#L-625 2/15/83

Memorandum 83-22

Subject: Study L-625 - Probate Code (Assembly Bill No. 25)

Suggestions for revision of one provision of Assembly Bill No. 25 have been received. The provision is the one that deals with the relationship of parent and child between an adopted child and its natural parents. The relevant provision is subdivision (a)(3) of Section 6408, which provides:

> 6408. (a) If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:
> (1) Except as provided in paragraph (3), the relationship of parent and child exists between a child and its natural parents, regardless of the marital status of the natural parents.
> (2) . . .
> (3) The relationship of parent and child does not exist between an adopted child and its natural parents, except that the adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.

We have received a letter from James E. Prosser, Assembly Minority Consultant, which forwarded a letter from Miles E. Adams regarding intestate succession (both letters are attached as Exhibit 1). The letters suggest that the Commission recommended provision (drawn from the UPC) is not broad enough to cover all the exceptions that should be made to the provision which precludes an adopted child from inheriting from or through the natural parent. The letter suggests that an adopted child be entitled to take through intestate succession from or through the child's natural parents not only where the child has been adopted by the spouse of a natural parent (AB 25) but also where death has severed the relationship between the natural parent and child prior to the adoption. This suggestion is consistent with the view expressed by Professor Halbach at the last meeting; he thought that there might be other cases not covered by AB 25 where the right of the adoptee to inherit from natural relatives ought not to be cut off. The examples given below show how the adoption of this suggestion would change the results under Section 6408.

We have also received a letter from Kenneth M. Klug (attached as Exhibit 2). Mr. Klug would greatly restrict the provision permitting inheritance by, through, or from the natural parent of an adopted child.

Mr. Klug would limit the exception to the no-inheritance rule to the following: "except that, for purposes of determining the share passing to the adopted child by intestate succession, the adoption of a child by a spouse of a natural parent following the death of the other natural parent has no effect on the relationship between the child and either natural parent."

Exhibit 1 in substance suggests that the right of an adopted child to take through his or her natural parents is too narrow where (1) the adoption occurs after the death of both natural parents or (2) a second adoption follows a stepparent adoption and death of the natural parent-spouse. The staff believes that the proposed section should be expanded to permit the adopted child to take from or through his or her natural parents in these situations.

Exhibit 2 suggests that there is danger in extending the right of inheritance of a natural parent whose relationship with a child has been severed by adoption, but the language suggested in Exhibit 2 would greatly restrict the right of an adopted child to take through the natural parent as well. The staff believes that the proposed section of AB 25 should be limited to restrict the right of the natural parent giving the child up for adoption to take from the adopted child.

Exhibit 4 (attached) is a letter from the Educational Director for the UPC in support of the UPC provision as drafted.

The staff suggestions for revision of Section 6408 are set out in Exhibit 3 attached. Set out below are examples showing how the existing provision of Section 6408 works, how the staff suggested revision of that Section (set out in Exhibit 3) would work, and how Mr. Klug's suggested revision would work.

Example 1

Child's father dies. Child's mother remains in contact with her deceased spouse's relatives. Child's mother remarries and her new spouse adopts the child. Child still has contact and knowledge of his father's relatives. The adopted child's natural paternal grandparents die intestate. See, In re Garey's Estate, 214 Cal. App.2d 39, 29 Cal. Rptr. 98 (1963); In re Estates of Donnolly, 81 Wash.2d 430, 502 P.2d 1163. Child would take under existing provision of AB 25, under Exhibit 3 (staff recommended provision), and under the language suggested by Mr. Klug (Exhibit 2).

Example 2

Child's parents divorce. Child lives with mother who later remarries. Mother's new spouse adopts child. Child has contact with and knowledge of his natural father and his natural father's relatives. Child's natural father dies intestate. See First Nat'l Bank of East Liverpool v. Collar, 27 Ohio Misc. 88, 56 Ohio Ops.2d 302, 272 N.E.2d 916 (1971). Child would take under existing provision of AB 25 and under revised provision suggested by staff (Exhibit 3). Child would not take under Mr. Klug's suggested provision (Exhibit 2).

Example 3

Child's parents die. The child's only living relatives are his natural grandparents. Grandparents feel that it would be best for the child to be adopted but still remain in contact with the child. Grandparents die intestate. Child would not take under existing provision of AB 25 but would take under revised provision suggested by staff (Exhibit 3). Child would not take under Mr. Klug's suggested provision (Exhibit 2).

Example 4

Child's parents are dead. After their death, child is adopted. Child's only living natural relative is his sister, who has never married and has no children. She has reached the age of her majority and has not been adopted. Adopted child has contact with and knowledge of his natural sister. Sister dies intestate. See Estate of Goulart, 222 Cal. App.2d 808, 35 Cal. Rptr. 465 (1963). Child would not take under existing provision of AB 25 but would take under revised provision suggested by staff (Exhibit 3). Child would not take under Mr. Klug's suggested provision (Exhibit 2).

Example 5

Child's parents divorce. Child lives with mother who later remarried. Mother's new spouse adopts child, natural father giving consent for the adoption. Child dies intestate after reaching majority. Both natural parents and adoptive father survive. They are the only possible heirs. Under the provision of AB 25, it appears that the three parents would share the child's estate equally. Under staff suggested revision (Exhibit 3) and under Mr. Klug's suggested language, the natural parent who gave the child up for adoption would take nothing. The other natural parent and the adoptive father would share the estate.

Example 6

Child's parents divorce. Child lives with mother who later remarries. Natural father also remarries. Mother's new spouse adopts child, father giving consent for the adoption. Child dies intestate after reaching majority. The natural parents and the adoptive father do not survive child. The following survive the adopted child:

(1) A brother of the child by the marriage between the natural father and mother.

(2) A child born of the marriage between the mother and the adopting father.

(3) A child born of the marriage between the natural father and his new spouse.

Under the existing provision of AB 25, all three children would share in the adopted child's estate. Under the staff recommended provision (Exhibit 3) and under Mr. Klug's suggested language (Exhibit 2), the child born of the marriage between the mother and the adopting father and the brother of the adopted child by the marriage between the natural father and natural mother would take. The child born of the marriage between the natural father and his new spouse would not take.

Example 7

Child's father dies. Child's mother remarries and her new spouse adopts child. Child dies intestate. Natural parents and the adoptive father of the child do not survive. The following survive the adopted child:

(1) A brother born of the marriage between the natural father and natural mother.

(2) A child born of the marriage between the natural mother and adopting father.

Under AB 25, the staff suggested revision (Exhibit 3), and the revision suggested by Mr. Klug (Exhibit 2), both the brother and other child would take.

Example 8

Child's parents die. The child's only living relatives are his maternal grandparents. Grandparents feel that it would be best for the child to be adopted but still remain in contact with the child. Child dies intestate after both of new adoptive parents die. Grandparents are only possible relatives. Under existing provision of AB 25, child's

estate would escheat. Under staff suggested revision (Exhibit 3), the grandparents would take. Under revision suggested by Mr. Klug, child's estate would escheat.

Example 9

Child's parents die. Child is then adopted by nonrelatives. Child's sister dies intestate after reaching age of majority. Only living natural relative of child is his sister. A brother of the adopting mother survives. Under existing provision of AB 25, the brother of the adopting mother would take. Under the staff recommended revision, the sister would take. Under the revision suggested by Mr. Klug (Exhibit 2), the brother of the adopting mother would take.

Respectfully submitted,

John H. DeMoully
Executive Secretary

CALIFORNIA LEGISLATURE

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February 2, 1983

John H. DeMoully, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Dear Mr. DeMoully:

Assemblyman William Baker's office forwarded to me the enclosed correspondence from Miles E. Adams regarding intestate succession by adopted children. Since Mr. Adams' suggestions relate directly to portions of AB 25, I would like your comments on the issues raised therein.

My review of Mr. Adams' letter and AB 25 lead me to the conclusion that AB 25 does not provide for an adopted child to take through his or her natural parents where the adoption occurs after the death of both natural parents (examples 3 and 4 of Mr. Adams' letter). There may also be a similar problem where a second adoption follows a stepparent adoption and death of the natural parent-spouse.

Quite frankly, I am unaware of any public policy that would justify different treatment of the various types of adoption situations described by Mr. Adams and this letter. Assemblyman Baker is considering amendments to AB 25 to deal with this issue, but would greatly appreciate your comments before proceeding.

Thank you for your cooperation and assistance in this matter.

Sincerely,

James E. Prosser

enclosure

104 Cassandra Pl.
San Ramon, Ca., 94583

December 20, 1982

Assemblyman: Bill Baker
1243 Alpine Rd. Suite 102
Walnut Creek, Ca., 94596

Assemblyman Baker:

I am concerned with the present state of the law, concerning inte/state succession, by adopted children, (Ca., Probate code ' 257). Briefly the statute states, that under no circumstances, may an adopted child inherit from, or through his Natural parent. There are times when this is not equitable.

I have enclosed a legislative recommendation for you to look over. I have spent much time researching this area of law, and find that the Uniform Probate Code, many state statutes, and the general rule law concerning Inte/state Succession by adopted children, allow, adopted children to take from, or through a natural parent.

I would appreciate if you would sponsor this proposel to the legislature, this comming year. I feel that this is an important problem.

If you have any questions. Please, feel free to contact me at my home. (415) 828-8350.

Thank you for your time.

Sincerely,

Miles D. Adams

Miles D. Adams

Introduction

Presently the law of intestate succession in the state of California does not allow an adopted child "to succeed to the estate of a natural parent," or "relative of the natural parent," when that natural parent or relative dies intestate.[1] There are no exceptions.

History

Adoption, though an ancient practice, was not known at common law and exists in this country only by virtue of statutory enactment.[2]

The tendancy of the courts has been to construe adoption statutes liberally; to the benefit of the child.[3] It has been held that, in absense to a statute to the contrary, an adopted child still inherits from his natural parents or blood relatives.[4] The Uniform Probate Code[5], as well as many other jurisdictions, follow this rule.[6]

The reason for this rule is that the child, the person principally affected, has no choice and gives no consent to the adoption, "no one consents to the innocent and helpless subject to the transfer that he shall lose the right to inherit from his natural parent, whose issue . . . he does not cease to be when the right

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1. §257 California Probate Code.
2. 2 C.J.S. Adoption §3.
3. 2 C.J.S. Adoption §150.
4. This is so even if the adoption statute provides that the natural parents shall be divested of all legal rights and obligations. 2 C.J.S. Adoption §150.
5. §2-109 Uniform Probate Code
6. 2 C.J.S. Adoption §150.

of his control passes to another."[7]

Until 1955 California did not allow an adopted child to inherit from his natural parent, who died intestate, where their relationship was severed by the adoption. In that year the legislature amended § 257 of the California Probate Code to its present form. The purpose of the amendment was to give the adopted child a "fresh start" with his new family.[8]

Some states which expressly (or through judicial interpretation) terminate the right of adoptive children to inherit from or through their natural parents have provisions where an exception arises where the natural parent marries and consents to the adoption of the child by the new spouse.[9] In other states an exception arises where the separation of the parents was due to death and not divorce. In one state, at least, an adopted child can always recieve Veterans Benefits from his natural parents.

The following hypothetical examples show where exceptions would be helpful. In each, under current California law, the adopted child would not take.

Example 1. Separation of Parents Through Death.

Child's father dies. Child's mother remains in contact with her

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7. Sorrenson v. Churchill, 212 N.W. 488, 489, 51 S.D. 111.
8. Cherside, Herbert B., Right of Adopted Children to Inherit From Intestate Natural Grandparents, 60 ALR2d 631.
9. New York Domestic Relations Law 117, 2 C.J.S. Adoption § 150.
10. Conn. 45-64a Gen. Statutes, 2 C.J.S. Adoption § 150.
11. Conn. 45-64a Gen. Statutes.

deceased spouse's relatives. Child's mother remarries and her new spouse adopts child. Child still has contact and knowledge of his father's relatives. The adopted child's natural grandparents die intestate.[12]

Example 2. Separation of Parents Through Divorce.

Child's parents divorce. Child lives with mother who later remarries. Mother's new spouse adopts child.[13] Child has contact with and knowledge of his natural father and his natural father's relatives. Child's natural father dies intestate.[14]

Example 3. Separation From Parents Through Death.

Child's parents die. The child's only living relatives are his maternal grandparents. Grandparents feel that it would be best for the child to be adopted but still remain in contact with the child. Grandparents die intestate.

Example 4. Separation Through Adoption From Immediate Natural Family. Child's parents are dead. Child has been adopted. Child's only living natural relative is his sister, who has never married and has no children. She has reached the age of her majority and has not been adopted. Adopted child has contact with and knowledge of his natural sisiter. Sister dies intestate.[15]

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12. See In Re Garey's Estate, 29 Cal. Rptr. 98, 214 CA2d 39, Re Estates of Donnolly, 81 Wash. 2d 430, 502 P.2d 1163.

13. In this instance the natural father, recognizing the benefit to the child of having the mother's new spouse as the child's adoptive parent, can allow the mother's new spouse to adopt child.

14. See First National Bank v. Collar, 27 Ohio Misc. 88, 56 Ohio Ops. 2d 302, 272 NE2d 916.

15. See Estate of Goulart, 222 Cal. App.2d 808.

Recommendation

All of the above examples are reasonable and possible real life situations, in fact, some closely resemble actual cases. Though unquestionably substitution od adoptive for natural parents serves a number of social objectives, "the longing for neatness should not be allowed to obscure real distinctions where they exist . . . . The law should not and cannot ignore the fact that an adopted person may not in many respects be cut off from his natural family, the law should not in the name of consistency undertake to thwart the expression of those feelings when the encouragement thereof does not hinder the adoptive relationships."[16]

To say that a natural relative, who still cares for a child removed through adoption from the natural line, will still provide for that child by simply including him specifically in a will is unrealistic.[17]

It is therefore recommended that §257 of the California Probate Code be amended to allow adopted children to take through intestate succession from and through their natural parents where death has severed the relationship between the natural parent and child or where the child has been adopted by the spouse of a natural parent.

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16. Estate of Zook, 62 C.2d 492, 42 Cal.Rptr. 597, 399 P.2d 53.

17. An Associated Press article reported that an American Bar Association study made in 1978 found that 57 percent of the adults in California did not have wills. Nationally, the study reported that 70 percent of people with minor children had not drawn up a will.

Proposed Legislation

This recommendation would be effectuated by amending § 257 of the California Probate Code.

The people of the State of California do enact as follows:

Probate Code §257 (amended). Adopted child: Inheritance: Succession to estate of child

SECTION 1. Section 257 of the Probate Code is amended to read:

An adopted child shall be deemed a descendant of one who has adopted him, the same as a natural child, for all purposes of succession by, from or through the adopting parent the same as a natural parent. ~~An adopted child does not succeed to the estate of a natural parent when the relationship between them has been severed by adoption, nor does natural parent succeed to the estate of such adopted child, nor does such adopted child succeed to the estate of a relative of the natural parent, nor does any relative of the natural parent succeed to the estate of an adopted child.~~ An adopted child may take through intestate succession from or through a natural parent where the death of the natural parent has preceded the adoption of the child or where the child has been adopted by the spouse of a natural parent. The natural parent whose relationship with a child has been severed by adoption other than as stated above does not succeed to the estate of such child, nor does any relative of such natural parent succeed to the estate of the adopted child except where the natural parent could succeed to the estate of the child as provided for in this statute.

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February 7, 1983

Mr. John H. DeMoully
Executive Secretary
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Re: Assembly Bill 25

Dear John:

I have the following comments regarding the intestate succession provisions of A.B. 25, which I would appreciate your bringing to the attention of the Law Revision Commission.

Section 6408(a)(3), which is set forth on page 72 at lines 22 through 26 of the December 6 version, provides as follows:

> (3) The relationship of parent and child does not exist between an adopted child and its natural parents, except that the adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent. [Empasis added.]

It is my recollection that the intent of the underscored language was to change the law so that in the case of a stepparent adoption, the adopted child may inherit from or through the adoptive parent and also from or through the natural parent who gave the child up for adoption. This position has some merit, because the adopted child should not be deprived of any inheritance from a natural parent by virtue of an act over which the adopted child has no say. The comment to Section 2-109 contained on page 28 of Memorandum

82-8 sets forth the intent of the statute. The Law Revision Commission's similar intent is expressed on pages 17 and 18 of the same memorandum.

Unfortunately, the language is too broad and will have unintended results. For example, it would also allow the natural parents to inherit from the adopted child. Suppose the natural father gives the child up for adoption by the child's stepfather (the husband of the child's natural mother). Suppose further that the child's mother and adoptive father make gifts to the child of substantial amounts. (It is not uncommon for very wealthy parents to make annual gifts to their children of $10,000 each.) If the child were to die during minority, or if the child were to otherwise die without a Will, the underscored language in the bill would entitle the natural father to take a share of the child's estate by intestate succession. Obviously, the child's mother and the adoptive father would not want any of the child's property to go to the child's natural father. I believe that the possibility of having the child's estate pass to the natural father would prevent adoptive stepparents from making gifts to adopted children. The result would be that an adopted stepchild would not be treated by the adoptive stepparent the same as natural children of the marriage, which would defeat one of the major reasons for stepparent adoptions. I believe that the above-quoted language is much too broad, and will have a detrimental effect on stepparent adoptions.

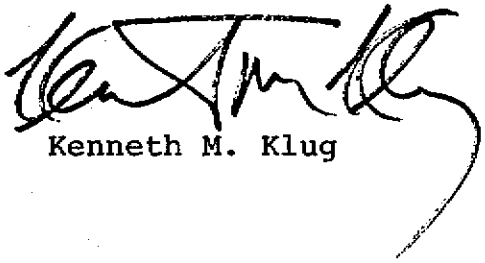
The broad language may also have a detrimental effect on other children of the adopted child's natural parent. For example, suppose A and B are married and have a child, C-1. Suppose A and B are subsequently divorced, A remarries, and B consents to A's new spouse adopting C-1. Assume that B and C-1 never again have contact, and B considers that C-1 is not to be his child. If B remarries and has more children (C-2, C-3, etc.) and dies intestate, C-2 and C-3 would share their intestate part of the estate with C-1, who was never regarded as a sibling. While this may be beneficial to C-1, it is certainly detrimental to C-2 and C-3; it is certainly not the result which B would have intended. One can even speculate whether the inheritance is beneficial to C-1. Assuming that C-1 has developed a stable, new home life with a new family (and possibly new siblings) an inheritance by C-1 from B would provide for special

treatment of C-1, and underscore that C-1 is not really a member of the new family. The inheritance by C-1 could cause family rift and emotional scars.

The only real advantage to the proposed language is in case of a stepparent adoption where one of the natural parents is deceased. In that situation, it would be unfair to treat a stepparent adoption as terminating the relationship between the adopted child and the relatives of the deceased parent (e.g. the child's natural grandparents). I believe that Section 6408(a)(3) should be limited to the situations where the stepparent adoption follows the death of a natural parent, and should never apply to the situation where the natural parent consents to the stepparent adoption. I recommend that the Section be revised to read as follows:

> (3) The relationship of parent and child does not exist between an adopted child and its natural parent, except that, for purposes of determining the share passing to the adopted child by intestate succession, the adoption of a child by a spouse of a natural parent following the death of the other natural parent has no effect on the relationship between the child and either natural parent.

Very truly yours,



Kenneth M. Klug

Exhibit 3

STAFF RECOMMENDED REVISION OF SECTION 6408

6408. (a) If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) Except as provided in paragraph (3), the relationship of parent and child exists between a child and its natural parents, regardless of the marital status of the natural parents.

(2) The relationship of parent and child exists between a child and its adoptive parents.

(3) ~~The~~ Except as otherwise provided in this paragraph, the relationship of parent and child does not exist between an adopted child and its natural parent~~, except that the adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent~~. Neither the adoption of a child by the spouse of a natural parent, nor the adoption of a child where the death of a natural parent has preceded the adoption of the child, has any effect on the relationship between the child and either natural parent, except that neither a natural parent living at the time of the adoption whose relationship with the child has been severed by the adoption, nor a relative of that natural parent, succeeds to any share in the estate of the child on the basis of the relationship of parent and child between that natural parent and the adopted child.

(b) For purposes of intestate succession, a parent and child relationship exists where such relationship is (1) presumed and not rebutted pursuant to the Uniform Parentage Act, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code, or (2) established pursuant to the Uniform Parentage Act. Nothing in this subdivision limits the methods by which the relationship of parent and child may be established.

Joint Editorial Board for the Uniform Probate Code

American Bar Association Section of Real Property, Probate and Trust Law
American College of Probate Counsel
National Conference of Commissioners on Uniform State Laws

February 10, 1983

Mr. John DeMoully, Executive Secretary
California Law Revision Commission
4000 Middlefield Rd., Room D-2
Palo Alto, CA 94306

Dear John,

Thanks for your letter of February 4. It will be a few days before I'll be able to mail material to CLRC members. I'll send a copy of whatever goes to them to you for your files.

You asked for my comment to the correspondence regarding section 6408 of AB25. I would not favor the proposed change in the section. The exception to the cut-off of inheritance connections effected by adoption that is reflected by UPC 2-109 and 6408 of AB25 strikes me as about right.

The UPC exception applies whether the connection between the child and the natural parent in question ended by reason of the parent's death, or ended by reason of divorce and the parent's consent to the adoption. In either setting, if the adoption is by one who is a spouse of a natural parent, there is no cut-off. The formulation takes no account of personal acquaintance that might or might not have existed between an adopted child and its natural kindred. The cut-off either applies or does not irrespective of acquaintance or other circumstances that may make a given result appear harsh.

The logic of the UPC exception is that the adopting person's connection as spouse of the child's natural parent tends to assure that all persons interested, whether as natural relatives of the child or through the new, adopting parent, probably will have access to information about the child's pre-adoption family connections and about the new parent. In this setting, there is no justification for the information barrier that the section erects by keeping other adopted children separated from natural kindred for in-

heritance purposes.

In all other settings involving an adoption, the UPC draftsmen concluded that the interests of adopted children were best served by the broad principle that adoption should serve, where possible, to make family connections preceding the adoption legally irrelevant. The child's well-being (including prospects of inheritance) are enhanced, we thought, by rules making adoptive parents the child's only legal parents. The position avoids surprise where an adopting parent or parents decide to keep the child's history to themselves or unknown. Also, it may tend to avoid dilution of filial loyalty.

The UPC-AB25 position regarding the effect of adoption produces the result apparently favored by Miles D. Adams, the author of the memorandum you enclosed, in his examples 1 and 2. It would not help in examples 3 and 4.

It may be noted, however, that Mr. Adams assumed that personal acquaintance was maintained between the adopted child and the blood relatives whose estates are passing in intestacy in examples 3 and 4. Indeed, he assumes a continuing acquaintance in all of his examples and it is this circumstance that tends to make the UPC position seem arbitrary. Different reactions to the working of the formula would result if the assumptions regarding personal acquaintance are shifted about.

Perhaps Mr. Adams really believes that personal acquaintance between an adopted child and a given blood relative should be controlling in determining whether the relationship continues for intestate succession purposes in spite of an adoption. But, it seems obvious that a test so subjective as acquaintance would not serve well as an assist to speedy settlement of decedents' estates.

The UPC exception to a general policy of erecting a barrier between natural relatives when one is adopted into a new family is rational and easily administered. I could not support a rule which left all connections to blood kindred intact in spite of adoption merely because a parent-child relationship that existed before the adoption was ended by death. Adoptions of orphans should not be haunted by any continuing legal connection to natural kindred. If acquaintance exists, wills can be used to direct inheritances as wished. It may be conceded that wills may not be made as needed and that hard cases will occur, but I think UPC draws the line in the right place.

Sincerely,

Richard V. Wellman
Educational Director