

The Judiciary Takes the Lead

Caring for Emotionally Disturbed Children

by Stan Swofford



That old familiar burn was once again sweeping over state District Judge James Samuel Pfaff. He had felt it first in 1976 when, at age 31, he became a judge in Guilford County. It was then that he read the court records of Michael

Long, an emotionally disturbed 14-year-old youth. The records told Pfaff that the child had been shunted from agency to agency and institution to institution. It seemed to Pfaff that no one at any of the state's service agencies or hospitals was serious about wanting to treat or care for the youth.

Michael, who was big for his age and could be violent, had been in and out of John Umstead and Dorothea Dix Hospitals numerous times. The pattern was always the same. He would stay for a few days before psychiatrists, who determined he "was not of imminent danger to himself or others," would release him. Within hours Michael would be back on the streets of Greensboro, and the police would pick him up for some type of violent or aggressive behavior. Then he would start the cycle all over again.

Pfaff's second encounter with the long, slow burn occurred about two years later when the case of "Billy Jones" (not the child's real name) came before him. His case was similar to Michael Long's except Billy was only nine years old, a fact that

astonished Pfaff when the judge discovered Billy had been held for two months in the county's juvenile detention center. Billy had also been shunted from agency to agency and foster home to foster home. This time, however, Pfaff was able to do something.

In a unique ruling, Judge Pfaff found that Billy, who was before him on a delinquency petition, lacked the capacity to participate in his defense. He also found that Billy would not have that capacity until he received extensive medical and psychiatric treatment. He then ordered that Billy receive that treatment at the child's Psychiatric Institute at John Umstead Hospital, an institution that had rejected Billy several times before. Pfaff ordered specifically that Billy not be released from John Umstead "without orders from this court."

Pfaff's order, which he made known to the state's press, spurred state Division of Mental Health officials to find a way of treating and caring for Billy. They soon found a place for him in one of the state's new Eckerd Wilderness Camps, which are designed to care for — in a structured, wilderness setting — children who have severe emotional and behavioral problems. Billy has progressed remarkably in this setting, camp officials have told Pfaff.

Stan Swofford, a reporter for the Greensboro Daily News, covers the North Carolina courts on a regular basis. He has won awards for legal reporting from the N.C. Press Association, the North Carolina State Bar, and the Sidney Hillman Foundation.

Emotionally disturbed children are shunted from agency to agency because of an "avoidance syndrome" on the part of state officials.

Unfortunately, what Pfaff calls an "avoidance syndrome" on the part of state officials in their dealings with emotionally disturbed children did not end with the "Billy Jones" case. Two years later, in August of 1980, still another "Billy Jones" case came before Pfaff's court. The old pattern was there. The child, 14, had been sent from agency to agency and hospital to hospital. It seemed that neither state mental health nor social services officials could treat and care for him.

Pfaff was boiling mad this time. He had learned that Michael Long, by then considered by the legal system to be an adult, had graduated from juvenile institutions to prison. In the new case, Pfaff ordered that the child be sent to a private psychiatric hospital in Winston-Salem for temporary care and treatment. Meanwhile, he ordered Guilford County officials to begin immediately to establish a group home for the care and treatment of emotionally disturbed children.

Two months later, in October 1980, Pfaff received word that no progress had been made, or attempted, toward establishing the home. He ordered the director of Guilford County Social Services, Frank Wilson, into his court, found him in contempt, and fined him \$500. He also ordered Wilson and county officials to begin work on the group home immediately. Guilford County appealed Pfaff's order and contempt finding to the N.C. Court of Appeals, maintaining that Pfaff exceeded his judicial authority. As of March 1981, the case had not been heard.

The North Carolina Supreme Court, in a similar case involving a Wake County judge and a troubled youth, sided with county officials. In a 4-2 decision issued in January 1981, the state's highest court held that Wake County Chief District Judge George Bason exceeded his authority when he ordered Wake County officials to send 14-year-old Scott Brownlee to an Austin, Texas, facility and to

pay for the treatment he received there.

The court did not disagree with Bason's finding that no adequate facility exists in North Carolina, and it praised Bason for his "tireless efforts" to help the child. It further stated that it hoped the Brownlee case and others like it will "prompt our state to develop an effective means of dealing with children of Scott's nature and disposition." It found, however, that Bason could not require Wake County to pay for the child's out-of-state treatment and care. The state's juvenile code, the court's majority wrote, refers to "community-based" care and treatment. Justices J. Phil Carlton and James Exum dissented sharply from the majority view, declaring Bason was authorized, even required, by state law to make certain the child was provided with care and treatment wherever it could be obtained. "There was not even a

Director of Guilford County Social Services, Frank Wilson.





Wake County Chief District Judge, George Bason.

hint" that the care and treatment must be provided within the child's community, they said.

Bason believed he had the authority for his ruling. Sandra Johnson, the youth's court-appointed lawyer who represents a number of children in juvenile court, shared Bason's view. "But since there is some question about it, the legislature should rewrite that section of the juvenile code to make clear what judges can do to get needed

treatment," says Johnson. Even legislative changes, however, would not provide all that is needed.

Both Judge Bason and Pfaff, who is now in private law practice, are frustrated by the lack of treatment and care facilities for the hundreds of troubled youth who appear in the state's courts every week. "I average one a week in my court alone," Bason says. "It's extremely frustrating. This state is far behind other states in treatment facilities for these children. If North Carolina isn't careful, it will find itself in the position Alabama was in a while back when the federal government had to step in and run its prisons."

There is, in fact, a class action suit before U.S. District Judge James McMillan in Charlotte filed on behalf of a class of children in the state who are both mentally handicapped and exhibit violent and assaultive behaviors. Johnson is one of the lawyers for the plaintiffs in that suit. The state already has admitted most of the plaintiffs' allegations and acknowledged that it has the responsibility of providing care and treatment for this class of children.

Where the money for that care and treatment is going to be found, and how much will be needed, are questions which have not been answered. The state Department of Human Resources, which plans to submit a supplemental budget to the legislature during the 1981 session, is trying to determine how many of these children North Carolina has. Their preliminary findings indicate there may be as many as 800.

"I don't know what it's going to take so far as money is concerned, but I know it's got to be done," Pfaff says. "I keep thinking of that 24-year-old man (Steven Judy) Indiana executed and what he said to all those people trying to save him from the electric chair. He said, 'Hey, you people! Where were you 10 years ago when I really needed you? When your help would have done some good?'" □

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District Judge George Bason