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## Potential Role of a Special Advocate in a Criminal Case

*By William Dahlberg*

In the following essay all names, dates and locations have been changed to assure anonymity.

Judge Will Gibbons is a senior jurist who is highly regarded across Colorado. On Monday of Thanksgiving week 1996, I received a call from Judge Gibbons' clerk saying that Judge Gibbons wanted to talk with me. Judge Gibbons told me that a case had come before him involving James Forrest who had allegedly drawn a revolver on a peace officer and made verbal threats. The officer and his partner had responded by ordering the man to drop the gun and surrender. Forrest allegedly refused and raised the weapon, whereupon one officer had fired, wounding him slightly. Forrest was then arrested and jailed after first aid treatment in a nearby hospital's emergency room.

Following Forrest's arrest, charges were filed by the District Attorney and the case was assigned to a young assistant for prosecution. The Public Defender's office assigned an attorney to defend Forrest.

Judge Gibbons' long tenure on the bench and thorough knowledge of the community prompted him to think that matters were not actually as represented to him, since he had some distant knowledge of both parties involved in the initial action. Judge Gibbons evidently called me because I had appeared before him many times as an expert and he

had confidence in my opinions. He wanted me to do a thorough evaluation of Forrest and his situation, and to provide a written report of my opinions as well as any recommendations I might have to remedy the situation. For reasons that I did not know, Judge Gibbons told me that he would not issue an order for an evaluation but assured me that I would be paid for my work.

Later that week I met with Forrest at the Larimer County jail. I told him about the reason for our meeting and said that I wasn't sure exactly how my written report might be used but that, to be optimally helpful to him, I needed to have his cooperation and also to get a lot of current and background information.

Forrest began by telling me that he hadn't intended to shoot the deputy, nor did he point the pistol at him. Rather, he explained, he had become so depressed and defeated that he was in the process of turning the weapon upon himself, hoping to end his misery. He then told me about his life.

Jim Forrest grew up as one of eleven children in a Black family in the rural South. He began to work in the fields at about five. His family was paid a nickel for every basket of tomatoes he picked. He rarely went to school and was almost totally illiterate. When he was about nine years old an uncle began to teach him simple automotive work and engine repair. By 10 or 11 he was driving farm equipment. He was able bodied and good-natured. He was bright enough that he learned very quickly and so his inability to read was either not recognized or ignored.

During his mid-teen years the Forrest family had slowly migrated westward and prospered as they acquired farm equipment of their own, which he and a younger brother were able to maintain. Jim had married in his mid-twenties but his wife drifted away, leaving him with a three-year-old son who died in a house fire. His family began to split up after that. His mother died and some of the farm machinery was repossessed when they fell behind in their payments. With gradually dwindling resources Jim found himself trying to find work in nearby towns where his illiteracy began to surface as an increasingly significant handicap. He worked as a semi-skilled laborer in a pool with others who had the advantage of some reading skills. He was making ends meet, but just barely.

Just before he turned 35 he met Julie, a former service-person with solid job skills. She had a five-year-old son, Frank, from an earlier relationship. He promptly became attached to Jim and vice-versa. In due course Jim and Julie married and soon had a daughter, Mary. By the time Mary was two she was learning to read with help and encouragement from both Julie and Frank.

As the job market began to heat up in the late 80's, the Forrests decided to move to Fort Collins where Julie soon found employment. Jim couldn't land a job, though he kept trying. The increasing use of computers and other language dependent tools made him obsolete and he began to lose self-confidence. Before long gloom turned to depression. After a while Frank, who was excelling in school, seemed to lose interest in Jim. Jim

couldn't contribute to the family as he thought he should and his self confidence dwindled significantly. Then tensions appeared in the marriage and he and Julie began to fight. As a result of all that Jim Forrest decided to end it all.

In my evaluation Jim's severe depression was glaring. Through no fault of his own he couldn't read and couldn't find employment. His arrest separated him from the wife and children he loved and upon whom his shriveling self confidence depended . Weeping bitterly he told me, "They come to visit, but I can't even touch my kids. All we can do is put our hands on the glass!" -- referring to the 10" x 14" thick glass window separating prisoners from their visitors.

With Judge Gibbons' influence I was able to evaluate Mrs. Forrest and the children on three occasions in mid-December and found them to be very sound, very caring and extremely supportive. But all, especially Frank and Mary, were becoming depressed in the absence of their father. Mrs. Forrest, though terribly worried about her husband and children, was doing her utmost to keep the family intact and on track.

I concluded that what Jim Forrest needed was

- (1) adult education focused primarily on literacy,
- (2) job training and/or retraining using current technologies,
- (3) help finding new and appropriate employment and
- (4) out-patient mental health support for himself and his family.

I thought that his depression would lift after he was reunited with his family, though I had no idea how that might actually work out given his legal situation. In view of his sound intellect and the excellent support and encouragement that I felt sure would be forthcoming from his wife and children I was optimistic about his abilities to use adult education and the other sorts of assistance I suggested. I gave Judge Gibbons my written recommendations and offered to do whatever I could to facilitate my plan.

I was able to have a final meeting with Jim and Julie and the children in an office provided by the court. During that meeting I explained to the family what I thought and why. They all agreed with my plan and each offered some thoughts about how they could individually and collectively help to bring about a positive outcome.

Two days before Christmas, 1996, Jim Forrest was released from jail on a personal recognizance bond into the embrace of his family with the proviso that he adhere absolutely to all the details of my basic plan as well as the schedules for adult education programs that were available. Judge Gibbons had secured the cooperation of Adult Education Services and a Community Mental Health Clinic.

In March, 1997, through Judge Gibbons' office, I got my first feedback from the treatment and educational facilities. Jim Forrest's depression had vanished almost completely within weeks of his release from jail. He was working hard at mastering the written word and was making solid headway. His wife and children were providing help and emotional support. He had gotten a job as a mechanic's helper and was learning to

and the extent to which they each saw their own turf invaded by the actions of the court and/or trial judge.

### **OBSERVATION, COMMENT AND SUGGESTION**

During 1997 in the area of family law, the Colorado Legislature created the position of Special Advocate ("SA") in Section 14-10-116(2)(b), Colorado Revised Statutes to perform "an independent and neutral assessment of cases" of children and parents in complex divorce matters, and empowered Special Advocates to act "as an investigative arm of the court" and a fact finder on specific and defined issues. The Chief Justice's Directive, 97-02 ("CJD") also addressed that position. The statute requires that the reasons for the appointment, the subject matter and the scope of the special advocate's duties and the term and the method of compensation be set forth in a written order. The order must also require that the special advocate file a written report. The CJD expands greatly upon the statute. The duties of the special advocate include (1) the duty to attend all court hearings, (2) to personally meet with the child/children, (3) to review records, reports and documents, (4) to conduct other necessary interviews with parents, school personnel and other people involved in the child's life.

It seems to me that Judge Gibbons was asking me to function as a special advocate in a criminal matter although there was evidently little or no precedent for that. Precedent or not, I believe that the outcome of this matter was reasonable and fair.

Has the time now come when the Colorado legislature and perhaps other legislatures nationwide should consider enacting laws that would create and fund this position? The potential savings of money and human suffering are huge, and potential reductions of the mammoth backlogs of court dockets are clearly worthwhile benefits.