File: Fiedelholtz childcare

Has Bruce Reed talked to him? JP

CHIEF OF STAFF TO THE PRESIDENT

John-
Mark Fiedelholtz has called several times b/c he wants to meet with the President to discuss child-care regulations / penalties. (His son died in a childcare facility and they were found negligent.) Scheduling has been putting him off for years. Most recently, he sent us this packet of materials about his son - Do you want me to reply? Do you want to call him?

Fern

emory of a son

Mark Fiedelholtz

Jeremy Fiedelholtz

A Plantation couple, whose 3-month-old boy died in day care, crusade for tougher regulations and stiffer penalties.

"If this can happen to us, two educated, professional people who checked out the system and asked all the right questions, then what's left?"

Mark Fiedelholtz

Mark Fiedelholtz
954-748-7698

Couple who lost son crusade for tough child-care rules

By MARGO HARAKAS Staff Writer

The anguished cries echo through the corridor of Plantation General Hospital. "I'm so sorry. I'm so sorry," says Mark Fiedelholtz, cradling the body of his 3-month-old son, Jeremy. "I'm so sorry I couldn't protect you. I'm just so sorry."

Jeremy

Sobbing, shaking, he and his wife, Julie, together pull the respirator from their brain-dead son. As they do, a black curtain covering a window in the Pediatric Intensive Care Unit falls from its Velcro tether, infusing the room with light.

The intruding rustle is lost in the parents' wail. *

Fifteen months after their son's death, the Plantation couple still struggles to understand. "How can this happen?"

How can you leave a child in a licensed child care home and return two hours later to find that child dead?

"If this can happen to us, two educated, professional people who checked out the system and asked all the right questions, then what's left?" Mark asks.

What the couple discovered in the aftermath of Jeremy's death was that the home day care operator, Christina Schwartzberg, lied about the number of children in her care. She did not have four, as she had told them, but an illegal 13.

They also learned Jeremy suffocated as a result of being placed in a crib face down.

Schwartzberg has not been charged with Jeremy's death, which was ruled accidental. The State Attorney's office has charged her with neglect of a child, a third-degree felony. She is scheduled for trial later this year.

Determined that such a tragedy never again occurs, Fiedelholtz has been on a yearlong grief-driven crusade.

He has doggedly buttonholed legislators -- both state and federal -- and pleaded on national TV for tighter regulations and felony penalities for those who break the child care laws.

His efforts may soon pay off. The Jeremy Fiedelholtz Safe Day Care Act, the nation's first-ever law to make day care violations a felony, is wending its way through the Florida House and Senate and is expected to be law by the end of the legislative session

File photo

Julie and Mark Fiedelholtz in Washington at a hearing on improving child care.

By the year 2000, the couple hopes to see similar legislation adopted in all 50 states.

"Sometimes you have to know the severe consequences (in order) to do the right thing," says Julie Fiedelholtz, who is expecting another child in May. *

Like shallow roots, pain is never far beneath the surface for the couple who married four years ago. It was the first marriage for Mark, who was then 36, the second for Julie, 34, who brought to the union a 9-year-old son.

"She's Catholic, I'm Jewish. We deserve each other -- the guilt trip, you know," Mark used to joke.

Now he says with greater profundity, "We're best friends."

That their marriage survived the tragedy does not surprise those who know the depth of their love. But family and friends note the lightheartedness that so characterized the couple has been displaced by a leadenness that has yet to let go.

"I also don't think my brother is as trusting as he was," says Glenn Fiedelholtz.

Mark admits, "We don't sleep that well at night. I have a lot of nightmares. I talk to Jeremy all the time. I look at his picture and we talk."

And in the room that is being redecorated for the expected baby, again a boy, Mark swears the scent of Jeremy lingers.

For Julie, it's no easier.

When co-workers at Catholic Charities, where Julie is administrator of family services, wanted to throw her a baby shower, Julie declined. "I just can't," she told a close friend. "I just can't."

"She tries to hide her sadness, but I know when she's been crying," says friend and co-worker Miranda Sgouros.

She cries every day. "The difference is," Julie says, "I cry once a day now rather than 19 times a day."

Yet, through the melancholy fog, the couple is beginning to discern a brightness as they struggle to remap a normal life.

Mark, who in his campaign for change neglected the legal seminars that are his livelihood, is back conducting them full-time.

And the new child that Julie will deliver, "God willing," has given the couple unmeasured joy.

"It helps immensely," says Mark, who found out the good news when he returned from a business trip, climbed into bed and felt a sliver of plastic beneath the covers.

"What's this," he said, pulling into the light the thermometerlike strip from a home pregnancy test.

For the first time in months, the tears flowed from an exquisite happiness.

Mark's media-savvy pursuit of legislative change was his means of exorcising grief.

"Look, the only thing I can tell you is this, my mother died in my arms about a month and a half before Jeremy. She died of cancer. Now I promised her I would take care of this kid and my family, and I couldn't come through because of the fraud, the lies, the ignorance. It was too much."

He had to try to set things right, not only for his family but for the 12 million American youngsters under age 5 who spend part of their day in child care.

He knew the skills he had and how to employ them to maximum benefit.

Seven years before entering St. Thomas Law School in Miami, he was a TV news stringer covering the White House, and then a TV anchor at WMDT in Maryland and at WBNG in upstate New York. He knew how to look straight into the cameras on The Today Show, Inside Edition, Maury Povich and Geraldo Rivera to expose the what he sees as a nationwide problem of child care safety and neglect.

"What happened to us is not unique," says Mark, who has heard from hundreds of parents around the country. "The bottom line is over 300 children died (nationwide) in child care in 1996."

Because many states, including Florida, do not track child care deaths or serious injuries, the full extent of the danger is impossible to gauge. Fiedelholtz bases his figure on a survey done by U.S. News & World Report for an August cover story.

The crux of the problem is twofold, Fiedelholtz contends: insufficient licensing requirements and the lack of criminal penalties.

In Broward County, a home child-care operator "must have certifcation in CPR, take a three-hour course, and go through a criminal background check. For a child-care facilty, it's a 30-hour course. That's it. You're done. There are no exams."

Contrast that, he says, with the 1,500 hours required to cut hair or groom a dog. "It makes no sense."

Schwartzberg's child care was shut down within hours of Jeremy being found face down in a puddle of vomit and blood.

Investigators from the state Department of Children & Families found Schwartzberg had violated the child-adult ratio, was caring for more children than the law allowed, and had left the children with an uncertified helper while she went to the grocery store. Schwartzberg subsequently surrendered her license.

The Fiedelholtzes don't know what they could have done differently.

They got Schwartzberg's name from a list of licensed operators provided by Family Central.

At $125 a week, hers was the most expensive of the homes the couple had considered, Julie says.

They checked the certificate on the wall, ran their own criminal background check, and questioned Schwartzberg extensively.

"Mark is very vocal," Julie says. "He was asking so many questions I was getting embarrassed."

And they requested references, of which Mark called two. "They said she was fantastic," he recalls.

In the end, none of it mattered. "We were a victim of lies and deceit," Mark says.

On the morning of Jan. 29, 1997, Julie drove the eight blocks from their home to Schwartzberg's place. It was a test run before Julie returned to work part-time.

She kissed Jeremy, handed him to Schwartzberg, the couple says, and went back home.

She returned unexpectedly less than two hours later to check on things.

Jeremy did fine, he was sleeping, she was told when helper Cheryl Lavigne answered her knock at the door.

Julie flinched when she saw Jeremy on his stomach in the crib near the door. We're not coming here again, she thought.

Then the horror.

"Jeremy was blue, the sheet was scrunched up around his nose," Mark says. He was not breathing.

"Julie turned him over and blew a couple of breaths in him," he says. "The helper didn't know what to do because she was not certified in CPR."

Lavigne dialed 911. Julie screamed and bolted from the house, calling Mark on her cellular phone.

"He's dead," she sobbed into the phone. "He's dead."

"My heart sank. I started shaking," Mark says.

When he arrived at the scene minutes later, Jeremy was in the emergency vehicle, and Julie was still outside the house sobbing.

They knew it was all over."It's an abyss no parent should have to enter," Mark says, recalling the hours at the hospital, praying for miracles. The next day, Jeremy was pronounced brain dead.

He died, the medical examiner concluded, of positional asphyxia, suffocation from being placed face down.

"He was a beautfiul baby, just starting to smile, starting to play, to focus on things. And suddenly for no reason, he was gone ... It was just so strange," Mark says, knowing he'll never understand.

It was up to Mark to go to the school to break the terrible news to his 13-year old stepson.

"He just cried. He was devastated."

As soon as the medical examiner's report was in, Mark knew the mission that lay ahead. "Jeremy did not have a chance to express his displeasure at the neglectful conditions that day care operator and helper left for him, so obviously, vicariously, his father had to speak out for him."

The day of Jeremy's death, inspectors found 13 children in Schwartzberg's home, including six infants, six 1-year-olds and a 2-year-old. Five were asleep in an unsupervised back room.

"You cannot have more than four infants in a home," says Shawn Lamarche of Broward County child care licensing. "If you're operating with more infants, then you're operating as a child care facility, and that's a separate ordinance with different requirements."

The number allowed in home child care is based upon the age of the children, with a limit of 10.

Schwartzberg's place had been inspected just three weeks before Jeremy's death. "Had the inspector gone throughout the house," Mark says, "she would have seen children in the back room."

The inspection was limited to the licensed room.

"I knew I had a job to do, and it wasn't just for Jeremy," Mark says. The danger, he realized, existed everywhere.

In July, Mark and Julie went to Washington, D.C., to testify on behalf of the CIDCare (Creating Improved Delivery of Childcare) bill. The measure, in the Senate Finance Committee, offers a carrot in the form of tax breaks and government subsidies to child care providers who obtain training beyond state requirements.

And last month, state Rep. Steven W. Effman, D-Sunrise, introduced the Jeremy Fiedelholtz Safe Day Care Act, which raises the penalty for child care violations from a misdemeanor to a felony.

"It says the violations that are already on the books, if you deliberately, knowingly violate them, you're going to jail," Mark says. "That's it."

The Fiedelholtzs think both measures are only a beginning. Ultimately, they would like national licensing standards adopted.

"The bottom line is that 75 percent of women are going to be in the workplace by the year 2000 with children 5 and under.

"Whether we want to deal with it or not, these children have got to go to safe, quality day care."

The couple is looking ahead now. They find hope in the emergence of new life.

"I want to be a dad. I gotta hand the baton to somebody," Mark says. "And I'm going to do it. I got screwed the first time, but I'm not getting screwed again, hopefully."

For both of them, residual fear still echoes.

Ask about child care for the new infant, and Julie admits, "We're avoiding it. We haven't totally discussed it because we're so scared something may happen. We're waiting till the baby is born and we know this kid is going to live."

What is certain is that Julie will stay home with the baby the first eight months. And maybe after that, she and Mark will work part-time, with a skilled, screened nanny coming in once a week.

Meanwhile, the couple tries to regain perspective. "Look, I've had a wonderful life really, so has Julie. You can't give up because of one tragedy. You have to look at the whole picture."

While shadowed, that wide-angle picture is coming into focus.

The Painful Decision To Go Public

Sun-Sentinel

SOUTH FLORIDA • THURSDAY • MAY 1, 1997 35c

Parents' day-care nightmare

Why was 3-month-old lifeless 2 hours after being dropped off at center?

By EVELYN LARRUBIA
Staff Writer

Mark and Julie Fiedelholtz did everything they could to ensure their baby would be in good hands when the mother returned to work three months after giving birth.

They sought out a small licensed day-care center in a Plantation home only seven blocks from their own.

They checked for complaints against the owner, Christina Schwartzberg, and found none. They asked if the sitters knew CPR and were told they did. They checked references.

In what was to be a trial run, the Fiedelholtzes left 3-month-old Jeremy at the center at 10 a.m. one Wednesday.

When Julie Fiedelholtz returned to pick him up two hours later, her son was lifeless, face down in his own vomit. He was revived, but was pronounced dead the next day.

"They weren't watching him," Mark Fiedelholtz said. "No healthy child goes to day care and dies of suffocation. I could've put him on I-95 and gotten better treatment."

The state Department of Children & Families has been investigating the case since Jan. 29. The Broward State Attorney's Office is investigating whether Schwartzberg or her aide should be charged criminally.

If they prosecute, it would be a first for the office, which has not in recent history charged a child-care worker in connection with a death where abuse is not suspected, said Chuck Morton, head of the State Attorney's Homicide unit.

Jeremy died of "positional asphyxia" — suffocated because he was placed face down. It does not appear that he choked on the vomit,

PLEASE SEE CARE / 11A

Jeremy Fiedelholtz

CARE

FROM PAGE 1A

Parents hope son's death results in child-care laws

Medical Examiner Joshua Perper said.

The day Jeremy died, the County Bureau of Children's Services, which licenses child care centers, cited Schwartzberg and temporarily suspended her license. She voluntarily surrendered it on Feb. 21.

A county inspector had visited the day-care center just three weeks before Jeremy's death and found it "safe and [the] environment is child oriented."

But the inspector saw only the garage playroom with six children and was told no other children were in the home.

On the day that Jeremy died, there were 13 children — more than county regulations allow — and five were in a room not approved by the county.

When Jeremy stopped breathing, Schwartzberg was at the supermarket. The 13 children — all 2 years old or younger — were with an aide, Cheryl Lavigne. That also violated state law because Lavigne was not CPR certified.

Schwartzberg's attorney, Robert Murray, said his client has done nothing wrong. He said the number of children was not a factor in the death, and questioned the accuracy of the Medical Examiner's finding. But Murray declined to be specific, saying he expects the Fiedelholtzes to sue.

Whatever happens to Schwartzberg or Lavigne, the Fiedelholtzes said they hope Jeremy's death will lead to federal legislation that would strengthen what he calls lax child-care laws.

The federal government requires minimum safety standards for child-care centers that receive grants, but states set the limits.

In Florida, home day-care operators must take a three-hour course, submit to a background check, be immunized and have a substitute caregiver. The state limits the number of children per sitter, based on the child's age.

Most violations of the law are subject to a fine of up to $100. Lying on a state application, running an unlicensed center or pretending to be licensed is a first-degree misdemeanor, which is punishable by a $1,000 fine and up to a year in jail.

"Florida, by virtually every standard, has not done enough in this area," said Susan Muenchow, executive director of the Florida Children's Forum in Tallahassee.

She and others said flagrant violations such as deliberately hiding children also should be a crime.

Day-care workers also should have "more training than someone who clips your poodle or cuts your hair," as Barbara Weinstein, of Family Central in Fort Lauderdale, put it.

Broward is one of only four counties that require home-based child-care centers to be licensed, and its regulations do not include criminal penalties.

Enforcement is also a problem. County inspectors make surprise visits two or three times a year, but check only rooms used by children. They lack authority to inspect entire homes unless they suspect a problem, officials said.

Activists say Jeremy's death should prompt a reform of inspection practices.

Mark and Julie Fiedelholtz said they turned to day care when they could not find someone to watch Jeremy in their home. They got referrals for small centers from a nonprofit agency, thinking they would take Jeremy to day care in the meantime. One of them was Chrissy's Kids — Schwartzberg's place.

"She had a good reputation and she seemed organized and she really put on a heck of a show," Mark Fiedelholtz said. "We thought we were getting a very close-knit situation."

Fiedelholtz said Schwartzberg said she only watched about six children.

On Jan. 29, they decided to try out the center. Julie Fiedelholtz dropped off Jeremy at 10 a.m., walked to the garage and saw the right number of children, Mark Fiedelholtz said.

Jeremy was crying, but she thought he was probably just pouting because he was with a stranger. She gave Schwartzberg some bottles, baby formula, diapers, a change of clothing and a pacifier before she left.

"We were home. All she had to do was call us," Mark Fiedelholtz said. "We figured: what's the worst that can happen?"

Schwartzberg put Jeremy on his stomach with his head turned to the left, according to the Medical Examiner's report. She told investigators the child cried a little, then settled down.

About 20 minutes later, Lavigne checked on Jeremy and he was fine, the aide told investigators.

After the children were sleeping, Schwartzberg went to the supermarket, leaving Lavigne alone with 13 children and three dogs.

Lavigne told investigators Jeremy was fine when she check on him about 11:45 a.m. Julie Fiedelholtz arrived to get him 10 minutes later.

"She reached down and felt him and felt no breath or movement," the Medical Examiner's report said. "When she picked him up, he was cold and blue underneath his eyes."

Julie Fiedelholtz put her son on the floor and blew into his mouth to try to revive him. Certain he was dead, the desperate mother ran outside to call her husband on her cellular phone.

"I'll never forget that phone call," Mark Fiedelholtz said. "How do you take your kid to day care for two hours and he's dead?"

Lavigne called 911 and asked for CPR instructions. Plantation police officers arrived before she could start.

According to the Medical Examiner's report, Lavigne told officers: "Hurry, he's been down so long." The infant was blue and "had no signs of life."

The officers started CPR at 11:57 a.m. and paramedics took over a few minutes later and continued while they rushed to Plantation General Hospital, where doctors established a heartbeat and blood pressure. Doctors estimated Jeremy had been in cardiac arrest for 15 to 20 minutes.

Jeremy was declared brain dead at 4:17 p.m. on Jan. 30. His father disconnected the respirator and the boy died in the same hospital where he was born.

For weeks afterward, Mark Fiedelholtz said he would sit in Jeremy's room, look around at all the Winnie the Pooh decorations and hug a blanket he swore still smelled like his son.

"Sometimes I think It's just a bad dream," he said.

Staff Writers Noreen Marcus, Lane Kelley and Douglas C. Lyons contributed to this report.

WHAT PARENTS SHOULD KNOW

Tips for selecting child care:

- Call a child-care resource and referral center. It can help direct you to good centers and answer your questions. In Broward, Family Central: 954-720-1000; in Palm Beach County, Child Care Resource and Referral: 561-265-2423. Among its offerings, Family Central has a parent checklist for evaluating the quality of child care.
- Check the history of the day-care center or home caregiver by calling the state agency that licenses and regulates the centers. In Broward, 954-765-4646; in Palm Beach County, 561-355-3018. Ask to see the center's evaluations.
- Visit at least three centers before choosing one. As you narrow the list, visit each again, showing up unannounced at peak times to watch children and caregivers in action.
- Is the center accredited by the National Association for the Education of Young Children? Centers that are accredited by the national organization must maintain higher standards than centers that are licensed solely by the state.

SOURCES: Florida Statutes, *Sun-Sentinel* research

Searching For The Truth

Caretaker to testify in death of infant

By EVELYN LARRUBIA
Staff Writer

Six months after Jeremy Fiedelholtz suffocated during his first two hours of day care, the Broward County State Attorney's Office is still investigating whether the infant's caretaker should be charged criminally.

Prosecutors likely will be closer to a decision on Monday, after obtaining a formal statement from the caretaker's helper.

Cheryl Lavigne has fought efforts to be questioned under oath, citing her Fifth Amendment right against self-incrimination.

But after prosecutors offered her immunity, a Broward circuit judge on Friday compelled her to give prosecutors her testimony.

When Jeremy, 3 months old, died on Jan. 30, Lavigne was alone with 13 infants and toddlers in the Plantation home-based day-care center. Its owner, Christina Schwartzberg, had left Lavigne with the children while she went to Publix.

Jeremy's mother arrived to pick him up about noon and found him dead, face down in a crib.

The county Bureau of Children's Services, which licenses child-care centers, cited Schwartzberg for caring for more children than the law allows, and it temporarily suspended her license.

She voluntarily surrendered it on Feb. 21.

In the months to follow, the State Attorney's Office has been looking into a variety of charges against Schwartzberg.

Mark Fiedelholtz, Jeremy's father, has said the possibilities include manslaughter, neglect and fraud. An expert's report recently provided to the family by the State Attorney's Office would suggest that prosecutors are leaning toward neglect.

Randell C. Alexander, an associate professor of pediatrics at the University of Iowa, said he thought the sitters exhibited neglect but did not meet the standard of culpable negligence.

"There is nothing in this situation that would reasonably lead one to conclude that a child was in imminent risk of death," Alexander wrote in a letter July 15, which the family's lawyer provided to the *Sun-Sentinel*.

He said that understaffing can lead to increased accidents and malnutrition but "no substantial increase in the risk of serious injury or death."

"I would not consider it culpable negligence but rather overall neglect, and particularly it is unacceptable day care," Alexander said.

Since his son's death came to light in March, Mark Fiedelholtz has called for better training and increased vigilance of day-care providers and stricter sanctions for lawbreakers.

Last month, the Fiedelholtzes endorsed a federal measure that would use tax breaks and subsidies to entice day-care providers to receive training and accreditation beyond state regulatory standards.

Jeremy's Story Goes National

Parents tell of day-care death

U.S. senators hear pleas for reforms

By MICHAEL MELLO
Ottaway News Service

WASHINGTON — He'd wanted to make them cry, these senators with the power to change people's lives.

So, New Windsor, N.Y., native Mark Fiedelholtz went to U.S. Senate yesterday to make the politicians relate, as parents, to the agony he and his wife, Julie, share.

The Fiedelholtzes must live with only memories of a 3-month-old son now dead because they left him at a Florida day-care center for two hours in January.

The lawmakers, members of a Senate panel on children and families, didn't cry. But they did introduce a new bill aimed at improving the quality of child care nationwide. And they showed enough compassion to make the Fiedelholtzes think their son's death could be the proof needed to improve the quality of licensed day care.

"It's one of the hardest things I've ever had to do," Mark Fiedelholtz said after testifying. "But I feel like we made a contribution and they (senators) really cared.

"We did a good thing," added his wife, tearfully. "If we can get enough information out there so one family can (benefit), it will have been worthwhile."

The couple, who live in South Florida, picked a licensed home day-care center to care for their son, Jeremy, while they worked. Everything seemed to check out. They liked it when the owner said she cared for only four children.

"When I got there I saw only two children and I wondered how she made any money," said Julie yesterday.

She'd dropped her baby off for a trial run. When she returned two hours later, she found her son's lifeless body face down in a pool of vomit. He was resuscitated, but was later pronounced brain dead. The family disconnected a respirator to let him die.

Police found 13 children in the day-care center, more than legally allowed. The woman who ran the center had left a pregnant helper to watch the children after Jeremy arrived.

Now the family plans to sue for damages, although they are still trying to figure out whom to blame. No criminal charges have been filed yet in the ongoing investigation.

"This boy got a raw deal," Fiedelholtz said during a rambling, often emotional recounting of the story. "Now he's dead, dead!" he said in a rising voice, a blown-up picture of his infant soon flanking him on his left. "I look at his (things) ... all I can do is cry and say over and over how sorry I am."

A former reporter and intern in Rep. Benjamin Gilman's office, the 39-year-old Fiedelholtz responded to perceived indifference from state and local officials in Florida by pushing his son's story to anyone who would listen.

The Associated Press

With a photograph of their late son at right, Mark and Julie Fiedelholtz testify on Capitol Hill yesterday before the Senate Labor Committee hearing on improving the quality of child care.

"We did a good thing. If we can get enough information out there so one family can (benefit), it will have been worthwhile."
– Julie Fiedelholtz,
mother of baby who died in day care

He says a national television network will show an interview this morning with him and his wife.

He also called Gilman, R-Middletown, N.Y., his state senators and others. Someone suggested the Fiedelholtzes might be a perfect poster family for the efforts of Sens. Chris Dodd, D-Conn., James Jeffords, R-Vt., and others to give states more resources to improve child care services. Few states are expected to be able to meet demand in the next few years, without added resources, because of welfare reforms that will force more mothers to work.

"Maybe hearing from you (both) will help some of our colleagues here understand there needs to be a basic quality standard for child care," said Dodd. "Placing a child in a day-care setting shouldn't be like going to Las Vegas and rolling the dice."

The bill introduced by Jeffords, however, does not call for national standards. It does give businesses tax breaks to create child care arrangements and an incentive grant program for states to expand the availability of licensed child care. States would still be left to handle their own regulations. Gilman, R-Middletown, will introduce a companion bill in the House.

Regardless of the outcome, the Fiedelholtzes will have taken one more step toward healing.

"Normally we sleep a couple of hours then get up at 3 a.m. and cry, then talk for a while," said Julie. "But we slept five hours last night."

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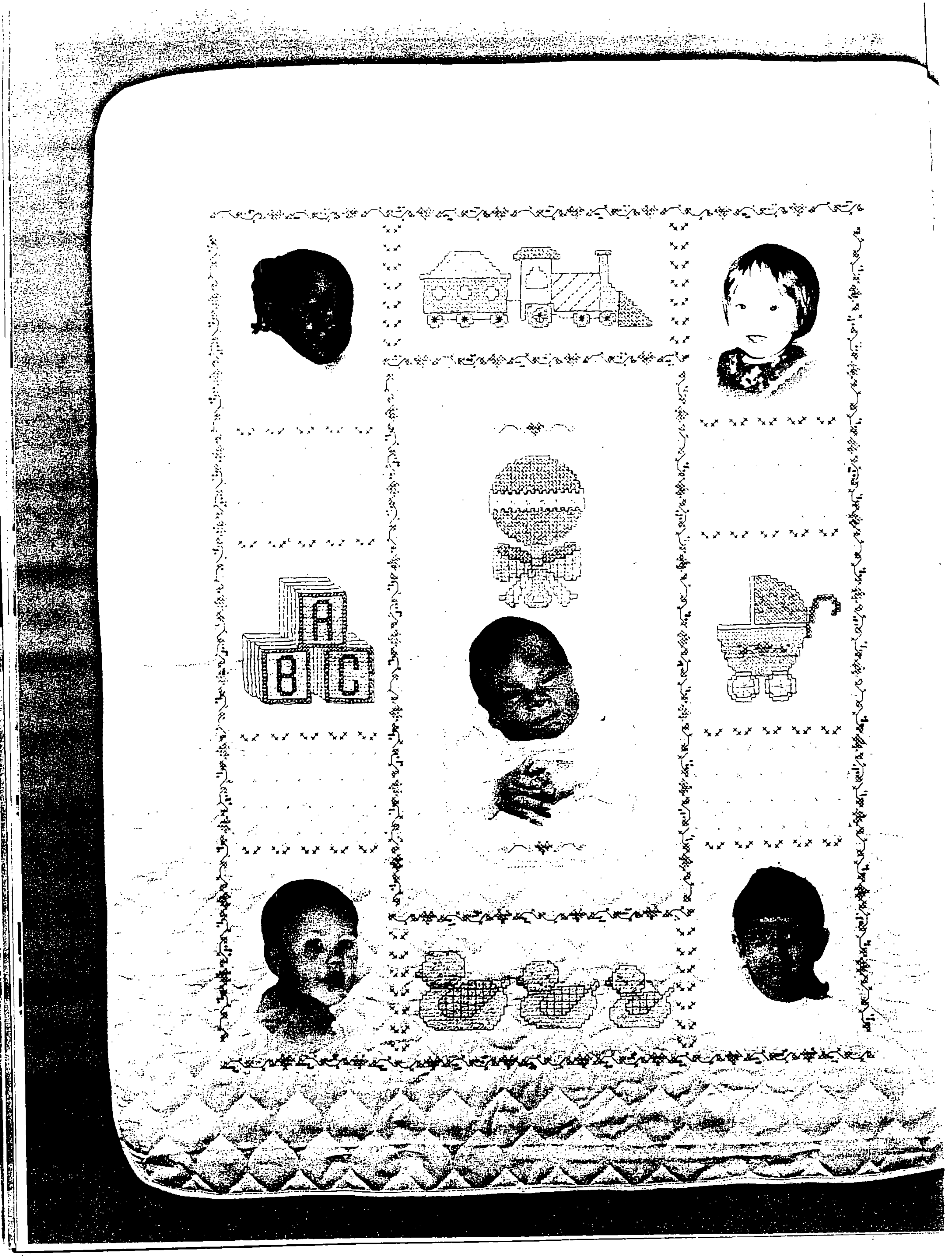
BALD TRUTHS
THE BUSINESS OF HAIR LOSS

EXCLUSIVE

Dangerous Day Care

Some parents have learned in the hardest way that day-care licensing and regulation, even when they exist, are no guarantee of their children's safety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Too many parents have learned that day-care licensing and regulation, even when they exist, do not guarantee quality. Not to mention safety

Day-care dangers

BY VICTORIA POPE

Julie Fiedelholtz arrived unannounced to pick up her son, Jeremy, at day care. Jeremy was 3 months old, and it was his first day at Chrissy's Kids day-care center in Plantation, Fla. Julie had left him there two hours earlier; now she was returning to get a candid look at his new surroundings. The day-care helper greeted her reassuringly: "Oh, Jeremy is sleeping so fine. He did good." Julie relaxed and looked with pride at her baby boy. "Buddha belly," she said to herself. That was his nickname, because Jeremy was so nicely plump.

The word caught in her mind: Belly. He's lying on his *belly*. Fear drew her closer to his crib. Jeremy's tiny hands were pulled alongside his head. His head was face down against a rumpled sheet, a smear of vomit across his cheek. His skin was tinged blue. Julie gathered her baby up, but he flopped like a rag doll. She dropped to her knees and screamed his name. She tried CPR. Paramedics arrived a short time later, summoned by the helper.

At 4:17 p.m the next day, Jan. 30, 1997, Jeremy was pronounced brain dead at the hospital. When the final autopsy results were ready two months later, his parents learned that he had died of "positional asphyxia"—in layman's terms, Jeremy had suffocated while lying face down. During the minutes when he was struggling for breath, one day-care employee had been responsible for Jeremy—and 12 other children, according to official reports. This lone day-care worker was a 25-year-old woman, herself in the seventh month of pregnancy. The center's owner, Christina Schwartzberg, was not there because she had left the facility for 45 minutes to go food shopping.

While Jeremy was still lying comatose in the hospital, Roy Chandler, an investigator for the Florida Department of Children and Families, told the Fiedelholtzes that police had found serious violations when searching the Chrissy's Kids site that afternoon, Mark Fiedelholtz recalls. Later, after Jeremy's death, Broward County officials cited Schwartzberg for violation of child-adult-ratio regulations and for leaving the children with an unapproved aide who was not certified in CPR. Schwartzberg voluntarily surrendered her license. She acknowledged no wrongdoing. No charges were filed against her.

As the Fiedelholtzes sought to investigate why and how their son had died, they realized that they had been far too trusting. Before deciding on Chrissy's Kids as a suitable site for Jeremy, they had determined that it was licensed by the county. They had assumed that this ensured at least an adequate level of physical safety. Yet in Broward County, they learned, accreditation required only three hours of training for providers. They saw the county's official child-care manual; only one page was devoted to infants. It made no mention of the American Academy of Pediatrics' recommendations that babies be laid to sleep not on their bellies but on their backs. After Jeremy's death, police interviewed other parents whose children had stayed at Chrissy's Kids at the same time. The Fiedelholtzes were stunned to hear that most of the parents said they would gladly put their

Deaths of the innocent. **Clockwise, from top right: Kierra Harrison, 14 months, from head injuries in Las Vegas; Alexandra LeVasseur, 4, of heatstroke in Peters, Pa.; Jordan Ambrozewicz, 23 months, of drowning in Pasadena, Md.; Raegan McBride, 2, of head injuries in Windsor, Conn. At center: Jeremy Fiedelholtz, 3 months, of suffocation in a crib in Plantation, Fla. Such recent tragedies, experts say, underscore unanticipated hazards that can exist in day-care centers.**

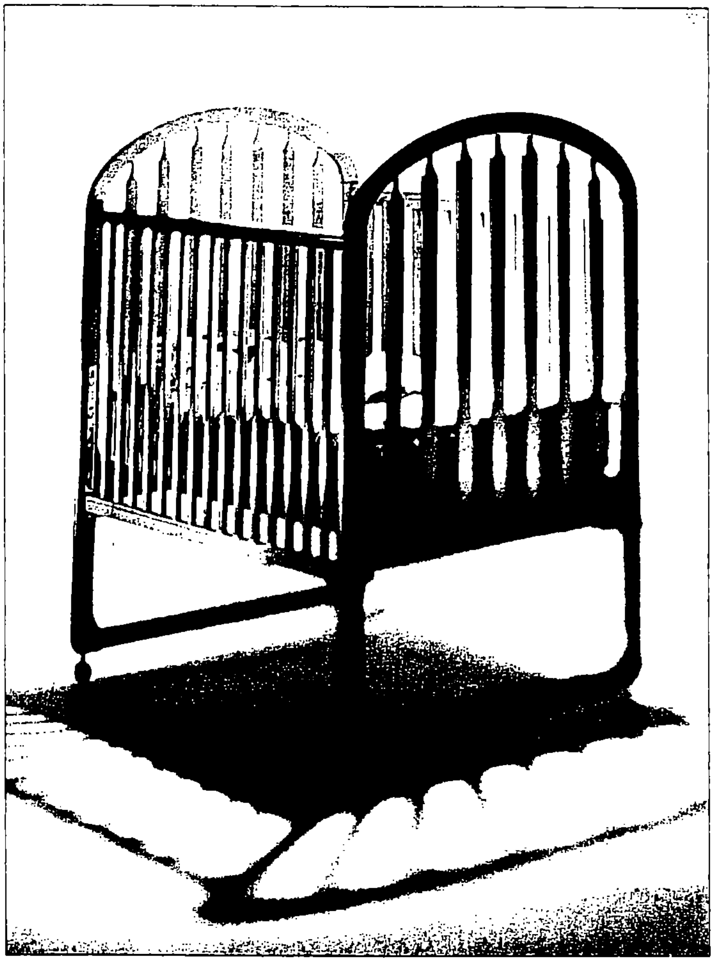
PHOTO ILLUSTRATION BY DOUG STERN—*USN&WR*;
(QUILT) MICHAEL LLEWELLYN FOR *USN&WR*; (ALEXANDRA, BOTTOM RIGHT) MICHAEL REDFORD

children back in Schwartzberg's care.

What happened at Chrissy's Kids is an extreme illustration of what can occur when parents place their trust—and their children—in the fast-expanding but only lightly supervised American day-care system. Already, 4.6 million infants, toddlers, and preschool children from every income group, spend part of their day in licensed day care. The pressures on the system are about to increase dramatically: As new welfare reform laws take hold in coming months, some 2 million parents (mainly mothers) now on welfare will join the work force, and their children will need care outside the home. Under pressure of welfare reform, many state legislatures are now scrambling to create new facilities as quickly—and inexpensively—as possible. Within three years, 3 out of 4 American women with children under 5 will be working and need child care.

As more and more mothers have moved into the work force, the varied effects of day care have provoked bitter debate. Some cognitive scientists argue that hired attendants cannot provide the stimulation or attention children need for emotional development; others contend that the independence and socialization forced on children by day care actually help children thrive. Economists point to day care's problems as a classic case of "market failure": Large numbers of parents need the service so they can work, but they are not willing to pay the fees that would be necessary for the well-trained, highly motivated workers they would like their children to have.

Avoiding harm. But whatever their positions in these debates, most parents take it for granted that day care will not be physically dangerous. To a larger degree than many realize, this assumption is incorrect. In a query of all 50 states and the District of Columbia concerning deaths in child-care facilities, *U.S. News* tallied 76 deaths in 1996. The causes included drownings, falls, being struck by autos, and sudden infant death syndrome—but the data are sketchy, since many states do not report the causes of these deaths. This is doubtless not the full total, since seven states as well as the District did not respond to repeated requests for information—and 16 others, including California and Ohio, said they do not track deaths in day care. Even fewer states record injuries. Figures also are difficult to obtain because so many of the nation's facilities are unregistered. In Texas, a state that has recently revamped its reporting system and does collect detailed data, 22 day-care deaths and 134 serious injuries were recorded in fiscal 1996. If the deaths recorded in Texas and Massachusetts (which also collects detailed data) were projected per capita on the national population, day-care deaths would number between 240 and 320 a year. As a comparison, in 1995, 2,260 American kids between ages 1 and 4 died in all accidents, including 825 in motor vehicle collisions.



When infants are laid in a crib to sleep, the American Academy of Pediatrics recommends that they be placed on their backs to help prevent SIDS. But many child centers don't heed this advice.

PHOTOGRAPHY BY MICHAEL LLEWELLYN FOR *USN&WR*

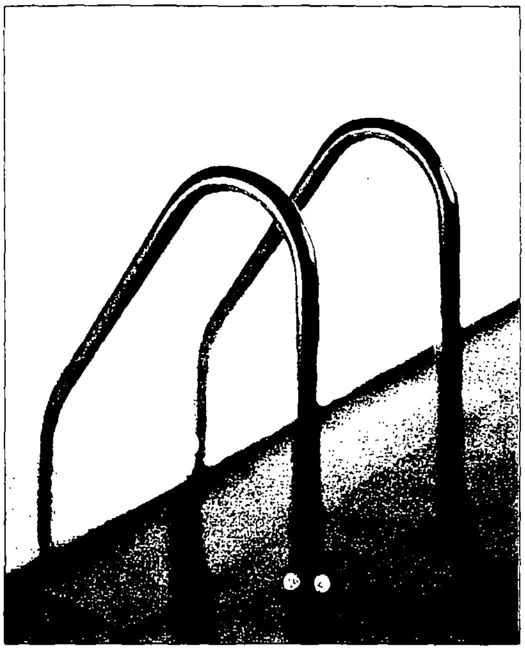
Cursory oversight. No degree of care could prevent all deaths or accidents; but the system into which millions of Americans entrust their children is notably underregulated and poorly supervised. The great waves of safety regulation in America, from the meat-packing reforms of the muckraking era to the pesticide controls prompted by Rachel Carson's *Silent Spring*, have stemmed from concern that without regulation, public safety will be at risk.

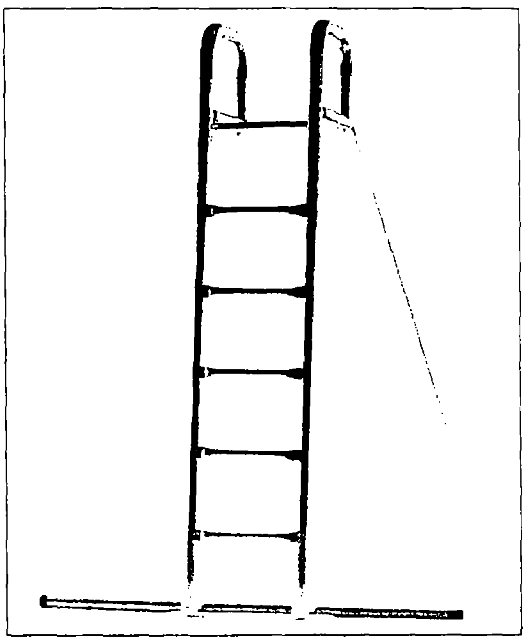
Worries about children's safety have led to no such day-care reforms. Typically, the required training for day-care workers is minimal, oversight is cursory, and standards are low. Complaints roll in, but punitive action is rarely taken—until it is too late. Agencies fail to share data that might have prevented injury and greater tragedy. Says Donna Overcash, director of Save the Children Child Care Support Center, an Atlanta-based advocacy group: "Zookeepers make more, and fast-food restaurants are better regulated."

Starting a day-care center is easy. *U.S. News* sent a 20-year-old male summer intern to apply for a day-care license in Washington, D.C. One of his letters of reference flatly stated he had "no professional training in child care." He filled out some forms, paid a $50 fee, and had his apartment checked out. He was told that with some first-aid training, some spot-cleaning, and a new fire extinguisher he could be licensed in a week.

In most states, the course of study for a driver's license is longer than for certification as a day-care worker. It takes about 1,500 hours of training at an accredited school to qualify as a licensed haircutter, masseur, or manicurist. Day-care providers, by contrast, are usually required to attend a single session devoted to a mishmash of topics from CPR techniques to food menus. In Las Vegas, Suzanne Magleby, a supervisor for Clark County social services, says her county requires six hours of training instead of the state-mandated three, which she wants to bump up to 12. "But I'm trying to go slow," she says, hinting at local resistance.

Training usually requires only passive exposure to instructional material; no tests are given. For instance, in a recent six-hour training class in Atlanta, participants sat through presentations on infectious diseases, injury prevention, and child-abuse detection. Of the 15 women there, three did not speak English. One slept through the entire video on infection control. Three women arrived an hour and a half late but were assured by the instructor that they would still be credited the full six hours to receive their certification.





Fencing is usually required when a swimming pool is located near a day-care facility, to avoid accidents. In a day-care center in Mattapan, Mass., a drawstring caught in a playground slide apparently led to the death of a young boy. Many safety experts say that children should avoid wearing clothing with drawstrings on playground equipment.

Many states now urge former welfare recipients to be trained as day-care workers. This may be good for the recipients, since it prepares them for jobs; it could well be bad for children, since some states seem ready to lower existing standards to accept these "provisionally certified" providers.

In a just completed review of day-care standards nationwide, the New York-based Commonwealth Fund, a national foundation working with Yale University experts, assessed the quality of day care state by state, based on indicators such as child-adult ratios, programming, and caregiver qualifications. This study gave overall passing grades to only 17 states; and only Minnesota met their criteria in all categories. The study did not rate a single state as "good" or "optimal" on the size-of-group standard, which is key to preventing injuries.

While restaurants are shut down every day for even minor hygiene violations, records show that day-care centers in America are rarely closed. Frequently, licensing authorities try to keep troubled facilities open so working parents won't be left in the lurch. In a recent case in Guthrie, Okla., outside Oklahoma City, a family day-care center had accumulated a staggering 415 complaints against it but was still operating when a young boy died at the facility last November. The victim was 2-year-old Michael Robinson III—known as Trey—who attended A Child's Place day-care center. Trey, inconsolable after his mother dropped him off, had walked out of the building undetected onto a highway. He was struck by a passing automobile. According to the records of Oklahoma's Department of Human Services, A Child's Place had violations against it that included children routinely left unattended, unsafe playground equipment, and in at least one instance an employee with a criminal record of child abuse. Yet the state allowed it to keep operating on six-month permits.

Run over, again. When police tried to reconstruct what happened prior to Trey's death, they turned to a 12-year-old named Anthony. By Anthony's account, written longhand on the police report, a staffer named Dale had asked him to help look for the missing boy. Anthony saw him first, lying on the busy road. "Dale told me to stay there and make sure he didn't get run over again," Anthony wrote. When a speeding car approached, Anthony jumped up and down to try to get it to stop, but the little boy was again run over. The center's owners deny any neglect; no criminal charges were filed. Judy Collins, the statewide licensing coordinator for Oklahoma's Department of Human Resources, says her agency had moved to deny the facility its license before Trey's death.

In Seminole, Fla., near St. Petersburg, Beth Bennion pulled her son out of a day-care center two years ago, she says, after it let a pest-control company spray the premises while children were there. She says the center had also told the licensing board that it had fixed some dilapidated playground equipment when it hadn't. So when Bennion later heard that a gun had been found one Monday morning at the center, she expected it to be summarily shut. Instead, one of the center's owners told the licensing board that the gun might have been a toy or left by carpet cleaners over the weekend. (Later, the owner's lawyer said it was a BB or pellet gun, even though three witnesses—including the center's director—described it as a firearm, "gray, heavy, and could fit in the palm of the hand.") The center was fined $200 for keeping a weapon on the premises, but it was not closed.

Extra kids. In the Fiedelholtz case, the 13 children present at the time of Jeremy's death were nine more than the center's owner, Schwartzberg, had told Jeremy's parents would be there at one time. (While police say only one adult was present when Jeremy is thought to have suffocated, Schwartzberg's attorney, Harry Solomon, says that the children were in an area that was small enough to be supervised.)

Regulations that call for adult supervision, of course, can't guarantee it. Two-year-old Jordan Ambrozewicz drowned in an ornamental pond at his Maryland day-care center two years ago. According to Jordan's mother, three adults were on the

If a chin gets caught in a highchair, a child may be injured. More than once in a day-care facility, a provider has stepped out of the room during mealtime and a child has strangled in a chair. Many states have rules against keeping a gun at a day-care facility, but witnesses said they saw a firearm in a Florida center. The center was fined $200 but was not closed.

premises, and the other children had gone home. In a case that led to a tightening of state care regulations in Pennsylvania, a 4-year-old, Alexandra LeVasseur, died in August 1995 after being left in a sweltering van for nearly three hours. The day-care operator had unloaded the van during a field trip and left the girl sleeping in the front seat. No charges were filed in either case.

Similarly, parents may assume that a state license means inspectors will regularly check the facility. In most states, it does not. Typically, inspectors visit a center when it opens, for initial accreditation—and thereafter in response to complaints or after a few years pass. In Virginia, a legislative audit showed that the state had failed to make mandatory twice-a-year inspections of 722 of its 4,200 licensed facilities in 1996; 159 centers were not visited even once.

When inspectors do show up, they often concentrate on compliance with the safety rules—whether a first-aid kit is complete, for instance—but may be oblivious to larger concerns about the children's welfare. When imposing regulations, licensing boards may insist on niggling requirements—that more toilets must be available in case children have diarrhea, or that a fence be built in a completely rural area—but ignore indicators of inappropriate behavior.

Regulatory enforcement is further hampered by poor coordination between different agencies. When state agencies fail to share information, dossiers of troubling testimony may go unread. That's apparently what happened last February, when 2-year-old Raegan McBride, from the Hartford suburb of Windsor, Conn., died. According to the state medical examiner, the cause of her death was a single blow to the back of the head. The blow was allegedly delivered by the child's day-care provider, Kathy Greene, who has been charged with manslaughter in the case. She has pleaded not guilty.

After Raegan's death, investigators probed Greene's record and found multiple complaints of child abuse logged over a 14-year period. Police interviews with Greene's former charges turned up accounts o bruises, cigarette burns, dislocated arms, and vicious threats, all allegedly perpetrated by Greene. One boy told investigators that Greene had thrown him against a washing machine because he had wet his pants. After reviewing a series of complaints, a socia worker wrote: "I would not place a child a Ms. Greene's again," stating that the wom an was unable to control her "rage for au thority and power over children." Tha was in 1992. Greene remained in business five more years, until Raegan's death.

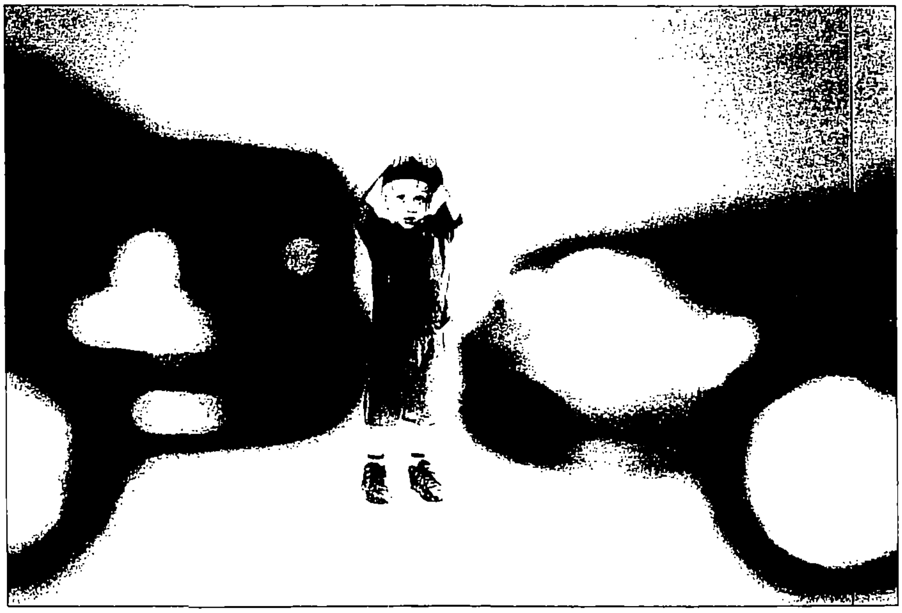
Kristine Ragaglia, the child advo cate for the state of Connecticut, a knowledges that faulty reporting wa part of the problem. Beyond that, Ra gaglia says, Greene stayed in busines because the previous cases boile down to a child's word against that o an adult—and the regulators consis tently sided with the adult.

Many states refuse to share thei files with other states; a bad day care provider drummed out of busi ness in one state can reopen in an other. Most states keep day-car records at the county level. Par ents can review the records, but ob taining access to the files isn't alway easy. When a reporter recently re quested information on 19 day-car homes in Anne Arundel Count Md., she was asked to limit herself t four requests and was told that th county could take 30 days to re spond. That would discourage man busy parents.

Reviewing a file is a good precaution, but not an ironclad one. When 14-month-old Kierra Harrison died in her Las Vegas day-care center last March, the cause of death was found to be a fractured skull from severe head trauma: Shards of bone were wedged in her brain. Doctors described her injury as equivalent to falling headfirst from a two-story building onto concrete. The day-care operator was charged with murder. She has pleaded not guilty. Yet when Kierra's mother, Amanda Harrison, checked with the licensing board, the day-care provider's record was clear. After the fatality, Kierra's family learned that the provider allegedly had been reported for abusing her own 3-year-old daughter, but it hadn't shown up in the files because her surname was misspelled. (A lawyer for the provider calls those child-abuse complaints against her "way out of proportion.")

The case has given Kierra's grandmother, Pam Rowse, a registered nurse, a political cause. After Kierra's death, Rowse dropped her 9-to-5 administrative position to work an emergency-room shift, so that she would have maximum free time during business hours to lobby for stronger regulation. Jeremy Fiedelholtz's parents have made the same choice. Mark Fiedelholtz, a lawyer who runs legal studies seminars, and Julie, a social worker with Catholic Charities, have lobbied Congress as well as Florida officials for national day-care reform. In the six months since his son's death, Mark has testily confronted more than one politician for failure to support greater regulation, saying: "What do you need, a body count?"

But while the families of victims lobby for higher standards and stricter rules, proprietary day care, especially the larger franchises, employs a powerful lobby in Washington to keep up opposition to increased regulation. Industry representatives contend that day care can maintain high standards without bolstering requirements, and that new regulations would drive costs up to unacceptable levels. What seems hardest for the mourning families is their abiding sense that they themselves had been naive—naive in assuming that the laws and standards governing day care had produced a system in which their children would be safe. ■



When facilities are close to busy traffic, an unlocked door may invite the sort of tragedy encountered near Oklahoma City recently. A little boy wandered out of his day-care center and onto a street where he was fatally injured by a car, police said.

With Margaret Loftus, Jill Jordan Sieder in Atlanta, and Zachary Knight

For more information see U.S. News Online (http://www.usnews.com).

FIXING DAY CARE

One state tries to do it right

From a regulatory standpoint, Colorado's mountains and wide expanses are a handicap. To check out a file on a day-care provider in a westernmost city like Durango, a resident would face an eight-hour drive to state offices in Denver. It's that isolation, however, that has spurred the state to create a new system of data collection. Starting next month, Colorado will put the records from its more than 7,000 licensed day-care centers on computer disk. Consumers will be able to quickly retrieve material through a half-dozen regional referral offices, where a specialist might urge that parents report day-care problems and scrutinize centers' records. "You, the parent, are there [dropping off children] every day. You need to put on your critical hat," says Gail Wilson, head of the private, nonprofit Colorado Office of Resource and Referral Agencies.

Such pragmatism has also powered an overhaul of day-care monitoring. Colorado has admitted to what most states will not: It wasn't doing its mandated annual day-care inspections, partly for reasons of cost. Now it has "risk based" inspections, which means resources will be used where they are most needed. Centers failing to comply in certain key areas will be tracked carefully, while facilities that have proved their faithfulness to the rules won't be visited at all.

These innovations have worked in part because the state's population has higher levels of income and education than the national average. Gov. Roy Romer's mantra—make Colorado the best place to raise a child—is attractive to the state's many newcomers. And Colorado's business community is counting on these quality-of-life seekers to support a new voluntary checkoff program that allows taxpayers to allocate a portion of their state income tax refunds to improving licensed day-care facilities.

-Victoria Pope

Testimony Uncovers Vast Fraud

Records: Day-care operator lied

Helper said she was told to hide extra children

By HENRY FITZGERALD JR.
Staff Writer

The Plantation home day-care operator charged with neglect after an infant died in her home routinely lied to parents who came to her seeking child care, records released on Tuesday by the Broward State Attorney's Office show.

Christina Schwartzberg and a helper routinely understated the number of children being cared for in the home, and sometimes hid children from county inspectors, the records show.

Key among the documents is a 173-page statement to investigators from Cheryl Lavigne, whom Schwartzberg hired for $250 a week.

Lavigne's interview, as well as others from parents and investigators, is part of 639 pages of documents gathered during the State Attorney's Office investigation.

Schwartzberg

The office in September charged Schwartzberg, 32, with neglect for leaving Lavigne with 13 infants and toddlers while Schwartzberg went grocery shopping.

While Schwartzberg was away, 3-month-old Jeremy Fiedelholtz died of positional asphyxia because he was placed on his stomach.

His parents, Mark and Julie Fiedelholtz, had left Jeremy with Schwartzberg for a two-hour trial run on Jan. 29. When Julie Fiedelholtz arrived to pick him up, she found him lying face down in a portable crib.

He had stopped breathing and had vomit on his face.

"This woman was a day-care predator," Mark Fiedelholtz said on Tuesday.

"She was hunting for parents for them to bring their children. We were being exploited."

The incident sparked a flurry of activity over county licensing for home day-care centers.

Schwartzberg is not charged directly with Jeremy's death, but rather for violating county rules about the number of children who can be cared for at a licensed day-care center.

Schwartzberg's license, which allowed her to look after five infants and five after-school children, was suspended immediately after the incident.

Schwartzberg later voluntarily surrendered her license.

The Fiedelholtzes have said repeatedly that Schwartzberg lied to them about how many children she was keeping in her home, 5660 SW Third Court in Plantation.

Lavigne's statement backs up the Fiedelholtzes' claims.

"Did [Schwartzberg] specifically tell you that if some parent asked about the number of children there that you were to misrepresent the number?" prosecutor Dennis Siegel asked Lavigne on Aug. 4.

"Yes," answered Lavigne, who was granted immunity in exchange for her statements. "All the time."

Lavigne also said Schwartzberg knew Lavigne's training was not up to date, and often told her to go with several children to a back room in the house when inspectors came.

"Why did she send you to the back?" asked Siegel.

"To watch the other children and she didn't have me all certified to be there," Lavigne said. "She didn't want to get herself in trouble."

Lavigne said Schwartzberg left her alone with the children often, including once for more than an hour while she went to get her nails done.

Schwartzberg's attorney, Bruce Zimet, said the revelations do nothing to make the state's case stronger.

"It doesn't change anything," Zimet said. "I think [Schwartzberg is] still going to be exonerated at trial."

A tentative trial date is Jan. 9.

County Put On The Hot Seat

Inspections of day-care firms examined

By ALAN CHERRY
Staff Writer

The Broward State Attorney's Office has opened an inquiry into inspection and licensing of child-care businesses, because of a complaint filed by the father of an infant who died in a home day-care business last year.

"It is not specific that someone did not do an inspection, or falsified an inspection, but there are just certain matters we need to look at," Assistant State Attorney John Countryman said.

The state has already filed child neglect charges against the center's owner, Christina Schwartzberg.

Countryman said he received a complaint from Mark Fiedelholtz of Plantation, whose 3-month-old son Jeremy died in January 1997 soon after asphyxiating in his own vomit while at Schwartzberg's center. The business, also in Plantation, had passed inspection three weeks earlier even though it may have had too many children — as many as 13 — with several in a back room missed by an inspector.

County inspection records, provided by Fiedelholtz, reported only five or six children in January.

"To me, why don't they just close down [the county agency]," Fiedelholtz said at a press conference Thursday.

Countryman said he would take several weeks to decide whether criminal charges should be pursued against agency workers. Fred Murry, director of Children and Family Services, declined to comment on the inquiry.

He said he was checking into Fiedelholtz's additional charge that a worker at Schwartzberg's business, Cheryl Lavigne, should have failed the background check for having an improper Social Security number and for illegally working in the United States.

Fiedelholtz said Lavigne, who was caring for his son when he died, was from Canada and lacked the proper paperwork to work in the United States. Schwartzberg was not in the house at the time of the death.

Murry said Lavigne had been registered with his agency as a child-care worker, but not specifically with Schwartzberg's business.

He said it was Schwartzberg's responsibility to report Lavigne's employment at her business. Murry also said questions about her Social Security number and working status should have turned up in an FBI check conducted by state authorities.

Schwartzberg has been charged with neglect of a child and faces five years in prison. Zimet said Lavigne has been given immunity from prosecution to testify against his client.

Broward 'censing agency cleared in baby's 1997 day care center death

By KARLA BRUNER
Herald Staff Writer

The Broward state attorney's office has cleared the county's child-care licensing agency of any criminal wrongdoing in the 1997 death of Jeremy Fiedelholtz.

In a six-page memo closing his investigation, Assistant State Attorney John Countryman said Christina Schwartzberg — the owner of the Plantation day-care center where Jeremy died — "presented a very plausible scenario to the field consultants: a neat, organized, apparently self-sufficient child-care center entirely encompassed in a converted garage."

But the boy's father, Mark Fiedelholtz, says the report does not get the county "off the hook yet, not by any stretch of the imagination."

Fiedelholtz said he believes that the state attorney investigation shows "civil violations" in the licensing agency, including the lack of reasonable inspection of the day care center and intervention. He has a civil suit pending against the county.

Countryman's inquiry began after Fiedelholtz complained that the county's Child Care Licensing Division should have known that Schwartzberg was violating county rules governing the adult-to-child ratio for day care centers.

Jeremy, who was 3 months old, suffocated on Jan. 29, 1997 — his first day at the center — after Schwartzberg left him and 12 other kids under 2 years old in the care of an unlicensed helper.

Broward County's licensing division requires that caregivers provide one adult for every four infants and one adult for every six toddlers. If the group has both infants and toddlers, the ratio must be 1 to 4.

The unlicensed worker, Cheryl Lavigne, said Schwartzberg was tipped to impending inspections.

Lavigne also told investigators that Schwartzberg told her to hide whenever field consultants from the county child care agency came by to inspect the center.

She also said extra kids being cared for by Schwartzberg were also hidden during the inspections.

Schwartzberg has been charged with child neglect, a felony. Her trial is expected to begin in January.

Countryman concluded that "there does not appear to be any criminal act done by an employee of the agency in failing to discover Ms. Lavigne and the other unlisted children."

His report said a fellow child care center owner may have tipped Schwartzberg off to upcoming inspections, but that was not proven. The report also recommended that the agency's field consultants be able to receive all information pertaining to the homes they inspect.

Inspectors visiting Schwartzberg's home did not know that Lavigne had applied to become a care giver.

Lloyd Soppe, an investigator at the law firm representing Fiedelholtz, said the state attorney's report won't influence the civil case.

Alexander Cocalis, chief trial counsel for the county, also said the state attorney's memo would not affect the case.

Cocalis said that he was "fairly confident" that the county would prevail in the civil suit because "it's clear that it was the day care operator who was at fault."

Since Jeremy's death, the agency has authorized its field consultants to search the entire premises of a day care center. It has also asked that inspectors be notified when there is a pending application by someone to become a caregiver at a home being inspected, according to Countryman's memo.

Herald staff writer Karla Bruner can be reached by e-mail at kbruner@herald.com

LOCAL

Agency absolved in infant death

3-month-old suffocated after home operator left him with unlicensed aide

By HENRY FITZGERALD JR.
Staff Writer

A Broward State Attorney's Office investigation has determined the county's Child Care Licensing Division was not at fault for the death of a child at a licensed home day care.

But prosecutors did suggest the licensing system could be improved to ensure such centers are safe and operators follow rules.

The investigation resulted from the death of 3-month-old Jeremy Fiedelholtz, who suffocated on Jan. 29, 1997, while at Christina Schwartzberg's licensed home day care in Plantation. Schwartzberg had gone grocery shopping and left the children with a worker who was not as yet licensed but allowed to work while a criminal background check was being conducted.

Prosecutors were concerned that county inspectors often must wait up to 90 days for the results of such a check, and sometimes are unaware if a background check is under way.

"... The agency's need for rapid access to criminal [background] records information is obvious," wrote John Countryman, who heads the Public Corruption unit of the State Attorney's Office, in a memorandum explaining the decision. "Also, [inspectors] must be able to receive all information pertaining to the homes they inspect."

However, Jeremy's father, Mark Fiedelholtz, thinks Broward's day-care licensing office was as much to blame as the overall licensing system. He had suggested the Broward State Attorney's Office investigate the county agency because he considered their inspections lax.

Fiedelholtz pointed out that Schwartzberg had 13 children in her home, but was licensed for only five. He said if the licensing division had inspected Schwartzberg's home more carefully, someone might have discovered her actions.

"You can't go into a house and have the operator tell you. 'These are the only kids I have here.'" Fiedelholtz said. "These are businesses. You have to check the other rooms."

Jeremy's mother, Julie Fiedelholtz, dropped off Jeremy, then returned two hours later to check on him. Schwartzberg was away grocery shopping but the helper, Cheryl Lavigne, told her the child was fine. His mother discovered he was not breathing.

Schwartzberg was not charged with Jeremy's death, but was cited for child neglect because she left the youngster with an untrained person. Her trial is set for early next year.

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Countryman concluded that "there does not appear to be any criminal act done by an employee of the agency in failing to discover Ms. Lavigne and the other unlisted children."

His report said a fellow child care center owner may have tipped Schwartzberg off to upcoming inspections, but that was not proven. The report also recommended that the agency's field consultants be able to receive all information pertaining to the homes they inspect.

Inspectors visiting Schwartzberg's home did not know that Lavigne had applied to become a care giver.

Lloyd Soppe, an investigator at the law firm representing Fiedelholtz, said the state attorney's report won't influence the civil case.

Alexander Cocalis, chief trial counsel for the county, also said the state attorney's memo would not affect the case.

Cocalis said that he was "fairly confident" that the county would prevail in the civil suit because "it's clear that it was the day care operator who was at fault."

Since Jeremy's death, the agency has authorized its field consultants to search the entire premises of a day care center. It has also asked that inspectors be notified when there is a pending application by someone to become a caregiver at a home being inspected, according to Countryman's memo.

Herald staff writer Karla Bruner can be reached by e-mail at kbruner@herald.com

LOCAL

Agency absolved in infant death

3-month-old suffocated after home operator left him with unlicensed aide

By HENRY FITZGERALD JR.
Staff Writer

A Broward State Attorney's Office investigation has determined the county's Child Care Licensing Division was not at fault for the death of a child at a licensed home day care.

But prosecutors did suggest the licensing system could be improved to ensure such centers are safe and operators follow rules.

The investigation resulted from the death of 3-month-old Jeremy Fiedelholtz, who suffocated on Jan. 29, 1997, while at Christina Schwartzberg's licensed home day care in Plantation. Schwartzberg had gone grocery shopping and left the children with a worker who was not as yet licensed but allowed to work while a criminal background check was being conducted.

Prosecutors were concerned that county inspectors often must wait up to 90 days for the results of such a check, and sometimes are unaware if a background check is under way.

"... The agency's need for rapid access to criminal [background] records information is obvious," wrote John Countryman, who heads the Public Corruption unit of the State Attorney's Office, in a memorandum explaining the decision. "Also, [inspectors] must be able to receive all information pertaining to the homes they inspect."

However, Jeremy's father, Mark Fiedelholtz, thinks Broward's day-care licensing office was as much to blame as the overall licensing system. He had suggested the Broward State Attorney's Office investigate the county agency because he considered their inspections lax.

Fiedelholtz pointed out that Schwartzberg had 13 children in her home, but was licensed for only five. He said if the licensing division had inspected Schwartzberg's home more carefully, someone might have discovered her actions.

"You can't go into a house and have the operator tell you. 'These are the only kids I have here.'" Fiedelholtz said. "These are businesses. You have to check the other rooms."

Jeremy's mother, Julie Fiedelholtz, dropped off Jeremy, then returned two hours later to check on him. Schwartzberg was away grocery shopping but the helper, Cheryl Lavigne, told her the child was fine. His mother discovered he was not breathing.

Schwartzberg was not charged with Jeremy's death, but was cited for child neglect because she left the youngster with an untrained person. Her trial is set for early next year.

Jeremy's Law Is Introduced

Day-care law would toughen penalties

Proposal named for boy who died

By KARLA BRUNER
Herald Staff Writer

Vowing to "stop the carnage of our children," State Rep. Steven Effman proposed child-care legislation Monday that would elevate from misdemeanor to felony the penalties for violating key state child-care facility rules.

The "Jeremy Fiedelholtz Safe Day Care Act" would penalize those who misrepresent official information about their facilities, or whose facilities exceed state staff-to-child ratios or capacity limits.

"This is no longer going to be a mere ticket with a fine," Effman said. "This is going to be a serious criminal offense.

"We want people to wake up, that the safety of our children, our most precious commodity for today and the future, is our No. 1 priority. I believe this statute will go a long way to making that point."

The proposed legislation is named after three-month-old Jeremy Fiedelholtz, who suffocated on Jan. 29, 1997, his first day at a licensed home day care in Plantation, owned by Christina Schwartzberg.

Investigators found that Schwartzberg left an unlicensed helper alone with 13 children, all under age 2, while she went grocery shopping. State and county laws require that there be one

PLEASE SEE **CARE, 2BR**

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NOT FORGOTTEN: State Rep. Steven Effman and Mark Fiedelholtz stand before a portrait of Fiedelholtz's late son, Jeremy, on Monday

Proposed child-care law named for Plantation boy

CARE, *FROM* **1BR**

caretaker for every four infants and two toddlers.

After months of investigation, Broward prosecutors determined Jeremy's death to be an accident, yet partly "attributed to the conditions of the center."

Prosecutors charged Schwartzberg on Sept. 10 with the neglect of a child, a third-degree felony that specifically avoids linking her to Jeremy's death. The trial, which was set for Jan. 9, has been continued until March 2.

Mark Fiedelholtz, Jeremy's father, stood beside Effman during Monday's press conference.

"The party's over," Fiedelholtz said. "It's finished. Child care, within the next two years, is going to become extremely professional."

Fiedelholtz said the bill "hopefully will spark the country to make sure that day care is not treated as a babysitting service but as a profession. It is a health profession, and we need skilled people running day care."

The director of a West Broward child-care center who did not wish to give her full name told The Herald on Monday that she did not believe the proposal would act as a deterrent to keep ill-prepared people "whose heart is not in it" out of the business. She said the state needs to do more to ensure that a worker is qualified before being employed.

After the press conference, Fiedelholtz said he hopes that "criminalizing" violations will keep what happened to his son from happening to others.

Effman, a Sunrise Democrat, said he believes he'll receive strong support for the legislation in this spring's legislative session. The goal, Effman and Fiedelholtz said, is to have all states adopt this law by 2000. Last year, 300 kids died in child-care facilities as a result of neglect, said Fiedelholtz, who has spent considerable time researching the law since his son died.

Barbara Weinstein, president and CEO of Family Central, a private non-profit Broward agency that, among other things, provides help for families looking for day care, commended the proposed legislation as a "good first step."

In addition to penalties, however, Weinstein also would like to see an increase in the amount of training child-care providers should have, and improvement in state standards for licensing day-care centers.

"We require more training for someone who works on our cars than for those who care for children," she said. "That's ridiculous.

"But at least someone's reacting, and at least we've got [lawmakers'] attention."

Day-care crime bill memorializes Broward boy

By JENNIFER DEL MEDICO
Staff Writer

SUNRISE — The first bill in the nation making day-care center violations criminal offenses will be introduced to the Florida Legislature, said the bill's sponsor, Rep. Steven W. Effman, D-Sunrise.

Effman announced the bill on Monday, three days before the one-year anniversary of the death of 3-month-old Jeremy Fiedelholtz, who suffocated during his first day at day care.

"Instead of experiencing his first steps and words, I'm calling the obituary column of a newspaper to put a remembrance in for Jeremy," said Mark Fiedelholtz, the boy's father.

During the past year, Fiedelholtz has worked to raise awareness of the potential dangers of day care by creating The Jeremy Fiedelholtz Institute to Protect Children. Fiedelholtz has also made TV appearances and given testimony to the U.S. Senate.

Effman's bill, which would be called The Jeremy Fiedelholtz Safe Day Care Act, would make a felony out of what is now a civil violation. The legislative session begins on March 3

The bill would allow prosecutors to specifically hold day-care operators and staff accountable for knowingly violating child-care ratios and other laws.

Misrepresenting licensing or operating procedures would be a third-degree felony that could carry a maximum penalty of prison time. If the child suffered bodily harm, it would be treated as a second-degree felony.

"If you lie to parents or play games, you're going to jail," Effman said.

Under current Florida law, misrepresenting one's qualifications or operations is a misdemeanor that carries a fine of about $100.

"In Florida, if you willfully create dangerous conditions that kill a horse or cattle, it's a second-degree felony," Fiedelholtz said.

"But if you willfully create dangerous conditions in day care that kills a child, it's a $100 fine."

Jeremy Fiedelholtz suffocated on Jan. 29, 1997, while under the care of licensed day-care provider Christina Schwartzberg of Plantation. Schwartzberg was charged in September with neglect of a child after she left Jeremy and 12 other infants and toddlers with an unlicensed helper while Schwartzberg went grocery shopping. Her trial is set for March 2.

"Every time I see a father play with his son, I keep asking how I could lose my perfectly healthy son at a licensed day care that was supposed to protect and nurture children," Mark Fiedelholtz said.

Schwartzberg's license, which allowed her to look after five infants and five after-school children, was suspended immediately after the incident.

Dad pushing for reform urges parents to boycott group day care centers

By LAUREN ROTH
Herald Writer

If a child dies while at a day care center, the charges a center operator faces are less severe than those for maiming animals or stealing cows, a day care reformer said Monday.

Mark Fiedelholtz, who pushed an unsuccessful bill in the Florida Legislature to make deliberate day care violations a felony, called on parents to boycott group day care centers.

"People can't go to licensed day care anymore. Their kids will get killed," he said.

Fiedelholtz's 3-month-old son, Jeremy, suffocated in January 1997 in the first two hours he was under the care of a home-based, licensed day care provider in Plantation. The provider left 13 children under the age of 2 in the care of an unlicensed assistant.

Jeremy's Law, as the bill was called, would have changed day care violations from civil negligence, a misdemeanor, to criminal negligence, a felony.

The proposed amendment that stopped the bill's progress in the Senate would have made negligence a felony only if a child were injured or killed.

The delay meant the House did not have time to vote again on the bill during this year's session.

Fiedelholtz is confident the bill will pass next year with the amendment.

"The 1998 Legislature has spoken. Slogans on license plates and tax breaks are more important than the safety of our children at day care," Fiedelholtz said at a press conference in Plantation.

Fiedelholtz is confident the bill will pass next year with the amendment. For now, parents should avoid group day care, he said.

"There are good day care facilities," he said. "But there are too many bad ones."

Working parents should get one-on-one care for their children, he said. "Rearrange their schedules, at least for the first year," he said.

He also suggested finding nannies trained as nurses through hospitals.

Sponsors upset over failure to pass child day-care bill

By KATHY BUSHOUSE
Staff Writer

Mark Fiedelholtz wants working parents to rethink sending their children to day care.

Since the state Legislature failed to pass a bill that would make some day-care violations crimes, Fiedelholtz thinks parents should find child-care alternatives — even if it means changing their work schedules, hiring a nanny or having one parent stay at home to care for the child.

"People can't go to licensed day care anymore. There's no way," said Fiedelholtz, whose 3-month-old son Jeremy died in day care last year. "It's too bad. It's their kids' life at stake."

The Jeremy Fiedelholtz Safe Day Care Act failed to pass before the end of the session on Friday, said state Rep. Steven Effman, D-Sunrise, who sponsored it in the House of Representatives.

If it had passed, day-care operators would have faced a second-degree felony charge if they lied to parents about their qualifications, licenses and facilities, then had a child suffer injuries or die in their care. The bill would have been the first in the nation to make such violations a felony.

The bill had unanimously passed the House, but the Senate revised the bill and the revised version did not get through the House in time, Effman said.

The bill had unanimously passed the House, but the Senate revised the bill and the revised version did not get through the House in time.

"If the House version had been heard on the floor of the Senate, I think it would have passed. ... We simply ran out of time. It was just very upsetting," Effman said.

"This bill here ... was a no-brainer," Fiedelholtz said.

Effman and Fiedelholtz said they would work to get the bill made into law during the next legislative session.

Jeremy Fiedelholtz suffocated on Jan. 29, 1997, in a crib at Christina Schwartzberg's licensed home day care in Plantation. She was charged with child neglect for allegedly leaving Jeremy and 12 other infants and toddlers with an unlicensed helper.

Fiedelholtz said he shopped around before choosing the home day-care center for his son. He believes parents often are lulled into a false sense of security by licenses, that they are "thinking they're getting a higher form of day care."

Both home day care and larger day-care facilities must have employees with CPR and first-aid training, and both have limits on the number of children they can have in their care.

In addition, home-care operators must submit to a background check, be immunized and have a substitute caregiver, according to state law. Larger day-care centers must have one person on staff with credentials in child development for every 20 children at the center.

Fiedelholtz said this training is not enough. "There's just no other health profession where you can do that," he said.

Debbie Schrauth, a regional team leader with KinderCare, said the state's licensing procedures are "meticulous."

The licensing agent who checks Schrauth's child-care center in Lake Worth checks everything from refrigerator temperature to the distance between children's cots to her staff's training files, Schrauth said.

"I do believe that child care is very much needed and that parents have to shop around," Schrauth said. "Quality care can be found; it just doesn't fall in your lap. It's something you have to look for."

A Gift From God

Unforgettable faces

YEAR IN REVIEW

A trio of klezmer musicians. A set of uncommon twins. A pair of half-century honeymooners. A couple of child-care crusaders. A *Titanic* entrepreneur. These are just a few of the people who have shared their stories on the Lifestyle pages this year. As with all of us, their lives have moved on with the passing months. There have been successes and struggles, good health and illness, and in the midst of it all, a newborn gift of hope.

■ More year-in-review stories. Page 7E

A sense of renewal and hope

By MARGO HARAKAS
Staff Writer

At 7 months, Jordan Fiedelholtz has decided he isn't yet ready to crawl. Instead he raises his arms, giggles and babbles, and Dad or Mom lifts him, hugs him and moves him to where he wants to go.

"What a gift," says Mark, watching his son's every move. The husky little guy with the deep blue eyes and sandy hair chatters endlessly, talks, the family concludes, nearly as much as his daddy.

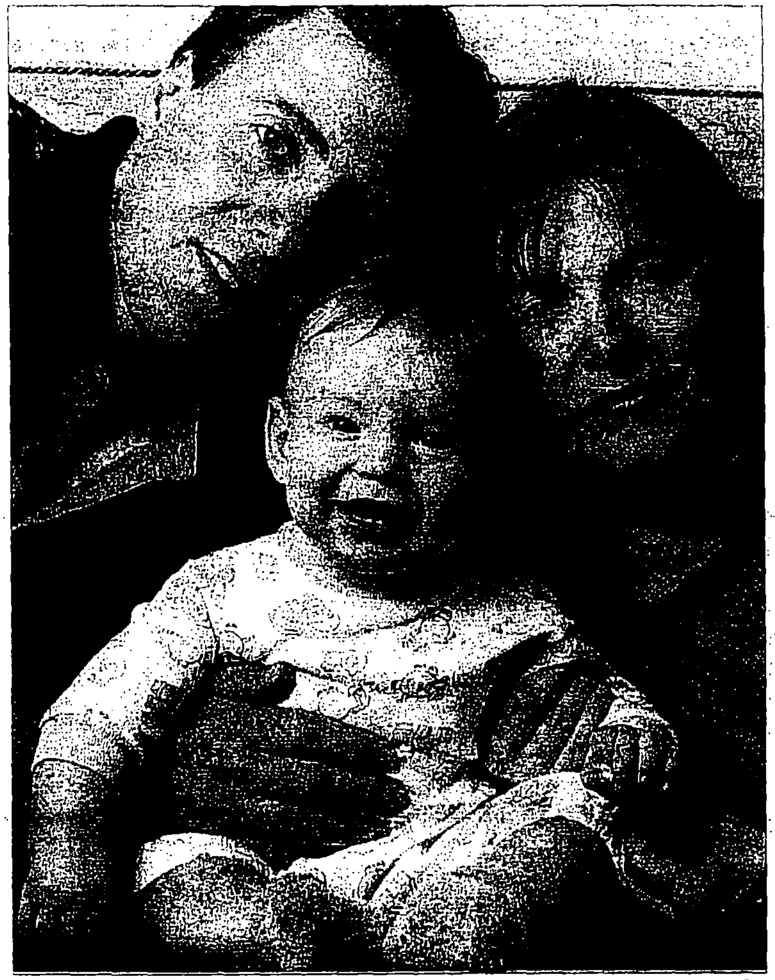
"He's definitely a blessing," says mom Julie. "He's definitely taken what was an empty pit and helped to fill that."

On the nearby Christmas tree is an ornament bearing the name Jeremy, a brother Jordan will never know. Jordan already is twice the age Jeremy was when he died in a licensed child-care home in Plantation nearly two years ago.

It still seems unreal. Two hours after dropping off Jeremy, Julie returned to find her 3-month-old son's lifeless body, face down in a crib.

It's not hard to fathom why in the delivery room in May, Mark held on to newborn Jordan, not wanting to release him. The doctor finally told Mark they had to get the baby under the

PLEASE SEE **HOPE** / 7E



Staff photo/JIM VIRGA

Mark and Julie Fiedelholtz and their 7-month-old son, Jordan.

SUNDAY LIFESTYLE

HEALTH FITNESS & FAMILIES

Sun-Sentinel, Sunday, December 27, 1998 Section E

FROM PAGE 1E

Incomprehension is mixed with swirling joy, grief

warming lamp. "It'd been so long since I'd held a baby," he says.

It's tough not to make comparisons between the baby that was and the baby that is. "They look alike," says Julie.

Jordan is large, but Jeremy was even larger. "Jeremy was extremely bright. Jordan is more loving and playful," Julie says.

Even at this tender age, Jordan has a captivating personality, an unusual sociability.

Jordan adores his older brother Jonathan, 15, Julie's son from a previous marriage, and Mark's best friend.

"He's a great young man," says Mark. "Jonathan, for a while, was the only one who could get Jordan to do a real deep belly laugh," says Julie, smiling.

Mark puts on legal seminars, and Julie is employed by Catholic Charities. Each works part-time now, so one or the other is always home with Jordan.

Financially, it's a hardship. "We bought this house based on two salaries," Julie says. But the sacrifice is worth it.

"It will be this way till we know he's not going to suffocate," says Mark. "We want to get him to where he has some recovery ability."

When Jordan is 1, they'll consider hiring a nanny, if they can find one they feel comfortable with. But even then, Mark, who works from home, will be close by. "It will be the nanny and me," he says.

At the age of 3, Jordan may go to day care. "We know there is good family day care out there," says Julie. Day care run by people who love children, are dedicated to them and their needs.

Finding such facilities would be easier, the couple believes, if the bill they've fought so doggedly for the past year and a half were passed. The Jeremy Fiedelholtz Safe Day Care Act would raise the penalty for child-care violations from a misdemeanor to a felony.

Jeremy died when the day care operator, Christina Schwartzberg, went shopping, leaving the children with an uncertified helper. The subsequent investigation found that Schwartzberg also had violated the child-adult ratio. She did not have four children enrolled, as she had told the Fiedelholtzes, but an illegal 13. Charged with felony neglect, she is scheduled for trial in February.

"Jeremy's story has captured the attention of millions of people nationwide," says Mark. "The message is starting to crystallize. We must offer better protection to our nation's children."

New York state already took the step by enacting the Jeremy Fiedelholtz and Julia Haas Safe Day Care Act. Similar legislation is being considered in other states, says Mark.

While Florida failed to follow suit, Fiedelholtz is confident Jeremy's bill will win legislative approval in '99.

Meanwhile the family is slowly healing. "We still get sad. We still cry," admits Julie.

"I still get up in the night and try to understand it," says Mark.

And he still talks to Jeremy, still carries his dead son's picture. "Everybody has a different way of coping," he says.

Evidence of the fear that still stalks them is seen in the way the couple judge their days. "Today's a good day," they'll tell each other. "Jordan is still breathing."

All that said, they are clearly happier these days. "We're content. We're working through our pain," says Julie.

"Jordan's arrival," says Mark, "has given us a sense of renewal and hope. Our faith in God and this great country remains intact."

While Julie says there will never be closure, the trial should help. "I think having this hanging over our heads," she says, "is not healthy."

HOPE

Chicago Tribune file photo

Julie and Mark Fiedelholtz testify in 1997 about the death of their baby Jeremy, pictured, who died in a licensed day-care facility.

Jeremy's Law Passes In New York

Day-care negligence a crime

Governor hopes new law brings peace of mind

By MARC VIOLETTE
Ottaway News Service

ALBANY – Gov. George Pataki yesterday signed legislation making New York the first state in the nation to criminalize major day-care violations, like those that claimed the life of New Windsor native Mark Fiedelholtz's infant son, Jeremy.

"Our kids are so precious," Pataki said yesterday, with Mark Fiedelholtz at his side. "Every parent should have peace of mind that when they drop their children off at a day-care center they should have confidence that the license means something."

The law Pataki signed yesterday makes it a felony punishable by up to four years in prison if a child is seriously injured or killed because of a day-care center's negligence. Day-care operators can also be jailed up to a year if they intentionally mislead parents or officials about the number of children they care for, the size of their facility or the credentials and qualifications of their staff.

Fiedelholtz and his wife, Julie, have campaigned relentlessly for such a law since January 1997 when their son Jeremy died unattended in his crib two hours after he was dropped off on his first morning at a child-care center in Florida, where the Fiedelholtzes now live.

The center's owner lied to the Fiedelholtzes about the number of children she cared for, claiming there were only four children when in fact there were 13.

On the day Jeremy died, the owner left to run errands, leaving all 13 children in the care of a poorly trained illegal immigrant.

"No one can understand the extreme agony of having a perfectly healthy child die in a pool of blood and vomit in a place that's supposed to be a safe haven for children," Mark Fiedelholtz said.

The new law was also prompted by the case of the Haas family whose three-month old daughter, Julia, died unattended in a baby swing at an Albany child care center.

In both the Fiedelholtz and Haas cases officials were able to revoke the licenses of the day-care operators but were unable to bring criminal charges against them because the deaths were caused by neglect, not overt child abuse.

The new law takes effect Nov. 1.

"This law will change the face of day care," said Mark Fiedelholtz, who predicted that other states will soon pass similar measures. He said the law sends a clear message to day-care operators "who use their centers as playgrounds for fraud and neglect. Your playgrounds are now closed. Forever."

Yesterday's bill signing ceremony took place at a child care center in the shadow of the state Capitol.

Sen. William Larkin, R-New Windsor, who sponsored the legislation, has been a longtime friend of the Fiedelholtz family.

At the podium yesterday, Larkin praised the Fiedelholtz and Haas families' persistence in pressing for legislation to close a gaping loophole in day-care law.

"When you have nine grandchildren this gets emotional," a teary Larkin said.

Looking down at the children arrayed at his feet on the floor of the day-care center, Pataki said that the "Jeremy Fiedelholtz and Julia Haas Safe Day Care Act" gives the state a law that puts teeth into day-care regulation.

Pataki said the vast majority of child care centers are operated by honest and caring providers. But he vowed that for those who break the law "we will make them criminals because that is what they are."

Jeremy's Law Finally Passes In Florida

MAD DAD: Mark Fiedelholtz in Plantation Wednesday beside a picture of his son, Jeremy, who died at a crowded day-care center, talks about passage of a new law to toughen penalties on day-care operators who misrepresent their services. Staff photo/Judy Sloan Reich

Dad warns 'greedy' day-care owners

By NATASHA BUTLER
STAFF WRITER

PLANTATION — Mark Fiedelholtz wants everyone to know it's open season on child-care operators who misrepresent themselves.

"This is a news alert for greedy day-care providers who are predators," said Fiedelholtz, his voice thundering. "People who take advantage of the system can now expect a one-way ticket to jail for a long time."

Fiedelholtz made the comments Wednesday during a press conference at Plantation City Hall chambers. He was on hand to discuss the state Legislature's passage last month of The Jeremy Fiedelholtz Safe Day Care Act, named after his son.

Three-month-old Jeremy suffocated on Jan. 27, 1997, while under the care of licensed day-care provider Christina Schwartzberg of Plantation. Schwartzberg operated Chrissy's Kids! out of her home at 5660 SW Third Court.

Fiedelholtz said Schwartzberg said she only watched about six children. But on the day of his death, Jeremy was reportedly one of 13 children — more than twice what the state allows — left under the care of an unlicensed aide, Cheryl Lavigne. This also violated state law, because Lavigne was not CPR certified.

Under the new measure (SB 750), lying about a day-care center's licenses, qualifications or facilities would be a first-degree misdemeanor, a charge that carries a penalty of one year in jail. If the child suffers serious bodily injury or dies, operators would face second-degree felony charges and a maximum of 15 years in prison. The bill is the second in the nation to make such violations a felony.

"I don't think the majority of [child-care] providers are hardened criminals," said Fiedelholtz, flanked by bill sponsors Rep. Steve Effman, D-Sunrise, and Sen. Howard C. Forman, D-Pembroke Pines. "I think a lot of them are opportunists, who just see the money and run with it."

Fiedelholtz said his son's death — and the subsequent bill — has paved the way to "bring down the wall of silence covering day-care fraud."

The Jeremy Fiedelholtz Safe Day Care Act was passed in both the House and Senate, but has yet to be signed by Gov. Jeb Bush. Once signed, the bill would take effect Oct. 1.

Jeremy's death was ruled an accident. The day he died, the county's Bureau of Children's Services, which licenses child-care centers, cited Schwartzberg and temporarily suspended her license. She voluntarily surrendered it in February that same year.

The State Attorney's Office charged her with neglect of a child, a third-degree felony. She is awaiting trial, possibly this summer. If convicted, Schwartzberg could face five years in prison. Lavigne was granted immunity from prosecution in exchange for her testimony against her former employer.

Schwartzberg is scheduled to go to trial in mid-July.

Florida makes it a crime for child-care centers to lie

By STEVE BOUSQUET
Herald Capital Bureau

TALLAHASSEE — It took two years, but the Legislature Monday passed a bill that makes it a crime in Florida for the operator of a child-care center to lie to parents or inspectors.

As more families are made up of full-time working parents, and more single parents are leaving the welfare rolls for the workplace, the Broward lawmaker spearheading the bill says the state has a responsibility to ensure safety standards in child-care centers.

Sponsored by Rep. Steve Effman, D-Sunrise, the bill was filed after a 3-month-old boy suffocated on his first day at a licensed day-care center in Plantation in 1997. In memory of the boy, Effman's bill is called the Jeremy Fiedelholtz Safe Day Care Act.

"It is an important milestone for the state of Florida, and it goes a long way toward protecting kids," Effman said. "The people who take care of our kids need to always act professionally and take their responsibilities very seriously."

Jeremy's father, Mark Fiedelholtz, who has lobbied for similar laws in other states, said Florida now has the strongest law in the country to protect customers from being deceived by operators.

"It's day-care Russian roulette," Fiedelholtz said. "In our case, unfortunately, it was played and we lost a child."

Jeremy and 12 other children under the age of 2 were left in the supervision of a single unlicensed day-care worker. Broward County's licensing division required one adult for every four infants.

Effman said parents should ask questions about child-care center operators: Are staffers certified? Do they know CPR?

The bill (SB 750), which now goes to Gov. Jeb Bush, passed the House 115-1, with only Rep. Bill Sublette, R-Orlando, voting no. The Senate vote was 40-0 Friday.

Effman reworked his bill and made criminal sanctions less severe after the measure died in the final minutes of the 1998 session in the Senate. The measure now makes it a first-degree misdemeanor to knowingly give false information to parents or inspectors. If a violation results in serious bodily harm or death to a child, the charge becomes a second-degree felony.

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Defense Attorney Is Desperate

Lawyer: Angry father bullied prosecutors

By PAULA McMAHON
STAFF WRITER

After Mark Fiedelholtz's baby son died in day care in 1997, he pushed aggressively to get prosecutors to file criminal charges, including manslaughter, against the child care provider.

Following months of investigation, the Broward State Attorney's Office charged Christina Schwartzberg with criminal neglect of a child, a felony.

Now Schwartzberg's attorney is trying to get a judge to disqualify Broward prosecutors from handling the case because, he says, Fiedelholtz went too far and intimidated prosecutors in his efforts to get charges filed. The high-profile case got a lot of attention and Fiedelholtz threatened to make prosecutors look bad and to harm their legal careers, defense attorney Bruce Zimet said.

■ PROSECUTORS continues on 2B

Lawyer: Angry father 'intimidated' prosecutors

■ PROSECUTORS

CONTINUED FROM PAGE 1B

"Unfortunately, no matter what 'motive' Mr. Fiedelholtz might have had, he far exceeded any reasonable level of protected conduct," Zimet wrote in court documents filed this month.

Prosecutors say Zimet's allegations are without merit and that Fiedelholtz was within his rights as a grieving father to advocate strongly for what he wanted.

Jeremy Fiedelholtz was 3 months old when his mother dropped him off for a two-hour trial run at Schwartzberg's day care center in Plantation.

When Julie Fiedelholtz returned to pick up her son, she found him lying face down in a portable crib. He had stopped breathing and had vomit on his face. He was declared brain dead a day later and was removed from life support.

Prosecutor Dennis Siegel said in court that Schwartzberg went out to buy Spaghettios. Jeremy Fiedelholtz went into distress while she had left 13 children, more than the number permitted by state law, in the care of a lone aide, Cheryl Lavigne.

Court documents show that Mark Fiedelholtz fought hard to get the most serious charges possible filed against Schwartzberg in 1997.

An attorney himself, Fiedelholtz did legal research and argued that Schwartzberg should be charged with manslaughter, neglect of a child causing great harm and organized fraud. He also tried to get charges filed against Lavigne and Broward County officials who supervised day care centers.

Court documents show that Fiedelholtz aggressively lobbied several prosecutors, including State Attorney Mike Satz, Chuck Morton, who heads the homicide unit, and Dennis Siegel, who is chief of the sex crimes and child abuse unit.

In one of several faxes and letters that Fiedelholtz sent to prosecutors, he wrote to Satz:

"If you want to be known as the State Attorney who didn't come to the defense of an innocent 3-month-old boy who was neglected by a callous and greedy woman, go for it."

Fiedelholtz threatened he would publicize his frustration at how the case was being handled at press conferences and in his testimony to a Senate committee. Fiedelholtz successfully lobbied for changes in the way day care providers are regulated.

"Anyone who doesn't do the right thing will be held accountable," Fiedelholtz told Satz in July 1997.

ANGRY FATHER: Mark Fiedelholtz's son Jeremy, pictured left, died shortly after being dropped off at a home day care provider in 1997.

Staff photo/ Judy Sloan Reach

He also hinted at political implications for Satz. "My assessment of the voters' reaction is, once they hear all the facts they will be outraged," he informed Satz, who is an elected official.

After investigating the case over a period of about eight months, prosecutors charged Schwartzberg in September 1997 with neglect of a child, which they said was the legally appropriate charge. If convicted, she faces up to five years in prison.

To sustain manslaughter charges, Florida law requires proof that except for the neglect, the victim would have survived.

An autopsy on the baby's body showed Jeremy died of positional asphyxia, which means he suffocated after being placed on his stomach. Schwartzberg is charged with neglect in her handling of four children, including Jeremy, at the day care center.

Fiedelholtz said Friday that he was not trying to threaten or intimidate anyone, but was advocating for his dead son.

"I am entitled to do that based on the facts of the case. I wanted [Schwartzberg's] conduct stopped," Fiedelholtz said. "They did not charge anyone because I was on CNN or the *Today* show. They charged her because of the facts of the case."

In court documents filed in response to Zimet's allegations, Siegel wrote that prosecutors' actions show they were not influenced by Fiedelholtz's demands. They did not file charges against Lavigne or county officials, and filed a lesser charge than Fiedelholtz wanted against Schwartzberg.

Lavigne, who now lives in Canada, is expected to testify against Schwartzberg by satellite at her trial.

Prosecutors are frequently challenged by individuals who say they will go to the media, contact other government officials, or make other threats if prosecutors don't do what they want, Siegel wrote.

"If a state attorney's office was disqualified every time this occurred, the state attorney's offices would be constantly disqualified, and the criminal justice system would be in deeper chaos than it already is," Siegel wrote.

Broward Circuit Judge Ronald J. Rothschild will consider the arguments before the trial's April starting date. Prior case law indicates it is likely that Broward prosecutors will continue to handle the case.

Rothschild has already ruled that jurors will not be told that the baby died. The death is of such magnitude that it would have a prejudicial effect on the jury, Rothschild ruled, noting that Schwartzberg is charged with neglect and not the death of the child.

Paula McMahon can be reached at pmcmahon@sun-sentinel.com or 954-356-4533.

Day-care owner loses bid for changes in death case

By **PAULA McMAHON**
STAFF WRITER

A Broward judge ruled Friday that the State Attorney's Office can continue to handle the prosecution of a day-care worker despite defense allegations that the baby's father bullied prosecutors.

Jury selection in the high-profile case is scheduled to begin Monday.

Christina Schwartzberg, 34, is charged with criminal neglect of a child in the January 1997 death of 3-month-old Jeremy Fiedelholtz.

The baby was left for a two-hour trial run at Schwartzberg's day-care center in Plantation. When his mother returned, he was not breathing.

He died a day later.

Prosecutors say Schwartzberg left an aide to care for 13 children while she went grocery shopping.

Defense attorney Bruce Zimet wanted Circuit Judge Ronald J. Rothschild to dismiss the charge against Schwartzberg or disqualify Broward prosecutors from handling the case.

Zimet argued that the baby's father, Mark Fiedelholtz, threatened to make prosecutors look bad and harm their legal careers.

Prosecutor Dennis Siegel said prosecutors were not affected by the pressure and made an objective decision to file the lesser charge that they felt was legally appropriate.

Siegel also said that Fiedelholtz had a right to express his opinions. Fiedelholtz said he was just advocating for his dead son.

The judge said Fiedelholtz, who pushed successfully for tighter day-care regulation, got more involved in handling of the case than most victims' families.

"While logic tells me there may have been influence [on prosecutors], I am finding as a matter of law that it was not substantial," Rothschild said.

Zimet plans to appeal the ruling.

Paula McMahon can be reached at pmcmahon@sun-sentinel.com or 954-356-4533.

Defendant Pleads Out To Avoid Trial

Plea deal : baby's death

House arrest, probation, fine ordered for day-care owner

By PAULA McMAHON
STAFF WRITER

Clutching the urn containing their baby son's ashes, Mark and Julie Fiedeltholtz watched Monday as Christina Schwartzberg pleaded no contest to child neglect in connection with the infant's death.

Schwartzberg's plea came as jury selection was to begin in her criminal trial. She would have faced up to 5 years in prison if convicted.

Schwartzberg

The Fiedelholtzs and prosecutor Dennis Siegel asked the judge to sentence Schwartzberg to at least some jail time for the felony crime. They said it would deter other day-care owners from engaging in similar neglect.

"Our family is destroyed," Mark Fiedelholtz said as tears rolled down his wife's face. "We're here, but our souls are ripped out."

"Jeremy's dead. Nothing is going to bring him back," he told the judge. "I'm really here for the rest of the children."

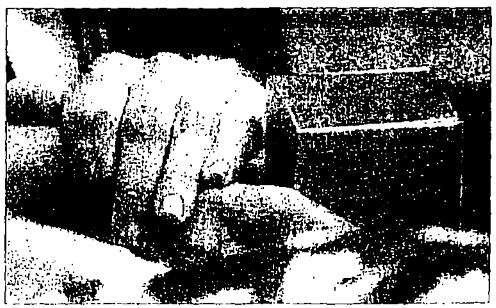
But complying with the terms of the plea, Broward Circuit Judge Ronald J. Rothschild sentenced Schwartzberg, 34, to two years of house arrest, three years of probation and to pay restitution or a $2,500 fine. He also banned her from caring for any children she is not related to for 5 years.

Jeremy Fiedelholtz was 3 months old when his mother dropped him off for a two-hour trial run at Schwartzberg's Plantation day-care center on Jan 29, 1997. She returned early and found him lying face down in a cot with vomit on his face; he was not breathing.

■ JEREMY continues on 2B

'DESTROYED': Julie Fiedeltholtz, above, wipes tears from her eyes next to her husband, Mark, as he speaks to the judge on Monday. The Fiedelholtzs' infant son, Jeremy, died after being left at defendant Christina Schwartzberg's day-care center for a brief time. At right, the couple hold an urn with their son's ashes that they brought to the hearing.

Staff photos/Judy Sloan Helch



Woman pleads no contest to neglect in baby's death

JEREMY

CONTINUED FROM PAGE 1B

A day later, Jeremy was declared brain dead and removed from life support. An autopsy found he died of positional asphyxia.

Prosecutors said they could not charge Schwartzberg with causing the baby's death because the evidence pointed only to neglecting Jeremy and three other children in her care.

Schwartzberg went out to buy Spagettios, prosecutors said, leaving an uncertified aide who was 7 months pregnant in charge of 13 children and a dog.

A police investigation showed Schwartzberg lied to parents about the number of children in her care, violated rules limiting the ratio of children to adults and hid children so parents would not suspect her.

On the day of Jeremy's death, there were six infants, six 1-year-olds and a 2-year-old at the center.

The couple did everything they could to ensure their son's welfare. They checked to make sure Schwartzberg was a certified caregiver and quizzed her about her standards of care.

"Her only motive for operating a day-care center the way she did was for money," prosecutor Siegel told the judge. "She lied to the parents about what she was doing."

Schwartzberg did not speak except to murmur brief responses to questions from the judge.

But her attorney, Bruce Zimet, said Jeremy's death has also devastated Schwartzberg.

"This woman has lived with what she did and didn't do for three years," Zimet said. "She will live with it for the rest of her life."

He read aloud from a statement Schwartzberg prepared but was too upset to read herself: "I did not intend to harm or injure any child.

"Nobody can ever understand the depth of my remorse," the statement continued. "I know my remorse will remain with me for the rest of my life."

Rothschild said nothing he could do would diminish the tragedy of the baby's death.

Citing Schwartzberg's previously clean record, Rothschild said he felt that and the evidence in the case made house arrest and probation the appropriate sentence.

If he had the legal authority to ban her from running a day care or working in one for the rest of her life, the judge said he would do so. Instead, he imposed a 5-year ban Schwartzberg will be able to care for her three children and relatives.

Outside court, the Fiedelholtzs said they were satisfied by the judge's action.

"It's not a slap on the wrist," Julie Fiedelholtz said "I'm relieved that it's over, we want to move on."

"It's a very stiff sentence, and I think a lot of the day-care operators are going to watch this and know they're not going to get a free pass," Mark Fiedelholtz said.

Jeremy's death has devastated the whole family, Mark Fiedelholtz said. Julie's son Jonathan, now 16, worries about the health of the couple's 22-month-old son, Jordan. But the family is trying to overcome their fears, and they are expecting another baby in September.

The family campaigned avidly to create greater government oversight of day-care centers.

"Jeremy's Law," which makes it a felony for day-care givers to lie to parents or misrepresent the care offered by their facility, has been enacted in Florida and New York and is being considered in other states, Mark Fiedelholtz said.

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Defendant Wants Leniency

Day care woman asks judge for rules

Can kids have friends over?

BY SHARI RUDAVSKY
srudavsky@herald.com

A day care operator sentenced to two years' house arrest for criminal child neglect last week has asked a judge to clarify whether she can have her children's friends over for sleep-overs and engage in routine activities outside the home under the sentence.

Christina Schwartzberg, in whose care an infant suffocated to death three years ago, is asking the court to allow her to attend synagogue weekly, ferry her children to school and hockey practice, as well as go grocery shopping.

Schwartzberg, whose sentence included the caveat that she not care for children other than her own, has also requested that she be allowed to supervise her children's friends when they come to play.

"These are things she can do with her kids so that her kids are not penalized," said Bruce Zimet, Schwartzberg's attorney. "It's letting the kids do what they would ordinarily do."

Broward Circuit Judge Ronald Rothschild is scheduled to hold a hearing on her request Friday. It's not uncommon for those placed under house arrest to ensure that certain activities do not violate the terms of their sentence.

But in this case, said Mark Fiedelholtz, father of the child who died in Schwartzberg's care, she has gone too far. Particularly offensive, he said, is the notion that she should care for other people's children.

Wife "Julie and I feel horrible for her children, but she should have thought of that before she committed the crime," he said.

His son Jeremy was in the care of an unlicensed aide at Schwartzberg's Plantation day care center when he suffocated unnoticed in his crib. Schwartzberg had left the center to run some errands at the time.

Judge eases terms of sentence in death

By **PAULA McMAHON**
STAFF WRITER

A Broward woman who pleaded no contest to neglect in a case in which a baby died in day care went to court Friday to ask for easier house arrest.

Earlier this month, Christina Schwartzberg, 35, of Plantation, was sentenced to two years of house arrest and five years of probation. Broward Circuit Court Judge Ronald J. Rothschild also barred her from caring for any children who are not relatives.

Jeremy Fiedelholtz was 3 months old when he died at day care in Schwartzberg's home. She had left an aide in charge of 13 young children.

Schwartzberg's attorney, Bruce Zimet, asked the judge Friday for several changes in the conditions of her house arrest.

Schwartzberg's requests included that she be allowed to work part time, drive her children to school and sports practice and attend religious services. Her three children are ages 6, 9 and 11.

She also asked to attend her children's hockey games and allow other children to come to her home to play or for sleepovers.

"The court indicated this was going to be a sentence for Mrs. Schwartzberg and not a sentence for her children," Zimet said.

Prosecutors Sherri Zack and Andre Thornton, of the Department of Corrections, which supervises people on house arrest, objected to some of Schwartzberg's requests.

"The whole concept of community control is that the person is a prisoner in their own home," Thornton said. Schwartzberg would not be able to attend hockey games if she was in jail, he said.

People on house arrest are frequently permitted to work but must inform the department of their work schedule and comply with it.

Rothschild allowed Schwartzberg to work part time, drive her children to school and go to synagogue. He banned her from going to hockey games or having any unrelated children in her home, even if her husband is home. The judge also forbade her from going out in her yard while her children are playing there unless there is an emergency.

Jeremy's father, Mark Fiedelholtz, said the judge's decisions were appropriate.

"Even though Julie and I feel this woman didn't care too much about our child, we feel absolutely horrible that her children are being affected," Fiedelholtz said. "But I do think it was kind of insulting of her to even ask to host sleepovers and go to hockey games."

Paula McMahon can be reached at pmcmahon@sun-sentinel.com or 954-356-4533.

Presidential Support Letters

THE WHITE HOUSE

WASHINGTON

May 5, 1997

Mr. and Mrs. Mark Fiedelholtz
Suite 279
8362 Pines Boulevard
Pembroke Pines, Florida 33024

Dear Mr. and Mrs. Fiedelholtz:

Hillary and I were saddened to learn of your son's death, and we extend our deepest sympathy. We know this must be a terribly difficult time for you. We hope that the love and support of your family and friends will sustain and comfort you. You are in our thoughts and prayers.

Sincerely,

Bill Clinton

GEORGE BUSH

May 23, 1997

Dear Julie and Mark,

I loved meeting your Jonathan and ached when he told me about Jeremy. Barbara and I know firsthand how hurt and devastated you are that this wonderful child is no longer there in your loving family. We know, though, that Jeremy is in God's loving arms now.

Time will help some, I'm sure of that. Friends will help, and faith will help a lot. We grieve with you.

All the best to you in your important work at The Jeremy Fiedelholtz Institute to Protect Children.

Sincerely,

G Bush

Mr. and Mrs. Mark Fiedelholtz
The Jeremy Fiedelholtz Institute to
Protect Children
8362 Pines Boulevard, Box 283
Pembroke Pines, FL 33024

10000 MEMORIAL DRIVE · HOUSTON, TEXAS 77024
PHONE (713) 686-1188 · FAX (713) 683-0801

JIMMY CARTER

May 5, 1997

To Julie and Mark Fiedelholtz

Rosalynn and I share your concern, as do many others, over the minimum requirements allowed to run a licensed day care center in the United States.

Although there is a great deal of work being done on this and many other child care issues, we agree that the White House and Congress must move expeditiously to prevent future tragedies from occurring. We are saddened that your infant son suffered such a horrible death, but pray that through your efforts and advocacy toward improving and enforcing child care agency regulations, other parents will be spared such pain.

You have our warm best wishes for success in this important undertaking.

Sincerely,

Jimmy Carter

Mr. and Mrs. Mark Fiedelholtz
8362 Pines Boulevard
Box 283
Pembroke Pines, Florida 33024

GERALD R. FORD

April 4, 1997

Dear Mr. and Mrs. Fiedelholtz:

Mrs. Ford and I are saddened that your infant son had a tragic death while in the care of a licensed day care center in Florida.

We share your concern that state regulation of day care centers is too often inadequate or ineffective, with minimum requirements. Because of the seriousness of the problem for infant care in such centers, it seems most appropriate for the White House and the Congress to consider the necessity of more strident federal regulations on a national basis. Appropriate administrative and/or legislative action would seem highly desirable.

Best wishes for success in your constructive effort.

Sincerely,

Gerald R. Ford

Mr. and Mrs. Mark Fiedelholtz
8362 Pines Boulevard
Box 283
Pembroke Pines, Florida 33024

Lee: Fiedelholtz

STATEMENT OF

MICHAEL E. HOROWITZ

DEPUTY ASSISTANT ATTORNEY GENERAL

CRIMINAL DIVISION

U.S. DEPARTMENT OF JUSTICE

CONCERNING H.R. 469 - "JEREMY AND JULIA'S LAW"

OCTOBER 4, 2000

Mr. Chairman, Ranking Member Scott and other Members of the Subcommittee, I am pleased to be here to testify today on behalf of the Department of Justice on H.R. 469, known as "Jeremy and Julia's Law", which would provide federal criminal penalties for certain acts relating to child day care providers.

Whenever our children are placed at risk or are harmed due to misrepresentations and falsehoods by day care providers regarding the nature of the services provided or their personal backgrounds, there is cause for serious concern. Incidents such as those involving Jeremy Fiedelholtz and Julia Haas are inexcusable, and require a serious response by those in government - and in particular law enforcement - to ensure that other parents and their children are not placed in similar situations. This bill is an understandable effort to help reduce - through deterrence and the incarceration of offenders - future conduct of this kind.

However, the bill also raises policy questions involving the proper role of the federal government. Heretofore, the regulation of child day care providers has been a matter reserved exclusively to state and local governments. Indeed, it appears that at least two states, New York and Florida, have passed similar legislation. Under this bill, the states would continue to have the exclusive responsibility for establishing standards for child day care providers, and for imposing non-criminal sanctions for violations. Typically, in a regulatory scheme, sanctions can range from administrative measures such as license suspensions, to civil penalties, and ultimately to criminal sanctions. Under H.R. 469, if enacted, the federal government's role would be confined to the imposition of criminal penalties for the most serious violations, with states having concurrent jurisdiction to impose such penalties. Thus, the federal government, unlike the supervising state, would not be able to consider an entire range of sanctions but could only determine whether or not to pursue a criminal case. While this role is not unique, the Department of Justice has generally supported such a role only on the basis of a strong record demonstrating the need for a federal role. Before reaching a final position on this particular legislation, we would wish to know far more concerning such matters as the extent of the problem facing parents and law enforcement, the nature of the states' regulatory and enforcement laws that address it, and whether the potential for federal criminal sanctions would be expected to significantly improve the safety of our nation's children and the performance of the child day care provider industry.

Although the Department has not yet reached a final position on this legislation, we believe there are several drafting ambiguities in H.R. 469 that need correction. For one thing, we are concerned that the definition of the term "child day care provider" is overbroad and could be construed to cover friends and grandparents who, without remuneration, provide day care for a parent who traveled to employment in another State. This scope of coverage raises constitutional concerns under the Commerce Clause in the light of recent Supreme Court precedents. See United States v. Morrison, 120 S.Ct. 1740, 1749-50 (2000). To avoid these constitutional concerns, and otherwise to properly limit the legislation to its likely intended purview, we suggest that the bill be made to apply only to providers who are engaged in child day care as a commercial activity. In addition, we believe it would be helpful if the legislation defined the term " law enforcement officer." Compare 18 U.S.C. 115.

Further, assuming the Subcommittee believes that a misrepresentation that merely poses a danger to a child (yet where no actual injury results) merits federal criminal penalties, we observe that the bill is limited, in subsection (a), to misrepresentations that are made **before** a child is placed in day care. But a misrepresentation after placement may also endanger a child. Limiting the scope of the legislation in this regard seems problematic. Either the proposed false statement offense in subsection (a) should be eliminated as too inchoate, or expanded to encompass false statements that endanger a child **before and after** the child has been entrusted to the provider's care.

Additionally, with respect to the offense listed in subsection (b), which requires "serious bodily injury" to a child, we suggest that a greater penalty may be appropriate where death as opposed to serious bodily injury results. Lastly, we believe that the term "serious bodily injury" should be defined by reference to 18 U.S.C. § 2119 rather than, as in the bill, to 18 U.S.C. § 1365, since the former has an appropriately wider reach that embraces certain nonviolent sexual offenses.

Mr. Chairman, that completes my remarks and I would be glad to try to answer any questions.