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Editorial Notebook

The End of Special Education?

Private Schools At Public Expense

School boards from Maine to California cringe at the mention of Shannon Carter, the learning-impaired ninth grader who won a momentous Supreme Court victory three years ago. Dissatisfied with Shannon's education in the Florence County, South Carolina, public schools, her parents placed her in a private academy — then sued the county for tuition. The Court ruled for the Carters, saying the county had failed to provide an "appropriate public education," as required by the Federal Individuals With Disabilities Education Act. Earlier rulings allowed reimbursement for private schools approved by the state; the Carter decision expanded the list to any and all schools that might be appropriate to the child's disability. The county paid up. Then came the deluge.

The Carter case and its progeny have transformed special education law from a minor specialty into a thriving and profitable industry. The cases are too new to get an accurate national count. But Shannon's lawyer, Peter Wright, has himself consulted in thousands of cases and toured the country, teaching his skills to lawyers and parents alike. The National School Boards Association says suits for private school reimbursement have mushroomed dramatically.

New York City is particularly vulnerable because of its bitter history of school litigation and its abysmal special education effort. Three years ago, New York City faced only two Carter suits. Last year there were 210, costing the Board of Education more than \$3 million. Fearing that the cases could double next year, the city is drilling local boards on how to protect themselves against litigation.

The suits are a hazard, particularly to poor systems. But they also provide a motive for special education programs to reform themselves and begin meeting their legal responsibilities.

Phoebe Redmond, a deputy director of the school board's legal department, admits that reimbursement suits sometimes have merit, but sees the Carter enterprise as "a voucher program for the rich." Ms. Redmond paints a portrait of parents who buy seats in pricey private schools, then seek lawyers who specialize in

making the public sector pay. But Mr. Wright says the parents he knows turn to lawyers only as a last resort — after the schools have failed their children again and again. He says that his typical case involves a child like Shannon, who was learning impaired and entered seventh grade not knowing how to read. When the school wrote Shannon off, her parents placed her in a private school and sued for reimbursement. Shannon jumped several grade levels and graduated reading on par.

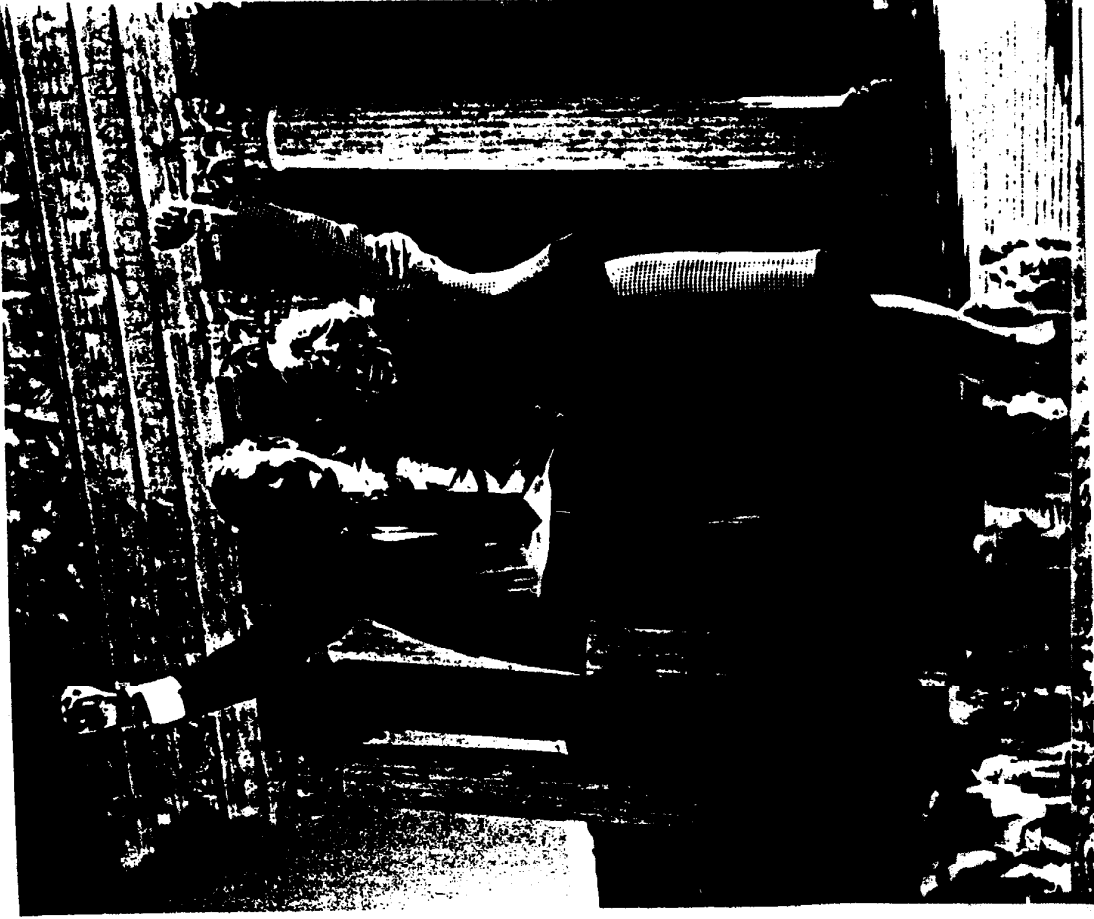
The true picture lies somewhere between Mr. Wright's and Ms. Redmond's. What's clear is that many special education programs have become a dumping ground for difficult students. The program's stated purpose is to prepare students for the mainstream. But in New York State, only 20 percent of children who enter special education return to regular classes. Most of the rest fail to graduate. Of those who graduated in 1995, only 4 percent got Regents diplomas.

The failings are both local and Federal in origin. The Individuals With Disabilities Education Act improved the way these children were treated, but also brought problems of its own. It requires an individualized education plan for every child, to be reviewed every year. The plans focus too much on clinical assessments, too little on the instructional life of the child. Teachers describe them as useless and say they ignore them. Yet the system races to complete the plans, fearing that a missed deadline or a minor procedural error will result in a lawsuit. The process occupies an enormous work force and spends a great deal of money that would be better used elsewhere.

In 1979, delays in placing special education students led to a historic lawsuit named for Jose P., a disabled child whose plight typified the problem. New York City entered into a consent decree, which effectively created the special education bureaucracy of today. That bureaucracy now absorbs nearly \$1.6 billion year, about 20 percent of the education budget. Restructuring the system will be difficult. But the Carter suits and the scenario they portend could well be the spur that gets it done.

BRENT STAPLES

Lawyer wins personal victory in education case



Pete Wright and Shannon Carter celebrate their victory on the U.S. Supreme Court steps.

BY DONNA CHILDRESS

Associate Editor
Richmond attorney Peter W.D. Wright has just lived an attorney's dream. He has won a United States Supreme Court case—and the opinion was unanimous.

But for Wright, the victory was even sweeter because he helped make law on a topic very important to him—educating children with learning disabilities.

He considers the issue significant because he is very familiar with learning disabilities. He had them himself.

The Carter case

The Supreme Court case, handed down Nov. 11, *Florence County School District Four v. Carter*, (VLW 093-1-001) involved Shannon Carter, who was classified as learning disabled while a 16-year-old student in the ninth grade (see story, page 5).

The school system had evaluated her for learning disabilities two years prior to her initial diagnosis, in 1983, but had misdiagnosed her as lazy and unmotivated, said Wright. At that time, the school officials recommended that her parents push her to work harder. Her parents followed the school system's advice, and pressured her about her studies.

By age 16, Shannon was functionally illiterate and borderline suicidal, said Wright.

Shannon's parents sought private counseling for her then, in February of 1985. The counselor suggested Shannon undergo a complete psychological evaluation. The evaluation revealed that Shannon was average to above average in intelligence, but had learning disabilities. Experts then recommended that Shannon study in a self-contained program, Wright said.

The school district proposed an Individual Education Program which would allow her three hours a week of individual instruction and would allow her reading comprehension to progress from a 5.4 grade level to a 5.8 grade level in a year's time. Shannon's parents considered this plan inappropriate, and asked that she be transferred to special education programs in one of two nearby public schools, or to Trident Academy, which specializes in teaching students with learning disabilities.

The school district refused.

The parents then placed Shannon in Trident Academy, and by her graduation she was reading at the twelfth grade level.

Litigation began after an August 1985 administrative hearing.

In the U.S. Supreme Court case, Shannon's parents sought reimbursement for the tuition they paid to send Shannon to a private school for the learning disabled after the public school system failed to give her an adequate education.

The school district argued that their plan of three hour-long tutoring sessions a week was appropriate for Shannon. The school district also argued that because the parents placed Shannon in a private school that did not meet state education standards, they should not be reimbursed.

The Supreme Court affirmed the Court of Appeals' decision, ruling that the parents may be reimbursed for their tuition expenses.

Empathy

Wright finds special education cases especially significant because he, too, suffered from learning disabilities.

Wright said his own disabilities were (See Wright, page 5)

Wright

(Cont'd. from page 4)

discovered when he was in the third grade. At that time, a friend of his parents' was doing graduate work in psychology and, as part of his studies, was testing children.

Wright was found to have three learning disabilities. These disabilities caused him to "mirror write," and to reverse both his reading and speech. He often confused pairs of words such as "up" and "down," and "over" and "under," he said.

Wright's disabilities were controlled by a medicine that stimulated certain parts of his brain, and by tutoring.

For a two-year period, Wright took personal lessons every day. In the third grade, he was illiterate, he said. But by the sixth grade, he was reading on an eleventh grade level.

After the extensive remediation, "things just took off," he said.

But Wright was not entirely rid of the disabilities' effects.

"In the high school years, [the disabilities] still did present some difficulties to me," he said. As a student in the Washington, D.C. public schools, he was steered away from college preparatory classes and put instead on a business track, he said. As part of that curriculum, he took two years' worth of typing class.

But the typing lessons were advantageous in the end. Now, he types all his briefs, he said.

After spending time at a New England school with a small teacher-student ratio, Wright went on to college. He majored in psychology, and later pursued a graduate degree in the same subject. He used his psychology background during nine years of work in the juvenile justice system, serving in such roles as house parent and probation officer.

Now he uses the psychology background as an attorney. Wright estimates that 50 percent of his cases deal with children who have special education needs.

Once he earned the law degree, that practice concentration was a natural development, he said.

Chance meeting

Meeting the Carters and becoming involved in Shannon's case was a "function of luck," Wright said.

As part of his work, Wright often gives speeches for parents of children with special education needs. "Being the learning-disabled grown-up, a lot of people like me to talk" because seeing his progress gives them hope, he said.

One of his speeches was scheduled in Charleston, S.C., several days after the district court opinion in the *Carter* case was released. When he arrived in Charleston, he learned that the Carters

would be coming to hear the speech. Wright then met with them and asked if he could refer to their case in his talk. They agreed, and later asked him to help with the 4th Circuit appeal.

Wright took over the case completely when the attorney who wrote the 4th Circuit brief accepted a job with the government.

Preparing the case

Wright's theme for arguing the *Carter* case might well have been the Boy Scout motto: "Be prepared."

Ten days before the oral argument, Wright said he went into seclusion and studied the case intensively. He outlined all amicus curiae briefs filed in the case—over 30—and read each case cited in each of the briefs. Then he went back to the initial hearing and read every part of the case and reviewed all the exhibits—twice.

Wright said he also talked to every attorney who had argued special education cases before the Supreme Court in recent years, and learned which justices he would need to convince on which issues.

In the two days before his Supreme Court appearance, Wright participated in mock oral arguments with a public citizen litigation group, an experience he describes as "absolutely brutal." But that brutal experience prepared him for any question the justices could ask, he said.

"Fear is what motivated me," Wright said. He was afraid he would go down in special education history as the attorney who had lost the *Carter* case, he said.

"Once I learned when [the oral argument] was scheduled, I started having nightmares," he said. In one nocturnal fright, Wright dreamed he had forgotten to put on his shoes and socks before going to court, and was presenting his oral argument to the Supreme Court barefoot, he said.

But the embarrassing situations that haunted Wright's dreams did not materialize in court.

Arguing before the Supreme Court was "one of the greatest highs I've ever had in my life," Wright said. The argument itself is like football, Wright said. "Once the ball's in the air, you forget the fans," he said, noting that the courtroom was packed. Wright spent his time trying to sense where a justice was going with a question and focusing "on where I needed to knock down some of [the opposing attorney's] points," he said.

Wright seems equally pleased with the case's outcome and the effect the *Carter* opinion will have on children with special education needs.

"Because of one case and one child, the [special education] child has had so many doors opened wider now," he said.

Wright said he believes the case has had a major impact, even though school systems claim the decision will cost them

more money.

The Supreme Court said, "Do what you're supposed to do," Wright said.

One brief filed in favor of the school system said that schools were serving twice as many special education children now and spending twice as much money as they did in the past, he said. But serving more children was the intent behind the Individuals with Disabilities Education Act, he said.

Wright said he also feels the decision is "going to cause parents to be more aware of what rights they have." Now, parents can purchase tutoring for their child or enroll the child in an appropriate private school if needed, he said.

Response

The ruling certainly has had an impact on Wright's law office. He estimates he has received a few hundred phone calls since the decision came down.

On Oct. 6, the day of the oral argument, Wright put a message on his voice mail describing the case and asking callers to leave their names and numbers if they wanted to talk to him personally.

The TV news that day showed Shannon Carter walking up—and down—the steps outside the U.S. Supreme Court. "That's when the flood [of calls] started. It just intensified after the decision," he said.

When the decision was released, the Supreme Court called at 10:02 a.m., Wright said. One half-hour later, CBS News was on the phone. After that media representative called, "there was a whole slew of them," he said.

Wright also has been contacted by the New York Times and drawings of him have appeared during Dan Rather's report.

"Since the...*Carter* case, we don't get many calls live in the office," Wright said. The firm has "a master list [of callers] that keeps getting bigger and bigger," he said.

But Wright would argue before the Supreme Court again.

"Having done it now, I'm going to keep my eye open for any special education cases" that might appeal to the Supreme Court, especially those cases like the *Carter* case with a split in the circuits, he said.

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SUPREME COURT DECISION MAKES LAWYER A CELEBRITY

Case eases education for handicapped children

BY ALAN COOPER
 Times-Dispatch Staff Writer

Peter W.D. Wright, a sole practitioner with a law office in Henrico County, became a legal celebrity overnight.

His moment of glory, a unanimous U.S. Supreme Court opinion on Tuesday that made it easier for handicapped children to get an appropriate education, had a small cloud over it. The case came down the same day that the Supreme Court decided a major sexual harassment case.

The harassment case made the front page of almost every paper in the country. Wright's case was inside, but he was overwhelmed by the response to it nevertheless.

So overwhelmed, in fact, that he put a two-minute recording on his law office telephone briefly explaining the case and advising those interested in the Individuals with Disabilities Education Act where they could call for additional information.

The message told anyone who wanted to talk to him about the case to leave a telephone number where he or she could be reached in the evening.

A major part of Wright's practice is representing parents who believe that local school boards are not giving their handicapped children an appropriate education. The federal law requires the school system to pay for such an education at a private school if the school system does not offer a program that meets the child's needs.

Wright, 47, came by his interest in the subject naturally. He suffered from an attention deficit disorder and learning disabilities in language and math. Medication and intensive one-on-one therapy every day when he was a third grader helped him overcome the disabilities, but his treatment was at his parents' expense because it came before the federal law was enacted in 1975.

The case before the Supreme Court

involved Shannon Carter, a high school student in Florence County, S.C., who had a language disability similar to Wright's.

She was functionally illiterate at age 16, and the school system proposed giving her three hours a week of personal instruction with a goal of helping her make four months of progress during the school year.

Her parents found that suggestion unacceptable and placed her in the private Trident Academy in Mount Pleasant, S.C., where she received much the same therapy Wright had gotten more than 30 years earlier.

Shannon progressed rapidly at the school and received a diploma in three years.

Her parents sued to recover the \$35,700 they spent for the special education program.

The school system contended that it shouldn't have to pay because the state had not approved Trident Academy for special education and because some of its teachers were not certified to teach in the state. The school is accredited by the Southern Association of Colleges and Schools.

The Carters were represented at first by David Burlington, a lawyer for a federally funded agency that provides representation for the handicapped. Burlington won a ruling in the trial court that the Carters were entitled to be reimbursed even if Trident had not been approved by the school district and did not meet state standards.

A few days after the trial judge's ruling, Wright was in South Carolina speaking to a group of parents of handicapped children. The Carters were in the audience and had heard Wright speak on the law a few years earlier in North Carolina.

Wright asked him to assist on the appeal. Burlington wrote the brief for the 4th U.S. Circuit Court of Appeals, but Wright took over and argued the case there after Burlington was appointed a hearing officer for the Social Security Administration.

Wright prevailed in the 4th Circuit in an opinion

by Judge J. Harvie Wilkinson III that conflicted with a decision by a federal appellate court in New York. That court had held that a private placement cannot be appropriate if the school does not meet state standards.

The Supreme Court agreed to hear the case to resolve the conflict between the two courts.

Wright said he immersed himself in the case for 10 days preceding the argument before the Supreme Court on Oct. 6. He said he twice reread the case record and all relevant court opinions. He even acquired a tape recording of 23 oral arguments that had been presented to the court in noteworthy cases.

The argument itself was "the absolute ultimate experience for an attorney. It gets no better than that. I can't tell you the high that I had. It lasted for a week and a half."

He said he was very impressed by the response of the court to his argument. "They knew the case inside and out."

Seventeen states, the National School Boards Association and the National League of Cities filed briefs in favor of the school system. The federal departments of Justice and Education supported Shannon.

Shortly after Wright's argument, Justice Sandra Day O'Connor issued the opinion affirming the lower court rulings.

Wright predicted that the practical result of the decision will be that school systems will be more cautious about offering only one alternative for handicapped children and "drawing a line in the sand."

O'Connor's opinion is consistent with the law's thrust of providing a continuum of possible responses to a child's handicap, he said.

He acknowledges that the states and school boards are probably right in concluding that the ruling "will cost more money now. But it will have a significant positive impact in children getting out of school able to read, write and do arithmetic."



GETTING THE MESSAGE. The response to Peter W.D. Wright's case was overwhelming.

The balance of Wright's practice consists largely of work in juvenile court and domestic relations, including serving as a mediator in divorce cases.

Representation of handicapped children is "not a lucrative area at all," he said.

Parents who seek legal help tend to be already "financially stretched out" by the expense of hiring mental health professionals to help their children.

The federal law provides for the payment of attorneys' fees to parents if they prevail. But school systems seldom pay attorneys' fees because most cases are settled under an agreement that does not provide for them.

As a result, Wright said, he frequently winds up getting less than his full fee.

He recalled one case in which he put in \$25,000 worth of work to win an out-of-state placement only to have the parents decide not to take advantage of the decision because the child became homesick.

Wednesday, September 28, 1983

Education lawyer has special knowledge

By Nancy Finch
Special Correspondent

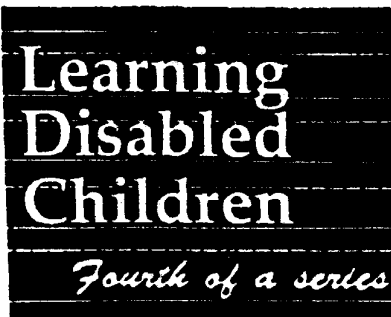
Asked his age, Peter W.D. Wright picked up a calculator, punched in some dates, leaned back in his chair and answered, with a smile, "37."

He was unconcerned that he'd had to make use of a calculator to figure his age. "Yeah, I had problems with math," he said matter-of-factly.

Wright is a lawyer. His educational credentials and his intelligence are obvious. But Wright also is learning disabled. He is successful because he was blessed with educated parents (his father is a Harvard University graduate, his mother has a degree from Radcliffe College) and he grew up in Washington, where, despite many troubles in primary grades, he had access to facilities for children with learning disabilities. That was before most people had ever heard of learning disabilities.

In his Richmond law office, Wright keeps on file his report cards from his first years in school.

They are consistent. "Peter is im-



mature, very often in mischief, capable of better work, does not listen to the teacher, is too free with his fists, reverses figures and letters, needs to improve his concentration, has to be spoken to frequently, wastes time," were some of the comments.

"I was extremely hyperactive," Wright said. When he was in about the third grade, a friend of his parents' who was doing graduate work in a psychology program asked to test Peter. He was testing friends' children as part of a class requirement.

"It was just by chance but he picked up some bizarre problems. I

had a high IQ but I was a low achiever. There was lots of scatter [widely varying scores]." He recommended a full educational evaluation from a diagnostician as well as a neurological and a psychological evaluation."

Wright said his parents followed their friend's recommendations and more testing showed that Peter had dyslexia.

He could barely read. He often reversed both his writing and his speech. His speech was disorganized and often even garbled.

Intensive remediation was recommended. Peter saw a tutor every day after school for two years. He also attended a summer camp in Vermont for children with dyslexia. And he was put on Ritalin, still used today as a drug approach to calming hyperactive children.

School was one long hassle for Wright.

His background has made him an unusual lawyer with unusual understanding of and empathy for what is rapidly becoming a new branch of law. Few lawyers are as well-equipped to handle the legal cases that are developing as a result of Public Law 94-142.

It isn't in the least unusual for Wright to receive telephone calls and letters from around the country, either from frustrated parents or other lawyers who have heard about Wright and seek his help in this new area of law that Wright calls "education problems."

Obviously, since Public Law 94-142 was passed only eight years ago, there has not been a lot of time for lawyers to have experience with it or for a great wealth of precedents to have been set. But that is changing quickly, too.

Wright is a subscriber to "Education for the Handicapped Law Report," a national review of cases and their results involving the law which provides for education for the handicapped. These cases have accumulated with such rapidity that Wright's volumes are thick and heavy. They are, however, invaluable in the growing number of "education problem" cases that Wright is handling.

He has become an expert in the area of education law. He is well-known to local and state educators. He is quite knowledgeable about the workings of most of the local school systems and how they handle special education. He has represented parents in cases before most of the area school administrations and many outside the Richmond area as well.

Not only does his own experience with dyslexia come in handy in helping resolve special education loggers between parents and school administrations but his background as a psychologist also is helpful. He has an undergraduate degree in psychology from Randolph-Macon College and 30 hours of graduate work in psychology with emphasis in counseling from Virginia Commonwealth University. He received his law degree from the T.C. Williams School of Law at the University of Richmond.

"When a psychologist starts talking about standard deviation, I know exactly what they're talking about," Wright said.

When Wright accompanies a parent to a hearing involving a request for services from a public school system, there is no doubt that Wright knows what he is talking about. He assuredly rattles off the names of tests and test results and isn't about to be intimidated or confused by figures that can be exasperating to the inexperienced.

Wright said he would not want his law practice to be devoted entirely to education cases. "Then you would lose touch with everything else." But his concerns about the problems of the learning disabled run deep. His memories of his childhood and all those report cards that cited his behavior failings and his difficulty in learning are still vivid to him.

"I became an emotional dropout. I felt stupid and I had trouble getting along with my peers. I remember having my written work made fun of by teachers in front of the class."

The dyslexia isn't gone. "It's a compensatory type of thing. I have to constantly organize and reorganize myself to stay on task.

"I lip read all the time. If people talk with their hands over their mouths, I ask them to move them. I

Wednesday, September 28, 1983

Education lawyer has special knowledge

don't rely on my memory. I dictate or take copious notes."

Wright believes his learning disability is genetic. His grandfather "made a million but he couldn't read or write." His 11-year-old son has a visual perception problem. But after help, Wright says, the boy is "doing exceptionally."

As a board member of the Virginia Association for Children with Learning Disabilities, Wright has been active in this association that seeks to aid parents and children in obtaining special education services. He is frequently called on to speak at meetings or conventions as an example of one who has overcome learning difficulties and gone on to be a success.

Wright handled 77 education problem cases last year and he won about 80 percent of them. He laughed. "It's not really a win or lose situation. It's often just a modification of something. . . . One out of every four consultations leads to a case," Wright said.

When a parent calls him to object to the school's classification of a child as retarded, when the parents feel sure the child is either learning disabled or emotionally disturbed, Wright first asks for testing.

If there is a discrepancy between the results that the outside examiners obtained and those of the school, Wright then asks for an outside evaluation of the test results. If all testing shows that the child is mentally retarded, then Wright informs the parents that the placement in a special education program is, apparently, appropriate. Otherwise, he proceeds with requesting a due process hearing for re-evaluation of the case, an official process provided for by Public Law 94-142.

TOMORROW: Awareness of the learning disabled has come a long way, but much still needs to be done.