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Cavanaugh, 138 N.H. 193, 201, 635 A.2d 1382, 1387 (1993) (Batchelder, J., dissenting). One who defends these freedoms "must share his foxhole with scoundrels of every sort, but to abandon the post because of the poor company is to sell freedom cheaply." *Kopf v. Skyrn*, 993 F.2d 374, 380 (4th Cir. 1993). These freedoms are rarely lost or compromised in sweeping pronouncements; rather, their erosion, when it occurs, most often happens by well-intentioned and incremental, even subtle, steps. The majority takes such a step today, and from that decision we respectfully dissent.

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Auburn Family Division
No. 96-672

In re NICHOLAS G.

May 22, 1997

[REDACTED]

Jeffrey R. Howard, attorney general (*Daniel J. Mullen*, senior assistant attorney general, on the brief and orally), for the State.

James E. Duggan, chief appellate defender, and *David M. Rothstein*, assistant appellate defender, of Concord (*Mr. Duggan* and *Mr. Rothstein* on the brief, and *Mr. Duggan* orally), for the juvenile.

MEMORANDUM OPINION

BROCK, C.J. The Family Division Pilot Program (*Korbey, J.*) has transferred without ruling, *see* SUP. CT. R. 9, questions as to whether marital masters have the authority, pursuant to Laws 1995, chapter 152, to adjudicate delinquency cases under RSA chapter 169-B (1994 & Supp. 1996). Pursuant to an agreement of the parties reached at a prehearing evaluation conference, *see* SUP. CT. R. 12-B, the following questions were briefed and argued:

1. Does a marital master have statutory authority to conduct proceedings under RSA 169-B?
2. Would it violate Part 2, Article 46 of the New Hampshire Constitution for marital masters to conduct proceedings

under RSA 169-B and to make recommendations under Chapter 152 and the Family Division Rules to judicial officers?

3. Does the existing process for review of a marital master's recommendation violate due process under the state or federal constitutions?

Because we hold that a marital master has no statutory authority to conduct delinquency proceedings, we do not reach the juvenile's constitutional arguments. See *Britton v. Town of Chester*, 134 N.H. 434, 441, 595 A.2d 492, 496 (1991).

On October 1, 1996, the juvenile, Nicholas G., appeared in a delinquency proceeding in the Auburn Family Division charged with simple assault. The Marital Master (*Bruce Dalpra*, Esq.) issued several pretrial orders and set a date for an adjudicatory hearing. The orders were approved by a district court judge that same day. See *Abrams v. Abrams*, 131 N.H. 522, 526, 556 A.2d 1173, 1175 (1989).

To counter the possibility that a hearing on the merits of the charge against him would be held before a marital master, Nicholas G. filed a motion to have the fact finder in his trial be a judicial officer under part II, article 72-A of the State Constitution. Subsequently, the family division transferred without ruling the question whether marital masters are authorized to hear juvenile delinquency cases under RSA chapter 169-B.

RSA chapter 169-B provides a comprehensive framework for the district court to "guarantee children their constitutional rights, and encourage the use of rehabilitative and treatment resources whenever possible." *In re Russell C.*, 120 N.H. 260, 266, 414 A.2d 934, 937 (1980). On May 25, 1995, the legislature transferred jurisdiction over a number of family matters, including delinquency actions, in Grafton and Rockingham counties to the family division, see Laws 1995, 152:2, III, which is comprised of family division justices and marital masters, see Laws 1995, 152:5. An underlying purpose of the family division is "the assignment of all family matters of a single family to one family division justice or marital master located in a family division court that is geographically accessible to the family." Laws 1995, 152:1.

Nothing in the legislation establishing the family division pilot program purports to confer on marital masters authority that they did not enjoy prior to its enactment, which was the ability to function "in an administrative but essentially advisory capacity to judicial officers." *Opinion of the Justices*, 128 N.H. 17, 22, 509 A.2d

