By Rob Hawn

During the Pennsylvania Bar Association’s November 2002 Committee/Section Day, the Children’s Rights Committee was solicited by representatives of the Civil and Equal Rights Committee to join its opposition to a proposed amendment of the Pennsylvania Constitution’s confrontation clause, as promulgated by Senate Bill 211 (2001 Session). This legislation sought to amend the Pa. Constitution, Article I, Section 9, by deleting the “face-to-face” provision of the confrontation clause. The bill also proposed the amendment of Article V, Section 10(c), by conferring upon the General Assembly, rather than the Supreme Court, the authority to determine the manner in which child victims and child material witnesses may testify in criminal court proceedings throughout the commonwealth.

A proposed amendment of the Pa. Constitution requires the approval of the electorate during a primary or general election in the commonwealth. However, legislation promulgating a constitutional amendment must first pass the General Assembly in two consecutive sessions before it can be presented for popular vote as a ballot question. The Pa. House of Representatives and Senate, on June 11, 2001, and Jan. 3, 2002, respectively, passed legislation proposing constitutional amendments identical to those most recently presented in SB 211. Thus, with the reintroduction and passage of SB 211 by the General Assembly during its current legislative term, these constitutional amendments would qualify for submission to the electorate as ballot questions for approval in the next election.

The two constitutional amendments presented in SB 211 are not new proposals. In fact, Pennsylvania voters considered virtually identical proposals for constitutional amendment during the 1995 general election. Prior to that election, the Children’s Rights Committee had proffered a resolution calling upon the PBA to support an amendment seeking elimination of the constitution’s “face-to-face” provision of the confrontation clause. Yet, the association opposed another amendment seeking to transfer certain rule-making powers to the Pennsylvania General Assembly that had previously abided exclusively with the Supreme Court of Pennsylvania. Nevertheless,

(Continued on Page 3)
Editor’s Comment

By Joyce A. Hatfield-Wise

Much of what we do in life involves maintaining a balance. Whether it is choosing a steak or a salad, knowing when to leave the office to have more time at home, or in turning down that extra responsibility, each of us has to make choices. Often, the decisions are difficult. Neither result may be desirable, yet we struggle to find that balance — between good and bad, better and best.

This newsletter issue confronts some of the more difficult issues in child advocacy: balancing the constitutional right of a defendant against the safety and welfare of a child, balancing the right of the public and the press to free access to the courts against the privacy interests of the parties involved in child dependency matters, and creating a system that works for children, not just with them.

The challenge for each of us is to choose and to choose wisely, to be informed about the various perspectives, and to come to some conviction with reason and rationale. As advocates of children, we must continue and increase our vigilance in ensuring that their silent voices are heard. To champion the cause of children is to understand the hope and goodness in each one of us. While the outcomes may not always strike our balance, to continue to weigh in is essential.

We invite you to share your thoughts and comments about this issue or any other matter. Your input will help to advance that balance.

Notes from the Chair

Committee members continue to volunteer many hours to the work of the Children’s Rights Committee on various activities. This work is in addition to their many professional responsibilities to their clients, their firms, their organizations, their families, etc. I believe that the members often volunteer their time to further the mission of the Committee: to improve the representation of children across the state. I personally enjoy the camaraderie of colleagues who are working to represent children in various legal proceedings from all parts of the state. We often share ideas of how to best proceed in difficult cases or how to improve procedures in our own counties.

The work of our committee includes the planning of continuing legal education programs twice a year and advocacy on legislation that affects the rights of children.
Pennsylvanians approved both amendments by popular vote. However, the vote was later ruled invalid, because both proposed amendments had been presented to voters in a single ballot question.

Despite its support of the proposed confrontation clause amendments in 1995, the Children’s Rights Committee reopened discussions on this important issue in November 2002, at the request of several committee members who expressed interest in the basis of the Civil and Equal Rights Committee’s opposition to SB 211. During the discussions, the Children’s Rights Committee discovered it did not enjoy the same consensus of support for the amendments promulgated in SB 211 that it had achieved for similar proposals in 1995. Particularly, committee members found themselves divided in November 2002, over the question of how children should be permitted to testify as victims or witnesses in criminal court proceedings. During further discussion in January 2003, committee members didn’t resolve their differences of opinion, and thus failed to revive the committee’s former consensus on this issue.

Presently, nearly all committee members agree on the need to shield child victims or witnesses from “face-to-face” courtroom confrontations with criminal defendants. Committee members disagree, however, on how this shield might best be afforded to children. Yet, significantly, committee members are unanimously opposed to conferring jurisdiction, by constitutional amendment, upon the General Assembly to determine the manner in which children might testify as victims or witnesses in criminal court proceedings. Still, considering the Supreme Court’s failure since at least 1995 to promulgate prophylactic rules governing child witnesses, several committee members have nevertheless expressed doubt that children will ever be shielded from “face-to-face” courtroom confrontations with criminal defendants, without a constitutional amendment.

This is a matter of obvious importance and concern to the Children’s Rights Committee, as it should be to all child advocates. The issue is still at hand. In this regard, the committee still strives for a consensus of opinion. To this end, the committee needs to hear your voice now. Please express your opinion on these issues, as most recently raised in SB 211 (2001 Session), by contacting the Children’s Rights Committee in care of Louann Bell of the PBA at louann.bell@pabar.org.

Rob Hawn is a member of Cozen O’Connor, practicing for 17 years in the firm’s Philadelphia office. Previously, he served for three years as a prosecutor in the Philadelphia District Attorney’s Office. Rob has served on the Pennsylvania Bar Association’s Children’s Rights Committee since November 2000. He gratefully acknowledges the assistance of Committee Co-chair Scott Hollander, who provided the historical background for this article.
Sen. Edward Helfrick, R-Columbia, has reintroduced legislation that would prohibit the imposition of the death sentence in cases of mental retardation. On June 20, 2002, the U.S. Supreme Court ruled that executing offenders with mental retardation is unconstitutional. The PBA supports this legislation. (Source: www.pabar.org)

SB 137, PN 125, introduced by Sen. Harold Mowery, et al., amends the Minor’s Consent Act to clarify that, for children ages 14 to 18, either the child or the parent can consent to mental health treatment. It is similar to legislation introduced by Mowery in the last legislative session that contains additional due-process protections for children.

Under current law, if a child refuses treatment a parent must petition the court to have the child involuntarily committed to treatment. To obtain a court order, the parent must prove the child is “a clear and present danger to himself or others.” A threat of violence is not sufficient to meet the standard unless the individual takes specific action to carry out the threat.

SB 137 is designed to allow parents to see that their children receive help before they become a clear and present danger to themselves or to others. Under this bill, if there is a disagreement regarding the need or appropriateness of mental health services, a petition can be filed with the court, where the matter will be heard by a mental health review officer. In determining the appropriateness for mental health services, the officer would not need to employ the “clear and present danger” standard, but will need to find only that the minor “exhibits behavior showing a need for mental health treatment” and that the minor “will benefit from such treatment.”

This bill was introduced by Mowery as SB 242 in the last legislative session. It never emerged from the Senate.

**Upcoming Meetings and Conferences**

- **APRIL**

  Pennsylvania Bar Association Annual Meeting at the Wyndham Philadelphia at Franklin Plaza, Philadelphia, April 23-25. Call (800) 932-0311, ext. 2231 or ext. 2225 or visit www.pabar.org for registration information.

- **MAY**
  The Eighth Annual Rocky Mountain Child Advocacy Training Institute is May 20-24 at the University of Denver College of Law. The title is “Presenting Evidence in Cases Involving Children.” Registration at fax (303) 871-6100.

**CHILD SAFETY GETS A BOOST**

Effective Feb. 21, 2003, Pennsylvania’s Motor Vehicle Code will require that children from ages 4 to 8 be placed in a child safety booster seat. Prior to the amendment of 75 P.S. §4581, children up to age 4 were required to be placed in specified seating. Now, children up to age 8 will be required to be seated in a booster seat. The law provides for some exemptions such as medical reasons or size of the child, but requires that the exemptions be determined according to the rules and regulations of the department.

**Booster and Buckle Up!**
Child Dependency Courts: 
A Rebuttable Presumption of Openness

By Joyce A. Hatfield-Wise

On Feb. 26, 2003, the Superior Court decided the case of In the Interest of: M.B., 2003 Pa. Super 76, 2003 Pa. Super Lexis 304. In an appeal brought by the PG Publishing Company, the court was asked to decide whether the trial court of Westmoreland County had erred when it ruled that the dependency hearings regarding the subject children would remain closed.

PG Publishing Company had sought to have the child dependency proceedings open to the public and the press. The proceedings were brought on behalf of two children, after their sibling was murdered by a family acquaintance. The Pittsburgh Post-Gazette had already run extensive stories regarding the murdered child and her family, which included the siblings names and details of their family life.

The trial court determined that there exists a presumption of openness in all courts as provided by Article 1, Section 11 of the Pennsylvania Constitution. However, recognizing the issue as one of first impression, the trial court noted that juvenile courts have traditionally been closed to non-parties. Finding “no centuries-old tradition of openness” for juvenile court existed, the trial court noted the unique purpose of dependency proceedings is to protect children in an inquisitional, rather than adversarial manner. Despite the differences in juvenile proceedings, the trial court found the constitutional mandate that “all courts shall be open” to be clear and unambiguous.

The court’s analysis, however, did not stop there. As with most constitutional rights, the right to openness is not absolute. Finding an inherent authority of the courts to control access and the conduct of their proceedings, the trial court determined that it had discretion to close dependency proceedings when deemed appropriate. Finding the privacy interests of the children worthy of protection and the state’s interest in protecting children to be compelling, the trial court denied the Post-Gazette’s motion to open.

In affirming the trial court’s decision, the Superior Court held that where there exists a constitutional presumption of openness, the party seeking to keep the proceedings closed must demonstrate that (1) the denial of public access serves an important governmental interest; and (2) no less restrictive means to serve that interest exists.

The Superior Court noted that “to satisfy these requirements, the party seeking closure must demonstrate that the material is the kind of information that the courts will protect and that there is good cause for the order to issue.” M.B., citing R.V., 626 A.2d at 1220, n. 3. A showing of “good cause” is met by demonstrating that opening the proceedings “will work a clearly defined and serious injury to the party seeking closure.”

Emphasizing that the government interest must be compelling and that there must not be a less restrictive remedy to serve that interest, the appellate court, nonetheless, held that “the decision to grant or deny public access remains “within the sound discretion of the trial court.” M.B. Finding no abuse of discretion, the Superior Court affirmed the trial court’s decision to deny the Post-Gazette’s motion to open the proceeding.

In so holding, the appellate court noted that the trial court had carefully considered the circumstances of the case. Finding the children would suffer additional psychological and emotional harm from continued publicity and that they would be impacted indirectly as well by the reluctance of witnesses and foster parents to testify for fear of “sacrificing their own privacy,” the trial court noted that publicity under these circumstances was “inconsistent with the non-adversarial nature of juvenile proceedings.” M.B., citing Gault. In dismissing the Post-Gazette’s argument that many of the details of the children’s family life had already been disclosed, the trial court found, and the Superior Court agreed, that such circumstances warranted greater protection of the privacy of the children, not less.

The trial court also held that the county CYS agency and the guardians ad litem demonstrated “that there is no less restrictive means to serve the compelling interest in protecting the children’s privacy rights than total closure of the proceedings.” Finding no practical or feasible way to limit access to certain information and finding that such a means created a significant burden on the court and the parties to attempt to control references to sensitive material, and finding ultimately that “there is no portion of these proceedings that will not address the details of the children’s

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Child Advocacy Centers: Impacting the Present and Envisioning the Future

By Patricia Dervish

The case conference begins on time. The setting is the new Child Advocacy Center in Lehigh County, Allentown. All six disciplines — child protective services, law enforcement, prosecution, medical, mental health, crime victim advocates — are represented. Although we typically reserve two and one-half hours every other week to meet at the Child Advocacy Center to review all the county’s cases of child abuse that involve law enforcement, we still struggle to give each case the time it needs. Today the list is long. We organize our notes and thoughts to give the best attention we can to the maltreated children of our community. We begin:

Emily is 6. Her mother, crying and upset, calls the police in their small town. When she went to work, she left Emily in the care of her husband. When she returned home after a three-to-11 shift, she found her daughter and husband sleeping in their own beds. In the middle of the night, Emily woke, complaining of a bad stomachache. Her mother, a nurse, noted blood in Emily’s pajama bottoms. She immediately took the child to the hospital. On the way, Emily told her that her stepfather had “hurt her.”

Although her husband is not Emily’s father, he had been a stepfather to her for the last two years. Nothing in the past ever predicated the present situation. Emily’s mother calls the police from the hospital. She wants an investigation.

This kind of case is heard all too frequently in our county. Of course, the variables change — some children don’t report immediately, some mothers don’t believe immediately, some offenders don’t get named immediately. But in Pennsylvania alone, in 2000, some variation of this tragic theme of child abuse was reported 22,809 times. Of those reported, 5,002 allegations were substantiated.*

Prior to 1985, Emily would have been taken to a hospital and most likely seen by an emergency room physician with no special awareness of child abuse. She would have been interviewed multiple times — by medical personnel, responding police officers, child protective services, a police detective, and a prosecutor. Some of these interviews would have occurred that night. Many, however, would have spanned the next few weeks, causing unassessed damage to Emily’s young psyche. Many would have taken place in atmospheres not favorable to children.

In 1985, Robert “Bud” Cramer, then the district attorney in Madison County, Ala., found this usual way of working unacceptable for the young victims. Soon thereafter, he became the founder of the Child Advocacy Center movement and the unnamed “godfather” to the 400 centers that now exist nationwide. The national Junior League made it a priority to encourage groups around the country to approach child abuse in this new, coordinated way. In 1999, amendments to the Child Protective Services law in Pennsylvania pushed the movement forward by requiring district attorneys and directors of Children and Youth Agencies to convene investigative teams to coordinate child abuse investigations (23 Pa. C.S.A. 6365(c)). Some counties looked to their multidisciplinary teams and felt satisfied. Others convened task forces, work groups or panels of professionals to establish Child Advocacy Centers in their communities. Lehigh County chose the latter model, forming a task force of all interested disciplines and meeting for three years before our first case conference in Jan. 2000, and the opening of our center” in Jan. 2001.

The concept is brilliant in its simplicity. All agencies charged with investigating allegations of abuse establish written protocols that require cooperation and coordination to conduct more effective and efficient investigations with less trauma to the victim and family. The majority of the cases that demand collaboration are those designated under the Child Protective Services Act as Serious Physical Injury and Sexual Abuse (23 Pa. C.S.A. 6340). A Child Advocacy Center provides a place to convene the investigation team, to conduct an investigatory interview, and to connect with other family members to assess safety for the victim-child and siblings.

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Child Advocacy Centers: Impacting the Present and Envisioning the Future

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to normalize and sustain the local coalitions needed to provide help to maltreated children. Some communities have placed their centers physically, as well as administratively, within one of the six disciplines—hospitals, child protective service agencies, district attorney offices. Others have chosen to establish their centers as independent, not-for-profit organizations. Regardless of the venue chosen, there are issues and problems that need to be resolved to move forward.

But the outcome can be astounding. Rather than a fragmented response to a hurt child, the advocacy center movement asks us to cooperate rather than compete, to “lean in” rather than “lean out,” when a child has been hurt, and surround that child with the best help we can offer. Communities can look forward to the day when the crisis for Emily will be met with a response that will carry her through the difficult time in her life to a place of potential healing. In 2003, we hope the end of Emily’s story will look something like this:

The child advocacy concept encompasses a process as well as a place. Collaboration requires prompt communication, availability and the ability to respond within the time frames followed by different members of the team. Collaboration also requires respect for other disciplines, and skills for interacting among professionals who are used to working independently or, at best, in parallel arenas. Child Protective Services caseworkers, for example, are learning about the corpus delicti rule, and police investigators are learning the importance of the non-offending parent. The case conference, a critical element of the child advocacy process, helps develop these skills. In reviewing cases, the different disciplines come together in an effort to learn the language, requirements and restrictions that control the work of their colleagues.

All disciplines stand to benefit, however, and the federal government is so sure of the advantages that it has committed monies to help communities establish Child Advocacy Centers. Federal assistance is channeled through the National Children’s Alliance, which has four regional centers across the country. Pennsylvania receives technical assistance, training and consultation from the northeast regional center. The staff of the National Children’s Alliance is prepared to help communities establish their teams, decide on locations for their centers, and form and sustain the

physician prepares a pediatric

rape kit. While the physician

takes a history from the moth-
er and then the child, the
detective and child protective

services caseworker take

notes. The caseworker remains

with the mother, giving sup-
port, learning about any other
children in the household, and
constructing a safety plan for
Emily with the mother. The
detective and police officer
proceed to the home to rouse
the stepfather and ask him to
go to the police station for
questioning.

After receiving Miranda warn-
ings, the stepfather confesses
to raping Emily. He had “too
much to drink and just lost
control.” He was remorseful
and ashamed. The detective
decides to arrest immediately.
She calls the district attorney
on call and gets approval for
the charges. She and the police
officer transport the stepfa-
der, now defendant, to the on-
call magistrate for his prelimi-
nary arraignment. The defen-
dant is incarcerated. Emily and
her mother return home.

The next day

caseworker arranges for the
child to be interviewed by the
child interview specialist. The
interview is observed by the

The caseworker presenting
the case at the conference is confi-
Child Advocacy Centers: Impacting the Present and Envisioning the Future

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dent that the mother will pro-
tect Emily and has already
referred her to a support
group for non-offending par-
ents. There are no other chil-
dren in the home. At the case
conference, the mental health
caseworker makes a variety of
suggestions for long-term care
of the child. The victim’s advokate suggests starting with a
short-term educational group
for Emily, with other young
victims. The prosecutor
reports that she has already
heard from defense counsel
and is preparing for the pre-
liminary hearing. The prosecu-
tor asks and receives support
for the child during the long
criminal process ahead.

At the case conference six
months later, the prosecutor
reports that Emily’s stepfather
is serving his mandatory five-
year sentence in a state corre-
cational facility. He will be incar-
cerated or on parole for 10
years. The plea agreement
attached an additional five
years of probation, to make
sure he was under supervision
until Emily nearly reached
majority. The physician
reports that Emily’s body has
repaired. The mental health
worker reports that counseling
is going well. The family advokate reports that mother and
child are healing.****

This is the vision of the Child
Advocacy Center approach. We, in
Lehigh County, have not yet reached
our goal. However, our players and
our process are in place, and we are
working to that end.

*** "Department of Public Welfare, Annual
Report on Child Abuse: 2000.” This is the
last year for which statewide figures are
available.

** There are nine Children’s Advocacy
Centers, in the following other counties:
Lawrence, Allegheny, Delaware,
Philadelphia, Berks, Bucks and Erie.

Anne Lynn is the Project Director at
the Northeastern Children’s Advocacy
Center. She can be reached at (800) 662-
4124 or alynn@cacphilila.org

*** This vignette is based on a real case and
represents optimal functioning of the
Child Advocacy Center model. The
vignette represents a vision for the future.

Patricia Dervish is the deputy district
attorney for Lehigh County and the direc-
tor of training at the Lehigh County Child
Advocacy Center in Allentown. Ms.
Dervish is a member of the Children’s
Rights Committee and has served as a co-
chair for its fall CLE seminar.

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Child Dependency
Courts: A Rebuttable
Presumption of
Openness

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lives,” the trial court held that there is
“no alternative short of total closure”
that will serve the children’s privacy
interests.

The issue of whether
juvenile proceedings are
open or closed, however, is
not yet settled.

Faced with the same question,
just 12 days later, the Superior Court
issued a judgment order in a Cambria
County case. The Superior Court
reversed the order of the trial court
which had denied the motion of the
PG Publishing Company to open
juvenile dependency proceedings in
the subject case and remanded for a
new hearing and a determination,
consistent with the court’s holding in
M.B., as to whether the parties, who
are seeking to keep the juvenile
dependency proceedings closed,
have met their burden.

The issue of whether juvenile
proceedings are open or closed, how-
ever, is not yet settled. There remains
an Indiana County-PG Publishing
case, 2001 WDA 2002, in the appellate
pipeline. Also, it is not certain yet as
to whether any party in the M.B. case
will seek allocatur. Those on all sides
feel strongly about the issue. Stay
tuned.

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Nationally recognized for its standard of excellence in education, this annual program is designed specifically for child advocates who are continually challenged to find creative and dynamic solutions to the problems facing children today. Developed by the Pennsylvania Bar Association’s Children’s Rights Committee, it is a one-stop-shop for the novice as well as the seasoned practitioner, featuring case law updates, legislative developments, practical guidance, plus an abundance of opportunities to meet and mingle with other advocates – and judges!

In addition to a “year in review” look, get the latest on the development soon to sweep the state: open dependency court proceedings, which came out of the Joint State Commission Report on the Children and Youth Services delivery system in Pennsylvania.

Highlights:
• Hot topics in juvenile delinquency and dependency
• Judicial perspectives — featuring a panel of juvenile court judges
• The results of the Pennsylvania Juvenile Defender Assessment Survey
• Open dependency court proceedings

* The program and manual achieved international recognition in 2002, when they won the Award for Outstanding Achievement from the Association for Continuing Legal Education (ACLEA). ACLEA’s awards are highly competitive and recognize the very best from among the thousands of projects that its members produce each year.

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PBI Conference Center, 5080 Ritter Road
Rossmoyne Exit, Rt. 15
8:30 a.m. to 4:30 p.m.; registration begins at 8:00 am.

One copy of Current Issues for Child Advocates © 2003 PBI is included in your registration.
If you are ordering course materials separately, please allow two weeks after the July 15, 2003 program for shipment for books and 4 to 6 weeks for shipment of the tapes and book/tape sets. Include $4.50 shipping & 6% Pa. sales tax on all book & tape orders.

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Thomas Caffrey, supervising attorney, Lehigh County Children and Youth, and Dr. Stephen Schachner of Pittsburgh discuss the use of psychological evaluations in juvenile delinquency matters.

Dr. Allan Tepper, Esq., of Philadelphia addresses the legal and ethical implications for psychologists in child dependency cases.

Participants enjoy an opportunity to network with their colleagues from across the state.

Children’s Rights Committee Co-chair Scott Hollander (left) exchanges ideas with other child advocates during a luncheon break.
Photo Highlights from Children’s Rights Committee Fall CLE

Lourdes Rosado, staff attorney with the Juvenile Law Center in Pittsburgh, outlines the laws and regulations regarding a minor child’s consent and confidentiality.

Children’s Rights Committee Vice Chair Joyce Hatfield-Wise and Dr. Stephen Schachner of Pittsburgh discuss the strengths and limitations of psychological evaluations as utilized in termination of parental rights proceedings.

Allan Tepper and Stephen Schachner enjoy the opportunity to compare notes and socialize during a luncheon break.

Attendees respond favorably to conference topics and networking opportunities.
Your PBA Listserv

To subscribe to the listserv, complete the form on the front page of the PBA Web site (www.pabar.org). Once subscribed to the listserv you will get the following confirmation message: “File sent due to actions of administrator traci.raho@pabar.org”

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To send a message to members of the Committee listserv, address your e-mail to childrenrts@list.pabar.org.

IMPORTANT: When you reply to the message, make sure that the listserv name is included either in the “to” or “cc” fields. If you see the listserv name with “bounce” included in the name, remove that address. The “bounce” address is a black hole. You may have to manually add the listserv address to one of the address fields in order for your reply to make it to the members of that list.

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To reply to the entire listserv membership, hit “Reply to All,” and type your response in the message body. This response will go to the sender and also to the entire listserv membership.

For customer service, contact Traci Raho, PBA internet coordinator, (800) 932-0311, ext. 2255.