

Interviewing Joseph Pisani: Insights Into Social Reform

During the 1970's, Joseph Pisani was the most influential New York State legislator in the arena of child welfare reform. But for many, his substantial accomplishments are overshadowed by his subsequent criminal conviction and public shame. Interviewing Pisani illuminates the process of social reform as well as clarifying our expectations of the nature of leadership.

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Introduction

From 1969-1979, Joseph Pisani was the legislative leader for child welfare reform in New York State. As an Assemblyman and later State Senator, he sponsored and secured passage of numerous legislation, including laws of national significance. His strategies, political savvy, and understanding of the process of social reform combined to make him without question the central and most controversial figure in New York's foster care and child welfare reform movement of the 1970's.

Driving up New York State's Rte 9W, on the left bank of the Hudson River, I am minutes away from his home. As part of my doctoral dissertation research, I have interviewed during the past several months dozens of participants and read almost all of the published documents relating to his decade-long child welfare reform efforts in New York State. Though now out of state office for almost 10 years, he is still referred to as "the Senator" by his former legislative aides, even as they look at me warily – or ask that the tape recorder be turned off – when they think I'm about to ask about the circumstances around the Senator's demise.

Pisani greets me tentatively and shows me to a dining area set up on his porch which provides a spectacular, eastward view of the Hudson. Stacked next to his chair are the many documents and reports issued by the State Temporary Commission on Child Welfare, which he secured creation of in 1975 then chaired till his resignation from the Senate — and public service — in 1981.

It is 10 a.m. and he has promised me as much time as I need to question him about his role in securing some of the most significant child welfare legislation in the country. Within 10 years, Pisani sponsored legislation that provided for periodic court review of foster care placements; gave preferential consideration to foster parents in adoption proceedings; restricted the right of birth parents to revoke their surrender of children to adoption; recodified the termination of parental rights laws; provided for adoption subsidies based on the need of the child; established the best interest of the child doctrine as the standard for disposition in termination proceedings; authorized the establishment of a computer data base to track children in foster care; established the first preventive services program; and finally, in the Child



Welfare Reform Act, completely overhauled the State's complex child welfare delivery system, solidifying the State's commitment to permanency planning a year before passage of the federal Adoption Assistance and Child Welfare Act of 1980. A stunning accomplishment.

Pisani did not meet the expected profile of a progressive reformer in the 1970's. A conservative Republican from the suburbs, Pisani never hid, even then, that he "got into it because there was a need and . . . [it] would give me credibility as a politician."¹ Reforming child welfare in New York State meant taking on the establishment: the long-entrenched system of primarily sectarian private agencies on whom the State had relied for provision of the most expensive and core service: foster care. Reform, then, pitted a conservative Republican against Catholic, Jewish, and Protestant child care leaders who for a century were the experts and primary providers of foster care.

Political ambitions are personal ambitions too. Examining the motivation and activities of Pisani, including his understanding of how politics works and the realistic choices he faced, gives us insight into how power is used for social reform. It also begins to explain how the most extended and prolific period of statewide reform of child welfare services in New York — reform that by any mea-

1.- This quotation, and all other quotations from Joseph Pisani, are from my audio taped interview with him November 5, 1991, Westpark, N.Y

sure must be considered to be bold, progressive, and client-focused — was led by a man who was distrusted by leaders of the child care community, scorned for his open political ambitions, and finally driven from office in public shame.

Pisani left office as a scandal surrounded him involving misappropriation of funds. Later publicity confirmed what many knew at the time: the Senator, married and father of four children, was involved in a relationship with the Commission's secretary. Now his wife, Katherine served us lunch and otherwise left us alone to our work.

Foster Care Reform in New York: The Context

Maas and Engler's (1959) *Children in Need of Parents* triggered what has become known as "the permanency planning revolution:" a two-decade explosion of research, advocacy, agency experiments, and legislation that resulted in a reconceptualization of the nature of foster care and an overhaul of the service delivery system throughout the country. In brief, Maas and Engler found that children were languishing in care for extended periods of time because the foster care agencies had no other plans for them and were doing little to return the children to their families of origin or, if that were impossible, to act

to have the children be raised in adoptive families. Children in foster care lacked a permanent home. Foster care had become a terminal service.

Systemic introduction of the principles of permanency planning in New York was complicated by the state's unusual service delivery structure. While the State Board of Social Welfare and Department of Social Services had ultimate responsibility for children in foster care, for most children that responsibility was discharged through arrangements with private, usually sectarian, agencies most of which were active in foster care for upwards of a century. These entrenched institutions, with their decades of charitable experience and connections with organized religion, were predictably suspicious of government oversight and regulation even as government increasingly provided the majority of funding for their service programs. In New York, public reimbursement was determined on a "per diem" basis: agencies received a predetermined amount of money for each child



in care for each day of that child's care. This arrangement, equitable in one viewing, also resulted in suspicion that agencies were "warehousing" foster children to keep the per diem rate flowing (Young & Finch, 1977).

Pisani's accomplishments, as outlined before, thus are more impressive given the considerable political power held by the objects of his reform. Further, as a suburban, conservative Republican, he was viewed skeptically by many social welfare academics and researchers, as well as by middle-class adoptive parents who felt betrayed by him when their representatives were not appointed to Pisani's Temporary State Commission on Child Welfare.



The Interview

"I just gravitated towards [child welfare issues]. Where the interest came from, I don't know. Maybe I was bounced on the floor on my head as a child! I don't know." As a lawyer in the Navy, Pisani became involved in work with Navy personnel trying to adopt. "I ran afoul of the rules and regulations and more important the attitude of adoption agencies" who then viewed Naval personnel as unstable because they moved from base to base. Such arbitrary decisions, common in adoption practice in the 1950s, fueled another bias in Pisani. "I've always had a great distrust for bureaucrats because they serve other masters. One of

which is self-perpetuation; the other is arrogation of power." After his service in the Navy, he continued to include adoption work in his private law practice.

Elected to New York's lower legislative house in 1966, Assemblyman Pisani scored his first major legislative victory with the passage in 1971 of a law mandating judicial review of a foster care placement after the child had been in care 24 months. "It was considered to be one of the worst ideas by the child welfare community. But, not by anybody else!"

Asked about the genesis of this law, nation wide the first such legislation, Pisani responded with a story of attending a meeting of foster parents held in a Baptist church in his district. A Mrs. Palmer related that the agency removed a foster child from her home because she was "becoming too close" to the boy. Subsequently, now in another home, the boy crossed the street to get a pizza, was struck by a car and died. "The whole place just went — I mean we were up to our knees in tears." Hearing that Canadian law required judicial review of foster care, Pisani saw such a structure as a way of stopping foster care drift, preventing unwise agency decisions, and improving the chances for the "Mrs. Palmers" to adopt the children in their care.

For Pisani, the story illustrated, or in Best's (1990) terminology "typified" the social problem which to him was the unchecked and arbitrary power of the agency.

Why not consider, for example, legislation requiring

administrative social service review of such prolonged cases of foster care? Pisani replied, "I could not trust a child welfare system that failed. And they wouldn't say it, but the agencies opposed it because they were losing power. But I trusted the judicial system more than I did the bureaucratic system."

Though using the justice system to correct the ills of the social welfare system posed intense problems of implementation from the start (Festinger, 1975), for Pisani the critical issue, one that would be the cornerstone of all of his reform efforts, was protection of the rights of children in care.

"As far as the social welfare system is concerned, the child had no rights! What we do for that kid, he ought to be grateful! We're giving him a home, shelter, feeding him. He ought to be grateful. But the court's interest is derived from rights. And if you approach it from the standpoint of a child has a right to certain things, and you have an obligation to enforce those rights — now you've got a different perspective."

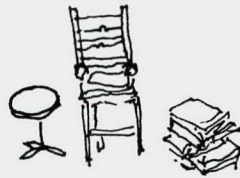
While judicial review of foster care stirred little public attention, for advocates in the child care community the passage of the law did begin to identify Pisani as the legislator who was concerned with reform issues. The 1973 Baby Lenore case, however, created significant publicity. Olga Scarpetta, a

young Colombian immigrant, surrendered (i.e., voluntarily relinquished her legal rights as a parent) her baby for adoption to a private agency, Spence Chapin. The agency immediately placed the infant girl with the De Martino family who then began adoption proceedings. But just days after the surrender, Scarpetta changed her mind and so notified the agency. After initially not notifying the pre-adoptive parents of this development, Spence Chapin, along with the De Martinos, then refused to return the girl, Lenore, even after a lower court ruled in Scarpetta's favor, noting there was no provision in New York State law regarding revoking a surrender. "Fortuitously, the Scarpetta case hit the headlines. I said to myself, Wow, what an opportunity!"

During the previous year, Pisani had introduced a bill that would have limited the right of a birth parent to revoke a surrender. "It was a conscious political strategy. Submit an outlandish bill to stimulate thought, then retreat to a more reasonable position and get what I want." The bill attracted no support, "it was shouted down," because it limited the rights of birth parents.

But riding a wave of newspaper and television publicity about Baby Lenore, including editorials urging that "something be done" to protect prospective adoptive parents, Pisani re-introduced and quickly secured passage of a law limiting to 30 days the birth parents' right to surrender: that is their voluntary relinquishment

of their legal rights as parents could be revoked only within a month of the formal filing for adoption. Ironically, the law would not have helped the De Martinos. Scarpetta had con-



tacted the agency just days after the birth of the child and before the De Martinos filed for adoption ("That's the anomaly!") and so under Pisani's law, the surrender would have been legally revoked. In addition, adoption agencies actually favored passage of the bill ("It set down clear, understandable rules about notice.") The public perception, however, was that Pisani defeated the backward-looking agencies and won a victory for adoptive parents.

Pisani is clear about the necessity for, in his words, "tragedies to bring about change."

"I hate to say this but, and I apologize for saying this, but if Roxanne is not found floating down the Hudson River, there wouldn't be a child protective services law in New York State. It's got to be on the front page of the Daily News before you can change it. Scarpetta coalesced, crystallized the need for change."

In 1974, Pisani chaired a New York State Conference on Children's Rights. Though "sponsored" by two state legislative committees, the conference was in fact completely funded by two private foundations with an interest in reform, the Edwin Gould Foundation for Children and the Edna McConnell Clark Foundation. "There was no way I could get state funds to pay for the thing. So, yeah, the arrangement was somewhat unusual, very novel." A hundred participants, representing public and private agencies, foundations, legislators, advocates, and civil libertarians, met to discuss how children's rights could be established, reinforced, and promulgated throughout the child welfare system. It sought to establish a "united approach to the problems" in the field (New York State Conference on Children's Rights 1974, unpaginated).

At that time, Pisani was a newly elected State Senator with ambitions for more power. "I was a freshman in the Senate. I was dissatisfied with my junior status, but most of the [Senate Committee] Chairmen were of my vintage. I was building up a head of steam with my child welfare work, but I had no authority. So, I thought, how can I get myself a commission?"

Pisani then spoke with the Senate Majority Leader, who agreed to support the creation of a commission only if Pisani secured the Republican Governor's agreement to fund the commission. Pisani approached the Governor, assured him of the

Majority Leader's complete support, then threatened to run in a Congressional primary against the Governor's hand-picked candidate. The Governor agreed to fund Pisani's commission. "I then went back to the Majority Leader and told him, 'The Governor thinks it's a great idea!'" And the State Temporary Commission on Child Welfare was born.

Pisani's maneuverings did not end. He appointed Philip Pinsky as General Counsel to the Commission. Simultaneously with holding this position, Pinsky was also an assistant counsel to the Senate Majority Leader.

"It was no accident that I put him on my Commission. Obviously, he would give his imprimatur to the Majority Leader. I knew how to get a law passed. And one of the ways of getting a law passed is to get to the guy who talks to the boss's ear, because the boss very seldom had time to look into the merits of every law. It was the most brilliant of my strokes."

Could the State's child welfare system have been reformed without a commission? For Pisani, the answer was clear: "No!" While other groups, such as the Council of Voluntary Child Care Agencies (COVCCA), Catholic Charities, and adoptive parent advocates had proposed legislation, these groups "had an ax to grind."

"COVCCA was looking out for its own behind. The Catholic agencies, the adoptive parents – they had their own interests. But we didn't have an ax to grind. We wanted to accomplish things. We were committed to changing the system."

Nevertheless, Pisani knew that reform would not be possible without the support of the sectarian agencies who could be expected to lobby against the bills his commission would propose and, perhaps even more importantly, would be expected to implement the changes in the system. "So in many ways, we had to convince the people out there who were actually going to have to deal with these changes [in practice] that this was the right way to go." I commented that even the process of proposing new legislation works to change the system. "Yes! Because it has to be implemented and with enthusiasm! Our goal was to get the legislation passed and to develop a receptivity for the legislation in the agencies." The targets of change needed to be part of the process of change.

Chaired by Pisani, the thirteen member Commission therefore included representatives of sectarian agencies but not foster and adoptive parents or foster care researchers and academics who supported permanency planning reform. The absence from the Commission of representatives from adoptive parent groups was particularly noteworthy, as they had been supportive of Pisani and his ear-

lier legislative initiatives, and they constituted a vocal and voting middle-class constituency. But for Pisani, appointment of adoption advocates to the Commission was not necessary at this stage of the reform process.

"This has to do with how commissions are appointed. Adoptive parent groups, foster parent groups – neither had sufficient political credibility to gain appointment. We didn't think it was necessary to appoint the advocates, because quite frankly I was their spokesman. And if people [advocates] think I stabbed them in the back – well, I needed a Commission and they were not a political force.

"You didn't have to win over the advocates; you had to win over the political forces. Let's face it. I was a politician, distrusted by the social services people. It was more important to me to get people identified with the forces to participate. If they went along with it, their groups could hardly be that much against it. It's a lot easier to change the system if you don't force it down their throats, if you make them part of the process."

While this rationale exemplifies Selznick's (1949) theory of co-optation, Pisani also recognized that he needed to establish his credibility with the agency representatives. This

process included forming an expert staff, utilizing available research, and "making this commission available to anyone and everyone." Not only did Pisani hold numerous public hearings throughout the state, he also sought consensus informally. "There were times when we reached certain conclusions. But before we acted on these conclusions, we would seek out certain individuals to get their private reactions to it."

How did the Commission begin its work? Pisani laughs, "It was a jungle out there! No paths in the jungle! The most important part is that all these people from different perspectives, we took each step together." In the early years of the Commission, there was quick agreement to proposed legislation that remedied obvious and discrete deficiencies in the State's child welfare system. Between 1975 and 1978, the Commission's work resulted in 20 pieces of legislation, 10 of which clarified and simplified the process of freeing and adopting children in foster care. Pisani added, "There's a strategy and psychology of getting these people to work together. Isolate an area where they agree a change is needed, then inexorably we're all taking steps which none of us would have agreed on without taking the steps together."

One such area was the reform of the State's adoption subsidy law. Previously based on the financial needs of the parents, subsidy would now be based on the needs of the child, a change opposed by some of

Pisani's fiscally conservative colleagues.

"They said, 'What are you talking about! You mean Rockefeller could adopt a child and get a subsidy?' I said yes, because otherwise the child is not going to be adopted. So if Rockefeller adopts the child, at least you don't have to feed and house the child [in foster care]. So you're saving money! The fact is I was able to attract them [fiscal conservatives] to that kind of legislation and still be faithful to the ideology. I proved to the Republican majority that the money would be spent wisely. So they said, 'Well, maybe Pisani knows what he is doing.'"

I asked Pisani about the most striking omission from his Commission's work: the absence of any reference to child protective services. Indeed, Pisani had played no significant role in the passage of New York State's Child Protective Services Law in 1974. He responded by referring to Republican Senate Leader Perry Duryea, a powerful politician with gubernatorial ambitions.

"The child abuse law was enacted under Duryea. And I sort of had a pact with Duryea. I wouldn't play with his agenda. He had Doug Besharov advising him about protective services. I thought it politically wise of me not to try to be

an obstacle to him on this issue. Being an adroit politician is to know how far you can go. While I was concerned about child abuse, I couldn't tread on it especially when the someone else was Perry Duryea."

The inexorable conclusion of the Commission's activities was the 1979 Child Welfare Reform Act. This complex legislation can be understood as driving permanency planning through the child welfare delivery system via incentives (substantially enriched reimbursement for preventive services) and fiscal disincentives (financial penalties for counties and private agencies who allowed children to remain in foster care too long and who did not meet subsequent regulatory standards for completing case plans, court filings, and other issues.)

In part, the rationale for using fiscal disincentives to drive reform was based on the perception that private agencies "warehoused" foster children. "Oh, yeah. No doubt about it. If they deny it, they're lying. They'd never admit it publicly, especially when you talk about permanency planning. But it stands to reason: the budget is based on an income which is based on population."

But the per diem reimbursement system, even with an overlay of potential financial penalties, remained in place and the potential for abuse remained. Couldn't another funding mechanism be designed? Here, Pisani discussed the limits of reform:

"The only way I could change that funding was to eliminate the voluntary agencies and make them public. Which is, I mean, wash my mouth. Now, if I were approaching this without any system in place, I think we could find a way to do it. But because of entrenched attitudes and entrenched funding streams and concepts, we couldn't do it."

The complexity of the Act also reflects other "entrenched" realities of the governmental structure in New York State, including its system of "home rule" and the inevitable tension between State agencies and local, especially New York City, government. "That's the reality of life [in New York State]. And if you don't pay attention to the realities of life, then what you are doing is unreal." The reality of even sweeping reform, then, is a compromise between idealistic goals and political reality. "God, we made compromises."

In its final form, the Act had the unanimous support from the child care establishment despite the increased paperwork requirements and threat of financial penalties.

"By the time we got to that point, they had all spun their wheels, they had all articulated their views and attitudes. Complain, threaten,

do all sorts of things, but in the final analysis -- see, we got them. On the one hand, we had penalties in there. But we also had the carrots! Let's put it this way. We lured them right into it with the carrots and they couldn't back out."

As the interview neared its end, Pisani thanked me for allowing him the privilege to recollect those days of reform excitement. "It was a lot of fun, then. It was exhilarating. I'm being immodest again, but it was the first time that people



involved with social services were working with someone who knew the political process. I knew how to get things done."

Finally, how does Pisani explain the child welfare reform movement in the 1970's? "It was an extraordinary coalescence. I was on a fast moving train, not necessarily steering it, but dealing with the speed of it. We were the instrumentality by which this stuff [calls for reform] became real."

Postscript to Reform

At one point in the afternoon, I had asked Pisani what he thought was his most significant accomplishment. As he began to look through the stack

of documents at his side, I commented on the magnificence of the view of the Hudson on this late afternoon autumn day. He peered above his glasses, nodded in the direction of wooded vista on either side of the river, and said, "If you've been what I've been through, you need this to get by."

Contemporaneous with drafting and passage of the Child Welfare Reform Act, State and Federal grand juries began investigations into his finances. He was alleged to have accepted kickbacks from men appointed to "no-show" jobs on the

Commission, money which allegedly was then used to purchase the home where this interview occurred. He was found not guilty of that charge, but

guilty of embezzling money from his law firm. That conviction was overturned on appeal because the state law defining the offense did not take effect until after Pisani's alleged misdeeds. He then pled guilty to one charge of federal income tax evasion, served a year in jail, and was disbarred.

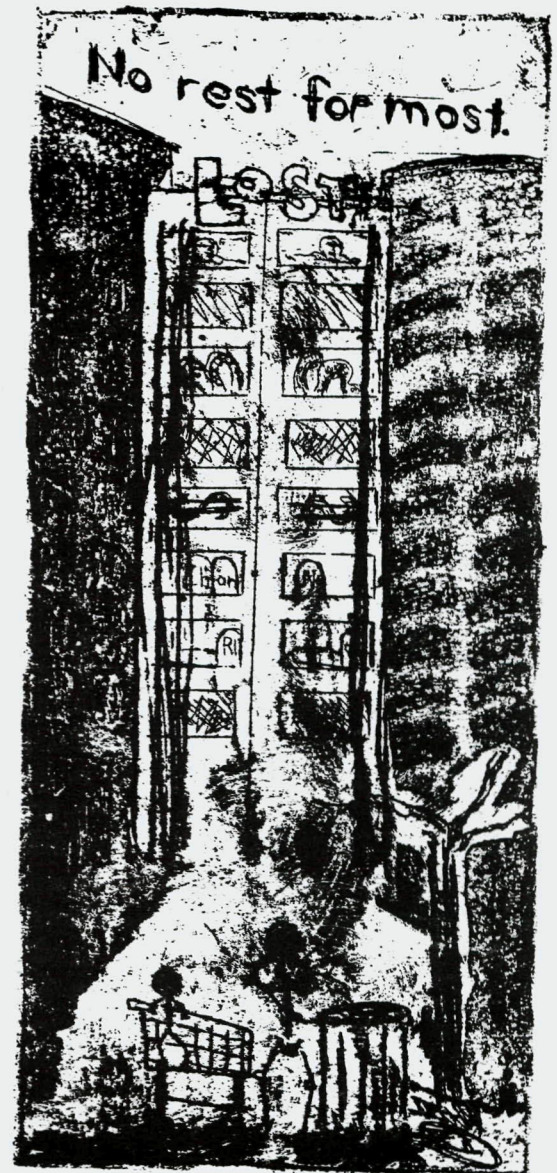
We did not speak about those events, in an unspoken agreement that they were outside the purview of my concerns. Contrasted with his masterful recollection of events and even details of reform concerns from 20 years earlier, his isolation from present-day activists and ignorance of contemporaneous child welfare issues were striking. He was cut off, or had

cut himself off, from the power to act in the best interests of the child.

It is true that the child welfare reform movement in New York State cannot be understood fully without consideration of the political strength of the middle-class adoptive parent groups, of the advocacy work by scholars and foundations, of the State's fiscal crisis, and of the increasing nationwide commitment to permanency planning. Clearly Pisani was as aware of these factors (the "train" of reform) as he was of his motivation for personal advancement, and sought to advance the cause of children's rights as much as his own career. His public achievements are not diminished by the consequences of his personal quests. There can be no reform without leaders who, reality insists, will be as flawed as we are. □

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