For the first time

Children have their own advocate agency

By MARLENE CIMONS
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WASHINGTON--Children, often called the most under-represented group in America, will finally have their own network of full-time advocates working across the country for reform in such areas as education, health and juvenile justice.

The new nation-wide rights program for children, the Children's Defense Fund, began here as an arm of the Washington Research Project, a civil rights and education think tank.

"Children are at the end of the totem pole in so many ways," said Marion Wright Edelman, director of both the WRP and the CDF. "They are often nonpersons under the law. There is no public policy that recognizes children as individuals in their own right."

With a total of about $700,000 for the first year, the fund is based here but expects to affiliate with local groups all over the nation working in their own communities on related programs. Initially, the Children's Defense Fund will concentrate on six areas:

--The right to education for children who have been excluded from school;

--The classification and labeling of children and their subsequent placement in special education classes and institutions;

--The right to treatment and education for institutionalized children:

--The treatment of children by juvenile justice systems and children's agencies;

--The right to adequate medical care and delivery of health services to children;

--The use of children as subjects for medical and drug research.

Every child has a basic right to an education. Census data show that there are between 1.5 million and 2 million children between the ages of 7 and 15 who are not enrolled in school," said William Smith, a staff member of the fund. "At the moment, we can only speculate as to why.

The Fund has begun a state-by-state analysis and plans thoroughly to examine a group of elected target states by talking with state educators, families and lawmakers. "We won't know anything more specific until we go out into the field, do some case histories and examine state laws," Smith said.

WRONG CATEGORIES

Research in the second area, that of labeling and classification of children, will be targeted in the District of Columbia, California, Louisiana, Michigan, Alabama, South Carolina and Georgia.

"The problem here is that a large number of kids in the school system are inappropriately placed," said Audrey Colom, directing this project. "Black kids, for example, are tested and the tests are standardized along white, middle-class norms, and they do badly and are placed in a separate class.

"The same with Spanish-speaking children whose English is not good. There also is sex discrimination. Girls are misclassified because of their behavior."

The Fund's concern is two-fold. "Once a child is placed in a special class, is it geared to her needs? Or is it just a dumping ground?" Colom said. "The problems of these children are given all sorts of names--learning disabilities, emotionally disturbed--and these labels follow them all through life.

"These children have to operate with a stigma attached to them. We're looking for areas of potential litigation and we also want to examine the development of alternative systems."

In the health project, the concern is to educate families about their rights in the delivery of health services to their children, and to insure that people know what is available to them under Medicaid, Smith said. "We also want to look into the lead paint poisoning problem and maternal and child health programs," he said.

"There are numerous examples of medical research on children in institutions for the mentally retarded, in children's hospitals or on juvenile offenders,. Where children are, in effect, captives, Smith said.

A spokesman for the Food and Drug Administration, John Walden, admitted that the question of drugs intended for use in children was a very delicate problem.

"Federal law says that a drug must be demonstrated through controlled clinical studies to be safe and effective before being marketed," he said. "If a manufacturer is going to claim safety and effectiveness for use in children, it must be demonstrated to be safe and effective in children."

The FDA, he said, does not approve of experimentation in healthy children but has no power at this time to regulate it.

Government retirement benefits offset by firms

By RONALD L. SOBLE
(C) 1973, The Los Angeles Times

NEW YORK — Millions of Americans upon retirement will not benefit fully from the big Social Security increases just voted by the Congress because their corporate employers will cut individual company pensions by an amount equal to part of the rise in the federal old age monthly payment.

The practice, although little publicized and largely misunderstood by the public, is entirely legal. Its proponents say it provides generous retirement income consistent with the aim of federal and private pension plans.

Whether the practice is morally justified is questioned by union officials and public critics who content that the action partially neutralizes congressional moves to offset inflationary effects on those with fixed retirement incomes. It also allows corporations to recoup partly their Social Security tax increases and to a degree subsidizes private pension plans.

Moreover, charge the critics, the practice mainly hurts lower-paid workers.

Although this is supposed to be the year of pension reform in the Congress, nowhere in legislation before either the House or the Senate is the issue of integrated or offset benefits touched.

Yet, declared Chic St. Croix, director of research for the Oil, Chemical and Atomic Workers International Union, based in Denver, such plans are cheating workers out of benefits that Congress wanted them to have.

"We have very strong complaints on this issue," St. Croix told the Los Angeles Times.

Several executives interviewed, including some representing the largest U.S. corporations, say such criticism is nonsense. They claim the practice has been generally accepted since Congress approved the Social Security Act in 1935.

Although there are no firm government statistics in this area, actuaries who design private pension plans estimate that perhaps as many as two or three million Americans will see up to one-half of the increases in their Social Security benefits whittled away through an offset in their private pension benefits.

And of the 35 million (in the 70 million U.S. work force) who have some sort of pension plan, actuaries estimate that as many as 20 million work for companies that use subtler formulas utilizing Social Security as a basis for calculating private pension plans.

Interviews with corporate officials and actuaries indicate the practice of integrating benefits most often applies to non-union workers.

Workers in the auto and steel industries, for example — two highly unionized sectors of the economy — have employer-contributed pensions which take no account of Social Security increases and which are paid in addition to full federal benefits.

The offset method of calculation is common in the oil industry. The formula also is prevalent in the banking industry, for example, at Bank of America, San Francisco, the world's largest commercial bank, and the Bankers Trust Co., New York, one of the nation's largest managers of pension and trust funds and one which has sought to be a leader in the fight for pension law reform.

International Telephone and Telegraph Corp. has an offset plan and General Electric and Westinghouse have variations of integrated Social Security-private pension plans.

A typical example of how the offset plan works would be Mobil Oil Corp., said to have one of the oil industry's better retirement plans. Mobil's final-pay benefit formula says that for each year with the company, a single employe receives 1.55 per cent of his average annual pay during the highest paid five years of his or her last decade of service, offset by up to one-half of monthly Social Security benefits that the employe will receive directly from Washington.

Thus, an employe with 30 years of service averaging $10,000 a year and about to retire at age 62 (which Mobil allows with no loss of benefits) will receive a combined private pension-Social Security package approximating 64 per cent of his final pay.

If the employe is married, the pension will provide a little more.

Subtler ways of using Social Security involve "step-up" plans under which an employer multiplies, for example, 1 per cent by the taxable Social Security wage base plus, say, 2 per cent by the excess of employe salary over the wage base, times years of service.

Actuaries say this is a common practice.

Merton Bernstein and Daniel Halperin, law professors at Ohio State and the University of Pennsylbania, respectively, recognized experts in the pension field, believe the step-up method discriminates against lower paid workers.

They point out that as Congress raises the taxable wage base, more and more lower-paid workers are cut out of the 2 per cent part of the formula.

Is this what Congress wanted when it passed the Social Security Act? Much of the 1935 debate in the Senate centered on integration of public and private pension plans, said Murray Latimer in an interview.

Latimer, 72, was President Franklin D. Roosevelt's first director of federal old age benefits and is now a private consultant to the United Steel Workers Union.

He noted that the Senate wanted to allow private pension plans to take the place of Social Security if a company provided benefits at least equivalent to Social Security payouts. The House, however, never really debated this subject, he said.

Congressional intent was thus fuzzy when the first contributions began in 1937 and when the first monthly retirement benefits were paid out beginning on Jan. 1, 1940.

Ohio State's Bernstein points out the integrated pension issue generates little controversy because so few Americans understand it Bernstein and others maintain, however, that notwithstanding the corporate posture — that it is a natural outgrowth of the original Social Security law — integrated pension plan benefits are one of the most important issues in the emerging debate over what is fair retirement compensation for the growing number of retired workers.

'Redeeming social value' no longer justifies 'obscenity'

By JOHN P. MacKENZIE
(C) 1973, The Washington Post

WASHINGTON — Paving the way for crackdowns on "the crass commercial exploitation of sex," the Supreme Court on June 21 gave states and the federal government broad new powers in obscenity cases.

In a series of 5-to-4 decisions the Court established a new definition of obscenity, rejected arguments that a "national" rather than local standard should govern and flatly refused to carve out exemptions for obscene films, magazines and books on grounds that they are aimed at "consenting adults."

Chief Justice Warren E. Burger triumphantly delivered the rulings, noting that it was "the first time" in 16 years that "a majority of this Court has agreed on concrete guidelines to isolate 'hard core' pornography from expression protected by the First Amendment."

The majority, which supplanted an amalgam of justices who have decided obscenity cases without a unifying constitutional rule since 1957, consisted of the four appointees of President Nixon — Burger and Justices Harry Blackmun, Lewis Powell Jr. and William Rehnquist — with Justice Byron White supplying the fifth vote.

Dissenting were Justice William Douglas, who predicted "raids on libraries," and Justices William Brennan Jr., Potter Stewart and Thurgood Marshall, who called for scrapping obscenity laws "at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults."

Burger spurned what he called "the alarm of repression" sounded by the dissenters, saying they demeaned the First Amendment by equating "the free and robust exchange of ideas and political debate with commercial exploitation of obscene material."

Of all the new tools handed to prosecutors across the country, the most useful appeared to be the discarding of an obscenity definition which gave Constitutional protection to forms of expression unless they were "utterly without redeeming social value."

In its place, Burger announced that the test will be whether the work, "taken as a whole, does not have serious literary, artistic, political or scientific value."

Prosecutors and censors had been hard-pressed to prove that any material was utterly lacking in some redeeming features, and Burger said they will no longer be required to carry that heavy burden.

In addition to the test of "serious" value, the Court said authorities must independently prove that the work, "taken as a whole, appeals to the prurient interest in sex" and that it "portrays, in a patently offensive way, sexual conduct specifically defined by the applicable law."

Spelling out examples of patently offensive displays that would sustain prosecutions or civil suppression proceedings, Burger listed "patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated," and descriptions of "masturbation, excretory functions, and lewd exhibition of the genitals."