultimate impact on the heterosexual and homosexual communities is the same; recognition as a family and a clear indication that tolerance is succeeding over ignorance.

This is not to say that the initiatives at the city and state level have not met with widespread criticism, fear that many will take advantage of the programs through fraud, and that the costs of health care, already enormously expensive, will be further increased by introducing domestic partners as additional insureds.

The problem of fraud is pervasive in most every area of benefits (fraudulent marriages to obtain immigration benefits). But there appear to be no empirical data to suggest that heterosexual non-married cohabitants and homosexual couples are any more likely to commit fraud than anyone else. Further, there is no evidence that the ordinances or initiatives described herein have resulted in significant financial costs to the municipalities or corporations that have extended such benefits and protections.

Perhaps the most significant change in the model of family is the effect of alternate family lifestyles on children. Recent cases have involved every conceivable (no pun intended) situation concerning children. Single mothers and single fathers are certainly not considered aberrations in 1994, but the courts are facing many scenarios that have only been made possible by the scientific advances reproduction. The Courts are also squarely facing the rights of biological parents who are homosexual, and the rights, if any, of the non-biological homosexual partners who are participating in child rearing with partners, who are often the biological parents of the children.

Earlier this year the Family Court of Monroe County New York held that the long term lesbian partner of a biological mother may adopt her partner's children.[10] The New York Court, relying on the Vermont Court,[11] held that the adoption would not terminate the biological mother's rights if the adoption was by a stepparent. Construing the term stepparent broadly, the Court placed the biological mother's lesbian partner in the shoes of a stepparent. The New York Court was careful to consider the effect that same sex parenting may have on the children. The Court's ultimate decision, hinged on the best interest of the children.

The cases arising from voluntary consents by biological parents have ended on a far different note from those concerning the desire of lesbian partners, (the non-biological parents) to have visitation with children they helped raise. In thoses cases where there was no adoption, and the non-biological partners sought visitation after their relationships ended the Courts have not been particularly receptive, and have generally held that a non-biological partner, absent an adoption, does not have standing to seek visitation with a child she co-parented during a lesbian relationship. In *Alison D. v. Virginia M.*, Ct.App.N.Y., 572 N.E. 2d 27 (1991) the Court found that because the mother's lesbian partner was a "biological stranger" to the child, and the child's mother had refused visitation, she had no standing. New York is not alone in its rejection of a lesbian partner's request for visitation rights. It should be noted that many states specifically limit vistation rights to parents and grandparents. In Delaware, however, the Supreme Court in *Rogers v. Trent*[12] extended visitation rights to an aunt and uncle who had held custody of a minor child and had raised the child for several years. The Delaware Court applied the traditional best interest standard in determining visitation rights in that instance and in allowing the aunt and uncle to pursue their claim, although they were not the biological, adoptive, or grand parents of the child in question.

For many years the courts have dealt with the issue of an biological parent's homosexuality as affecting custody or visitation rights. In a recent News Journal article concerning a Virginia Court's denial of custody to a Mother because she was a lesbian, former Family Court Judge Roxanna Arsht reflected on a decision of hers many years ago when the same issue was raised. Judge Arsht had found that such conduct was not injurious to the child. This author is unaware of any state that specifically disallows custody or visitation rights based because the parent is homosexual. However, while the fact that a parent is homosexual may not in and of itself serve as a basis for the denial of custodial or visitation rights, it is not unheard for a Court to consider this lifestyle choice" detrimental to the child. Visitation may not be denied altogether, but restrictions may be placed disallowing a parent's homosexual partner to participate in the visitation or to have contact with the child. Certainly the burden remains to show that the conduct has an injurious effect on the child and is not in the child's best interest. Similiarly, the presence of the fact that a parent carries the AIDS virus has not been found to be a reason for the denial of visitation.[13] In fact, such denial based *solely* on the presence of the AIDS virus may violate the Americans with Disabilities Act.

Certainly, the courts will continue to wrestle with the interpretation of the law concerning a child's best interest and whether that interest is substantially impaired by a parent's homosexual conduct. Courts will continue to have to balance the best interests of children against parents' constitutional rights to raise them. However, in a world of anger and hatred, where children and parents are killed and mutilated every day, where families are torn apart by violence, it seems odd that we wish to deny children the home of a loving parents or person's who able to serve as parents solely on the basis of their sexual preference. It is certainly far better for children to be raised in an atmosphere of acceptance, stability, and tolerance than one filled with hatred and intolerance. It is better for a child to be raised in a non-traditional home where he or she may be loved by one or two parents, regardless of their sexual orientation, who can commit more to the child than a traditional home of a married couple who cannot give the child what is necessary for a healthy and secure future.

* * *

Constraints of space make it impossible to include the author's extensive footnotes, but the numbers to these footnotes appear. The full footnotes will be available upon request to the offices of this magazine.

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ANNE L. GOODWIN

Oh, Brave New World of Parenthood!

Special Thanks: I should like to thank Susan Frelich Appleton, Professor of Law at Washington University, for her invaluable support and assistance in the editing and research of this article.

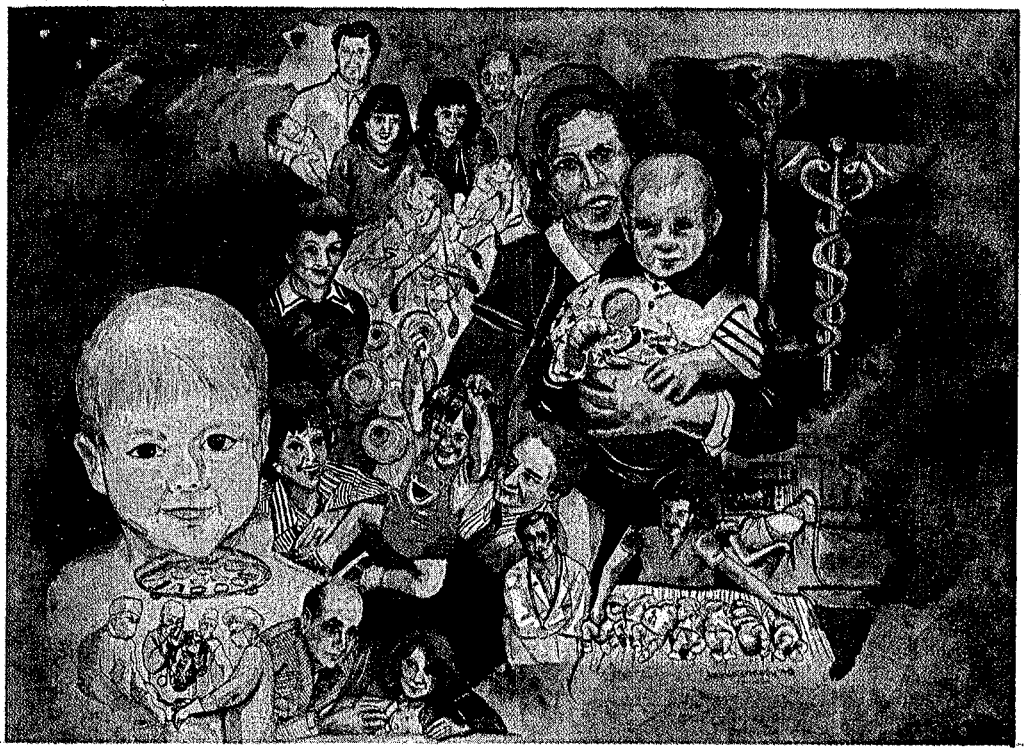

Illustration by Donna W. Goodwin

Breakthroughs in noncoital reproduction have sparked debate over the determination of legal parentage and age limits on motherhood. A child born of gestational surrogacy and egg donation may become embroiled in a custody dispute among *five* potential parents. Egg donation and embryo transplantation enable post-menopausal women in their sixties to become mothers. As commentators and lawmakers grapple with these controversial issues, society must rethink traditional notions of family and parenthood.

Who is the Legal Mother in Egg Donation and Gestational Surrogacy Arrangements?

Born out of the frustration of infertility, new noncoital reproductive procedures involving egg donation, transplantation of embryos, and gestational surrogacy have created children with a uniquely complex and nontraditional parentage. Gestational surrogacy and egg donation arrangements have challenged the notion that a child has only one set of natural and legal parents. Designating the person who gave birth to the child as the legal mother at common law relied on the presumption that every child's genetic mother and birth mother were one and the same.[1] Traditionally, the husband of the birth mother was presumed the legal father.[2] A child produced from the noncoital reproductive procedures known as in vitro fertilization (IVF) or gamete intrafallopian transfer (GIFT)[3] could feasibly have five potential parents: a sperm donor, an egg provider, a woman who agrees to gestate the child, and two nonbiologically related persons who intend to raise the child.[4]

Legal parentage could arguably be derived from common law presumptions, the pregnancy, genetic ties, the intent of the parties at the inception of the agreement, or a combination thereof.[5] Parties involved in noncoital reproduction may enter into a variety of arrangements and perform overlapping roles. For example, the woman intended to be the mother by the parties at the inception of the agreement may also be either the egg donor or the gestational surrogate. To establish her maternal rights, the woman with a dual role in the noncoital conception could point to her genetic ties to the child, or to the physiological, emotional, and social ties created by the pregnancy as well as the agreement designating her as the intended mother. The intended father who provided the sperm could argue that his genetic ties to the child in addition to the parties' original intent should result in a finding that he is the child's legal father. Regardless of whether he provided the sperm, the intended father who is also married to the birth mother could point to the tradition-

al presumption of paternity.

Adding to the confusion of establishing legal parentage, intrafamily noncoital reproduction arrangements have become more commonplace. Egg donation and gestational surrogacy agreements between family members result in genetic ties among all of the participants. A grandmother has given birth to her twin grandchildren produced from her daughter and son-in-law's genetic material.[6] An infertile woman gave birth to a child produced from her husband's sperm and her sister's eggs. As a result, her sister is both the child's aunt and genetic mother.[7] Triplets were born to two different gestational mothers in different cities: When two sisters both underwent implantation of embryos produced by the infertile sibling and her husband in order to increase her chances of becoming a mother, the women gave birth to a total of three babies.[8]

In the wake of disputes arising between parties engaged in gestational surrogacy and egg donation arrangements, state courts and legislatures have faced the difficult task of identifying the legal parents of children born from such arrangements. Determination of the bases for legal parentage - traditional presumptions, biological ties, gestation, or contractual intent - has a direct impact on how society values and protects the contributions of genetic material, pregnancy, and childbirth.

California became the first state to address a surrogacy arrangement in which the gestational surrogate had no genetic ties to the child. Confronted with two women claiming to be the natural and legal mother, the courts struggled to define legal maternity. In 1989, an infertile couple, Mark and Crispina Calvert, entered into a written agreement with Anna Johnson whereby an embryo created from the sperm and egg of the Calverts would be implanted in and gestated by Johnson.[9] The contract provided that the Calverts would raise the child, that Johnson would relinquish all parental rights, and that the Calverts would pay Johnson $10,000.00 in installments. Prior to the birth of the child, the Calverts and Johnson filed suit seeking declaration of their legal parentage.[10] Mark Calvert's paternity and parental rights to the child were undisputed by the parties.

Focusing on the biological ties, the trial court held that the Calverts were the child's "genetic, biological and natural mother and father," that Johnson "had no parental rights to the child," and that the surrogacy contract was "legal and enforceable" against Johnson's claims.[11] The trial court further stated that it refused to "split this child emotionally between two mothers."[12] The California Court of Appeals held that "[it] must resolve the question of [Johnson's] claim to maternity as [it] would resolve the question of a man's claim to . . . paternity when blood tests positively exclude him as a candidate" and that Johnson is not the natural mother.[13]

In the California Supreme Court decision, the majority opinion relied on the theory of intent-based parenthood and held that the Calverts were the child's natural parents.[14] Although the Court noted that the Uniform Parentage Act (UPA), as adopted by the state of California, did not specifically address the issue of gestational surrogacy, it found that "the Act offers a mechanism to resolve this dispute."[15] In its analysis of the UPA, the majority concluded that a mother-child relationship may be established by proof of her having given birth to the child or by the same means a father-child relationship may be established under the code, blood testing. The Court held that both Crispina Calvert and Johnson established evidence of a mother-child relationship under the UPA, but that "California law recognizes only one natural mother, despite advances in reproductive technology rendering a different outcome biologically possible."[16]

The majority stated that the payment of $10,000.00 in installments during and after the birth of the child to Johnson was intended to compensate her for her services, and not for her termination of parental rights. The Court rejected arguments that gestational surrogacy arrangements would "exploit poor women" or would "foster the attitude that children are mere commodities."[17] The majority upheld the parties' contract stating that it was "not on its face, inconsistent with public policy."[18]

The Court looked to the intent of the parties manifested in the surrogacy agreement and concluded that "but for [the Calverts'] acted on intention, the child would not exist."[19] The Court held "she who intended to procreate the child — that is, she who intended to bring about the birth of a child that she intended to raise as her own — is the natural mother under California law."[20] In a footnote, the majority explained that a mother who gestated and gave birth to a child produced from a donor egg with the intent to raise the child as her own would be the natural mother under California law.[21] The majority cited legal commentators Marjorie Maguire Schultz and John Lawrence Hill who argue that legal parentage should be based on the intent to raise the child rather than the genetic relationship or pregnancy. Both Hill and Schultz emphasized that without the orchestration of the egg donation or gestational surrogacy arrangement by the intended parents, the child would not have not been born.

The dissenting opinion criticized the majority's reliance on "but-for causation" and "originators of the concept" to justify intent-based parenthood. The dissent stressed that children are neither the personal property nor intellectual property of their parents and therefore, specific performance of a gestational surrogacy contract would be an inappropriate remedy. The dissent argued that the majority's reliance on intent devalues the role of the gestational surrogate, supports the enforcement of gestational surrogacy contracts without imposing any protective requirements and constitutes "a sweeping endorsement of unregulated gestational surrogacy." Conceding that the California code allowed only one natural mother for the child, the dissent endorsed the best interest of the child test in choosing between the genetic mother and the gestational mother. The dissent also advocated the implementation of legislation modeled after the Uniform Status of Children of Assisted Conception Act (USCACA) in order to regulate gestational surrogacy.[22]

The majority opinion's reliance on the contractual intent of the parties to determine the legal mother of the child born as a result of a gestational surrogacy arrangement marks a drastic change in legal definitions of parentage. On one hand, contractual intent as a basis for parental rights promotes fairness and holds the gestational surrogate or egg provider to her word that she would give up any claims of maternity to the child. The contracting parties would enjoy absolute certainty that a breach of the agreement to terminate any parental rights derived from gestation or from genetic bonds would result in specific performance - delivery of the child to the persons designated as intended parents by the contract.

The consequences, however, of cutting off the parental rights of a partici-

pant in noncoital reproduction the moment an oral or written agreement is formed should be carefully scrutinized. Such an approach would encourage the proliferation of commercial gestational surrogacy arrangements. The majority opinion in *Johnson v. Calvert* dismissed the argument that social commercialization of surrogacy would cause social problems.[23] Adoption of intent-based parentage would not discourage the development of gestational surrogacy as a service industry because the intended parents' risk of not gaining full custody rights of the child would be eliminated. Without recognition of the parental rights of a gestational surrogate, an indigent or low-income woman renting out her womb to an infertile couple would have little or no bargaining power in negotiating terms and provisions of the agreement and commanding a fee for her services.[24] One commentator pointed out that because a typical fee of $10,000.00 for nine months is equivalent to a wage of $1.54 per hour, assuming a 24 hour work day, the fee is clearly paid to induce the termination of her parental rights.[25] The majority opinion in *Johnson v. Calvert* reasoned that surrogacy contracts were unlikely to exploit indigent women any more than other low-paying or undesirable jobs.[26] Low wages or poor working conditions are unlikely to dissuade an indigent woman from entering into a paid gestational surrogacy agreement.

The potential exploitation of low-income or indigent women calls for state regulation of gestational surrogacy arrangements or a total ban on commercial arrangements. The USCACA addresses both of these approaches to gestational surrogacy.[27] North Dakota, the first state to adopt the USCACA, opted for Alternative B, which voids surrogacy contracts and designates the surrogate as the legal mother. The surrogate's husband, if a party to the contract, is the child's father.[28] Virginia adopted a modification of the USCACA and requires preapproval of the contract by the court. If the surrogacy contract is not court-approved, the statute awards parental rights to the intended parents if they are also the genetic parents. Otherwise, the code falls back on the traditional presumption that the birth mother and her husband are the legal parents.[29] New Hampshire's surrogacy statute also requires court supervision of surrogacy contracts and permits the surrogate to rescind her termination of parental rights up to seventy-two hours after the child's birth regardless of her genetic ties to the child.[30] Abolition of commercial surrogacy or the careful regulation of contractual arrangements pursuant to the USCACA offers the gestational surrogate some protection from exploitation.

Termination of the gestational surrogate's parental rights at the inception of the contract raises other troubling issues. Intent-based parentage strictly upholds the contractual designation of the legal mother and father and requires specific performance in the event of a breach of the agreement. This approach relies on the assumption that rational individuals do not change their minds after making decisions. The social and physiological relationship between the unborn child and the gestational surrogate cannot be contracted out of existence even if the woman gestating the child for another enters into a mind set that she will not claim the child as her own. Recognition of the gestational surrogate's rights of maternity promotes the health and well-being of the child by increasing her sense of responsibility towards the fetus.[31]

A substantial change in circumstances such as the divorce or death of an intended parent could likely compel a gestational surrogate to recant her commitment to terminate her parental rights.[32] Because the facts on which the parties' contractual intent are based could change before the birth of the child, severing the gestational surrogate's parental rights from the inception of the contract serves no compelling purpose. Deferring the termination of a gestational surrogate's parental rights until after the child's birth does not reinforce the stereotype of women as irrational or incapable of giving informed consent, but instead acknowledges that the physiological and social bond created by the pregnancy offers protection of the child's best interests. Furthermore, intent-based parentage "reinforces the male norm of retaining control and access to reproduction with minimal physical involvement" rather than serving to eliminate gender bias.[33]

Unlike a commercial gestational surrogacy or egg donation contract, an intrafamily arrangement may lack a written agreement designating the intended parents. Family ties between the gestational surrogate and the egg provider give the participants overlapping roles. For example, a sibling who donated an egg to her sister for gestation would be the genetic mother but may be either

the intended aunt or the intended mother depending on the arrangement. In the event of a dispute between participating family members, intent-based legal parentage would subject the child to a parental limbo while the factfinder sorts through oral testimony and other evidence.[34]

In some cases, choosing between the maternal rights of two women to designate one legal mother may not benefit the child.[35] For example, when an egg provider and gestational surrogate are both unmarried and use anonymous donor sperm, the child born out of the arrangement would have no known father. By granting parental rights to all potential mothers, the child would benefit from the financial support of multiple parents regardless of who has primary physical and legal custody.[36] Such a child could inherit through both mothers just as a child born into a traditional family would inherit through both the mother and father.

Furthermore, from parental rights follow responsibilities for the child's care and support. If a disabled child is born, none of the participants to the gestational surrogacy arrangement may want to raise the child.[37] Choosing between the gestational, genetic, or intended mothers merely shifts the burdens and responsibilities of parenthood without consideration for the disabled child's long-term need for support. Both intent-based parentage and gestational-based parentage operate to force the responsibility on persons who may no longer desire the child born disabled. Admittedly, granting parental rights to all participants to a noncoital reproductive arrangement that resulted in the birth of a disabled child would not prevent individuals from terminating their parental rights. Imposition of parental rights on all parties to noncoital reproduction, however, would likely discourage participation by those who are ill-prepared to take custody of and contribute to the support of either a healthy or a disabled child.

Lawmakers should exercise caution before joining the intent-based parentage band wagon. Upholding contractual expectancy as the sole basis for legal parentage to the exclusion of nurturance, pregnancy, and childbirth encourages the proliferation of commercial gestational surrogacy arrangements, may result in exploitation of women, and reinforces patriarchal notions of parentage.[38] Rigid adherence to the "one

mother and one father per child" model for determination of parentage ignores the possible benefits to the child that accompany the complexity of recognizing multiple legal parents.

A Mother at the Age of 62: Should there be an Age Limit?

Not only do the noncoital methods of reproduction, egg donation, embryo transplantation, and gestational surrogacy, complicate legal parentage, but also they have broken through the biological age barrier faced by females and allowed post-menopausal women to become mothers. IVF techniques that enable an infertile woman of childbearing age to have a child may also be applied to women in their fifties and sixties. The international community hotly debates whether age limits on so-called retirement age pregnancies should be imposed.

After a 62 year old woman gave birth in Italy and a woman one year older announced she was three months pregnant, legislators and policymakers in Italy and France called for legislation that would put an age cap on artificial impregnation of women past the childrearing age.[39] The European Union's Social Affairs Commissioner, Padraig Flynn, proposed a conference, noting that "citizens could cross borders to get treatment that was not available in their own countries."[40]

Some critics argue that post-menopausal pregnancies are unethical because the children would be orphaned at an early age or burdened with physically incapacitated parents.[41] Others contend that an age limit on IVF pregnancies in females would constitute gender discrimination since no such restrictions exist for men who father children late in life.[42] One obstetrician commented that "this is another example of trying to fit a woman's body into the previous examples of irresponsibility of men's reproduction . . . [h]uman biology, at this point, tells us something."[43] France's junior health minister Phillippe Douste-Blazy stated that "artificial late pregnancies [are] immoral and dangerous for the health of both mothers and children."[44] The infertility specialist, Dr. Mark Sauer, who enabled American singer, Jonie Mitchell, to become a mother at age 54,[45] remarked that "women in their 50s are doing as well, meaning the pregnancy rates ares as good as women in their 20s, 30s and 40s."[46] Other commentators note that grandparents have raised their grandchildren successfully.[47] University of Southern California Law Professor, Susan Estrich, points out that society should "worry more about children having children than a few wealthy middle-aged women with enough resources to do this."[48]

Reacting to the shock of the new by legislating an age limitation on motherhood reinforces stereotypes of women and tacitly insults retirement age persons presently engaged in childrearing. The decision whether a post-menopausal female is healthy enough to endure a pregnancy from IVF should be left up to the individual and her treating physician

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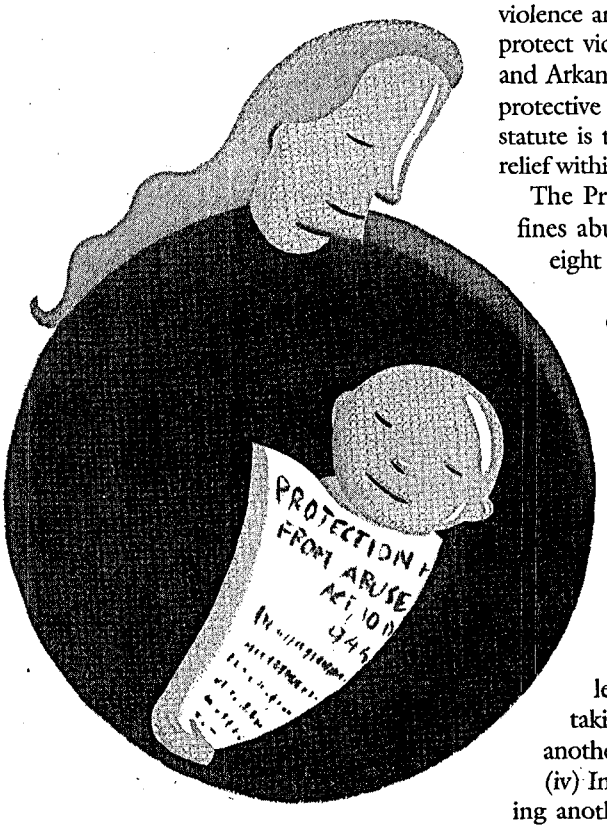
CAROLEE GRILLO

Protection from Abuse



In which an expert observer describes a real – if belated – response to a shameful problem.

The Delaware Protection from Abuse Act, 10 *Del.C.*, §945-952, became effective on January 16, 1994. The Act is the Delaware legislature's response to the growing awareness of domestic violence and the need for civil orders to protect victims. The States of Delaware and Arkansas were the last to enact civil protective statutes.[1] The purpose of the statute is to provide immediate relief or relief within thirty (30) days of filing.

The Protection from Abuse Act defines abuse at 10 *Del.C.*, §945(1) in eight (8) categories as follows:

(i) Intentionally or recklessly causing or attempting to cause physical injury or a sexual offense, as defined in §761 of Title 11;

(ii) Intentionally or recklessly placing or attempting to place another person in reasonable apprehension of physical injury or sexual offense to himself, herself or another;

(iii) Intentionally or recklessly damaging, destroying or taking the tangible property of another person;

(iv) Insulting, taunting or challenging another person or engaging in a course of alarming or distressing conduct in a manner which is likely to provoke a violent or disorderly response or which is likely to cause humiliation, degradation or fear in another person;

(v) Trespassing on or in property of another person, or on or in property from which the trespasser has been excluded by court order;

(vi) Child abuse, as defined in Chapter 9 of Title 16;

(vii) Unlawful imprisonment, kidnapping, interference with custody and coercion, as defined in Title 11; or

(viii) Any of the conduct which a reasonable person under the circumstances would find threatening or harmful.

Abuse occuring between and among family members, people who live together, or people who have or have had close relationships with one another is called domestic violence. Family Court, appropriately, was given jurisdiction over Protection from Abuse petitions.[2] Domestic violence is defined as "abuse perpetrated against one member by another member of the family" under Family Court's traditional jurisdiction under 10 *Del.C.*, §901(9).[3] However, in order to protect those to whom the Protection from Abuse legislation was intended to protect, the General Assembly expanded the jurisdiction of the Family Court for Protection from Abuse petitions only to include the following in the protected classes:[4]

1.Former spouses,

2.Man and woman cohabiting together with or without a child or either or both,

3.Man and woman living separate and apart with a child in common.

Petitions may include members of the protected class, DFS, or DAPS. See 10 *Del. C.* §945(3).The Court may issue a no contact or no adverse contact order on a finding of abuse by a preponderance of the evidence.[5] In addition, the Court, after making a finding of abuse, may grant additional appropriate relief as follows:[6]

(3) Grant exclusive possession of the residence or household to the petitioner or other resident, regardless of in whose name the residence is titled or leased. Such relief shall not affect title to any real property:

(4) Order that the petitioner be given temporary possession of specified personal property solely or jointly owed by respondent or petitioner, including but not limited to, motor vehicles, checkbooks, keys and other personal effects;

(5) Grant temporary custody of the

Illustration by Dan Yaccarino

children of the parties to the petitioner or to another family member, and provide for visitation with the respondent, if appropriate, including third party supervision of any visitation. . .

(6) Order the respondent to pay support for the petitioner and/or for the parties' children. . .

(7) Order the respondent to pay to the petitioner or any other family member monetary compensation for losses suffered as a direct result of domestic violence committed by the respondent, including medical, dental and counseling expenses, loss of earnings or other support, cost of repair or replacement of real or personal property damaged or taken, moving or other travel expenses and litigation costs, including attorney's fees;

(8) Order the respondent to temporarily relinquish. . . the respondent's firearms and to refrain from purchasing or receiving additional firearms for the duration of the order;

(9) Prohibit the respondent from transferring, encumbering, concealing or in any way disposing of specified property owned or leased by parties;

(10) Order the respondent, petitioner and other protected class members, individually and/ or as a group, to participate in treatment or counseling programs:

(11) Grant any other reasonable relief necessary or appropriate to prevent or reduce the likelihood of future domestic violence.

Civil Protection from Abuse orders are enforceable through a civil or criminal contempt proceeding, which may result in fines, incarceration, or both and through criminal prosecution, which may result in imprisonment, fine, or both.

The legislature has responded to the increase in domestic violence not only with the Protection from Abuse legislation but also Offenders' Domestic Violence Diversion Program.[7] Also, the Family Court has created "fast track" scheduling for the domestic violence cases on the criminal calendar.

Family Court in each of the three counties has been hearing emergency, same-day, *ex parte* hearings since Tuesday, January 18, 1994.[8] Chief Judge Vincent Poppiti directed that Family Court Commissioners[9] hear the Protection from Abuse petitions. As of February 28, 1994, 145 petitions had

been filed statewide: 108 in New Castle County, 19 in Kent County, and 18 in Sussex County. Of those, statewide, 33% were entered as *ex parte* orders the same day or next day after filing, 34.5% were heard within 10 days of filing, 32.5% within 30 days of filing, and 3% were withdrawn or dismissed.

The statistics gathered as of February 28, 1994,[10] show that statewide 39% of the relationship blocks marked by petitioners were under the expanded definition allowed under the Protection from Abuse Act. In New Castle County, 46.5% of the petitions were checked under the expanded jurisdiction, in Kent County 15.5%, and in Sussex County 11%. For the same period (01/18/94 through 02/28/94), on average statewide 89.5% of the petitioners have been women and 10.5% have been men.[11]

Delaware attorneys and *pro se* litigants are encouraged to learn more about this vitally important legislation. The Delaware Domestic Violence Coordinating Council and the Family Court Special Services Unit are continuing their efforts to educate the legal community, law enforcement agencies, and the public about the prevalence of domestic violence and the availability of protective relief through the civil protective orders and criminal prosecution.

As a Delaware Family Court Commissioner, I have heard Protection from Abuse petitions in each county. For the most part, the allegations of abuse are very serious. It is important that litigants and members of the Bar understand that the Protection from Abuse statute was enacted to protect people in relationships from violence and that it was not enacted to circumvent the Delaware divorce ancillary proceedings or to be used in lieu of filing custody, visitation, and support petitions.

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Carolee Grillo was confirmed as a Commissioner of the Family Court in November 1993, following a year as a Master of that Court. Before coming to the court, she practiced family law with the Wilmington firm of Ament, Lynch & Carr. She is a member of the Family Law and the Women and the Law Sections of the Delaware State Bar Association. She is also a member of the Family Law Section of the American Bar Association. ◆

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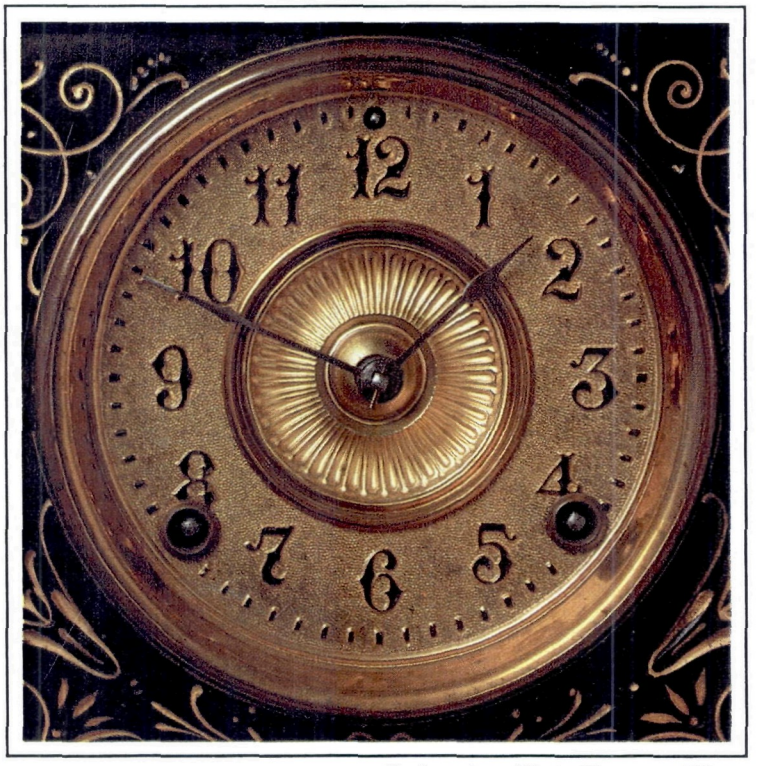

Clock courtesy of Hagley Museum and Library.

Our Private Banking Officers make it their business to know and understand the needs of our clients, providing a personalized plan to assist in achieving your financial goals.

Acting as liaison with all divisions of the bank, your Private Banking Officer affords you the convenience of one bank, one contact. Also, a bank within a bank, our Private Banking Division offers you exclusive access to a special suite of offices, along with your own teller to assist in conducting your banking transactions.

We are at your service anytime of the day or night; wherever and whenever you need us. In fact, we are there even when you are not. While out of town on business or vacationing abroad, your Private Banking Officer can tend to your Delaware Trust financial matters in your absence. And we respond quickly should any complex financial situations arise.

Not everyone requires this extraordinary attention and highly personalized service. If you are someone who equates time with money, contact our Private Banking Division at (302) 421-7450.

Where people make the difference™

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