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## NOTES AND COMMENTS

### Who Polices Child Abuse and Neglect on Military Enclaves Over Which the Federal Government Exercises Exclusive Jurisdiction?

At the 1974 annual American Medical Association Conference a symposium was held on "Child Abuse and Neglect in the Military."<sup>1</sup> Although exact figures were unknown, it was estimated that child abuse and neglect incidents in the military were from two to three times that of the civilian population.<sup>2</sup> It was also pointed out that the military would have to face several major obstacles should it attempt to deal with this problem. For instance, since state child abuse legislation was believed to be inapplicable on military bases, a military child protection system would have to be created.<sup>3</sup> Another problem stemmed from the fact that military courts cannot take jurisdiction over civilians.<sup>4</sup> Thus, state juvenile and district courts would have to be utilized, even though state laws were thought to be invalid on military reservations.<sup>5</sup> In short, it was made clear that although there was a great need for children's protective service programs on the military bases, no such programs existed. For these reasons, the symposium was concluded with the recommendation that an official program be quickly implemented in the military for the treatment and prevention of child abuse and neglect.<sup>6</sup>

In response to this problem, the United States Army issued Army Regulation 600-48, Army Child Advocacy Program (ACAP), effective February 1, 1976.<sup>7</sup> ACAP provides for military programs designed to prevent and control child abuse and neglect in families living within the military command. These programs are implemented by well-trained military personnel operating in a coordinated system composed of three units: (1) medical personnel,<sup>8</sup> (2) child protection and case management teams,<sup>9</sup> and (3) the child advocacy/human resources council.<sup>10</sup> Its stated objectives include prevention and control of child maltreatment,<sup>11</sup> management of child mal-

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1. A REPORT OF A SYMPOSIUM ON CHILD ABUSE AND NEGLECT IN THE MILITARY, 1974 AMA Conference, Dr. Ray E. Helfer, Moderator.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*; JUVENILE JUSTICE, May, 1975, at 11.

6. *Id.*

7. ARMY CHILD ADVOCACY PROGRAM, Army Reg. 600-48 (1976) [hereinafter cited as ACAP].

8. *Id.* at § III, 13,b.

9. *Id.* at § II, 10.

10. *Id.* at II, 11.

11. *Id.* at § I, 2,c.

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treatment cases among Army families,<sup>12</sup> and coordinating military and civilian programs that impact on children's growth and development.<sup>13</sup> Underlying ACAP is the idea that a good family life affects the performance of a soldier, which in turn affects the morale, discipline, and health of the command.<sup>14</sup> This is one reason that social development and health of children of Army families are matters of concern to all commanders.

Somewhat similar to ACAP is the North Carolina Child Abuse Reporting Law, passed in 1971.<sup>15</sup> Its primary purpose is to require that reports of child abuse and neglect be made to the local Departments of Social Services (D.S.S.).<sup>16</sup> This assures that any children suspected of being abused or neglected will be identified and that protective services will be made available to such children.<sup>17</sup> The Act further requires the director of social services receiving a report of child abuse or neglect to make a prompt and thorough investigation and evaluation of the case.<sup>18</sup> Normally, this requires a visit to the home of the child suspected to be neglected or abused. If removal of the child from the home seems necessary for the protection of the child, the director shall sign a juvenile petition to invoke the juvenile jurisdiction of the district court.<sup>19</sup>

It is the purpose of this note to examine Army Regulation 600-48 in relation to the North Carolina Child Abuse Reporting Law.<sup>20</sup> The specific questions to be answered are: (1) Whether the North Carolina Child Abuse Reporting Law is applicable to civilian dependents of Army personnel inhabiting a military base over which the federal government has exclusive jurisdiction; and (2) if so, in what manner might the administration of this law be limited by the Army? This is an area of law that is relatively new to North Carolina, since the North Carolina Act was not enacted until 1971<sup>21</sup> and ACAP in 1976.<sup>22</sup> Although no North Carolina cases directly dealing with this issue exist, there has been a great deal of uncertainty as to the rights of civilians living on federal enclaves to state services and to the duty of state authorities to provide them those services in other jurisdictions.<sup>23</sup>

Ordinarily the acquisition by the United States of exclusive territorial jurisdiction assumes the absence of any interference with the exercise of the

12. *Id.* at § I,2,d.

13. *Id.* at § I,2,a.

14. *Id.* at § I,4,a.

15. N.C. GEN. STAT. §§ 110-115 through 110-122 (1975).

16. N.C. GEN. STAT. § 110-116 (1975).

17. *Id.*

18. N.C. GEN. STAT. § 110-119 (1975).

19. *Id.* at (2)(b); N.C. GEN. STAT. § 7A-279 (Supp. 1975).

20. *Supra*, note 15.

21. *Id.*

22. *Supra*, note 7.

23. Whitfield, *Rights of Federal Enclave Residents to State Residents Benefits*, 49 CALIF. L. REV. 550, 551 (1961).

functions of the federal government.<sup>24</sup> However, as Mr. Justice Reed stated in *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 99 (1940):

The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary its language has long been interpreted so as to permit the continuance until abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred. This assures that no area however small will be left without a developed legal system for private rights.<sup>25</sup>

Furthermore, where a particular statute has not been enacted prior to the transfer of sovereignty, but where "the basic state laws or . . . scheme for guaranteeing the welfare of the individuals residing in the area antedates the jurisdictional transfer, changes in the regulatory means of implementing the basic scheme should not preclude the state's exercise of jurisdiction in the area of law involved."<sup>26</sup>

The first question to consider is whether the North Carolina Child Abuse Reporting Law is applicable on a military base under exclusive federal jurisdiction. Since the United States obtained exclusive jurisdiction over the lands comprising Ft. Bragg between 1919 and 1943,<sup>27</sup> and the North Carolina Child Abuse Reporting Law was not enacted until 1971,<sup>28</sup> it would appear that the North Carolina law would not apply there. However, a convincing argument could be made that this North Carolina law is an outgrowth of several related statutes<sup>29</sup> concerning the processing of juvenile cases,<sup>30</sup> the providing of juvenile services,<sup>31</sup> and criminal sanctions for child abusers.<sup>32</sup> These related statutes antedate 1920, before most of Ft. Bragg became subject to federal jurisdiction. On this basis alone it seems that the North Carolina law is applicable at Ft. Bragg.

However, a stronger reason exists to support this belief. "[T]he particular field of domestic relations, including the adjudication as to the custody of an abused and neglected child, is exclusively one belonging to the states, not to the federal government."<sup>33</sup> Except in rare instances, where a state does not accept jurisdiction over a juvenile,<sup>34</sup> federal courts cannot exercise jurisdiction over a child custody proceeding.<sup>35</sup> Furthermore, recent congression-

24. *Paul v. United States*, 371 U.S. 245, 267 (1963); 41 N.C. ATT'Y GEN. 581 (1971).

25. *James Stewart and Co. v. Sadrakula*, 309 U.S. 94, 99 (1940).

26. 41 N.C. ATT'Y GEN. 580, 581 (1971); *see also* Paul, *supra*, at 269.

27. Inventory Report on Jurisdictional Status of Federal Areas within the State as of June 30, 1962, at 575.

28. *Supra*, note 15.

29. 41 N.C. ATT'Y GEN. 582 (1971).

30. N.C. GEN. STAT. §§ 7A-277 through 7A-289 (Supp. 1975).

31. N.C. GEN. STAT. §§ 110-22, 23 (1975).

32. N.C. GEN. STAT. § 14-316.1 (Supp. 1975).

33. *Supra*, note 29, at 581; *Ex parte Burrus*, 136 U.S. 586, 593-594 (1889).

34. 18 U.S.C. § 5032 (1974).

35. *Ex parte Burrus*, 136 U.S. 586, 593-594 (1889); 41 N.C. ATT'Y GEN. 580, 581 (1971).

al legislation indicates a strong federal policy to support child abuse and neglect prevention and treatment programs through state agencies.<sup>36</sup> Thus, it seems clear that the North Carolina law is not in conflict with any federal legislation.

In the past, however, federal enclave inhabitants were often denied many benefits of state laws such as voting in state elections, using state courts to obtain a divorce, and benefiting from state poor relief laws.<sup>37</sup> These denials were based on three primary arguments:<sup>38</sup> (1) The grant of state residency benefits would be incompatible with the exclusive federal jurisdiction over the enclave, (2) Enclave residents do not automatically become state residents, (3) Enclave inhabitants are not subject to the burdens of state residency. Gradually, as these arguments have fallen there has emerged a general trend to grant residency benefits to state inhabitants.<sup>39</sup>

One case following this trend is *Board of County Freeholders v. McCorkle*, 98 N.J. Super. 451, 237 A.2d 640 (1968), in which the New Jersey Superior Court declared that state laws relating to the providing of welfare services for children (care and guardianship of dependent children), and to the commitment of the mentally ill to state hospitals were applicable to persons living on military bases under exclusive federal jurisdiction. In this case Burlington County, plaintiff, sought a declaratory judgment that such state services were inapplicable to the inhabitants of Ft. Dix. The State of New Jersey and the United States, through an *amicus curiae* brief, contended that these state services did apply to residents and nonresidents alike on the base. The court declared that application of these New Jersey laws did not interfere with the federal government's exercise of exclusive jurisdiction on the military base. These laws were applicable to all on-base inhabitants, whether residents of the state or not. Thus, the state was empowered to take custody of dependent children and the mentally ill who lived on the military base. Although this case was decided prior to the enactment of ACAP, it should be controlling as to appropriate state welfare services on a military base.

The next question to consider is whether the North Carolina Child Abuse Reporting Act has been "abrogated"<sup>40</sup> by ACAP. Although both the North Carolina law and ACAP purport to provide protective services to the same children, this constitutes no conflict. As mandated by ACAP the case management team's activities and procedures must conform to the law.<sup>41</sup> Whether Army personnel must report incidents of child maltreatment to civil

36. 42 U.S.C. §§ 1397(3), 1397(a) (Supp. IV. 1970); 42 U.S.C. §§ 5101-5106 (Supp. 1970); 42 U.S.C. § 620 (Supp. IV. 1970); 42 U.S.C. § 652 (Supp. IV. 1970); 42 U.S.C. § 2996 F(b)(4) (Supp. IV. 1970).

37. *Supra*, note 23, at 551.

38. *Id.* at 553.

39. *Id.* at 552.

40. *Supra*, note 25.

41. Army Reg. 600-48, § II, 8.d.1 (1976).

authorities will depend on state law.<sup>42</sup> Army attorneys must provide guidance to Army personnel on the scope of authority state officials may exercise over dependents residing on base.<sup>43</sup> In short, ACAP mandates that the Army follow state child protection statutes. It emphasizes close coordination with state agencies in this area.<sup>44</sup> In this way, ACAP's underlying concept<sup>45</sup> of improving the soldier's family life which, in turn, affects the health of the command, will be enhanced. It should also be remembered that only North Carolina courts, not military courts, can take juvenile jurisdiction over neglected and abused children physically present in this state.<sup>46</sup> Therefore, absence of North Carolina law would leave military bases without a developed legal system for the adjudication of children's rights. Such a result would clearly be in violation of the language and spirit of *Sadrakula*, *supra*.<sup>47</sup>

The last question to consider is whether the administration of the Child Abuse Reporting Law<sup>48</sup> (in-home investigations, child removals, etc.) by state authorities on military bases can be limited by military authorities. As stated in the *Sadrakula* case: "[T]he authority of state laws or their administration may not interfere with the carrying out of a national purpose. Where the enforcement of state law would handicap efforts to carry out the plans of the United States, the state enactment must, of course, give way."<sup>49</sup> Yet, this question involves more than a possible conflict between the military and North Carolina. It involves the possible conflict of two federal policies: (1) The policy to provide child's protective services to all children through state agencies;<sup>50</sup> and (2) the policy of having the base commander exclude from the base any persons inimical to security, discipline, and morale.<sup>51</sup>

It has long been recognized that a military base commander has the authority to summarily exclude from the base any persons he believes to be inimical to the morale, discipline, or loyalty of his troops.<sup>52</sup> Nevertheless, although the base commander has wide discretion in this area, he cannot act invidiously, irrationally, or arbitrarily.<sup>53</sup> Although it is unquestioned that a commander can place restrictions on access to the base by civilians,<sup>54</sup> the

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42. Army Reg. 600-48, § II, 8.d.2 (1976).

43. Army Reg. 600-48, § II, 8.d.3 (1976).

44. Army Reg. 600-48, § I.2.a., 5.b § II. 10.c.8.c., § III,12 (1976).

45. *Supra*, note 14.

46. N.C. GEN. STAT. § 7A-279 (Supp. 1975); *Spence v. Durham*, 16 N.C. App. 372, 194 S.E.2d 216 (1972); *Reid v. Covert*, 354 U.S. 1 (1956).

47. *Supra*, note 25.

48. *Supra*, note 15.

49. *Supra*, note 25, at 103, 104.

50. *Supra*, note 36, *Board of Chosen Freeholders v. McCorkle*, 98 N.J. Super. 451, 237 A.2d 640 (1968); *Board of County of Commissioners v. Donoho*, 144 Colo. 321, 356 P.2d 267 (1960).

51. *Cafeteria Workers v. McElroy*, 367 U.S. 886 (1961).

52. *Id.*

53. *Greer v. Spock*, 424 U.S. 828 (1976).

54. *Supra*, note 50.

extent of any restrictions in relation to the carrying out of state law has not yet been decided.

In the recent case of *Greer v. Spock*, 424 U.S. 828 (1976) the base commander of Ft. Dix, pursuant to base regulations banning speeches and partisan political demonstrations, denied permission for a candidate for the U.S. Presidency to hold a political rally on base. Ft. Dix was an "open" base over which the federal government had exclusive jurisdiction. The Court reasoned that although the public was allowed freely to visit the base, it did not necessarily follow that the base had become a public forum for first amendment purposes. It was held that the federal government retained the power to preserve property under its control for the proper purpose for which it was lawfully dedicated. In this instance, that purpose was to train soldiers, not to provide a public forum for partisan political rallies.

Clearly then, a base commander has the authority to exclude from base any social worker whose actions become a clear danger to the loyalty, discipline, or morale of the troops of his command.<sup>55</sup> However, it seems highly improbable, that on-base investigations by state authorities of suspected cases of abuse or neglect would be recognized as a threat to troop loyalty, discipline, or morale by a court of law. This is because it would often be impossible to identify maltreated children without investigations in the homes on base by social workers. Since the underlying idea of ACAP is to identify, prevent and control child maltreatment<sup>56</sup>—which will improve the soldier's family life—which, in turn, affects the morale, discipline and health of the command<sup>57</sup>—the administration of the protective services program by state authorities on military bases serves, not as a threat, but as an aid to the overall good health of the command. Similar reasoning was used by the Supreme Court of Colorado in *Arapahoe County Board of Public Welfare v. Donoho*.<sup>58</sup> In that case Arapahoe County contended that on-base investigations of military base inhabitants, who were seeking state poor relief benefits, might be frustrated by military authorities. The court reasoned that since that welfare program was contemplated by federal statute, it would be illogical for the federal government (meaning military authorities) to interfere with county officials carrying out such a program.<sup>59</sup> This is further substantiated by the federal government's filing of an *amicus curiae* brief, in the *McCorkle* case contending that children living at Ft. Dix were entitled to all services provided by the New Jersey Bureau of Children's Services, including the "care, custody, guardianship, maintenance, and protection of children."<sup>60</sup>

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55. *Supra*, note 52.

56. Army Reg. 600-48, § I.2.c (1976).

57. *Id.* at § I.4.a.

58. 144 Colo. 321, 356 P.2d 267 (1960).

59. *Id.* at 331, 356 P.2d at 274.

60. Board of Chosen Freeholders v. McCorkle, 98 N.J. Super. 451, 455, 237 A.2d 640 (1968).

Although *Donoho* and *McCorkle* indicate that administration of state law on military bases does not interfere with federal law, they are limited in that they involve only state and county governments; not the military. It must be remembered that no cases exist which directly involve the extent to which a base commander can regulate children's protective service activity by state personnel on base. The cases previously alluded to simply state that (before the enactment of ACAP) where federal funds partially support state child welfare programs, those states must also provide child welfare services to children residing on military bases. But, from all indications, it seems that the carrying out of such programs does not interfere with the military.

#### CONCLUSION

It is clear that exclusive jurisdiction does not mean absolute jurisdiction in all areas of law. The subject of child abuse and neglect belongs to the laws of the states and not to the federal government. However, state administration of these laws on a military base is subject to regulation by the base commander, in the interests of discipline and security. Although the extent to which military restrictions on state authorities on base is not clear, it seems certain that full proscription of such state activity would not be supported by a court of law. State social workers have a right and a duty to provide children's protective services on military bases.

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### Expert Medical Opinion Evidence in North Carolina: In Search of a Controlling Precedent

#### I. INTRODUCTION

The common-law system of proof has always been rigid and demanding in its insistence upon the most reliable source of information in a given case; particularly when the testimony is that of an expert medical witness.<sup>1</sup> In North Carolina, and most other jurisdictions, this policy has resulted in the gradual development of highly complex evidentiary rules relating to the admissibility of opinion and hearsay evidence by qualified experts.<sup>2</sup> Although his value as an expert<sup>3</sup> is desired by the courts because of his superior

1. C. MCCORMICK, *LAW OF EVIDENCE* §§ 10-13 (2d ed. 1972). (hereinafter cited as MCCORMICK)

2. *Id.* at §§ 13-15.

3. Qualification as an expert is largely a question of fact and ordinarily within the exclusive province of the trial judge. Qualifications are not rigid. "It is enough that, through study or experience, or both, he has acquired such skill that he is better qualified than the jury to form an opinion on the particular subject." (Citations omitted) 1 STANSBURY'S NORTH CAROLINA EVIDENCE 429 (Brandis Revision, 1973). (hereinafter referred to as STANSBURY)