

President Bush believes
in financing religious charities.
But if a group takes
government money, should
it be able to fire someone like
Alicia Pedreira?

Faith-Based Furor

By Eyal Press

The first time Alicia Pedreira heard from co-workers that they had spotted her picture in a photo exhibit at the state fair in Louisville, Ky., she was baffled. "I thought: Photograph? What photograph?" Pedreira said recently of the strange sequence of events that began in August 1998 and would soon upend her life. "I had no idea what they were talking about."

At the time, Pedreira was working as a therapist at the Kentucky Baptist Homes for Children, a religious organization that contracts with the state to provide a range of services for at-risk youth. Pedreira liked her job, and she had a sterling reputation among her peers. But she wasn't the chattiest person in the office. On the advice of the man who had hired her, she generally kept her personal life to herself — until, that is, her photograph unexpectedly popped up at the Kentucky State Fair. Taken by an amateur photographer during a 1997 AIDS walk and entered, without her knowledge, in the state-fair art competition, the image depicts Pedreira, who is 37, in the company of a woman with short-cropped brown hair whose arms dangle suggestively around Pedreira's waist. The two women look distinctly like a couple, an impression that Pedreira's tank top — which bears a map of the Aegean Sea with an arrow pointing to the "Isle of Lesbos" — all but announces.

"The minute I heard what I was wearing," said Pedreira, "I thought immediately, I've lost my job." She was right. On Oct. 23, 1998, a few weeks after word of the photograph circulated through the office, Pedreira was fired. A termination letter explained that Pedreira's "homosexual lifestyle is contrary to Kentucky Baptist Homes for Children core values."

Pedreira was devastated; several of her colleagues were so angry that they resigned in protest. Friends urged her to fight back. Last April, Ped-

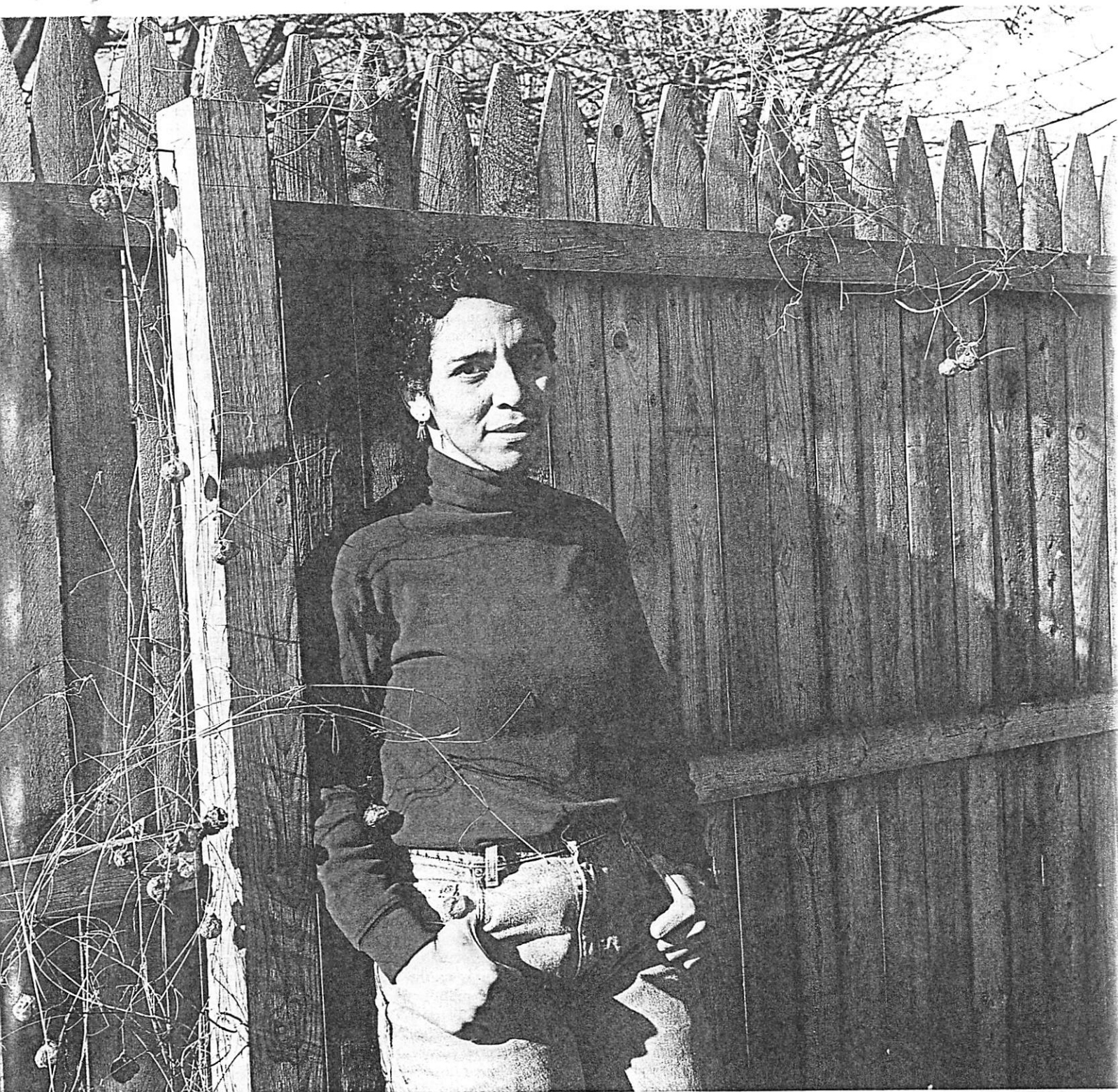
reira and the American Civil Liberties Union filed a federal lawsuit in United States District Court in Louisville, accusing the Kentucky Baptist Homes for Children, which receives more than three-quarters of its money from the government and is the state's largest provider of services for troubled youth, of engaging in religious-based discrimination.

Now, as Congress prepares to consider President Bush's agenda to allow an array of government-financed social programs to be administered by religious groups, her case is being monitored by proponents and opponents alike of so-called faith-based initiatives. Pedreira's lawsuit may well become the most important gay rights case since *Boy Scouts of America v. Dale* — although the issues it raises are in fact much broader.

Religious organizations have long been exempted from the provision in Title VII of the 1964 Civil Rights Act that forbids religious discrimination by employers, on the grounds that they would otherwise be forced to act against their beliefs when hiring personnel. But starting in 1996, Congress began passing "Charitable Choice" legislation allowing religious organizations to discriminate while accepting public funds for welfare-to-work and, more recently, drug-treatment programs. And although criticism is mounting, supporters of faith-based initiatives are attaching similar provisions to a host of additional social programs, from crime prevention to hunger relief to housing grants. Recently on "Face the Nation," Stephen Goldsmith, a White House adviser, explained that such organizations will indeed be allowed to discriminate in their hiring practices, but only "on the basis of religion."

What Goldsmith did not say is that religion can often bleed into other categories, like gender, sexual orientation and race. "If you can discriminate on religious grounds, it doesn't take much imagination to discriminate in other ways," said Congressman Bobby Scott, a Democrat from Virginia. Indeed, several courts have ruled that the Title VII exemption would allow Christian schools to fire female teachers who give birth out

Photograph by Maude Schuyler Clay



Alicia Pedreira was told by the Kentucky Baptist Homes for Children that her homosexuality made her unfit to work there as a therapist.

of wedlock. Others have determined that religious institutions can refuse to hire applicants whose views on abortion differ from theirs. Nor is it clear what courts would say if an organization's religious tenets mandate differential treatment on the basis of race. In theory, an organization like Bob Jones University could receive public funds to hire employees while forbidding them to engage in interracial dating.

Alarmed by the implications, a coalition of civil rights and religious organizations — including the Union of American Hebrew Congregations, the N.A.A.C.P., the Interfaith Alliance and Catholics for a Free Choice — recently sent a letter to President Bush urging him to oppose

“government funded” discrimination in any form. “It would be unconscionable,” the letter states, “that a want ad for government-supported social services could read, for example, ‘Catholics and Jews Need Not Apply.’” But the Bush administration — which in February established a White House Office of Faith-Based and Community Initiatives — is unlikely to change course.

Pedreira lost her job, her lawsuit claims, not on the basis of her performance but because Baptist Homes determined that she violated the demand (spelled out explicitly in its employment forms) that employees “exhibit values in their professional conduct and personal lifestyles that

are consistent with the Christian mission and purpose of the institution."

When the case comes to trial, probably near the end of the year, Pedreira's legal team plans to raise some pointed questions. If hiring discrimination is illegal with government jobs, why not with jobs paid for by the government? Does the public financing of faith-based programs violate the Constitution, whose Establishment Clause requires government neutrality toward religion? Although Pedreira's case deals with state rather than federal financing — and therefore does not overtly threaten Charitable Choice — her lawyers say it will set a precedent for eventually overturning the law. "Charitable Choice authorizes religious-based employment discrimination in government-funded programs," said Michael Adams, Pedreira's attorney. "This case, if we prevail, will say, 'You can't do that, it's unconstitutional.'"

Alicia Pedreira lives in a one-story white clapboard house on a quiet residential street in Germantown, a working-class neighborhood in Louisville. The matchbox houses on Pedreira's block look more or less the same. Hers, however, is the only one with a gay-pride flag fluttering above the entrance.

Dressed casually in jeans, running shoes and a wool sweater, Pedreira greeted me at the door one day in February. She has short black hair and a muscular physique; she was once a competitive bodybuilder. We went to sit on the leather couch in her living room, beneath several oil paintings of landscapes adorning the walls. Pedreira painted them herself, she explained, telling me it was her passion for art that initially sparked her interest in becoming a therapist — and led her to the doors of the Kentucky Baptist Homes for Children.

"I had been working various jobs but never found anything I really liked," she explained in a soft voice that bore the trace of a New York accent, which is where Pedreira, the daughter of Puerto Rican immigrants, lived as a child. In 1997, roughly a decade after she moved to Louisville to live near her older sister, Pedreira completed a degree in expressive therapy, a Jungian approach that aims to help patients explore their emotions through artistic creation. After working for several months with mentally ill patients at a local hospital, she was approached about an opening at a place called Spring Meadows, one of the Louisville branches of the Baptist Homes.

Pedreira was initially skeptical. "I wasn't sure if I wanted to work for Baptists," she recalled. "I mean, the year before they had boycotted Disney for offering benefits to gays and lesbians." Still, the idea of working with teenagers intrigued her, the salary was good and her interviews with Jack Cox, Baptist Homes's clinical director, went well. Pedreira recalls that Cox asked her what she would do if one of the children she was treating were gay. Pedreira said she would try to help the patient work through his or her emotions; she revealed nothing about her personal identity. At the start of the next interview, however, she informed Cox that she was a lesbian.

"I said, Look, if this is a problem, don't hire me, because I don't want to work here six months and then get fired," she recalled. "It was prophetic."

According to Pedreira, Cox (who declined to be interviewed for this article) assured her she would be fine, provided she kept the matter to herself. It was, in essence, a "don't ask, don't tell" policy, and Pedreira followed it faithfully, disclosing her sexual orientation only to a few fellow clinicians.

At the same time, she did not overhaul her daily life to avoid the risk of being outed. While working there, Pedreira regularly appeared in public with her girlfriend at the time, Nance Goodman, the woman standing next to her in the state-fair photograph. And she remained active in the gay political scene in Louisville, helping to organize marches (as she still does). She simply trusted Cox's promise that as long as she did not discuss her sexuality in her therapeutic work, her job would not be in jeopardy.

When she was told of her dismissal, Pedreira felt obligated to provide an explanation to the teenage boys she had been counseling. "We had a group session," she said, shaking her head at the memory, "and they were angry. It

takes a long time for these kids to get comfortable with a therapist, and here I was, one more person being yanked out of their lives." She paused and then said: "I remember one of the kids said: 'Wait a minute, you're gay and we're boys! So what's the problem?' We all laughed to keep from crying."

According to Pedreira, Jack Cox, who had praised her "exceptional skills" as a therapist in his performance evaluations, broke into tears when telling her the news. A few weeks afterward, Cox himself left the organization.

THE KENTUCKY BAPTIST HOMES FOR CHILDREN REFUSED TO ANSWER specific questions about Pedreira's dismissal, but in published statements the agency has made its line of defense clear. Pedreira was fired, the agency has said in an official statement, not on the basis of religious discrimination, but because "homosexual behavior is not in the best interest of anyone, especially sexually abused and confused children and youth."

From a legal perspective, focusing on Pedreira's sexual orientation is smart. There is no federal statute barring discrimination against gay men and lesbians, nor does the state of Kentucky have such a law.

Michael Adams, Pedreira's attorney, acknowledged this in an interview. But he pointed out that officials at Baptist Homes have made contradictory statements about the reasons for Pedreira's firing. On Sept. 23, 1998, the parent of a child whom Pedreira had treated wrote a letter to Baptist Homes pleading for her to be retained. "I just can't understand why someone as intelligent and as good with problem children as Alicia is could be fired because she is different from many of us," the letter states. In response, Bill Smithwick, the president of Baptist Homes, explained the agency's reasoning as follows: "To employ a person who is openly homosexual, living in an adulterous situation, is a chronic abuser of alcohol or drugs, etc., does not represent the Judeo-Christian values which are intrinsic to our mission."

Pedreira's legal team sees this letter and other statements by Baptist Homes employees as clear evidence of religious-based discrimination. "We argue that you cannot take government money and impose those religious beliefs on employees," said Adams, "whether the victim is a homosexual — as in this case — or not."

Whose argument will prevail in court remains to be seen. Pedreira's case comes, of course, on the heels of the Supreme Court's 5-4 decision in *Boy Scouts of America v. Dale*, which determined that the Boy Scouts can ban homosexuals because it conforms to the group's "expressive message." But unlike the Boy Scouts, which receives little money from Washington, Baptist Homes relies on the government for the vast majority of its budget.

At the very least, the policy of Baptist Homes runs counter to the trend in publicly financed employment positions: all federal employees, for example, are now protected from discrimination on the basis of sexual orientation. Allowing government-financed groups to disregard this standard has begun to raise concerns in Congress. "We can't adopt a system here that allows religious groups to meet a lower standard of civil rights protection than non-religious groups," Senator Joseph Lieberman recently said in a statement.

But this is not the only concern. Because courts have interpreted the Title VII exemption to include all the "tenets and teachings" of a faith, the door could be open to a seemingly wide range of government-financed discrimination practices. Consider what would happen if a state decided to contract out services to the Nation of Islam. Catholics, Jews or any other group that runs afoul of the Nation of Islam's teachings might find themselves excluded. This is not a hypothetical example. Back in 1995, Bob Dole and other Republicans denounced the Department of Housing and Urban Development after discovering that federal funds were used to hire a security firm linked to the Nation of Islam. Despite reports that the firm was effective, HUD promptly revoked the contract. Yet in 1996, many of these same politicians helped pass the first Charitable Choice legislation.

Baptist Homes does not hide the fact that its religious tenets prohibit more than just homosexuality. "We've made it clear as to the values we're looking for in the staff we hire," said Smithwick. In general, he explained, leadership positions at the agency must be filled by Baptists. "It's not just a single issue that brought this whole thing to a head. There are other issues."

One of those other issues, according to Dawn Oaks, who worked at Baptist Homes for two years, is couples who live together out of wedlock.

Eyal Press is a contributing editor at Lingua Franca. He last wrote for the magazine about a Congolese refugee's first year in New York.

"When I started working there, I had a male roommate," Oaks said. "Then we started dating. Now, I was raised a Baptist, so I knew this would not be accepted." Oaks worried constantly about being discovered. A co-worker in the same situation, she says, installed a separate phone line in her home for protection. What if one of the women had gotten pregnant? Court precedent suggests that they could have lost their jobs.

Oaks was the first of several colleagues who resigned after Pedreira's firing. "It was hard, because I really think the agency provides good treatment," she said. "But a lot of the kids there are dealing with problems like birth control and sex and sexual identity. What kind of message did this send? I felt I could not stay." It's a feeling others shared. To show support for Pedreira, the University of Louisville and Spalding University stopped assigning students to field placements at Baptist Homes.

None of this has moved the agency to alter its employment policies or any other aspect of its approach. "Our mission is to provide care and hope for hurting families through Christ-centered ministries," Smithwick has said. "I want this mission to permeate our agency like the very blood through our bodies. I want to provide Christian support to every child, staff member and foster parent." If forced to change, Smithwick told me, Baptist Homes would rather stop contracting with the government.

This nearly happened. Last June, the agency declined to renew its state contract after Viola Miller, head of Kentucky's Cabinet for Families and Children, warned that it was "very possible" the group's employment policies would lead state officials to stop sending children there. The dispute was resolved only after Gov. Paul Patton — who is reportedly planning to run for Senate one day — intervened and persuaded Baptist Homes to renew. "As a person raised in the traditions of the Southern Baptist Church," Patton explained in a subsequent letter to a Baptist newspaper, "I fully understand the sincere and deeply held beliefs of the church."

PEDREIRA'S CASE IS NOT THE FIRST OF ITS KIND. IN 1987, A MISSISSIPPI woman named Jamie Kellam Dodge sued a Salvation Army domestic-violence shelter after she was fired for her association with the Wiccan religion (a sect that practices modern witchcraft). Because Dodge's salary was partly financed through a government grant, a federal judge ruled against the Salvation Army. Citing the Establishment Clause of the Constitution, the court determined that government financing of jobs filled in accordance with religious values "clearly has the effect of advancing religion and is unconstitutional." Dodge received \$1.25 million in damages.

In 1995, when Charitable Choice was first being debated in Congress, the Mississippi case caught the eye of John Ashcroft, then a senator from Missouri and the legislation's chief advocate. Although the Salvation Army case was not precedent-setting, committee transcripts record Ashcroft expressing fear that it would "send a chill" through religious communities and insisting on adding an amendment guaranteeing religious groups "the ability, frankly, to be discriminating" when contracting with the government.

Proponents of Charitable Choice view the law's hiring provisions as essential. Carl Esbeck, a conservative legal scholar, has written that religious organizations "can hardly be expected to sustain their religious vision without the ability to employ individuals who share the tenets of the faith." In a recent article in *The New Republic*, Jeffrey Rosen echoed this view, noting that, after all, many secular organizations that receive government funds, like Planned Parenthood, also hire on the basis of their values.

Pedreira's allies counter that the same argument could be used to justify



The photograph of Pedreira and Nance Goodman that cost Pedreira her job.

Pedreira's lawsuit may well become the most important gay rights case since *Boy Scouts of America v. Dale* — although the issues it raises are in fact broader.

lifting the restraints on any form of discrimination. Excluding someone on the basis of religion is barred under federal law because, like race and sex, this category of discrimination has proven so persistent and deleterious. Doing so with public funds is not only deeply offensive to many Americans, the argument goes, it also highlights a contradiction in the logic behind Charitable Choice. While proponents argue that faith-based organizations deserve "equal treatment" when it comes to disbursing public funds, their demand for a Title VII exemption for religious groups — an exemption whose limits will be difficult to define — amounts, opponents say, to a form of preferential treatment.

"In no other government program do we allow such discrimination," said Congressman Scott. "I think it's turning the clock back to say that in a government-funded program, we can practice bigotry." A better alternative, argues Julie Segal, an adjunct government professor at American University who has written widely on the subject, would be to restrict public financing to religiously affiliated groups that agree not to discriminate, thus enabling them to provide social services without violating basic principles of fairness.

ONE NIGHT DURING MY VISIT TO LOUISVILLE, Pedreira drove me over to Spring Meadows. It was her first time back.

"Hey, that was my building," she said as we approached the facility, a series of large, red-brick cottages situated atop a vast expanse of green lawn. We slowed to a halt, and Pedreira, who is normally voluble, fell silent. "What gets me," she finally said, "is that it had nothing to do with my work. I did good work. And I cared about those boys."

Though her case is still in the early stages, Pedreira seemed unfazed by the prospect of a protracted legal battle. "My goal is not the lawsuit; it's education," she said. "I want people to know this can happen." In Louisville, where local media coverage has been steady, she has already achieved this objective. "People walk up to me all the time," she said, "and tell me I did the right thing."

Pedreira even got the chance to confront Governor Patton, who appeared one day when she was volunteering for a Democratic Congressional candidate. "He shook my hand and said, 'Hi, I'm Governor Patton,'" she recalled. "I said, 'Hi, I'm Alicia Pedreira.' He kept walking, so I squeezed his hand again and said, 'I'm the woman who got fired from Kentucky Baptist Homes for Children.' He said, 'Oh, that was a terrible situation for everybody,' but he never looked me in the eye, which made me think he knew what happened was wrong."

For all the gratifying moments, however, Pedreira has also suffered plenty of lows. "I've had people throw trash in my yard," she said. "I've been called a pedophile." And she is still dealing with the aftershocks of a traumatic experience. "I was depressed, and I didn't work for months," she confessed. "I felt lost." Since losing her job, Pedreira has not felt inclined to pursue work as a therapist; at present, she's working as a repair technician for Bell South. "Before, I had hoped to climb the ladder, maybe even direct my own program one day," she said. "But I haven't felt ready to go back to that."

Pedreira told me that she has fallen out of touch with the children she once counseled. But there are certain things she keeps around to remind herself of what happened. Back at the house, I asked her about the infamous photograph that caused her troubles. She left the room for a moment, then returned with a manila envelope. "Here it is," she said, laying the black-and-white still on the table. "I'd still have my job if not for that photo," she said. Then she smiled. "It is a lovely photograph. One day, I'm going to have it framed." ■