HB

247

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

SPONSOR STATEMENT

HB 247

"An Act relating to the detention of delinquent minors and to temporary detention hearings; amending Rule 12, Alaska Delinquency Rules; and providing for an effective date."

The State of Alaska receives federal formula grant funding to implement the mandates of the Juvenile Justice and Delinquency Prevention Act of 1974. The four mandates of the Act include:

- Deinstitutionalization of status offenders
- Sight and sound separation of juveniles from adult offenders
- Removing juveniles from adult jail and lockup facilities
- Addressing disproportionate minority confinement

Alaska funds a variety of community based delinquency response services to meet these mandates including electronic monitoring programs, attendant care shelters and non-secure hold services, mentoring and community accountability courts.

Alaska stands to lose $168,000 of these federal formula funds because of the number of youth temporarily held in rural and remote adult jails throughout Alaska prior to an initial court hearing and transport to a youth facility. This noncompliance could mean that Alaska will also lose discretion on how $504,000 of federal money may be used. Federal law will require these funds to be rerouted and used to bring the state into compliance.

When a juvenile commits a serious offense in a rural or remote community, they may need to be detained upon arrest in order to protect the public. There are only 6 juvenile detention centers throughout Alaska, so serious juvenile offenders in remote communities often end up in village adult lockup facilities awaiting relocation to a juvenile facility. Federal regulations require that juveniles in adult facilities be held for no more than 24 hours; however, the regulations also allow a state to extend those time limits because of adverse weather, limited transportation options, and other conditions. Such an extension is only available in states where the juvenile must make an initial appearance in court within 24 hours of their arrest.

HB 247 would require an initial appearance in court within 24 hours for juveniles placed in an adult jail or lockup and would place the federal regulation exception language into state statute. This change would give Alaska the ability to claim certain exceptions to the federal mandates, preserve the state's eligibility for 100% of the federal formula grant allocation, but would not allow juveniles to be held in adult facilities any longer than is absolutely necessary.

Email: Representative_Kevin_Meyer@legis.state.ak.us • Toll Free: (866) 465-4945

Session: State -4945 Fax: (907) 465-3476

Interim: 716 W. 4th 07) 269-0199 Fax (907) 269-0197

Sposor Statement

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

HB 247

Briefing Paper

- Alaska exceeds the number of violations associated with excessive time limits for juveniles held in adult jails or lockups. This jeopardizes Alaska's continued receipt of federal formula delinquency prevention grant funds.
  - Federal Formula Grant totals $627.0
  - Grant funds support: attendant care shelters; mentoring programs; electronic monitoring; youth and elders courts.

- The Juvenile Justice and Delinquency Prevention Act of 1974 creates 4 primary mandates, including the removal of juveniles from adult jails. The regulations for the Act allow a state to claim certain exceptions to specified time limits if the state enacts a 24-hour arraignment for juveniles held in adult jails or lockups.
  - Senator Stevens' Alaska exemption to the 24-hour arraignment rule for juveniles in adult jails and lockups will expire in September 2002.

- HB 247 established a 24-hour arraignment requirement for juveniles arrested and held in rural and remote adult jails and holding facilities and puts the federal regulation time exception language in the Delinquency statues.

- HB 247 would not extend the periods of time for which juveniles might be held in adult lockups. Officials would continue to move juveniles from remote locations into regional juvenile detention centers as quickly and safely as possible. HB 247 simply gives Alaska access to regulatory time exceptions which lower violation rates preserve federal funding.

- Youth held in juvenile detention centers would continue to be arraigned within 48 hours as provided under the current statute.
  - Establishing a two level delinquency arraignment system minimizes the fiscal impact and preserves Alaska's eligibility for full federal formula grant funding.
  - There were 2,728 juveniles detained in FY 2000. 222 of these were held for various periods of time in adult jails or lockups, most were moved to juvenile detention facilities within allowable time limits.
  - The violation rate can not be more than 9 "non-conforming" holds per 100,000 population. This would put Alaska's rate at 19.5. In FY 1998 we had a violation rate of 29.5 and in FY 1997 the violation rate was 38.2 These violations would be under the 19.5 rate if Alaska could claim the exceptions provided through enactment of a 24 hour arraignment for juveniles held in adult jails or lockups.

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Session: State C[illegible] 945 Fax: (907) 465-3476

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Sectional Analysis

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 247

Revision Date/Time (Note if correction) _____ Dept. Affected _____

Title: Detention of Juveniles — BRU: Alaska Court System

Component: Trial Courts

Sponsor: Representative Meyer

Requester: House Health and Social Services — Component No.: 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Section 3 of HB 247 reduces the amount of time allowed between detention and arraingnment of a juvenile housed in an adult correctional facility. The current law requires the juvenile to be brought before the court within 48 hours; this bill reduces that time to 24 hours. This change will require more juvenile arraignment hearings to be held on the weekend. The Division of Juvenile Justice estimates that had this provision been in effect in FY 2000 there would have been 31 additional weekend hearings. Although this number is too small to generate a fiscal note, the court system will experience some additional costs associated with these weekend hearings. If this burden becomes significant the court system may return to the legislature for additional funding.

Prepared by: Douglas Wooliver — Phone 463-4750

Division: Alaska Court System — Date/Time 4/23/01 2:30 p.m.

Approved by: Stephanie Cole by — Date _____

Agency: Alaska Court System

For distribution information, call the Governor's Legislative Office

(Rev 8/2000 OMB)

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 247
( ) Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Health & Social Services
Title: Relating to the Detention of Minors
BRU: Juvenile Justice
Component: Delinquency Prevention
Sponsor: Rep. Meyer
Requester: House (HES)
Component Number: 248

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Alaska receives approximately $670,000 per year through the Juvenile Justice and Delinquency Prevention Act (Act) formula grant program which supports activities related to the four mandate areas under the Act: 1. Deinstitutionalization of status offenders, 2. Separation of juveniles from adult offenders, 3. Removing juveniles from adult jail and lockup facilities, and 4. Disproportionate minority confinement. If a state fails to comply with standards set for each of these four mandates, a grant withholding penalty of 25% is assessed against the formula grant total for each mandate in which the state is found to be in non-compliance. Additionally, failure to correct areas of non-compliance will require all remaining funds be directed to efforts to bring the state into compliance with the Act.

Prepared by: George Buhite, Director
Phone 465-1385
Division: Juvenile Justice
Date/Time 4/20/01 6:58 AM
Approved by: Elmer A. Lindstrom, Special Assistant
Date 4/23/01 4:46 PM
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

(Rev 2/7/2001 OMB)

ANALYSIS: (continued)

Alaska has difficulty meeting the established compliance standards related to the removal of juveniles from adult jails and lockup facilities. Because of Alaska's expansive geography, limited transportation services in many rural parts of the state, adverse weather conditions which impact transportation, and the fact there are only 6 youth detention facilities in Alaska, the state stands to lose approximately $168.0 in federal grant receipts due to non-compliance with jail removal mandates under the JJDP Act.

The Act allows a state to receive full formula grant funding if, through application of certain compliance exceptions, the number of violations remain below the limits set by federal regulation. In order to take advantage of the jail removal compliance exceptions the state must have a law requiring that juveniles placed in an adult facility be brought before the court within 24 hours of their placement. These exceptions provide a set of allowable circumstances under which a juvenile may be held in an adult facility without incurring a non-compliance violation of the jail removal mandate of the Act. These exceptions allow a juvenile to be held for longer periods as a result of limited transportation services, adverse weather conditions or other circumstances which contribute to delays in moving juvenile offenders out of inappropriate adult facilities into youth detention facilities. This bill proposal would enact a 24 hour arraignment in these juvenile cases, places the mandate exceptions provided in the federal regulations in state statute, and would preserve Alaska's ability to claim full funding of the federal grant award under the Act.

Department of Education and Early Development
Foundation Program
Base Allocation Increase
April 19, 2001

Prepared by Mindy Lohnes

DISTRICT	FY02 Projected State Aid	$20,000,000 INCREASE $101 INCREASE BASE ALLOCATION TO $4,041			$25,000,000 MILLION INCREASE $126 INCREASE BASE ALLOCATION TO $4,066			$30,000,000 MILLION INCREASE $151 INCREASE BASE ALLOCATION TO $4,091		
		$20,000,000 Increase in State Aid	*Funding Floor Difference*	*Total Entitlement Difference @ $20,000,000*	*$25,000,000 Increase in State Aid*	*Funding Floor Difference*	*Total Entitlement Difference @ $25,000,000*	*$30,000,000 Increase in State Aid*	*Funding Floor Difference*	*Total Entitlement Difference @ $30,000,000*
Alaska Gateway	4,720,721	*118,429*	*(22,372)*	*96,057*	147,744	*(34,098)*	*113,646*	177,058	*(45,823)*	*131,235*
Aleutian Region	1,170,144	*31,335*	*(12,534)*	*18,801*	39,092	*(15,637)*	*23,455*	46,848	*(18,739)*	*28,109*
Aleutians East Borough	2,822,075	*95,623*	*0*	*95,623*	119,292	*0*	*119,292*	142,961	*0*	*142,961*
Anchorage	193,595,132	*6,775,142*	*0*	*6,775,142*	8,452,158	*0*	*8,452,158*	10,129,173	*0*	*10,129,173*
Annette Island	867,075	*62,278*	*0*	*62,278*	77,694	*0*	*77,694*	93,109	*0*	*93,109*
Bering Strait	15,583,586	*542,841*	*0*	*542,841*	677,208	*0*	*677,208*	811,575	*0*	*811,575*
Bristol Bay Borough	1,340,580	*60,344*	*0*	*60,344*	75,280	*0*	*75,280*	90,217	*0*	*90,217*
Chatham	2,148,172	*62,406*	*0*	*62,406*	77,853	*0*	*77,853*	93,300	*0*	*93,300*
Chugach	1,698,865	*31,793*	*(12,717)*	*19,076*	39,662	*(15,865)*	*23,797*	47,532	*(19,013)*	*28,519*
Copper River	5,324,548	*139,282*	*(15,984)*	*123,298*	173,758	*(15,984)*	*157,774*	208,234	*(15,984)*	*192,250*
Cordova	2,638,380	*84,127*	*(33,650)*	*50,477*	104,950	*(41,980)*	*62,970*	125,774	*(47,151)*	*78,623*
Craig	3,013,383	*91,486*	*0*	*91,486*	114,131	*0*	*114,131*	136,776	*0*	*136,776*
Delta/Greely	4,246,748	*104,249*	*0*	*104,249*	130,053	*0*	*130,053*	155,857	*0*	*155,857*
Denali Borough	2,422,605	*74,398*	*0*	*74,398*	92,814	*0*	*92,814*	111,229	*0*	*111,229*
Dillingham	3,870,502	*116,473*	*(46,589)*	*69,884*	145,303	*(58,121)*	*87,182*	174,133	*(69,653)*	*104,480*
Fairbanks N. Star Borough	63,086,196	*2,230,351*	*0*	*2,230,351*	2,782,419	*0*	*2,782,419*	3,334,486	*0*	*3,334,486*
Galena	14,450,362	*324,518*	*(129,807)*	*194,711*	404,844	*(161,938)*	*242,906*	485,171	*(194,069)*	*291,102*
Haines Borough	1,931,769	*70,070*	*(7,573)*	*62,497*	87,414	*(7,573)*	*79,841*	104,758	*(7,573)*	*97,185*
Hoonah	1,737,765	*48,628*	*(19,451)*	*29,177*	60,664	*(24,266)*	*36,398*	72,701	*(29,080)*	*43,621*
Hydaburg	909,539	*22,626*	*0*	*22,626*	28,226	*0*	*28,226*	33,827	*0*	*33,827*
Iditarod Area	5,765,716	*141,100*	*(56,440)*	*84,660*	176,026	*(70,410)*	*105,616*	210,952	*(84,380)*	*126,572*
Juneau Borough	20,427,809	*790,334*	*0*	*790,334*	985,961	*0*	*985,961*	1,181,588	*0*	*1,181,588*
Kake	1,140,552	*33,018*	*(6,615)*	*26,403*	41,191	*(9,885)*	*31,306*	49,364	*(13,154)*	*36,210*
Kashunamiut	2,037,788	*78,895*	*0*	*78,895*	98,423	*0*	*98,423*	117,952	*0*	*117,952*
Kenai Peninsula Borough	41,665,482	*1,497,460*	*0*	*1,497,460*	1,868,118	*0*	*1,868,118*	2,238,776	*0*	*2,238,776*
Ketchikan Gateway Borough	9,550,271	*357,914*	*0*	*357,914*	446,506	*0*	*446,506*	535,099	*0*	*535,099*
Klawock	1,636,402	*43,585*	*(17,434)*	*26,151*	54,374	*(21,750)*	*32,624*	65,162	*(26,065)*	*39,097*
Kodiak Island Borough	13,523,703	*468,563*	*0*	*468,563*	584,544	*0*	*584,544*	700,525	*0*	*700,525*
Kuspuk	4,679,476	*151,091*	*(60,436)*	*90,655*	188,490	*(65,720)*	*122,770*	225,888	*(65,720)*	*160,168*
Lake & Peninsula Borough	5,959,944	*164,955*	*(65,982)*	*98,973*	205,786	*(82,314)*	*123,472*	246,616	*(98,646)*	*147,970*
Lower Kuskokwim	35,139,517	*999,030*	*(399,612)*	*599,418*	1,246,314	*(498,525)*	*747,789*	1,493,599	*(597,439)*	*896,160*
Lower Yukon	14,605,616	*528,590*	*0*	*528,590*	659,429	*0*	*659,429*	790,268	*0*	*790,268*
Mat-Su Borough	61,647,537	*1,906,518*	*0*	*1,906,518*	2,378,428	*0*	*2,378,428*	2,850,338	*0*	*2,850,338*
Nenana	6,063,818	*156,556*	*0*	*156,556*	195,308	*0*	*195,308*	234,059	*0*	*234,059*
Nome	4,929,994	*145,906*	*(50,608)*	*95,298*	182,022	*(65,055)*	*116,967*	218,137	*(79,501)*	*138,636*

Department of Education and Early Development
Foundation Program
Base Allocation Increase
April 19, 2001

Prepared by Mindy Lobaugh

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		$20,000,000 Increase in State Aid	*Funding Floor Difference*	*Total Entitlement Difference @ $20,000,000*	*$25,000,000 Increase in State Aid*	*Funding Floor Difference*	*Total Entitlement Difference @ $25,000,000*	*$30,000,000 Increase in State Aid*	*Funding Floor Difference*	*Total Entitlement Difference @ $30,000,000*
North Slope Borough	9,885,875	*525,966*	*0*	*525,966*	656,156	*0*	*656,156*	786,346	*0*	*786,346*
Northwest Arctic Borough	20,358,082	*604,428*	*0*	*604,428*	754,039	*0*	*754,039*	903,650	*0*	*903,650*
Pelican	420,585	*6,951*	*(2,780)*	*4,171*	8,671	*(3,468)*	*5,203*	10,392	*(4,157)*	*6,235*
Petersburg	3,025,635	*103,239*	*0*	*103,239*	128,793	*0*	*128,793*	154,347	*0*	*154,347*
Pribilof	1,064,937	*42,868*	*(6,855)*	*36,013*	53,479	*(11,099)*	*42,380*	64,090	*(15,343)*	*48,747*
Sitka Borough	6,400,649	*230,815*	*0*	*230,815*	287,948	*0*	*287,948*	345,080	*0*	*345,080*
Skagway	886,624	*31,218*	*(12,487)*	*18,731*	38,945	*(15,578)*	*23,367*	46,672	*(18,669)*	*28,003*
Southeast Island	2,941,152	*69,863*	*(27,945)*	*41,918*	87,156	*(34,862)*	*52,294*	104,449	*(41,780)*	*62,669*
Southwest Region	5,979,493	*223,345*	*0*	*223,345*	278,628	*0*	*278,628*	333,911	*0*	*333,911*
St. Mary's	1,747,266	*42,344*	*(16,937)*	*25,407*	52,826	*(21,130)*	*31,696*	63,307	*(25,322)*	*37,985*
Tanana	1,280,078	*33,526*	*0*	*33,526*	41,824	*0*	*41,824*	50,123	*0*	*50,123*
Unalaska	2,023,121	*74,200*	*(29,664)*	*44,536*	92,566	*(37,011)*	*55,555*	110,932	*(44,357)*	*66,575*
Valdez	3,672,455	*145,351*	*(31,096)*	*114,255*	181,329	*(45,488)*	*135,841*	217,307	*(59,879)*	*157,428*
Wrangell	2,364,305	*75,737*	*0*	*75,737*	94,483	*0*	*94,483*	113,230	*0*	*113,230*
Yakutat	1,448,203	*37,353*	*(10,466)*	*26,887*	46,599	*(14,164)*	*32,435*	55,845	*(17,862)*	*37,983*
Yukon Flats	4,087,475	*115,657*	*(46,263)*	*69,394*	144,284	*(57,714)*	*86,570*	172,912	*(69,165)*	*103,747*
Yukon/Koyukuk	5,492,033	*159,350*	*0*	*159,350*	198,793	*0*	*198,793*	238,236	*0*	*238,236*
Yupiit	3,831,544	*123,602*	*(49,441)*	*74,161*	154,196	*(61,678)*	*92,518*	184,791	*(73,916)*	*110,875*
Alyeska Central School *	4,338,941	*110,777*	*0*	*110,777*	138,197	*0*	*138,197*	165,617	*0*	*165,617*
Mt. Edgecumbe High Scho	1,321,400	*48,928*	*0*	*48,928*	61,039	*0*	*61,039*	73,150	*0*	*73,150*
Other / Contracts	26,096,100									
TOTAL	665,017,725	*21,355,432*	*(1,191,738)*	*20,163,694*	26,641,430	*(1,491,313)*	*25,150,117*	31,927,429	*(1,782,440)*	*30,144,989*

G:\Mindy\Requests\[20-25-30MillionBaseIncrease.xls]20, 25, 30 Million Increase

OLIVER M. KORSHIN, M. D.
DISEASES AND SURGERY OF THE EYE

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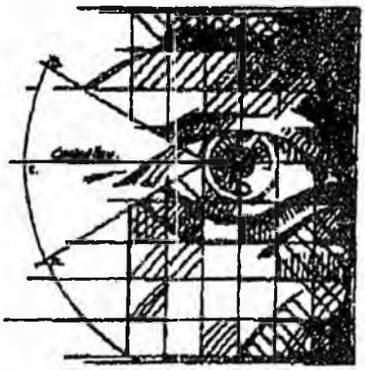

April 24, 2001

Alaska State House of Representatives
Health, Education and Social Services Committee

Re: H. B. 215

Dear Committee Members:

I am writing to you to express my strongest opposition to H.B. 215, which would allow Alaska optometrists to prescribe any and all drugs in the United States Pharmacopia, including narcotics, anti-cancer agents, medications for epilepsy, contraceptives, broad-spectrum oral antibiotics and a range of other powerful systemic medications of whose actions, side effects, toxicities, interactions with other drugs and contraindications to their use they are wholly ignorant.

Optometrists have neither the education, post-graduate training nor clinical experience to prescribe such medications safely, nor to deal with their adverse reactions and side effects. *Optometrists are not medical doctors*, and receive only the barest smattering of clinical training in areas outside the eye.

The optometrists' perennial effort to be permitted by licensure to prescribe such drugs is rather like Bush pilots demanding legislation permitting them, by fiat, to fly jet transport aircraft simply because there are pilots and "know about airplanes."

No one denies that optometrists are familiar with the eye and the visual system, but, *optometrists are not medical doctors*, and cannot integrate the eye and the visual system with the body as a whole, as can all ophthalmologists, by virtue of their broad medical training in both medical school and internship/residencies in hospitals, where they routinely deal with the very ill and the dying. Optometrists have never dealt with severe systemic illness, much less with dying patients.

I urge you to vote against H. B. 215.

Please contact me if you have any questions.

Sincerely,

Oliver Korshin MD

Oliver Korshin, M. D.

HB

252

22-LS0454\B
Lauterbach
4/2/02

CS FOR HOUSE BILL NO. 252( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Dyson

A BILL

FOR AN ACT ENTITLED

"An Act relating to the construction of certain statutes relating to children; relating to the scope of duty and standard of care for persons who provide services to certain children and families; relating to intensive family preservation services; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. By the amendment of AS 47.10.005 in sec. 2 of this Act, the legislature intends to express its recognition that parents possess inherent, individual rights to direct and control the education and upbringing of their children.

*** Sec. 2.** AS 47.10.005 is amended to read:

Sec. 47.10.005. Construction. The provisions of this chapter shall be liberally construed to the end that a child coming within the jurisdiction of the court under this chapter may receive the care, guidance, treatment, and control that will

promote the **best interests of the child, including the parents' participation in the child's upbringing** [CHILD'S WELFARE].

* **Sec. 3.** AS 47.10.086(a) is amended to read:

(a) Except as provided in (b) and (c) of this section, the department shall make timely, reasonable efforts to provide family support services to the child and to the parents or guardian of the child that are designed to prevent out-of-home placement of the child or to enable the safe return of the child to the family home, when appropriate, if the child is in an out-of-home placement. **Within appropriations identified by the department for the specific purpose of intensive family preservation services, the department shall also offer intensive family preservation services when those services are available and the child's safety in the home can be maintained during the time the services are provided.** The department's duty to make reasonable efforts under this subsection **to provide family support services** includes the duty to

(1) identify family support services that will assist the parent or guardian in remedying the conduct or conditions in the home that made the child a child in need of aid;

(2) actively offer the parent or guardian, and refer the parent or guardian to, the **family support** services identified under (1) of this subsection; the department shall refer the parent or guardian to community-based family support services whenever community-based services are available and desired by the parent or guardian; and

(3) document the department's actions that are taken under [(1) AND (2) OF] this subsection**; the documentation required under this paragraph must include**

(A) documentation about whether intensive family preservation services were appropriate, offered, used, or available to the family; and

(B) if intensive family preservation services were appropriate or offered to the family, enumeration of the reasons specific to the case explaining why intensive family preservation services were appropriate or offered.

* **Sec. 4.** AS 47.10.086(b) is amended to read:

(b) If the court makes a finding at a hearing conducted under AS 47.10.080(l) that a parent or guardian has not sufficiently remedied the parent's or guardian's conduct or the conditions in the home despite reasonable efforts made by the department in accordance with this section, the court may conclude that continuation of reasonable efforts of the type described in (a) of this section are not in the best interests of the child. The department shall then make reasonable efforts to place the child in a timely manner in accordance with the permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child. **If the court concludes that continuation of reasonable efforts of the type described in (a) of this section are not in the best interests of the child and intensive family preservation services were not provided in the case, the court shall enumerate in the record the reasons the services were not provided.**

* **Sec. 5.** AS 47.10.142(b) is amended to read:

(b) The department shall offer available counseling services **and intensive family preservation services** to the person having legal custody of a minor described in AS 47.10.141 and to the members of the minor's household if it determines that counseling services **or intensive family preservation services** would be appropriate in the situation. If, after assessing the situation, offering available [COUNSELING] services to the legal custodian and the minor's household, and furnishing appropriate social services to the minor, the department considers it necessary, the department may take emergency custody of the minor.

* **Sec. 6.** AS 47.10 is amended by adding new sections to read:

Article 3A. Intensive Family Preservation Services.

Sec. 47.10.500. Statewide program. Subject to AS 47.10.510 and 47.10.520, the department shall, within appropriations available for intensive family preservation services, develop and implement intensive family preservation services systematically and over time, with the ultimate goal of providing intensive family preservation services on a statewide basis. The department may provide the services directly or through contracts with private nonprofit providers.

Sec. 47.10.510. Standards for providers. The department shall develop

measurable standards that must be met by a provider before a contract may be awarded to, or renewed with, the provider under AS 47.10.500.

Sec. 47.10.520. Eligibility for services. (a) The department may provide intensive family preservation services to a child, the child's family, and other appropriate nonfamily members only if

(1) there are no other available means that will prevent out-of-home placement of the child or make it possible to immediately return the child to the child's home; and

(2) the child has been placed in out-of-home care or is at actual, imminent risk of out-of-home placement due to

(A) child abuse or neglect;

(B) a serious threat of substantial harm to the child's health, safety, or welfare; or

(C) any other factor that could lead to out-of-home placement.

(b) The department need not provide services to an otherwise eligible family if

(1) services are not available in the community in which the family resides;

(2) services cannot be provided because the program is filled to capacity;

(3) the family refuses the services;

(4) the child's case plan does not include reunification of the child and family; or

(5) the safety of a child, a family member, or a person providing the services would be threatened.

Sec. 47.10 530. Solicitation of funding sources. The department shall solicit federal and private resources that may be available to fund intensive family preservation services.

Sec. 47.10.590. Definition. In AS 47.10.500 - 47.10.590, "intensive family preservation services" and "services" mean intensive family preservation services, as defined in AS 47.10.990.

*** Sec. 7.** AS 47.10.990 is amended by adding a new paragraph to read:

(28) "intensive family preservation services" means services provided to a family with a child who is in an out-of-home placement or is at imminent risk of out-of-home placement that

(A) are designed to address problems creating the need for out-of-home placement by assisting the family to improve parental and household management competence, solve day-to-day practical problems that contribute to family stress, identify the factors that created the risk of out-of-home placement, and participate in the development of the family's case plan so as to improve parental performance and enhance functioning of the family unit; and

(B) have the following characteristics:

(i) are offered at the family's option;

(ii) are provided in the family's home;

(iii) are available 24 hours a day and seven days a week;

(iv) are provided within 24 hours of initial contact for assistance;

(v) are provided on a time-limited basis by a single case worker whose caseload is congruent with intensive family preservation services standards established by the Child Welfare League of America; caseloads shall be kept low to allow for the necessary intense level of interaction with the family, and the services shall be most intensive at the time of crisis; and

(vi) may, in appropriate instances and subject to available appropriations, include monetary assistance for special needs of the family, such as to obtain food, shelter, or clothing or to purchase other goods or services that will enhance the effectiveness of other services offered to help preserve the family.

* **Sec. 8.** AS 47.17.030(d) is amended to read:

(d) Before the department or a local government health or social services agency may seek the termination of parental rights under AS 47.10, it shall offer protective social services and pursue all other reasonable means of protecting the

child. **The department or agency shall also consider the eligibility of the child and family for intensive family preservation services under AS 47.10.500 - 47.10.590.**

*** Sec. 9.** AS 47.10.960 is repealed.

*** Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

STUDY. (a) The Department of Health and Social Services shall conduct a study in at least one region of the state in order to

(1) develop a valid and reliable process for accurately identifying clients who are eligible for intensive family preservation services;

(2) collect data on which to base projections of service needs, budget requests, and long-range planning related to intensive family preservation services;

(3) develop regional and statewide projections of needs for intensive family preservation services;

(4) develop a cost estimate for implementation and expansion of intensive family preservation services on a statewide basis;

(5) develop a long-range plan and time frame for ultimately making intensive family preservation services available to all eligible families; and

(6) collect data regarding the number of children in foster care, group care, institutional care, and other out-of-home care due to medical needs, mental health needs, developmental disabilities, and juvenile offenses and to assess the feasibility of expanding intensive family preservation services eligibility to include all of these children.

(b) By November 30, 2004, the Department of Health and Social Services shall submit a report to the governor describing the study required under this section and including the department's conclusions and recommendations that are based on the study. The department shall notify the legislature that the report is available.

(c) In this section, "intensive family preservation services" has the meaning given in AS 47.10.990.

*** Sec. 11.** Sections 1 and 2 of this Act take effect immediately under AS 01.10.070(c).

*** Sec. 12.** Sections 3 - 8 and 10 of this Act take effect July 1, 2002.

2-12-02

22-LS0454\F.1
Lauterbach
2/5/02

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE CISSNA

TO: HB 252

Page 1, line 3, following "**families;**":

Insert "**relating to intensive family preservation services;**"

Page 1, following line 13:

Insert new bill sections to read:

"* **Sec. 2.** AS 47.10.086(a) is amended to read:

(a) Except as provided in (b) and (c) of this section, the department shall make timely, reasonable efforts to provide family support services to the child and to the parents or guardian of the child that are designed to prevent out-of-home placement of the child or to enable the safe return of the child to the family home, when appropriate, if the child is in an out-of-home placement. **Within appropriations available for the purpose, the department shall also offer intensive family preservation services when those services are available and the child's safety in the home can be maintained during the time the services are provided.** The department's duty to make reasonable efforts under this subsection **to provide family support services** includes the duty to

(1) identify family support services that will assist the parent or guardian in remedying the conduct or conditions in the home that made the child a child in need of aid;

(2) actively offer the parent or guardian, and refer the parent or guardian to, the **family support** services identified under (1) of this subsection; the department shall refer the parent or guardian to community-based family support services whenever community-based services are available and desired by the parent or guardian; and

(3) document the department's actions that are taken under [(1) AND (2) OF] this subsection, **including whether intensive family preservation services were appropriate, offered, used, or available**.

* **Sec. 3.** AS 47.10.086(b) is amended to read:

(b) If the court makes a finding at a hearing conducted under AS 47.10.080(l) that a parent or guardian has not sufficiently remedied the parent's or guardian's conduct or the conditions in the home despite reasonable efforts made by the department in accordance w. this section, the court may conclude that continuation of reasonable efforts of the type described in (a) of this section are not in the best interests of the child. The department shall then make reasonable efforts to place the child in a timely manner in accordance with the permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child. **If the court concludes that continuation of reasonable efforts of the type described in (a) of this section are not in the best interests of the child and intensive family preservation services were not provided in the case, the court shall enumerate in the record the reasons the services were not provided.**

* **Sec. 4.** AS 47.10.142(b) is amended to read:

(b) The department shall offer available counseling services **and intensive family preservation services** to the person having legal custody of a minor described in AS 47.10.141 and to the members of the minor's household if it determines that counseling services **or intensive family preservation services** would be appropriate in the situation. If, after assessing the situation, offering available [COUNSELING] services to the legal custodian and the minor's household, and furnishing appropriate social services to the minor, the department considers it necessary, the department may take emergency custody of the minor.

* **Sec. 5.** AS 47.10 is amended by adding new sections to read:

Article 3A. Intensive Family Preservation Services.

Sec. 47.10.500. Statewide program. Subject to AS 47.10.510 and 47.10.520, the department shall, within appropriations available for the purpose, provide intensive family preservation services on a statewide basis. The department may provide the services directly or through contracts with private nonprofit providers.

Sec. 47.10.510. Effectiveness required. (a) The department shall develop measurable standards that must be met by a provider before a contract may be awarded to the provider under AS 47.10.500.

(b) The department may not renew a contract with a provider of services unless the provider can demonstrate that provision of the services prevented or terminated out-of-home placement in at least 70 percent of the cases served by the provider and that out-of-home placement was avoided for a period of at least six months after termination of the services.

(c) The department may not continue direct provision of services unless the department can demonstrate that provision of the services prevented or terminated out-of-home placement in at least 70 percent of the cases served and that out-of-home placement was avoided for a period of at least six months after termination of the services.

Sec. 47.10.520. Eligibility for services. (a) The department may provide intensive family preservation services to a child, the child's family, and other appropriate nonfamily members only if

(1) there are no other available means that will prevent out-of-home placement of the child or make it possible to immediately return the child to the child's home; and

(2) the child has been placed in out-of-home care or is at actual, imminent risk of out-of-home placement due to

(A) child abuse or neglect;

(B) a serious threat of substantial harm to the child's health, safety, or welfare; or

(C) family conflict.

(b) The department need not provide services to an otherwise eligible family if

(1) services are not available in the community in which the family resides;

(2) services cannot be provided because the program is filled to capacity;

(3) the family refuses the services;

(4) the child's case plan does not include reunification of the child and family; or

(5) the safety of a child, a family member, or a person providing the services would be unduly threatened.

Sec. 47.10 530. Solicitation of funding sources. The department shall solicit federal and private resources that may be available to fund intensive family preservation services.

Sec. 47.10.590. Definition. In AS 47.10.500 - 47.10.590, "intensive family preservation services" and "services" mean intensive family preservation services, as defined in AS 47.10.990."

Renumber the following bill sections accordingly.

delete

Page 2, following line 6:

Insert new bill sections to read:

"* Sec. 7. AS 47.10.990 is amended by adding a new paragraph to read:

(28) "intensive family preservation services" means services provided to a family with a child who is in an out-of-home placement or is at imminent risk of out-of-home placement that

(A) are designed to address problems creating the need for out-of-home placement by assisting the family to improve parental and household management competence and by solving practical problems that contribute to family stress so as to improve parental performance and enhance functioning of the family unit; and

(B) have the following characteristics:

(i) are persistently offered but provided at the family's option;

(ii) are provided in the family's home;

(iii) are available 24 hours a day and seven days a week;

(iv) are provided within 24 hours of initial contact for

assistance;

(v) are provided for a maximum of 40 days by a single case worker whose caseload is not more than two families at any one time; and

(vi) may, in appropriate instances and subject to available appropriations, include monetary assistance for special needs of the family, such as to obtain food, shelter, or clothing or to purchase other goods or services that will enhance the effectiveness of other services offered to help preserve the family.

*** Sec. 8.** AS 47.17.030(d) is amended to read:

(d) Before the department or a local government health or social services agency may seek the termination of parental rights under AS 47.10, it shall offer protective social services and pursue all other reasonable means of protecting the child. **The department or agency shall also consider the eligibility of the child and family for intensive family preservation services under AS 47.10.500 - 47.10.590."**

Renumber the following bill sections accordingly.

Page 2, following line 7:

Insert a new bill section to read:

"*** Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

STUDY. (a) The Department of Health and Social Services shall conduct a study in at least one region of the state in order to

(1) develop a valid and reliable process for accurately identifying clients who are eligible for intensive family preservation services;

(2) collect data on which to base projections of service needs, budget requests, and long-range planning related to intensive family preservation services;

(3) develop regional and statewide projections of needs for intensive family preservation services;

(4) develop a cost estimate for implementation and expansion of intensive family preservation services on a statewide basis;

(5) develop a long-range plan and time frame for ultimately making intensive family preservation services available to all eligible families; and

(6) collect data regarding the number of children in foster care, group care, institutional care, and other out-of-home care due to medical needs, mental health needs, developmental disabilities, and juvenile offenses and to assess the feasibility of expanding intensive family preservation services eligibility to include all of these children.

(b) By November 30, ~~2003~~ 2004, the Department of Health and Social Services shall submit a report to the governor describing the study required under this section and including the department's conclusions and recommendations that are based on the study. The department shall notify the legislature that the report is available.

(c) In this section, "intensive family preservation services" has the meaning given in AS 47.10.990."

Renumber the following bill sections accordingly.

Page 2, line 8:

Delete "2"

Insert "6"

Page 2, line 9:

Delete "Section 3"

Insert "Section 9"

Delete "sec. 2"

Insert "sec. 6"

Page 2, following line 10:

Insert a new bill section to read:

"* **Sec. 13.** Except as provided in secs. 11 and 12 of this Act, this Act takes effect July 1, 2002."

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

HB 252 STANDARD OF CARE FOR CINA SERVICES
Sponsor Statement

We must continue our work of balancing child protection with family preservation during government intervention. Parents are held to a standard of care by our state with the threat of loosing parental rights if they fail in meeting these standards.

HB 252 is introduced with the purpose of recognizing parents in their God given role to raise their children as they see fit. This bill also recognizes that parents fail in varying degrees and the Division of Youth Services is called upon to protect the children while trying to preserve the family. Therefore we are adding the parent's participation in the event of a child coming under court jurisdiction.

Failing to properly care for children is not just a parental issue. Our State Division of Youth Services also is made up of humans that from time to time may fail in a standard of caring. Therefore HB 252 is requiring that a standard of care be instituted within our State so that each department employee is held to at least the same standard of care that we require of parents in Alaska.

Since we are invoking police and judicial powers to our agency personnel I believe that a higher standard of duty, conduct and care is needed. The requirements should be consistent with those stated in the Board of Social Workers in AS 08.95

Currently under AS 47.10.960 there is no duty or standard of care imposed department employees. The lack of a standard of care obscures the fiduciary duty of the State to the parents and children for which they are making these decisions.

HB 252 simply requires DFYS to implement through the regulatory process the scope of duty owed and the standard of care that must be met by department employees when dealing with CINA cases under Title 47. This legislation will provide for rules that can be understood by public employees and private citizens who may have this law applied to their lives.

Representative_John_Coghill@LEGIS.state.ak.us

C P S W a t c h

Child Abuse or Discipline?

by Teresa Cunio, LSW

Child Protective Services . . . Child Welfare . . . Family Services . . . call it what you may but for some individuals, just the thought of this agency can send them into a panic. They have good reason to panic. One wrong individual within this agency can destroy a person's life and do it legally. Not just destroy one person but families. Numerous families!

You may find yourself reading this article and thinking, 'Oh, that only happens to the poor. It could never happen to me.' Well, I am sorry to inform you but it could happen to anyone of us. I know. I have been the social worker who has knocked on numerous doors over the course of my six years with Child Protective Services.

Looking back over my employment, I see so many problems . . . problems with an agency that was supposed to be designed to protect the innocent children. But is that what they are doing? Are they truly doing what is in the 'best interest' of the child?

Children had been wrongfully removed because parents make mistakes. Not a single one of us is perfect. But could a mistake that you make raising your child cost you your child? It absolutely could!

Some of the children that I seen wrongfully removed, were children who had been physically disciplined rather than physically abused. I would rather use other means of correcting a child's bad behavior but there could possibly be some benefit on popping a young child on their buttock area. Sometimes, a child does not seem to respond to anything else.

Many of those reading this article are of the generation that if they had done something seriously wrong then they would have their tail ends worn out. Or in school, would have been sent to the principals office for licks. Was that abuse? Or was that a simple means of discipline? Children have been removed from their homes because a simple means of over disciplining their child was mistaken for child abuse. I have seen a whole family torn apart because one caseworker felt that a father could not ever use a means of physical punishment to correct his children. At the time I worked for CPS, their stance of physical punishment was that if there were any markings left on a child then it was considered physical abuse. Therefore, the perpetrator of this disciplining would be listed as a physical abuser. Is it right to consider someone who spanks their child and leaves a bruise on the child's bottom a 'child abuser?' Their children are probably not going to be removed because of a small bruise on their bottom, but they are going to be listed in the CPS registry as a physical abuser of a child. That is a terrible title to label a person who was only trying to correct a child's behavior.

When I first started to write, I looked towards the Department of Protective and Regulatory Services for statistics on abuse. As I looked at the figures, I had to wonder, "How accurate are these figures?" I have no way of measuring their accuracy. The figures that the Department comes up with are figures that are the result of compiling all of the caseworker caseloads. I am sorry, but we need to do better than that. I have questioned the judgment of more than one caseworker. So I decided that I would use my own statistics. I do not want to depend just on what the Department is telling me. I want to look at it for myself.

I took a five-year time period and recorded the investigations that I have worked. The time period covered, from 9/90-9/95. Over the course of that time period, I worked 406 child abuse investigations. At the end of the five year period, I had a total of 146, 'Reason to Believe' cases out of the 406 investigations. The highest-ranking type of abuse found was physical abuse cases, which numbered 57 out of the 146. But that is 57 cases by what the agency defines as abuse. I, personally, would have only characterized 10 as true physical abuse cases. The other 47 cases I would have rather characterized as 'Excessive Physical Discipline'. But the Department did not give me that option.

There is a significant difference between the two. Excessive physical discipline on the part of parents who are trying to lead their child in the right direction, is when they did not intentionally mean to hit the child as hard as they did, and usually do not realize that they hit him/her too hard until they see the bruises. These people are not dangerous. There is no way that this type of abuse can be predicted or prevented. It is usually a result of the parent being frustrated or pushed too far.

Example: When I first met Lavonne and John, they were the parents of a challenging 3-year-old. Little John was, by far, an extremely difficult child. Lavonne had been married previous to meeting John. From that marriage, she had a young daughter named Maria. Maria had been removed from Lavonne's care and was placed with an Aunt. Lavonne was fearful of disciplining little John. She did not want the State to have any reason to take him away from her. Little John soon gained control of their household.

The times that I was called out to the home were usually when Lavonne had come to the point where she could take no more. She would spank him and, because of the built up anger, would over discipline him. Thus, leaving bruises on the buttock's area.

After a couple of years, Lavonne would call the complaints in on herself. After she called the Hotline, she would call my office and tell me what had happened. She would say, "I know that you're going to find out, so I figured I would just go ahead and call myself." I appreciated her openness and honesty. I would go to the house and we would talk about what she would need to do differently.

Lavonne was not a bad parent. She was young and unsure of her parenting skills. She did not know how to appropriately discipline little John. Even though I had made numerous trips to their home and spent many hours talking to her, she would still have problems sticking with the set plan of discipline.

Little John took advantage of her insecurities and would push every button that he knew of just to try and set her off. A routine visit to the home would find little John bouncing on the couch. He would jump from the couch, onto the coffee table. After a couple of bounces on the floor and he would be at the television set. The volume would suddenly be turned up to the highest level causing Lavonne to quickly get up and turn it down.

By the time that she could get back to her seat and sit down, little John would be back at the television set. The volume would once again be raised. Lavonne and Little John would play this game until I would intervene. I could do more with little John than what his mother was capable of doing. He knew that his mother would let him get by with his disruptive behavior. I would not. After about four times of them fighting over the volume, I instructed Lavonne to shut the television off. Little John let out a loud screech.

That was not going to stop him. He turned it back on. Lavonne had no idea what to do. I told her to unplug the television set and send Little John to his room. Lavonne unplugged the television and put little John in his room. Do you think he stayed in there? No, he beat her back into the living room.

In a matter of thirty minutes, this child could have me to the point that I wanted to scream. I could not imagine what this mother went through each and everyday. She had much more patience with this child than I would be able to.

You may think that this is a rare case but I have run across several children like little John. Some of these children are a little better and some are worse.

Example: Five year old, Timmy was home with his father the day that I went out to see them. Bob answered the door as I explained to him who I was and my reason for being there. He opened the door and invited me in. Four steps into the home and I was being showered with a stack of papers falling around me. I turned around to see Timmy on top of the washing machine throwing things up into the air. He then flung open the cabinet doors and just as he reached to grab something from the shelf, Bob grabbed him.

Bob attempted to have Timmy pick the things up. Timmy refused. Bob asked for my advice on the matter. I told him to send Timmy to sit in the corner until he was ready to pick up the mess. He marched Timmy over to the kitchen table. He took a chair from the table and placed it in the corner. He then told Timmy to sit in the chair. Timmy assertively yelled, "No!" The father threw up his hands, as if giving up the battle. I asked him, "Do you mind if I try?" He seemed relieved.

I picked Timmy up from the floor and carried him to the chair as he screamed into my ear. Just as his little bottom hit the seat, he jumped up. I caught him and put him back into the chair. Once again he pounced up. The third time, he looked directly into my eyes and then spit on the floor.

By now I was hoping that the father would step in and relieve me. He stood waiting for me to handle it. As I inventoried my mind I thought, "It sure would have been nice if the Department would have trained me on disciplining the difficult child." But they didn't.

I knew what I would do if this were my child. I would tell him if he moved from that chair one more time: I would give him a spanking that he would not easily forget. But this was not my child and I was there to set an example.

I cannot imagine the frustration that a parent feels at the thought of not being able to control their child. It is understandable how a parent reaches a point where they explode and hit the child. I am not saying that what they are doing is right. I am stating that it is understandable.

The example of these two parents is excessive discipline. They are trying everything they knew to control their children. They need to be taught how to discipline these children. Intentionally, they are not going to do any real serious damage to that child. But they could fall into the same class of individuals that are the physical abusers.

Out of the 57 'Reason to Believe' cases, 47 of them would have fallen under the lines of excessive discipline. The bruises left upon the child were not put there intentionally and they usually were near the buttock area. The parent was angry and trying to get their point across to the child.

The other ten cases? Well, those cases were the 'true' physical abusers. On the surface, the other ten parents did not appear any different then the parents who excessively disciplined. But once in the home and watching the family's interactions, I could sense that there was definitely more going on here. The children in these cases were different.

One of the characteristics about these children was that they did not display their injuries proudly. They all seemed somewhat withdrawn and did not want to talk about the abuse. Most of the children would make up excuses for the abusing parent. They would often take the blame themselves, saying that they had caused the parent to punish them that hard. They would not put up any argument if they had to. They would simply do just as they were told to do.

If you put the child and the physical abuser into the room together it seemed as though you could feel all of the tension. The child would not utter a word. Looking into the child's eyes, you could see a true fear.

The physically abusive parent seemed to have many common characteristics. The one that first comes to my mind is self-control. They may not be in control of anything else but they are in control of their family. When the family is in the room together and the father is the physical abuser, I found that the father did all of the talking. The other members of the family did not speak unless I directed a question specifically to them. Many times the family member would look towards the physical abuser before answering. These people are not stupid. The majority, 7 out of the 10, was intelligent and successful. Income level varied from lower middle class to upper middle class.

Example: In this case Ms. Brown was the physical abuser. Ms. Brown was also Charles' stepmother.

As we entered into the house, there was a teen-age boy cleaning up in the kitchen. I immediately noticed that this child's head seemed to be somewhat out of proportion compared to his body size. The shape of it was quite unusual. I had first thought it was a birth defects but later found that it was swollen.

His stepmother had been hitting him on the head with a board! I spoke with Charles about his injuries. I asked him how he had received the knots on his head and the bruises on his body. He stated that he had misspelled some words on his homework.

He immediately took all of the blame. He explained that if he would have spelled the words right then she wouldn't have to hit on him. The bruises covering his body were caused from the belt. A board caused the knots on his head. Charles explained, "I let my mind wonder off too much. I should concentrate on what I am doing."

When I spoke with his stepmother, she openingly admitted that she had been hitting on him. "It is his own fault, if he would use that brain that he has in his head then I wouldn't have to hit him so much."

She spoke as if there was nothing wrong with what she had done. She stated, "When he is doing his sit ups in the mornings, he will do the same thing. He starts letting his mind wonder. I have to kick him in the side to get his attention." And Charles did have numerous bruises on his rib cage.

Charles' stepmother was a very pretty and intelligent lady. Her husband was a successful businessman that kept him away from their home the majority of the time. She could not see that there was anything wrong with the way she was dealing with him.

Robby was another physically abused child. When I first met Robby, I had just gone to work for the Department. The little 6-year-old boy had several bruises scattered throughout his body. He could not give a reason for the bruises, other than to say that he was clumsy. The allegations were that his stepfather was physically abusive to him.

I located the nice brick home out in the country and was greeted at the door by Robby's mother. Once I introduced myself, she stated that she needed to call her husband in from work. She immediately went to the phone. She informed me he was on his way and would rather not talk until he got home. She would not say anything else until he arrived.

It took James about 30 minutes to get home. When he walked in the door he was mad. After he finally settled down we were able to discuss the allegations. He insisted that a relative who just wanted to cause them problems called in the complaint.

I had felt sure that when he arrived that the mother would talk to me. I was wrong. She allowed her husband to speak. Several times I would direct a question to her. Each time I did, James would answer the question. It was obvious that she was afraid to speak for herself.

Just because things did not seem right, did not give me the authority to take the child from the home. I did not feel good about leaving but I had no choice.

A couple of months later and I was visiting the home again. The allegations were the same the bruises were different. Once again, the child continued to insist that the bruises were just accidents. He said that his stepfather would never hit him. He would often laugh but his laugh was one that had a nervous tone.

The intakes on the family continued to flow in. Around the fifth intake things seemed to be getting much more serious. This time Robby had to go to the emergency room to get his ear sewn on. It had been pulled to the point that about an inch of it had been ripped from his body.

No one seemed to know what had happened. Robby stated that he had passed out. Mother agreed with the stepfather and stated that they were outside. The stepfather said that he went inside the house and found the child passed out on the floor. It seemed a little strange that no one knew how a seven-year-old child got his ear ripped.

It took thirteen investigations before Robby was ever able to trust someone enough to talk. Years of torture before he was removed and placed with his loving grandmother.

Sometimes parents abuse children. Sometimes parents even kill their children. For those children, Child Protective Services is vital. Their lives depend upon this agency. But for those who are trying to discipline their child and have gone a little over board, Child Protective Services could be disastrous. It could destroy not only their families but it could destroy their life. Who is making sure that CPS is doing their jobs? Are they protecting the children they are supposed to be protecting, while honoring a parents right to raise their child? Are they doing what is in the 'best interest' of the child?

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You can purchase Ms. Cunio's book here.

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C P S W a t c h

Runaway Freight Train

by Sarah Alcorn

I would like to bring your attention to a terrible crime that is being committed against all of humanity. The most tragic aspect of this crime is that it's sanctioned by law. What is it? It is the murder of the American family. The culprit? It goes by many names, but is collectively known as Child Protective Services. There are many associated agencies that are accessories to this crime. The federal government must hold these agencies accountable by better defining abuse and related terms such as neglect, dependency and so on and by requiring that social workers respect the rights of parents in the same manner that police officers must respect certain rights of criminals. Under the current system, parents are held to superhuman standards, while social workers routinely resort to intimidation and even lying and foster care providers get away with murder, sometimes literally.

Before I continue, let me give you the legal definition of abuse[1]. According to Kansas Statute Chapter 38, Article 1502 Section (b) abuse is defined as "the infliction of physical, mental or emotional injury or the causing of a deterioration of a child and may include, but shall not be limited to, failing to maintain reasonable care and treatment, negligent treatment or maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered."

Let me introduce you to Taler. Taler was born prematurely right here in Wichita while his mother was visiting from Missouri. The hospital social worker tried to coerce her into committing fraud by having her apply for a medical card, though she was from Missouri and had private insurance. When she refused, they call Social Services and Taler was removed. His mother was accused of medical neglect, the report saying that she refused to sign medical consent for him. The report was falsified.

Now, this is an extreme case, clearly the workers were in the wrong. But what of the parent who is in the midst of spring-cleaning when the investigative knock comes on the door? Or the parent who utilizes a swat on the rear when a child is misbehaving severely? Or the parent whose child wanders off in the store? The list could go on forever. The point is that most people would not consider these things to be abuse. However, once seen by or reported to a social worker, these and many other unfortunate situations are often twisted out of proportion and the parents portrayed as monsters.

In fact, according to the U.S. Department of Health and Human Services National Center of Child Abuse and Neglect, more than 97% of children are NOT abused or neglected in any given year[2]. Yet one hears constantly that the number of children reported to Child Protective Services is on the rise. Where do these numbers come from? Taler is one. In fact, I would venture to say that the vast majority of the reports originate in cases similar to Taler's and the examples I listed.

Social workers are not required to read Miranda rights to a parent, but any information a parent provides to a social worker can and will be used against that parent in Child Dependency Court. When a report is made, an investigation generally must be done. However, parents are often lied to by social workers in order to get the information that the worker deems necessary to complete the investigation. Often the parent is coerced into providing information.

After the parents have been lied to and lied about; the children are taken into foster care and the family's

plight worsens. Let's return to Taler. When he was taken into custody, he was not yet ready to leave the hospital. Not only was he removed, he was placed with foster care providers who were seeking to regain custody of their own children that had been removed for abuse.

Again, this is extreme, but a classic case. In October 1997, the Kansas Chapter of the National Association of Social Workers compiled a report titled Early Responses to the Move to Privatization of Child Welfare Services[3]. The report found that:

- Χομμυνιτψ Βασεδ σερϖιχεσ αρε βεινγ χομπρομισεδ. Τηε πριϖατε αγενχιεσ αρε νοτ χοοπερατινγ ορ χομμυνιχατινγ ωιτη προϖιδερσ, σομε προϖιδερσ ηαϖε χλοσεδ τηειρ δοορσ.

- Μενταλ Ηεαλτη σερϖιχεσ αρε νοτ βεινγ προϖιδεδ. Χηιλδρεν ιν φοστερ χαρε αλλ ρεχειϖε μεδιχαλ χαρδσ, ωηιχη χαννοτ βε υσεδ το παψ φορ μενταλ ηεαλτη σερϖιχεσ.

- Τηερε ισ νο χονσιστεντ υσε οφ πραχτιχε στανδαρδσ φορ σερϖιχεσ. Σομε χηιλδρεν αρε μοϖεδ μανψ τιμεσ ωιτη νο ρεασον γιϖεν φορ τηε μοϖε. Ωηεν μοϖεδ, τηεψ αρε υναβλε το τακε περσοναλ βελονγινγσ ωιτη τηεμ ανδ σομε αρε μοϖεδ βψ ωορκερσ ωηο δο νοτ εϖεν κνοω τηε χηιλδ σ ναμε.

- Περηαπσ μοστ σιγνιφιχαντ ισ τηε χονφυσιον οϖερ ωηο ισ ρεσπονσιβλε φορ τηε χηιλδρεν λεγαλλψ ανδ φινανχιαλλψ. Πασσινγ τηε βυχκ βετωεεν ΣΡΣ ανδ τηε πριϖατε χοντραχτορσ σεεμσ το βε χομμον.

November 1998, FOX NEWS did an investigative report into the foster care system[4]. They found that the goal in privatization was to transfer services from public to private hands as fast as possible and fine-tune delivery of services later.

Add all these factors to the fact that the children entering care are coming from loving, caring families who may have done nothing worse than to be human, and in even the best foster homes you have a recipe for disaster. Add to all of this the fact that, with so many children entering care so fast, there are not enough good foster placements. The child's welfare becomes the luck of the draw.

We would all agree that child abuse is a terrible tragedy that nevertheless occurs daily. We would also agree that something must be done about this and that sometimes the abuse is so terrible that, in order to preserve the child's life, the child must be removed from the home. However, what if I told you that children are three times more likely to be abused in state care than in their natural homes? The In 1997, the U.S. Department of Health and Human Services did a study and found that, out of a population of 1000 children, 20 will be abused[5]. A natural parent will abuse 5 of those; foster care providers will abuse the other 15. The American Civil Liberties Union goes so far as to estimate that children are actually ten times more likely to be abused in foster care than at home (Thoma 10)

Remember Taler? After he was placed, he most often arrived at visits with her covered in bruises. He was finally returned to her custody a year ago brain damaged as a victim of shaken baby syndrome. He is also blind due to several injuries to his eyes. These injuries were diagnosed by a Retinal specialist, and confirmed by three other specialists, as having been caused by a blunt crescent shaped object. Again, we are talking of an extreme case. But many children arrive at visits with their parents with bruises that, had they occurred while the child was at home, the child would have been removed immediately. When they occur in the foster home, the parent is considered hostile and uncooperative for mentioning the injuries. There are no statistics on these instances, however, because foster care abuse is underreported and not likely to be investigated when it is reported. Even the goal set by Kansas for child 'safety' is five times lower than the national average. The goal is that 98% of children in care will not be abused. This means

that out of every 1,000 children, 40 can be abused. This threshold used to be 99%, or 20 out of every 1,000, but the state continually failed to meet this goal. The national average safety rate is 8 out of every 1,000. Currently, there are about 6,000 children in the system. This means that, by Kansas standards, 240 can be abused. The national average would say that 48 could be abused. This is according to an article from the Topeka Capital Journal on June 30, 1999[6]. Children are also 5-10 times more likely to die in foster care.

The Department of Social Services is a runaway freight train. It is smashing through families from coast to coast and beyond, the death toll staggering and the critical injuries beyond count. This monster blind sides the family and leaves nothing but carnage in its wake. Countless surviving family members have been witnessed sobbing uncontrollably. Depression and desolate emotions is all that remain, where there once were so many happy homes, filled with so many happy families, happy children. It is all gone now. When will we derail this freight train of destruction and devastation? Will you help?

Now that you are more aware of the runaway train known as Child Protective Services, what can be done to protect families? First of all, the laws must be rewritten so that there is no question what constitutes abuse. Social workers must be held by accountable for their actions by the repeal of absolute immunity laws. Foster care providers must be held to at least the same standards as parents, preferably higher. Now what can you do? I have drafted a petition proposing that all state employees are individually held accountable for their actions and also that the rights of the family are inviolate except in dire circumstances. After signing this petition, you can also write to you congressmen and representatives. Next to your support, perhaps the most important thing that you can do to help as well as to protect your own family is to educate yourself regarding the extent of State employees' contempt for individual and family civil rights. I have composed a listing of some of the most informative sites on the web. Please visit these sites. They are very informative. If you have deal with these problems, or know someone who has, please contact CPSWatch at 1-800-CPSWatch. They have helped me and many others in many ways.

Bibliography

1. Kansas Statutes Annotated 38-1502 section (b)

2. U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, 1988 The Study of National Incidence and Prevalence of Child Abuse and Neglect chapter 3, p. 2

3. Kansas Chapter, National Association of Social Workers, Talk Back, Early Responses to the Move to Privatization of Child Welfare Services.

4. Fox News, November, 1998 Private Problems

5. U.S. Department of Health and Human Services Perpetrator Data, 1997

6. Roger Meyers; Topeka Capital Journal Report: More Children Coming into Foster Care than Leaving.

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CPS Watch

Legal Orphans; Government's Assault on Children

by Cheryl Barnes

Technically, the children have parents, but legally, there is no parent of record. They've been permanently separated from their parents through termination of parental rights, but haven't been adopted.

In the last two reporting periods, our government has created 30,750 legal orphans. And the rate at which our government is creating legal orphans is increasing with a 20% increase in fiscal year 1998 over fiscal year 1997. Data for fiscal year 1999 is not yet available.

If we continue to legally orphan children at this rate, there will be one-quarter million legal orphans by the year 2002. An interesting irony since the goal of the Adoption 2002 law was to double the number of adoptions each year until 2002. While adoptions are increasing, the number of children left without parents increases at a higher rate. By the year 2002, instead of eliminating the pool of children without parents, we will more than double that number.

The Adoption and Safe Families Act (ASFA) was supposed to keep children from "languishing" in care and get those already in care into permanent homes. It has had the opposite effect mainly because it focuses on termination of parental rights, an act that orphans more children.

The ASFA requires states to file for termination of parental rights when the child has been in foster care for 15 out of the previous 22 months. The presumption is that if a child has been in care this long, it must be the parent's fault. However, this is often not the case. Social workers fail to provide services in a timely manner and many cases get backed up in the courts.

According to the AFCARS report for fiscal year 1998, 71% of the children that were permanently separated from their parents through termination of parental rights were children aged five and under. This is in sharp contrast with the fact that only 37% of the children taken into custody were aged five and under. In fact, a child removed from his parents at age five or under is more than FOUR times more likely to lose rights to their parents forever than those removed over age five. This indicates that parental rights are being terminated based upon adoptability. This is further evidence by the fact that 48% of the adoptions were children aged five and under.

What kind of effect does this orphaning activity have on the child? Our federal government knows. According to the federal manual for Substitute Care Providers, our government expects children to experience great pain when dealing with loss and to never fully accept the loss. (Figure 1)

The federal manual further states that any new loss will generate a "new round of feelings" and push the child back toward denial, guilt, anger and sadness. How many losses does a legal orphan suffer?

First, they lose their home, their parents, favorite toys, comfort and security.

Next, they will be allowed to see their parents less and less until visitation is completely cut off.

Then they lose all rights to be legally associated with their parents through termination of parental rights.

Next, they will lose their last name when they are adopted. They may even lose their first name if the adopters aren't satisfied with it and change it to suit their own interests.

When this happens, the child's original birth certificate is replaced with a new one, another significant tie to his parents.

Next, in one out of every four cases, the child will even lose the people that adopted him. These new parents will grow tired or frustrated with him and return him to the state where the process starts all over. In these cases, the traditional parents aren't notified that their child is once again a legal orphan.

If our government concedes that even one significant loss causes a child such horrendous grief, how do they expect children to survive the repeated significant losses they endure in the system?

What kind of adults will these children become?

Figure 1

How Children Cope with Loss

When a [child] suffers a loss, he/she grieves. The feelings of grief are strong, painful, and difficult to sort out. The [grieving] model presented in this manual identifies the following five stages:

Denial. At first, the [child] doesn't want to believe the loss. He/she cannot endure the pain. So he/she pretends it is not true, or that it doesn't really matter.

Guilt. Surely, there was something the [child] did that caused the loss or something that he/she could have done to prevent it. A child always feels responsible for a loss that he/she experiences.

Anger. This stage usually follows guilt. The [child] questions why the loss occurred, feels it is not fair, and seeks some other person to hold accountable for the pain.

Sadness. When a [child] realizes that the loss has, indeed, occurred and that the impact of the loss cannot be undone by guilt or anger, there is an intense awareness of how much the lost person will be missed, particularly during moments that had been shared and treasured (mealtimes, bed time, holidays, etc.). This sadness is so overwhelming and the pain so acute that it cannot be endured for long. Each [child] allows it to come and go by retreating to one of the earlier stages.

Acceptance. This final stage is never fully realized. Acceptance of a significant loss is never total acceptance. Acceptance resembles denial and a [child] starts through the process again or goes back to one of the earlier stages. Any new loss, of course, generates a new round of feelings, and pushes [the child] back towards denial.

Source: "Substitute Care Providers: Helping Abused and Neglected Children": The User Manual Series, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, National Center on Child Abuse and Neglect: pages 36-37

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When Government Intervention Becomes Excessive: The Rights of the State Versus the Rights of the Parents

by Dawn Michelle Irons, BSW
April 1996

The Social Problem:

As you listen to the political arena you hear the heart cry of the American people crying out "Less government interventions into our lives!!!" This has been a heated debate throughout history. Just what is proper intervention of the government into the family life? When does that become intrusive and cross the line of being unconstitutional? Who determines and defines what is "proper intervention"?

Many people believe that government has crossed the sacred "line in the sand" when it comes to family life and parental authority over their own children. Government and state agencies have been given authority to remove children from homes first and ask questions later. Although state guidelines say that there must be "observable and material impairment in the child's growth, development, or psychological functioning." (DPRS, 1995). A San Diego grand jury found that in child abuse cases in that county alone, family freedoms and parental rights were violated in over 300 cases. They reported that 35 to 70 percent of the children who were removed from their homes by Child Protective Services "should never have been removed from their parental homes." (San Diego Union Tribune, 1992.). The ultimate issue of the sanctity of the family is at stake.

Historically, America is a nation that was built on the foundation that government can in no right usurp the fundamental rights of the people. The earliest colonists of the United States made this quite clear when they declared their independence from England in 1776. Our nation's very own Declaration of Independence states the proper role of government in the lives of the people:

"We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these Rights, Governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the Right of the People to altar or to abolish it, and to institute a new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem likely to effect their Safety and Happiness ..... But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such government, and to provide new Guards for their future security." (U.S. Congress, 1776.)

In 1923, the Meyer v. Nebraska (262 U.S. 309, 399, 43 S. Ct. 625, 1923) became the first case in which the U.S. Supreme court recognized the rights of the parents to control the upbringing and education of their children. The same court in 1925 (Pierce v. Society of Sisters) struck down a state law forcing parents to send their children to public schools because it violated the right of the parents to direct the education and upbringing of their children. The Texas court of appeals in 1991 in Gibson Vs. J.W.T. specifically upheld "the rights and privileges of parenthood are indeed fundamental." A later court decision stated "the parental interest in the upbringing of the child is a fundamental liberty which is protected by the fourteenth amendment". (Texas Home School Coalition, 1995). The judiciary of the United States as well as state Supreme Courts have long voted in favor of fundamental parental rights.

It is hard to pin point the specific period of time when government intervention seemed to run rampantly out of control in regards to the family. There is a definite period of time in the 1960's, during the Johnson Administration's War on Poverty, that seems to play as a key turning point. The War on Poverty started out with good intentions, but it began a time of government programs taking on a large role in the life of the family.

Unfortunately, this began a disintegration process in many families. Due to federal regulations and state requirements, many families could not receive AFDC or other assistance programs if there were two parents to the family unit. This requirement encouraged the fathers to withdraw from the family structure in order for the family to receive financial assistance. Social Workers have always held to the tenant that the breakdown of the family is the source of almost all social problems. But contrary to this belief, these social programs encouraged the breakdown of the family unit.

A major concern of many families is the quality of their children's education. 1965 saw a greater influence of the federal role in education. Lyndon Johnson launched an extensive federal welfare-state approach to education in the Elementary and Secondary Education Act. As a result of this legislation, federal spending on education went from $478 million to $1.646 billion in a single year. One of LBJ's congressional leaders, Carl Perkins stated, "If we can reduce the cost of crime, delinquency, unemployment and welfare in the future by well-directing spending on education now, certainly, on this account alone, we will have made a sound investment." (Farris, 1995.) Unfortunately, thirty years later, crime is higher, delinquency is rampant and welfare payouts are at an all time high. Was the government intervention really effective or just intrusive?

There are varying opinions even among politicians and legislators as to what is the right of the government and what is the right of the parents. The First Lady of the United States, Hillary Clinton, has stated, "The basic rationale of depriving people of rights in a dependency relationship is that certain individuals are incapable and undeserving of the right to take care of themselves and consequently need social institutions specifically designed to safeguard their position. It is presumed that under the circumstances society is doing what is best for the individuals." She went on to describe that "dependency relationships" included family, marriage, slavery, and the Indian reservation system. (Harvard Education Review, 1973, p.493).

Dan Morales, the Attorney General of Texas was quoted as saying in the appeal of Maxwell vs. Pasadena I.S.D. that "Parents do not have a fundamental right to direct the education and upbringing of their children." (Texas Home school Coalition, 1995). Former President, George Bush had a slightly different viewpoint, " I believe that children need mothers and fathers, not "Big Brother Bureaucracy" , and the bond between the parent and child is sacred and is fundamental."(The Freedom Voice, 1992.)

The involvement of government intervention into the family can range from the obscure to the sublime. In 1978, in the matter of Ray v. New York Social Services (408 N.Y.S. 2d 737, 1978) a social worker removed a child from her home after a school guidance counselor examined the first grader who seemed hyperactive. The counselor recommended psychotherapy. The mother took the child to 4 sessions of treatment, but stopped after concluding that the child's problem was due to the school and not some personal or emotional cause. Also the therapy was not helping her daughter. The child was removed from the home and the court stated that they had the right to intervene whenever "medical intervention will have a beneficial effect." The court ruled the mother guilty of child neglect. To some, this may seem like a rather obscure example depending on the severity of the hyperactivity, which we do not know. A more outrageous example is that of Sampson v. New York Social Services (65 misc. 2d 658, 317 NYS 2d 641 fam. ct. 1970). In this case, Kevin age 15, had "elephant man's disease" which caused a large fold of skin to grow over the side of his face. The mother wanted to wait until the child was 21 before permitting surgery. Doctors testified that the surgery was very risky and offered no cure , and that waiting would decrease, not increase the risk. The Judge overruled the mother's decision and charged her with "neglect" and ordered that the series of operations be done, even without parental consent.

These are just a few of the cases that highlight the abuse of governmental powers in regards to the family. These cases do not in any way deny the fact of legitimate cases of abuse where children are maimed and murdered by their own parents. These cases do show that the rights of the parents and the rights of the government have met in a head on collision and are at complete odds with each other. This paper will attempt to discuss the issue of when government intervention becomes excessive.

Issues of Human Behavior in the Social Environment

The family is the basic unit of social structure. Families define and shape the individuals that are a part of the family unit. Parents teach their children their values, and teach them a moral value of what is right and what is wrong. Parents set boundaries as to what is acceptable behavior and what will not be tolerated. These are basic and fundamental rights given to parents. They are recognized by the highest court in America to be the responsibility of the parents, not the job of the government.

The sanctity of the family is at risk within our current social service and governmental system. An alarming number of false allegations of child abuse have actually been prosecuted and indicted in California courts. After careful investigations by a grand jury, many cases were dismissed, thrown out of court, and children returned to the parents. What has gone wrong with the system? Why has the value and sanctity of the family been reduced to a value judgment and the gut level instinct of a social worker? Such power has been given to the social service system in regards to the family without a proper check and balance system.

In the 1980's, the expertise of social workers began to be highly recognized in the areas of child custody and child sexual abuse cases. More recently, though, courts are more likely to question the qualifications of social workers than those of psychiatrists and psychologists. Courts are also critical of the nature of social worker's testimonies, as they are with others who give "expert opinions" about sexually abused children. (Mason, 1992).

The federal policy in 1992 instituted public law 96-272 which mandated the prevention of unnecessary separation of children by providing social services to the family. (Samantrai, 1992). Although the federal policy changed, not all states have incorporated this change into their individual practices with families. On April 20, 1992, the San Diego County Grand Jury made a report to Honorable John Burton of the 16th district family court. The following are actual statements from their findings:

"The jury has serious concerns that these abuses (by social workers) have seriously eroded public confidence in CPS's ability to fairly protect children and their families. If the legislature does not approve legislation to control social worker abuse of public confidence the jury fears a public backlash which may seriously impact society's ability to protect children.

We seek legislative changes in the immunity provisions governing social workers and others involved in the child abuse system. This may be the most important recommendation of the jury because that single change carries the potential remedy a great many of the other problems found in the system. The jury believes the current system of absolute immunity is the single greatest deterrent to change. Social workers who perform their task in good faith will have nothing to fear and still be protected by qualified immunity. The jury has witnessed the unfortunate truth of a statement made by a trial attorney within the fourth district court of appeals. "Power corrupts. Absolute power corrupts absolutely. Absolute immunity is absolute power." The jury was hesitant to reach the conclusion that absolute immunity must go, but having seen the results of this immunity in the lives of the citizenry, we adamantly believe it must."

The Grand Jury report went on to say:

"The San Diego Grand Jury has:

* Seen episodes of social worker perjury in court records, and indeed, even in court testimony.

* heard testimonies by attorneys and court-appointed therapists that social workers have threatened to have them removed from court approved lists if they failed to adhere to the social worker's recommendations

* heard testimonies that social workers have threatened to remove additional children from families who fail to exactly follow social workers recommendations even when there is no issue regarding that child.

* heard testimonies that even repeated adverse reports by professionals about individual social workers have resulted in a failure to discipline

* heard testimonies from attorneys that when faced with the most blatant abuses of power, there are still no remedies for their clients

* heard therapists testify that social workers have threatened to ruin their careers with a report that they have "accommodated the denial" of a client, or questioned a "true finding"

* seen evidence of social workers conspiring to place children for adoption with their own (social worker's) family members even while reunification with natural family was in process

* seen evidence of social workers placing children in particular foster homes which would render the opportunity to reunify non-existent

* read numerous Social Study reports filled with innuendo, half truths and lies

* seen evidence of social workers so obsessed with molestation scenarios that they were unable to maintain even a semblance of objectivity" (San Diego Grand Jury, 1992). "

There has definitely been an overall sense of mistrust by the public in regards to child protective services and government intervention into the family. One might think this case in California is an isolated incident, but that is far from the truth. In January 1991 Denise Perrigo lived outside of Syracuse. She phoned a local community center to find the phone number of the La Leche League, which is a breastfeeding advocacy and support group. She wanted to know if it was normal to become aroused while nursing. If she had been able to contact the support group she would have found that many women experience such feelings. She never reached the La Leche League, but instead was referred to a rape crisis center, where the volunteer equated Mrs. Perrigo's question and the fact that she was nursing a two year old child to sexual abuse. The volunteer called the child abuse hotline, Mrs. Perrigo spent the night in jail and her daughter was put into protective custody. Criminal charges were dismissed immediately, but CPS filed charges of sexual abuse and neglect with the family court. The family court judge ruled that no abuse or neglect had occurred and ordered that the child be returned to the mother. Instead of returning the child, CPS filed new charges in front of a new judge for the next day. The new allegations were that Mrs. Perrigo had inserted foreign objects into the child's vagina; which was later determined to be the child's description of having her temperature taken rectally.

By November, the new judge had ruled that no abuse had taken place, but there had been neglect. The judge cited that Mrs. Perrigo's failure to wean the child sooner was neglectful as well as exposing the child to CPS investigations by making her phone call about her breastfeeding question in the first place. (The decision is being appealed.)

There is a social stigma to nursing an older child, but does the government really have a right to determine just how long is "long enough" between a mother/child nursing relationship? The international average length of nursing a child is 4.2 years, Americans tend to wean their babies between 12 and 24 months,

which is an average of 2 years sooner than the international average. Many Mothers won't nurse toddlers or even nurse publicly at all due to the public reaction and fear of someone calling it abuse. (Associated Press, 1995).

Along with the stigma of breastfeeding is the controversial issue of spanking your child. Who determines what is proper discipline for our children? According to landmark supreme court cases, the parents get to determine how to direct the raising and upbringing of their children. Although these cases have made precedents, they are constantly under barrage by different human rights groups and major lobbying powers. The American Academy of Pediatrics (a subdivision of the American Medical Association) and the National Education Association are two of the strongest lobbying groups trying to influence legislative powers. Together they have teamed up to change public opinion and laws concerning corporal punishment:

"The AAP and the NEA are strongly opposed to spanking. Spanking is on its way out in most of the world, but if you feel you must spank your child, use these following guidelines:

1. Hit only with an open hand.

2. Hit only the buttocks, legs, or hands.

3. Give only one swat, that is good enough to change behavior.

4. Use spanking no more than once a day.

5. Putting a child in time-out or in a comer is much more civilized" (Shmitt, 1994).

With all of these groups and abuses within the social structure constantly defeating the "fundamental rights" of the parents, it is no surprise that the family is falling apart under the pressure of government intrusion. We've seen government agencies tell parents they can only nurse a child until a certain age (which is acceptable to the government), we've seen blatant lies and misuses of their power by social workers with personal agendas, we've seen major lobbying powers telling parents that spanking is uncivilized. Everything that is sacred within the family is under attack by various governing agencies, even the right to choose how to educate your children is in the line of fire.

In 1985, the Leeper vs. Arlington Case was a class action suit filed by home school parents to bring relief from the prosecution of compulsory attendance laws in Texas. The law suit asked the courts to declare that home schools were "private schools." In 1987 the court ruled in favor of the parents, however the state of Texas appealed the case all the way to the Texas Supreme Court. That court's ruling was a unanimous (9-0) decision upholding home schools as private schools. Currently, the State of Texas has filed a motion for a rehearing that is still pending. The government is still trying to usurp the parental authority of parents to direct the education and upbringing of their children even in the face of opposition by precedented Supreme Court rulings in favor of "fundamental parental rights." (Texas Home school Coalition, 1995).

The entire integrity of the family is under assault. The National Child Rights Alliance believes that civil rights apply to all people, including minor children. This organization has drawn up a document called the "Youth Bill of Rights". According to this document these rights are to be given to minor children:

"The Right to Liberty: No child shall be forced to live in any household against their will - this includes biologic as well as foster and adoptive households. No child shall be institutionalized against their will without due process rights.

The Right to Survival: All children have the right to adequate food, shelter, and medical care and a healthy environment. NCRA supports a free national healthcare system for children which is not dependent on parental income or parental consent.

The Right to Education: All children have a right to free education - including college and technical schools at the public expense.

The Right to Free Speech: All children have a right to free speech. This includes both in personal expression and in school-based and public media.

The Right to an Attorney: All children have the right to legal representation whereby the attorney acts as an attorney for - not guardian of - their clients."

If it were true, that these are rights that children should have, then this would be the total breakdown of parental influence or parental rights to raise their own child. Parents would not be able to ground or to discipline their child against their will because you cannot force a child to stay where he does not want to be! This is anarchy, not advocacy for children!!! Granted, this document has no legal or binding powers towards parents, but that is not so for the U.N. Treaty on the Rights of the Child, which will be discussed in detail in the Policy section of this paper.

Social Policy Issues

Policy issues surrounding the problem of government intervention into the family are numerous. They range from state legislation and bills to U.S. congressional bills, to National Policy signed into law by President Clinton, to an International Treaty which the U.S. is very close to ratifying. All of which have a tremendous impact on the life of the family.

1989 brought about the U.N. Convention on the Rights of the Child. This legislation has yet to be ratified by the U.S. congress, but it is only 9 votes away from being signed into law. In Missouri vs. Holland, the Supreme Court held that a treaty made by the president, with a 2/3 senate approval, is under the Supremacy Clause of Article VI, section 2, which makes the treaty the "Supreme Law of the Land".

This means that the U.N. treaty would become legally binding in all 50 states. All other laws pertaining to education and parental rights (which would conflict with the treaty) would be subject to invalidation. The United States Constitution would be secondary by law and the treaty the primary law of the land. (NCHE, 1995).

Exactly what is at stake if this treaty gets signed into law? Great Britain signed and ratified the treaty. A judgment issued by the U.N. Committee on the Rights of the Child have cited the country and put them in violation of the law on these counts:

* Home schooling would be banned unless the child consents (British judgment, p.3).

* Public school parents could not withdraw their children from sex education without the child's consent (British judgment, p.3).

* Parents are banned from spanking their children (British judgment, p.4)

* Juvenile offenders cannot be incarcerated for more than a few days, even for crimes like murder, rape, or carjacking. (British judgment, p4.)

* Private schools are banned from spanking children (British judgment, p4).

Once again we see massive government intervention into the family. What is more frightening about this policy is that it is an international treaty which would supercede our own country's existing laws on the fundamental rights of parents. Article 3 of the treaty states that in all actions concerning children, the

courts, social services, and bureaucrats are empowered to regulate families based on their subjective determination of what is "best for the child." The authority of the parent is usurped and power is given to the states and ultimately to the United Nations.

On a national level there is the Parental Rights and Responsibility Act (H.R. 1946). This bill was submitted by the 104th congress. Under section 2a-4 the bill states, "some decisions of the federal and state courts have treated the right of parents not as a fundamental right but as a non-fundamental right, resulting in an improper standard of judicial review being applied to government conduct that adversely affects parental rights and prerogatives; (5) parents face increasing intrusions into their legitimate decisions and prerogatives by government agencies in situations that do not involve traditional understandings of abuse or neglect but simply are a conflict of parenting philosophies..."

The bill goes on to outline the terms of what is the parents rights and responsibilities. They include directing or providing for the education of the child, health care decisions, disciplining the child (including reasonable corporal punishment), and directing or providing for the religious training of the child. The bill prohibits federal, state and local government from interfering with or usurping the rights of the parents to direct the upbringing of the child. (H.R. 1946).

In 1994 President Clinton signed into law the Educate America Act, commonly known as Goals 2000. These education reforms fail to include the parents into the decision making process, but instead have brought forth a "nationalized education curriculum." It has already been presented the rise of federal spending in education since 1965 (especially in administrative costs). With the passing of Goals 2000 there have now been added many new federal bureaucracies into the department of education. They include: National Education Goals Panel, National Education Standards and Improvement Council, and the National Skills Standard Board.

Ever since the establishment of the federal office of education, the government has insisted it would not become involved in writing and establishing the curricula. Unfortunately through time, that standard has been compromised and with the implementation of Goals 2000, it has been completely overthrown. (Bauer, 1995). In 1994 the National Center for History in the Schools, a federally funded project at the University of California at Los Angeles, published the nations first "National Standards for History." These standards determine on a national level what should be taught on the K-12 grade levels. There is an implied threat to schools who don't adopt these standards to lose their federal funding and being deemed as a "substandard" school.

Of the 31 standards set forth in the 4 volume set, not one mentions our national constitution. George Washington makes a brief appearance, but is never recognized as the nation's first president. The founding of an environmental group "Sierra Club", and the National Organization for Women (NOW) are both mentioned, but no mention at all of the first gathering of the U.S. Congress. Robert E. Lee is left out along with Thomas Edison, the Wright brothers, and Daniel Webster. Joseph McCarthy and McCarthyism is mentioned 19 times, the Gettysburg Address only once, and Paul Revere not at all. One might call this a whirlwind of "political correctness." (Bauer, 1995).

The policy issues surrounding government intrusion into the family spirals on down even into local government. With all the policy relating to what parents rights are and what government rights are it is easy to get confused. Parents are told they can't spank their children and be civilized people, they cannot force a child to do anything against his will, they cannot even present the child moral or religious teachings without the child's consent. In light of all of that legislation, the following piece of legislation seems particularly amusing. A representative of the House of Texas introduced a bill into congress "relating to criminal responsibility of a parent for the child's delinquent conduct; providing a penalty." (Cuellar ,1995)

What is a parent to do? Parents are told they can't train, teach or discipline a child against that child's will, but is expected to take criminal responsibility for the child's delinquent behavior. Well, government can't

have it both ways! Either parents DO have a fundamental right and a responsibility to raise their kids or they don't. And if government chooses that parents DON'T have that right, then parents can in no way be held responsible for the outcome of that child's behavior. A parent can't be held responsible for what it had no part in helping to create. If the government persists in trying to remove parental rights , they are creating their own monsters of delinquents to deal with at a later date.

Another issue of policy is the extreme lobbying power of the National Education Association and the resolutions that were passed at the 1995 convention of the NEA. A few of these resolutions that impact the rights of the parents to direct the education and upbringing of their children are listed below:

"A-27. Deleterious Programs. The NEA believes that the following practices are detrimental to public education and must be eliminated: privatization, performance contracting, tax credits for tuition vouchers to private and parochial schools.

B-8. Sexual Orientation Education. The association supports the development of positive plans that lead to the effective ongoing training programs for the purpose of identifying and eliminating sexual orientation stereotyping in the educational setting. Such programs should attend to:

a. Accurate portrayal of the roles and contributions of gays, lesbians, and bisexual people throughout history, with the acknowledgement of their sexual orientation.

b. The acceptance of diverse sexual orientation and the awareness of stereotyping whenever sexuality and/or tolerance of diversity is taught.

d. Support for the celebration of a Lesbian and Gay History Month as a means of acknowledging the contributions of homosexuals throughout history.

B-35. Sexual Education. ...Teachers and health professionals must be qualified to teach in this area and must be legally protected from censorship and lawsuits.

B-63. Home schooling. The NEA believes that home schooling programs cannot provide the student with a comprehensive education experience. The association believes that if parental preference home schooling study occurs, students must meet all state requirements. Instructors (parents) must be licensed by appropriate state education licensure agencies and must use a curriculum approved by the state.

I-13. Family Planning. The NEA supports family planning, including the right to reproductive freedom. We further urge the implementation of community based family planning clinics that will provide intensive counseling by trained personnel."

These are just a few of the issues that usurp a parents fundamental right to direct the education and upbringing of their children. If a parents only choice is public school there needs to be an "opt out" choice so that parents have more control into what their children are being taught and without penalty to the child. If these issues are to be taught in the public schools they need to be offered on an elective basis - not required.

Issues of Research

There has been much research done on the areas in which government has intervened. There have been studies done on home schooled education compared to private and public education and the academic outcome of each. There have also been financial studies into the department of education and a comparison was made between academic performance and federal spending since 1965.

There is an unfair bias among many social workers as to their opinions of the "quality" of education that a

home schooled child receives. A study was done by Dr. Rhonda Galloway, professor of English at Bob Jones University. The study began with the basic assumption that the skills needed in a college level English course are representative of the skills needed to successfully complete other college level courses. Dr. Galloway's sample consisted of 180 first time, non transfer students at Bob Jones University. 60 students were home school graduates, another 60 students were graduates from private Christian universities, and the last 60 students were public school graduates. To measure the students performance she analyzed the students' ACT English subtest scores, ACT composite scores, and achievement in college English (as measured by tests, quizzes, and research papers.) Her findings showed that there was no significant statistical difference except in one category. That category was the ACT English scores and the home schooled students had the highest scores.

Some of the limitations of the study were that she did not include the curriculum that was used, or the educational background of the home, public, or private school teachers. The study reflected only the students who participated in the study and is not a definitive statement on the performance of all home, public, or private school educations. The study also noted that home school students performed well above the national average on all achievement tests, usually upwards of the 80th percentile. The study revealed that home schooled students did as well as, if not better than conventionally schooled students in the public and private sector. Galloway credits this performance success to the fact that prior to college, students were not grouped according to age. The students were used to communicating to a variety of age groups in the home, church, and home school associations. In Galloway's opinion, home schooled students were better equipped for adapting than their conventionally educated peers. "They had much more variety in their social interaction." (Home school Helper, Vol 6, No. 2).

The Smedley study done at Radford University in 1992 stated that "home school students usually have better social skills than their public school counterparts." The Shyers study done at the University of Florida in 1992 concluded that "home schooled students have consistently fewer behavior problems" and "a child's social development depends more on adult contact and less on contact with other children than previously thought." (H.O.P.E., 1994). Due to the academic superiority of home educated students over public educated students, many Ivy league colleges as well as state funded colleges actively recruit home schooled students. (H.O.P.E, 1994).

There has also been significant statistical research into the federal involvement in education since 1965. Research shows that the per pupil cost for elementary and secondary education has risen 56.6% in real spending since 1972. (From $3,393 in 1972 to $5,313 in 1994 - figures are adjusted for inflation to show 1994 dollars.). Administration and overhead costs have risen 80.6% in real spending (from $1,792 in 1972 to $3,260 in 1974.) Out of every new dollar spent on education since 1972, 76 cents went to administrative and overhead costs and only 24 cents went to the teachers.

One financial advisor suggests that if we eliminate federal funding and control administrative costs to rise at the same rate as teacher's pay, the schools would have an additional $7,940.70 per classroom every single year. Although spending has definitely increased, the performance level of students has drastically decreased. Graduation rates are down 1.3% since 1980 (the year the federal role in education was elevated to Department status.) Today, only 71.2 % of students enrolled in the 9th grade will graduate from high school. SAT scores are down 35 points since 1972 (on a test taken only by those planning on attending college.)

In 1992 only 24% of America's 4th graders were reading at a level considered "proficient or better." Only 23% of the nations 8th graders met this proficiency test in math. This outcome is not exactly the great expectation Americans had when the Johnson administration said, " well-directed spending on education now will reduce the cost of crime, delinquency, unemployment and welfare in the future."(Farris, 1994)

Practice Issues

It is quite obvious to see the implications of a social worker's practice with individuals and with families concerning the social problem of government intervention into the family. One has to wonder if the social service system can really offer any solutions to the problem or are they the main source of the problem itself? The ethical issue of this question will be addressed in the values and ethics portion of this paper.

As a direct result of the social problem itself, many support groups have surfaced to help families deal with the oppressive nature of the governmental and social service system. Some of these groups include local home school support groups, The Home School Legal Defense Association, La Leche League breastfeeding and advocacy group, legal groups to help defend false allegations of child abuse and parents who have had children wrongly removed from home, and even support groups to warn and educate families about the dangers of social workers and their intrusion into family life.

As far as the community is concerned the general public opinion of the social worker has been reduced greatly and public confidence in CPS has been has been shaken. The profession as a whole has become something to be feared among the average law abiding family. And in turn, many people truly question the legitimacy of actual child abuse cases. The San Diego County Grand Jury had a very valid point in stating its concern that the public opinion could drastically change society's ability to protect true cases of child abuse simply because the public's confidence in the system has been shaken.

Many organizations have emerged from this social problem. Among the grassroots organizations are the Christian Coalition, Home Oriented Private Education, and Focus on the Family. Professional organizations that have emerged to counterbalance the conservative viewpoint are the National Education Association and the National Child Rights Alliance.

Issues of Social Work Values

The values by which we perform our professional practice comes from the National Association of Social Work Ethics. These are the standards by which we practice, or should practice. In light of the social problem of excessive government intervention into the family, the blatant abuses of the social service system (or individual social workers within the system) needs to be examined by our own professional code of ethics.

The NASW Code of Ethics states, "The social worker should not participate in, condone, or be associated with fraud, deceit, or misrepresentation." The San Diego County Grand Jury found over 300 cases of this breech of ethics, and not once were any of the social workers censured or reprimanded in any way. The Code also states, "The social worker should not engage in any action that violates or diminishes the civil and legal rights of clients." An example of this violation of ethics is when a social worker removed an eighth grade girl from her home because she "objected to her parents rules which were reasonably enforced." The parents had grounded their daughter because she wanted to smoke marijuana and sleep with her boyfriend. This case went all the way to the Supreme Court of Washington where the court upheld the decision to have the child removed from parental custody. [In re Sumey, 94 Wash. 2d 757, 621 P. 2d 108 (1980)]. The social worker who initially removed the child had violated the professional code of ethics by interfering with the parents legal and civil right to direct the raising and upbringing of their child.

In section VI-P(1) of the code of ethics: Promoting the General Welfare it states that "The social worker should act to prevent and eliminate discrimination against any person or group on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or any other preference, personal characteristic, or condition."

It is a sad testimony to the social work profession that the "Home school Legal Defense Association" even exists. This organization exists on the principle of defending the legal and civil rights of parents to direct the education of their children. According to our code of ethics as social workers, we should be standing in the gap for these people instead of against them. These people are definitely discriminated against, often

times due to their religious beliefs. An anonymous college professor of Social Work, at a Christian University once stated, "My main problem with home schoolers is that they produce socially inept people to face the real world. Usually their whole education is based solely on religious principals." What a sad testimony to the profession that even Social Work Educators are promoting the discrimination of civil rights and religious freedoms on a people that are being severely oppressed by government intervention, simply because their (the social work educator's) personal values conflict with the ethical responsibility we have to defend these people.

Another ethical issue that needs to be discussed is the alliances of the National and International associations of social workers. In 1994, the United Nations held a Geneva Conference on the world issue of Human Rights and Social Work. During this conference new guidelines for social work education were drawn up and agreed upon by the U.N. Council on Social Work. In the manual it states, " throughout this manual the term "human rights" is used to convey an idea of the totality of rights as identified by the United Nations." There is a definite conflict of interests here. When the U.N. starts giving a global definition of what "human rights" are, then our own National Standards of human rights become subject to the Global Government. Not only is there a problem of excessive government intervention into the family on the National level, we have seen the problem that Great Britain has encountered by signing the U.N. Treaty on the Rights of the Child on a Global Government level. As social workers we have an obligation to defend the legal and civil rights of the citizens in our communities. This will be severely compromised if the NASW agrees to the U.N. standards of human rights. There is too much government involvement as it is, we don't need to elevate it to a global level of complication.

Human Diversity Issues

Not only is government intervention into the family a major social problem in the United States, it stretches to a diverse group of people and countries. I will focus on the problem in China. In China, the life of the family is totally government regulated. The country has a forced abortion policy due to their "one child per family law" The government monitors women's menstrual cycles so it can identify unapproved pregnancies and abort them. Historically, China is a country that has murdered tens of millions of female infants. The sex ratio in larger regions of China is 64% male.

Recently, the Clinton administration approved of U.S. support for a conference on women's rights in China. The administration has also granted "most favored nation" status to this country as well. This is all very sobering in light of all the drastic human rights violations of this country that we would financially support them and give them a favored nation status. (Dobson, 1995).

Impact of the Problem on Society

Projections and conclusions

The impact of this problem on society is the attack on the family and basic parental rights. If something does not change in the public's perception of social services, especially CPS, there will be an increasing problem of being able to intervene in true cases of abuse and neglect. The public's confidence has been drastically shaken in the system's ability to determine legitimate cases of abuse.

There does need to be a proper check and balance system of a social worker's power. A strict adherence to the Code of ethics needs to be a must (regardless of personal values.) We in no way need "absolute immunity" if we are practicing in good faith. We cannot continue to inflict our personal values onto our clients. The heart of social work is client self-determination and empowerment. We need to be ready to serve any group of people that is being discriminated against for any reason. Meet the clients where they are, not where we want them to be. Social workers are not empowered to solve the social ills of the world, we are empowered to help the clients learn self-sufficiency, not dependency on us or the system.

Something has got to change. The integrity of the social work profession has been greatly compromised and the public seems to view social services more in fear than in hopes of seeking help. Not all social workers have compromised their values and ethics of profession, but it only takes a few "bad apples" to destroy the integrity and good intentions of the whole profession. We need some serious damage control in view of public perception of what social work services really do.

In short, something has got to change. In the words of Martin Luther King, Jr. 'I have a dream ..... to bring about social change for the better.

Bibliography

Associated Press. January 1993. "Breastfeeding mother loses her daughter, 2, for a year." archives.
Bauer, Gary L. Family Research Council, February 8, 1995.
Harvard Education Review, "Children Under the Law", November 1973.
Dobson, James. Focus on the Family, August 1995.
Farris, Michael, "It's Time to Abolish the Federal Role in Education". March/April 1995.
Grand Jury, San Diego County. Letter to Judge Burton, April 20, 1992.
Mason, Mary Ann. Social Work: 37(1), 30-34, January 1992.
The Freedom Voice, 1992. Lewis Pitts, "Sorting Truth from Fiction"
Samantrai, Krishna, Social Work: 37(4), p. 295, July 1992.
Schmitt, B. D., "Your Child's Health" Bantam Books, 1994.
United States Congress, H.R. 1946 : Parental Rights Act, 1995.
United States Congress, U.S. Constitution, 1787.
United States Congress, Declaration of Independence, 1776.
United Nations Convention on the Rights of the Child, General Assembly, December 1989.
Texas Department of Protective and Regulatory Services, Legal Definitions, 1995.
Home Oriented Private Education, Texas Handbook, 1994.
The Home school Helper, Bob Jones University Press, December, 1995.
Home school Legal Defense Association, Special Report, March/April 1995.
House Bill 745, Texas Legislature, Rep. Cuellar, 1995.
United Nations Geneva Conference, 1994, "Human Rights and Social Work"
NASW, Code of Ethics, 1995.
National Center for Home Education, Issues Alert, 1995.
National Education Association, 1995 Resolutions

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CPS Watch

How Child Protective Services Began

The Truth About Mary Ellen

by Doug Quirmbach

Authors of child welfare literature have for more than a century promoted the myth that the movement to take children out of their natural homes was spurred by the terrible physical abuse of a child the national press identified only as "Mary Ellen." According the legend, the public's concern about child welfare during the late nineteenth century was so low that only New York's Society for the Prevention of Cruelty to Animals would step in to help Mary Ellen.

In fact, Mary Ellen was a victim of a system that continues to this day abusing the very children it is mandated to protect. A true account of Mary Ellen's story indicates that we have yet to learn anything from the suffering of the child a nation cried over more than a hundred years ago.

Mary Ellen Wilson was brought to a superintendent for the Department of Charities by one Mary Score, who said that the infant was left in her care by an unknown party (probably her mother) who paid Score monthly. When the payments stopped coming, Score dumped the child. The superintendent, George Kellock, placed Mary Ellen into care at a group "home" run by the Department of Charities. Some time later, when little Mary Ellen was 18 months old, the Department of Charities placed her in the care of one Mary Connolly. It was Connolly, the foster caregiver, that brutally abused Mary Ellen (Costin, 1996).

Contrary to the myth, there were ample laws on the books to deal with child abusers in the Nineteenth Century. Foster woman Connolly was tried for felonious assault and sentenced to hard labor in prison. Kellock could not remember Mary Ellen when he was called to testify because, he said, "she was only one of 500 children" the Department of Charities had taken in that year and they were routinely "placed out" to strangers, a practice not unlike the one of today.

Legend has it that Etta Angell Wheeler rescued Mary Ellen from Connolly's care and approached Henry Bergh of the Society for the Prevention of Cruelty to Animals, whereupon he is alleged to have spit out immediately, "The child is an animal; if there is no justice for it as a human being, it shall at least have the right of the cur in the street" (Costin, 1996). In fact, Henry Bergh was not immediately willing to be of service and he was even less inclined to recognize the child as a "human animal" (Costin, 1996). Bergh had a "natural masculine irritation with noisy children" (Steele, 1942).

As the result of the Mary Ellen case, the New York Society for the Prevention of Cruelty to Children was founded, triggering the rapid growth of similar societies throughout the country (Costin, 1996). The 'cruelty' organizations are claimed by many child welfare specialists to be the forerunners of contemporary child protective service agencies.

The New York Times attacked the system that abused Mary Ellen in an editorial that year, criticizing the Charities for keeping up . . . "a well stocked child market" (Thomas, 1972). "Even the meaningless formula of reporting the condition of the child once a year may be dispensed with, as it was in this, the Mary Ellen case, without exciting either attention or inquiry," the newspaper said.

Ironically, publicity about Mary Ellen's brutal abuse at the hands of her foster caregiver spurred more than a century of intrusive action against biological families that often ended with the placement of their children in the same environment that brutalized Mary Ellen. Foster care placement was not the solution for Mary Ellen.

Today, children are eight to ten times more likely to be abused in the foster care system than in their own homes (Toth, 1997; Spencer & Knudsen, 1992; Pryor, 1991; American Civil Liberties Union, 1994; Bolton, et al., 1981).

When will we ever learn?

References:

American Civil Liberties Union (1994). Children's rights project. New York: ACLU

Bolton, F. G., Laner, R. & Gai, D. (1981). For better or worse? Foster parents and foster children in an officially reported child maltreatment population. Children and Youth Services Review, 3, 37-53.

Costin, Lela B., Karger, Howard J., Stoesz, D. (1996). The politics of child abuse in America. New York: Oxford University Press.

Pryor, R. C. (1991). New York State Central Register reporting highlights, 1974-1990. Albany, NY: State Central Register of Child Abuse and Maltreatment.

Spencer, J. W. & Knudsen, D. D. (1992). Out-of-home maltreatment: An analysis of risk in various settings for children. Children and Youth Services Review, 14, 485-492.

Steele, Zulma (1942). Angel in top hat. New York: Harper and Brothers.

Thomas, Mason P. (1972). Child care and neglect, historical origins, legal matrix and social perspectives. North Carolina Law Review 50, (2).

Toth, Jennifer (1997). Orphans of the living: Stories of America's children in foster care. New York: Simon & Schuster.

Also see Costin, Lela B., "Unraveling the Mary Ellen Legend: Origins of the 'Cruelty' Movement," Social Service Review 65, No. 2 (June, 1991): 203-223,and "Proceedings of the 37th. American Humane Association Annual Meeting, October 13-16, 1913, in Rochester, New York.

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Getting Paid
the Full Story on Adoption Incentive Payments

by Cheryl Barnes

We've all heard about the adoption incentive payments states receive under the Adoption and Safe Families Act for each child that is adopted out. But exactly how do they work? What must states do in order to earn these payments? And, what do states do with the money?

In general, states earn $4,000 for each child that is adopted from foster care and an additional $2,000 for each "special needs" child. These payments are capped at $20,000,000 per state, which equals 5,000 adoptions.

In order for states to be eligible to earn incentive payments, they must increase the number of adoptions each year. If adoptions for the fiscal year are less than the average of the last three years, the state gets nothing.

Further, states only receive incentive payments on the portion of adoptions that exceeds the average of the previous three years. Example: the average number of adoptions for the previous three years is 1,000; the number of adoptions for this year is 1,200; the state only receives incentive payments for 200 adoptions.

In order for states to take full advantage of this gold mine, they must increase the number of adoptions by 5,000 each year.

States are required to spend their incentive payments on Child Welfare programs. Family Preservation and Reunification services have a federal cap so the only area left in which to spend the excess of funds is on creating more terminations and adoptions.

It stands to reason that states would use the money to create more adoptions so that they will be entitled to a hefty bonus check again next year.

Incentive payments were supposed to move "unadoptable" children out of foster care and into permanent homes. Yet two years after passing, the number of children in foster care has greatly increased. While adoptions have also increased, they have not been enough to counteract the rising foster care rates. The so-called "unadoptable" children remain in foster care while infant and toddler adoptions increase.

In short, states are taking more young children from families needlessly in order to raise their adoption numbers and "get paid". Rising adoption numbers have created a false illusion of success when in reality, there are more "unadoptable" children in foster care today than there were two years ago, prior to the passing of this law.

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Assessing The Costs of False Allegations of Child abuse: A Prescriptive
by Dr. Susan Kiss Sarnoff

It is a sad truth that policymakers often demonstrate greater concern for the financial costs of policies than for their human costs. This is certainly true of the costs of false allegations of child sexual abuse. Policymakers rarely demonstrate concern about false charges unless they are exposed. Lawsuits against government entities are now increasingly permitted, as well, as was shown by the unsuccessful attempts by Kathleen Coulbourn Faller, and seven of her staff members at the University of Michigan Family Assessment Center, to avoid civil charges of malpractice by arguing that, as state employees, they were immune to such charges.

But charges of malpractice are difficult to prove, as the clearing of Faller and the University of Michigan demonstrated. Despite videotapes showing staffer Jane Mildred using leading questions, an anatomically correct doll and even allowing the child's (accusing) mother to participate in an interview designed to determine if the child's father was sexually abusing her, jurors were apparently swayed by the fact that the FAC staff were "good, hard-working professionals trying to take care of children," according to one of their attorneys. Yet these professionals failed to detect paranoia on the part of the mother (manifested so blatantly that the judge in the case ignored the FAC's report and gave custody to the child's father). The judge had no difficulty recognizing that a mother who regularly inspected her child's genitals and took her for no fewer than eight physical examinations to detect abuse, none of which were successful, was pathologically obsessed with the fear that her child was being molested. This demonstrates a clear discrepancy between the public's perception of professionals, as defined by their credentials and the settings in which they work, and an understanding of the skills and qualities professionals in child welfare require to effectively perform their roles.

The judge and jury in the malpractice trial, however, were not aware that leading questions and suggestive objects, such as anatomical dolls, often create "false positive" findings of abuse. Moreover, Faller is among a handful of child sexual abuse "evaluators" (she was herself a founder of the now-defunct Believe the Children) who professes that child sexual abuse is far more common than is recognized, and who ideologically lean toward true findings of abuse. Given the sloppiness reported in the case that was the subject of the malpractice lawsuit, it gives pause to realize that Faller's center has seen over 1,000 children since 1978, none of whose cases have been reviewed to determine whether later facts supported or disproved their findings.

Yet false allegations accrue considerable—and wholly unnecessary—costs to all aspects of the criminal justice and social service systems, potentially for police and other investigatory procedures, prosecutorial and court operations, pre-trial incarceration costs, foster care and out-patient or residential treatment, indigent defenses and public assistance for the accused's family. It also accrues costs to the falsely accused, for legal fees, lost wages, and mandated counseling. Perhaps the worst cost of all is that increased attention to false allegations is beginning to threaten the public's faith in all child abuse investigations.

These costs vary for many reasons, in particular the time and other resources allocated to them. Unfortunately, even rough amounts are impossible to calculate, because there is no agreement about how many people have been falsely charged. The nature of child abuse investigations make them particularly likely to accrue high systemic costs, and to reflect an excess of "false positives," however, because, when hard evidence is not available, or conflicting accounts emerge, the children are often referred to "evaluators," who claim to have special expertise in interviewing children and eliciting their reports of

abuse. Some of these evaluators *do* have particular skill in developing rapport with children and encouraging them to express themselves. But, as the "ritual satanic abuse" witch hunts of the past decade demonstrated, too many of those who call themselves evaluation "experts" are really ideologically-driven "validators," who assume that abuse occurred and then use spurious "methods" to convince others of what they have already convinced themselves.

As Bucks County District Attorney Alan Rubinstein's extensive investigation disproving allegations of ritual abuse at the Breezy Point Day School demonstrated, children's statements, whether elicited by parents, "evaluators," or others, can be proved or disproved—but such investigations are costly, as Rubinstein is the first to admit. Rubinstein did pioneering work in this area, and compiled his results in a report which offers guidelines for others—and exposes a bogus "expert" in ritual satanic abuse. Sadly, too few professionals know of the existence of this report. But while costly to investigate, false allegations are also costly to prosecute, because the falsely accused are much more likely to insist on trials, while the guilty more often opt for plea agreements, which tend to carry more lenient sentences.

Ideologues cannot alone turn false allegations into false convictions. But when validators are used as "hired guns" by the prosecution, and when defense attorneys and judges fail to challenge their assertions, the costs of false allegations can escalate to those of false convictions, including incarceration, probation, parole and appeal costs. False convictions, in turn, usually engender requests for new trials or appeals. And when these are successful, they can lead to civil and even criminal litigation against the "experts" whose testimony led to the convictions as well as against government entities that were complicit with the "experts."

The falsely convicted may also be entitled to compensation. Five states: California, Illinois, New York, Tennessee and Wisconsin provide such compensation as a right. This may affect the conditions under which compensation is offered, as well. For instance, Ohio offered Jenny Wilcox, who spent almost twelve years in prison based on the coerced testimony of children about a crime that never occurred (the children recanted to their mother even before the trial was completed, and she worked for Jenny's release), a mere $300,000 in compensation—if she agreed to hold the state harmless for any other damages. In contrast, Kerry Kotler received $1.5 million from New York for his conviction, which was overturned when DNA proved that he had been misidentified. Yet Kotler was on trial for another rape, of which he was convicted, when he obtained the funds—he claims that the second rape charge was engineered as "payback" because his exoneration had embarrassed Suffolk County. Many states also avoid paying compensation to the falsely convicted by overturning convictions for what they label "technicalities," holding the specter of retrial over the erroneously convicted instead of acknowledging their innocence.

The costs discussed so far, too, are unquantifiable, not only because the actual costs of investigations and trials vary so greatly, but because most falsely convicted people are never identified: if their cases are not reheard they are considered guilty, and if their convictions are overturned, their innocence is still not necessarily--they are often compensated in agreements that are sealed from public view. And these costs do not even constitute the bulk of the actual and potential costs that false allegations force the system to accrue.

In half of all child abuse cases, the child "victims" receive counseling. Often parents, and sometimes siblings and others close to the child, also receive counseling. If the parents do not have insurance to pay for these services, state crime victim compensation programs assume the costs. My doctoral research identified the fact that child victim cases are the least likely to be turned down—when these cases go unpaid by public funds it is almost always because other resources are available to pay for these services. And other resources are provided at so many different levels through so many different, uncoordinated means: private insurance, Medicaid, and so forth, that it would be impossible to quantify them without studying the individual case files of hundreds of separate private, state and federal agencies.

These cases are *so* rarely turned down, in fact, that they are routinely paid even when the allegations of

abuse occurred during an acrimonious divorce, or in a day care or other case later found to be a hoax. Victim compensation, and most forms of insurance, were designed to be available to meet urgent medical needs, and for this reason, it is provided long before case outcomes are decided. While compensation agencies have the right to independently investigate cases that have not been fully investigated by other "police" agencies, they rarely doubt the veracity of children—even when the "children's" statements are actually reported by parents or "interpreted" by dubious court "experts." And at least one state's compensation agency, Washington's, briefly covered adult claims based on "recovered memories" of child sexual abuse. (It is possible that other states have paid such claims, as well, although no data exist on this possibility.)

But no compensation or criminal justice agency has developed mechanisms to review case outcomes later to determine whether the crimes on which they were based were actually found to have occurred. California's victim compensation agency paid over 200 claims filed by families who accused Dale Akiki of abusing children at a church-run day care facility, resulting in at least $200,000 in therapy payments, although Akiki was later acquitted. The agency did *review* the claims, but decided to pay them because, according to Deputy Director Curt Soderland, "Just because somebody isn't convicted, doesn't mean something didn't occur." Yet Akiki's cases was also "reviewed" by a number of journalists and policymakers, who found that his indictment alone was an egregious miscarriage of justice. (In fact, the prison guards assigned to Akiki spent their own funds to send him home in a limousine upon his release. Anyone who understands the cynicism of prison guards will see that this was an unprecedented "vote of confidence" in Akiki's innocence.) The San Diego County Grand Jury's independent investigation into the Akiki prosecution also reported that it had been based upon faulty assumptions, faulty practices and overzealous attempts at "case finding."

The same Grand Jury investigated the case of Jim Wade, who was accused of raping and sodomizing his 8-year-old daughter. Although the daughter claimed that a stranger had abducted her after climbing through her bedroom window, the child was placed in foster care for 13 months, at state expense, during which time she was repeatedly encouraged by her foster parents and her court-appointed (and state paid) counselor to "admit" that her father had abused her. At the same time, Wade was required to enter—and pay for—sex offender therapy while proclaiming his innocence. The case was resolved only when DNA cleared Wade—and identified as the actual assailant a man the child's counselor knew to have committed similar crimes *in the Wades' apartment complex*. The counselor did later surrender her licence (on the eve of having it removed)—but not before hundreds of thousands of dollars had been unnecessarily expended on this single case.

Both the Child Abuse Prevention and Treatment Act (CAPTA) and the Violence Against Women Act (VAWA) encourage "detection" and "case finding." But CAPTA long ago shifted its focus from physical violence against children, which is relatively easy to detect, to sexual and other types of abuse that are more difficult to identify—and failed to either develop technologies to detect such abuse or to provide adequate training and salaries to lure well-trained professionals into the field. Yet, both VAWA and CAPTA key their funding to "detecting" cases, encouraging zealous "case creation." For example, Ohio has refused to review the conviction of Ron Tijerina, imprisoned for allegedly sexually abusing his younger brother-in-law, Dan Mohr, although Mohr has recanted in a formal deposition. Court-based "victim advocate" Sally King assisted Mohr's mother to obtain victim compensation for Mohr's therapy, arguing that Mohr's emotional and drug problems began when he met Tijerina. Yet the advocate had proof that Mohr's problems predated his meeting Tijerina by several years, which she withheld from the defense; and Ohio's compensation agency also refused to review this case, even though Mohr admitted that his false allegations were prompted by a promise of victim compensation benefits. That zealous "case creation" occurs is also demonstrated by the great increase in such cases that have been "identified" since these acts were passed and by the much smaller comparative increase in cases that have resulted in convictions. However, cases of child and spousal abuse that lack sufficient evidence for criminal prosecution are often referred to the Family Court system, where the San Diego Grand Jury found that, "the burden of proof, contrary to every other area of our judicial system, is on the alleged perpetrator to

prove his innocence. [As a result,] a parent making a false allegation of abuse or molest[ation] during a custody dispute is very likely to achieve the desired result." A subsequent jury largely concurred with these findings.

And despite insistence on the part of some few victim ideologues that, "children never lie about sexual abuse," journalist Cathy Young has observed that, "FBI statistics indicate that eight to nine percent of rape reports are "unfounded"—closed because the complainant recants or investigators conclude that no crime was committed, [while] the rate for all crimes is around two percent." These figures translate into more than eight thousand false rape reports each year. Even Manhattan Sex Crimes Prosecutor Linda Fairstein has observed that, "False reports of rape *do* occur. . . [and] have made it difficult for legitimate victims to be taken seriously. . . .For all prosecutors. . . it is critical to acknowledge that false accusations of rape *are* made." But the discrepancy between the proportion of false reports of sexual and nonsexual crimes may not result from women's desires to falsely allege sex crimes, but instead, may respond to the system's incentives to do so. These follow from the unintended consequences of policies which are so "sensitive to victims" that compensation and even criminal justice officials are discouraged from conducting any kind of investigation of victims' veracity; as well as the fact that sex crimes frequently leave as little tangible evidence as does whiplash, which is also often faked simply because it is so difficult to verify or disprove. That compensation fraud may be most common in the areas of child abuse and sexual assault claims is also suggested by the fact that these services receive the bulk of program funds (76%, considerably more than the 30% mandated), and also receive a significant portion of direct compensation (30% of awards and 18.7% of funds), as well as targeted funds from CAPTA, VAWA and the Department of Health and Human Services, suggesting how numerous claims based on these allegations are.

The Akiki case and a handful of others like it, including the notorious McMartin PreSchool case, *did* convince California's victim compensation program to limit therapy payments to a maximum of $10,000 per victim. But this is a poor solution, it not only fails to weed out incompetent and even fraudulent counselors, it might even encourage them to "find" more cases to balance their loss of revenue per victim. In California, too, child abuse claims increased by 225 percent from 1984 through 1994, making them the major draw on the fund—a fund which consistently had to be bailed out by taxpayers or face annual multimillion dollar shortfalls. In fact, in 1990 a special report commissioned by the California State Board of Control to study child molestation claims observed that "rarely is there independent, conclusive corroboration for [child molestation]. Physical evidence is present in only about 15% of the[se] cases." The same report also observed that counseling is required by fewer than 20% of victims. And the National Association of Crime Victim Compensation Boards found that, while mental health claims based on child victims were increasing in all states, California's rate of increase was still 50% to 100% greater than those of other states. One reason that this may be so is that, in California, evaluators are often blacklisted if they fail to support the position of the child protection agency in dependency or abuse hearings.

These cases threatened to bankrupt almost all state compensation programs just a few years ago. They did, in fact, cause long delays in victims' receipt of payments, and kept payment maximums for other expense categories, such as funerals, at the same level for years (decades in some cases). Ironically, however, large deposits in the federal Victims of Crime fund last year, from a small number of high corporate fines, increased the size of the fund substantially at the same time that crime rates dropped. As a result, victim assistance programs alone received $400 million in federal funds in 1997 (in contrast to $688 million over the prior *ten* years). These increased funds, coupled with the drop in crime rates, make it unlikely that victim compensation agencies will question *any* claims, because they have to justify their receipt of federal funds with "matching" state payments to victims.

While only a handful of "ritual sexual abuse" day care hoaxes have actually led to convictions (most of which have since been overturned) even those that resulted in acquittals, like Akiki's, reflect hundreds of children and their family members who were "referred" to counseling. In many of these cases, the families were limited to a handful of "approved" counselors, who also helped police and prosecutors "investigate" the cases by eliciting testimony from the children. One must wonder what these counselors "counsel" these

children about, particularly in the cases in which the "allegations" were later proved to have come from them rather than from the children with whom they worked--and considering that the children in these cases began showing symptoms of abuse only *after* disclosing—the reverse of abused children's usual responses to counseling.

Another, less recognized result of the day care hoaxes was that they forced other day care centers to obtain heavy insurance coverage, which forced many out of business entirely, and may have increased the incentives to defraud the remaining ones. As a result, some areas of the country, particularly southern California, have limited if any congregate day care. This requires working mothers to pay more for individual day care (which actually makes child abuse more likely and less easy to detect), and is another, hidden cost of the false allegations of abuse.

Why do victim compensation agencies refuse to recognize (or acknowledge) that many of these cases were fabricated by the very mental health professionals who are the only people to benefit from them? Perhaps because the federal government and the National Association of Crime Victim Compensation Boards have encouraged compensation agencies and "victim advocates" to form "partnerships." These "partnerships" have become so cozy in some states that victim advocates hold a majority of seats on "advisory" councils; plan and present workshops at state conferences; train police, prosecutors and compensation and child protection agency staff; evaluate victims to determine whether abuse occurred, treat those whom they determine were abused and then verify that the abuse constituted a crime reimbursable by the state victim compensation program; and even coach victims' testimony.

While only the last of these actions is patently illegal, all raise questions about conflicts of interest and states' abilities to maintain the "arm's length" distance that their fiduciary responsibilities dictate. The dangerous effects of such close relationships are evident in California's inability to distinguish between cases in which "somebody wasn't convicted" and that subset of those in which "something didn't occur;" as well as in the New York State Crime Victim Board's presentation of a workshop on "Ritual Sexual Abuse" at its 1997 conference—fully five years after the FBI's seven-year, multi-million dollar study which concluded that ritual sexual abuse was virtually nonexistent. It is obvious that continual reliance on the same handful of "experts" to report on innovations in the field, train others in their application, and even determine which claims are compensable dangerously skews decision-making toward the perceptions, or misperceptions, of a limited number of like-minded ideologues, for whom each "founded" case of child abuse contributes to their program statistics, their personal incomes, and their personal beliefs in the widespread (and even satanic) nature of child sexual abuse. But the "partnerships" (or collusion) among "victim advocates," the staff of compensation programs and so-called "experts" also creates a stonewall which makes it less likely that the inappropriate extremes of these "partnerships" will be disclosed.

Many of these "experts" have been found to misrepresent or ignore existing research in their fields, in part because they lack experience with issues other than sexual abuse which can produce similar behavioral "indicators" in children. In fact, in many cases these "experts" claim that their "field" is child sexual abuse, having no grounding in broader (and licensed) mental health fields that would have acquainted them with normal child behavior or the range of "traumas" that can cause similar reactions in children. Their defense is often that child abuse warrants such zealous prosecution, denying that those accused should be granted the same rights as those accused of other crimes. But their primary error is in believing that such indicators can be of any use in identifying the perpetrators of the abuse. As a result, they are easily manipulated into diverting suspicion from actual offenders, creating suspicion in retaliation for perceived wrongs or simply abetting scams against well-insured day care centers and public and private insurers. And their concern that child abuse is so rampant, but hidden (to all but themselves) is belied by the fact that child sexual abusers are the most recidivist of criminals, who are quite likely to be identified eventually without resort to questionable methods that rarely withstand appellate review.

Thomas Sowell pointed out in a recent column that, "no factual record is kept of how often [court experts]

are proved wrong by later events. Police officers, who are assessed in part on the rate of crimes that they "clear," and prosecutors, who are similarly rated on their proportion of guilty verdicts not later overturned on appeal, understand how case "post mortems" demonstrate the true effectiveness of the criminal justice system and its participants, and maintain a balance between zealous crime fighting and preservation of the rights of those accused.

Yet, eventually, the rates of effectiveness of the least "expert" tend to be exposed in malpractice lawsuits, licence review procedures and in some cases, even criminal prosecutions. Media reports of such procedures are, sadly, often the first notice to other "victims" (including the government agencies that unwittingly rely on these "experts") that the procedures they used were faulty. By then, however, the damage has occurred, and the costs have been incurred. But the costs of undoing the damage, which can be considerable, will threaten to present themselves for some time to come.

Peter Huber observed in *Galileo's Revenge*, the book in which he coined the term "junk science," however, that civil litigation is most effective as a threat which encourages solving problems by other means. Civil litigation also ignores the systemic problems which enable false allegations to proceed through the system unchecked. For a system to actually "learn" from the hoaxes and misinterpretations of the past, it must create feedback loops to ensure that the information it receives about individual cases and the state-of-the-art of case investigation is both accurate and complete. Well-meant incompetence in the earliest of these cases should be studied for its effects on later perceptions of these crimes and the methods by which they are investigated. But obvious hoaxes, created or perpetuated by "experts," should also be investigated to ensure that compensation and other benefits that were provided because of false allegations are recovered, that defrauders are identified and dealt with, and that the same practitioners are no longer "counseling" the children they erroneously identified as victims. In fact, the ongoing counseling of these children should be paid for out of these practitioners' malpractice insurance, or other restitution collected from them on the children's behalf by victim compensation programs. In this way, the resources intended for real victims will be preserved for them, future malpractice of this sort will be deterred and the integrity of the criminal justice and victim assistance systems will once again deserve the trust of the entire community. Furthermore, "experts" who caused children who demonstrated no indication of victimization to undergo intrusive medical examinations and psychological interrogations should be criminally prosecuted for child abuse.

One final step should be taken to complete the feedback loop. Victim compensation agencies should be empowered to compensate the victims of false *allegations* as well as the falsely convicted in every state. It is only when victim compensation agencies bear the costs of false allegations that they will gain the incentive to prevent all such cases, and not just to address the handful that gain media attention. This feedback loop would finally, and quite appropriately, recognize the falsely convicted as victims of crime, because the stigma of being falsely accused of a crime, and the horror of being wrongly imprisoned, is one of the worst forms of victimization--and one that is in the government's power to rectify.

NOTE: This article was originally published in the Summer/Fall 1998 edition of *Issues in Child Abuse Allegations*, and is reprinted with permission. Its author, Dr. Susan Kiss Sarnoff, is an Assistant Professor of Social Work at Ohio University and the author of *Paying for Crime: The Policies and Possibilities of Crime Victim Reimbursement*, published by Praeger in 1996.

Endnotes

1. Jack Kresnak. "UM Clinic Cleared in Child Evaluation. Father Loses Lawsuit Over Abuse Inquiry." *Detroit Free Press*, November 26, 1997; Jack Kresnak. "A Father Is Suing Sex-Abuse Evaluators at a U-M Clinic, Claiming That Leading Questions and a False Report Damaged His Daughter," *Detroit Free Press*, November 3, 1997.

2. Debbie Nathan and Michael Snedeker. *Satan's Silence*. NY: Basic Books, 1995

3. Alan M. Rubenstein. *Report: Investigation into Breezy Point Day School*. Doylestown, PA: Office of the District Attorney, March 1990.

4. Charles Silberman. *Criminal Violence, Criminal Justice*. NY: Random House, 1978.

5. For example, the *False Memory Syndrome Foundation Newsletter* and the Justice Committee (San Diego, CA) have documented thousands of such cases.

6. C. Ronald Huff, Arye Rattner and Edward Sagarin. *Convicted But Innocent.* Thousand Oaks, CA: Sage Publications, 1996.

7. Marianne McMullen. "Cry for Justice," *Dayton Voice*, February 21-27, 1996.

8. Author's conversation with Jenny Wilcox, December 1997.

9. Chau Lam and Donna Porstner. "Back to Prison," *Newsday*, July 18, 1997; Robin Topping. "Kotler Gets $1.5 Million for Wrongful Conviction," *Newsday*, July 4, 1997; Paul Vitello. "One Trial, But Two Planets," *Newsday*, July 3, 1997; "Wrong-Man "Rapist" Awarded $1.5 Million," *New York Post*, July 4, 1997.

10. See, for example, Debbie Nathan and Michael Snedeker, op. cit.; David Stout. "Conviction for Child Abuse Overturned 10 Years Later," *New York Times*, September 30, 1997.

11. Ted R. Miller, Mark A. Cohen and Brian Wiersema. *Victim Costs and Consequences: A New Look*. Washington, D. C.: National Institute of Justice, February 1996.

12. National Association of Crime Victim Compensation Boards. *1997 Program Directory*. Arlington, VA: National Association of Crime Victim Compensation Boards, 1997.

13. Susan Kiss Sarnoff. *A National Survey of State Crime Victim Compensation Programs.* Ann Arbor, MI: University Microfilm International, 1994.

14. Ibid.

15. Susan Kiss Sarnoff. *Paying for Crime: The Policies and Possibilities of Crime Victim Reimbursement.* Westport, CT: Praeger Publishers, 1996.

16. Susan Kiss Sarnoff. op. cit., 1994.

17. Ibid.

18. Joe Cantlupe and David Hasemyer. "Akiki Case Drains Victim Fund: With No Crime, Should Therapy Be Paid?" *San Diego Union-Tribune*, January 31, 1994.

19. Elizabeth F. Loftus. "Repressed Memory Accusations: Devastated Families and Devastated Patients," *Journal of Applied Cognitive Psychology*, Vol. II, 25-30, 1997.

20. Susan Kiss Sarnoff. op. cit., 1994.

21. See, for example, Debbie Nathan and Michael Snedeker. op. cit.; and Joe Cantlupe and David Hasemyer. op. cit.

22. San Diego County Grand Jury. *Analysis of Child Molestation Issues. Report No. 7.* San Diego , CA: San Diego County Grand Jury, June 1, 1994.

23. John Wilkens. "Innocent Family Awaits End to Child-Abuse Saga." *San Diego Union-Tribune*, November 14, 1993; San Diego Grand Jury. *Families in Crisis, Report No. 2.* San Diego, CA: San Diego Grand Jury, February 6, 1992; San Diego Grand Jury. *Report No. 6.* San Diego, CA: San Diego Grand Jury, June 23, 1992.

24. John Wilkens and Jim Okerblom. "Rape-Case Therapist Gives Up Licence," *San Diego Union-Tribune*, March 20, 1996.

25. Steven Smith and Susan Freinkel. *Adjusting the Balance: Federal Policy and Victim Services.* Westport, CT: Greenwood Press, 1988; *Grants to Combat Violent Crime Against Women: Proposed Regulations.* Washington, D. C.: U. S. Department of Justice, 1994.

26. Steven Smith and Susan Freinkel. *op. cit.*

27. Susan Sarnoff, "In Defiance of Justice," *OACDL Vindicator*, Summer 1997.

28. See, for example, Cathy Young. *Ceasefire: Beyond the Gender Wars.* NY: Free Press, 1999.

29. San Diego County Grand Jury. *Child Sexual Abuse, Assault, and Molest Issues, Report No. 8*, San Diego, CA: San Diego County Grand Jury, June 29, 1992.

30. San Diego County Grand Jury. op. cit. 1994.

31. Cathy Young. op. cit.

32. Alan M. Dershowitz. *The Abuse Excuse*. NY: Little, Brown & Co., 1994.

33. Linda Fairstein. *Sexual Violence*. NY: William Morrow and Co., Inc., 1993.

34. Susan Kiss Sarnoff. op. cit., 1996.

35. Ken Dornstein. *Accidentally, On Purpose*. NY: St. Martin's Press, 1996.

36. Susan Kiss Sarnoff. op. cit., 1994.

37. Joe Cantlupe and David Hasemyer. op. cit.

38. Joe Cantlupe. "Cash-Short Victim Fund Gets $44 Million Bailout," *San Diego Union-Tribune*, January 29, 1994.

39. Lucy Berliner and Benjamin E. Saunders. *Management of VOC Child Molest Claims*. Sacramento, CA: State Board of Control, June 30, 1990.

40. National Association of Crime Victim Compensation Boards. "Recent Trends from VOCA Performance Reports." *Crime Victim Compensation Quarterly*, No. 1, 1993.

41. Santa Clara Grand Jury. *Final Report 1992-93*. Santa Clara, CA: Santa Clara Grand Jury, 1993; San Diego Grand Jury. op. cit., February 6, 1992

42. Susan Kiss Sarnoff, op. cit., 1996.

43. National Association of Crime Victim Compensation Boards. op. cit., 1997.

44. "State Crime Victim Compensation and Assistance Programs," *OVC Fact Sheet*. Washington, DC: U. S. Department of Justice, undated.

45. Debbie Nathan and Michael Snedeker, op. cit.; Cantlupe, op. cit.; Cantlupe and Hasemyer, op. cit.; San Diego County Grand Jury, op. cit. June 1994.

46. See, for example, Debbie Nathan and Michael Snedeker, op. cit.; Stephen J. Ceci and Maggie Bruck. *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony*. Hyattsville, MD: American Psychological Association, 1995; and San Diego County Grand Jury. op. cit., 1994; San Diego County Grand Jury. op. cit. February 6, 1992; and San Diego County Grand Jury, *Families in Crisis, Report No. 2 Supplement*. San Diego, CA: San Diego Grand Jury, June 29, 1992.

47. Debbie Nathan and Michael Snedeker, op. cit.

48. Increasingly, the day care centers that have been targeted for allegations of ritual sexual abuse have been heavily insured or have high real estate values. See, for example, Mark Pendergast. *Victims of Memory*. Hinesburg, VT: Upper Access, Inc., 1995.

49. Jeffrey S. Victor. *Satanic Panic*. Chicago, IL: Open Court Press, 1993.

50. "Compensation and Assistance: Working Together," *Crime Victim Compensation Quarterly*, Spring 1996.

51. San Diego County Grand Jury 1996-1997. "Victims of Crime Program in San Diego County," *Final Report*. San Diego, CA: San Diego County Grand Jury, 1997.

52. See, for example, Raymond Hughes. "Protest Path," *New Hampshire News-Leader*, August 15, 1996; Susan Sarnoff, "In Defiance of Justice," *OACDL Vindicator*, Summer 1997; Mitch Weiss. "Citizens Group Casts Doubt on Victims Aid." *Cleveland Plain-Dealer*, September 17, 1995.

53. New York State Crime Victims Board. *Conference Brochure*. Albany, NY: New York State Crime Victims Board, 1997.

54. Kenneth Lanning. *Investigator's Guide to Allegations of "Ritual" Child Abuse.* Quantico, VA: National Center for the Analysis of Violent Crime, January 1992.

55. Letter to Morton Stavis from Dr. Suzanne Sgroi regarding Eileen Treacy's testimony in the Margaret Kelly Michaels case; deposition of Dr. Roland Summit regarding Joseph and Laurie Braga's testimony in the Bob Fijnje case.

56. A. Nicholas Groth. "Patterns of Sexual Assault Against Children and Adolescents," and Suzanne M. Sgroi. "Child Sexual Assault: Some Guidelines for Intervention and Assessment," in Ann Wolbert Burgess, A. Nicholas Groth, Lynda Lytle Holmstrom and Suzanne Sgroi, eds. *Sexual Assault of Children and Adolescents.* Lexington, MA: D. C. Heath, 1985.

57. Thomas Sowell. "Victims of the 'Helping Professions'." *New York Post* . December 27, 1997.

58. Peter Huber. *Galileo's Revenge.* NY: Basic Books, 1991.

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C P S W a t c h

Supreme Court Affirms Family Rights

by Cheryl Barnes

The U.S. Supreme Court strongly affirmed family rights last month when it ruled that the state couldn't interfere with a parent's chosen method of child rearing unless the parent had been deemed unfit.

Supreme Court Justice O'Connor joined by Chief Justice Ginsburg and Justice Breyer concluded that a Washington state law allowing any person to petition the court for visitation was unconstitutional and violated parent's rights to direct the upbringing of their children without interference from the state.

"The liberty interest at issue in this case - the interest of parents in the care, custody, and control of their children - is perhaps the oldest of the fundamental liberty interests recognized by this Court," the court ruled.

The court ruled that unless the parents had been found unfit, the state should not interfere in their child rearing decisions. "Therefore, neither social workers nor judges have the right to place children in foster care, mandate psychological reviews, or require parents or children meet with social workers when a fit parent is available," said Eric Werme, a Family Advocate in New Hampshire.

The case centers on a grandparent who sought visitation of the children against the parents' wishes. The court concluded, "if a fit parent's decision of this kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination.'

"The decision does not center on limiting grandparents' rights. Rather it strongly affirms parents' rights to raise a family as they see fit, as long as the parents have not been found unfit," says Werme.

In Child Protection cases where the parents have been ruled unfit, the grandparents may still seek to intervene into those cases. But this case protects families from state interference in raising their children when they haven't been ruled unfit. "As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a better decision could be made," ruled the court.

The Court strongly upheld general parental rights within the ruling as well:

"In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the right ... to direct the education and upbringing of one's children.

"In [our] view, a right of parents to direct the upbringing of their children is among the "unalienable Rights" with which the Declaration of Independence proclaims "all Men are endowed by their Creator." And in [our] view that right is also among the "other [rights] retained by the people" which the Ninth Amendment says the Constitution's enumeration of rights "shall not be construed to deny or disparage," the court stated.

The Court ended the case without taking the usual step of remanding the case to the lower court for further

proceedings. "The decision leaves little wiggle room," says Werme.

The full case citation is TROXEL v. GRANVILLE, 530 U.S. ___ (2000) and it can be found here.

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TROXEL *et vir. v.* GRANVILLE

TROXEL v. GRANVILLE, 530 U.S. ___ (2000)

Certiorari to the Supreme Court of Washington

No. 99-138. Argued January 12, 2000--Decided June 5, 2000

Washington Rev. Code §26.10.160(3) permits "[a]ny person" to petition for visitation rights "at any time" and authorizes state superior courts to grant such rights whenever visitation may serve a child's best interest. Petitioners Troxel petitioned for the right to visit their deceased son's daughters. Respondent Granville, the girls' mother, did not oppose all visitation, but objected to the amount sought by the Troxels. The Superior Court ordered more visitation than Granville desired, and she appealed. The State Court of Appeals reversed and dismissed the Troxels' petition. In affirming, the State Supreme Court held, *inter alia*, that §26.10.160(3) unconstitutionally infringes on parents' fundamental right to rear their children. Reasoning that the Federal Constitution permits a State to interfere with this right only to prevent harm or potential harm to the child, it found that §26.10.160(3) does not require a threshold showing of harm and sweeps too broadly by permitting any person to petition at any time with the only requirement being that the visitation serve the best interest of the child.

Held: The judgment is affirmed. 137 Wash. 2d 1, 969 P. 2d 21, affirmed.

Justice O'Connor, joined by *The Chief Justice*, *Justice Ginsburg*, and *Justice Breyer*, concluded that §26.10.160(3), as applied to Granville and her family, violates her due process right to make decisions concerning the care, custody, and control of her daughters. Pp. 5-17.

(a) The Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," *Washington* v. *Glucksberg*, 521 U. S. 702, 720, including parents' fundamental right to make decisions concerning the care, custody, and control of their children, see, *e.g.*, *Stanley* v. *Illinois*, 405 U. S.

645, 651. Pp. 5-8.

(b) Washington's breathtakingly broad statute effectively permits a court to disregard and overturn *any* decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge's determination of the child's best interest. A parent's estimation of the child's best interest is accorded no deference. The State Supreme Court had the opportunity, but declined, to give §26.10.160(3) a narrower reading. A combination of several factors compels the conclusion that §26.10.160(3), as applied here, exceeded the bounds of the Due Process Clause. First, the Troxels did not allege, and no court has found, that Granville was an unfit parent. There is a presumption that fit parents act in their children's best interests, *Parham* v. *J. R.*, 442 U. S. 584, 602; there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children, see, *e.g.*, *Reno* v. *Flores*, 507 U. S. 292, 304. The problem here is not that the Superior Court intervened, but that when it did so, it gave no special weight to Granville's determination of her daughters' best interests. More importantly, that court appears to have applied the opposite presumption, favoring grandparent visitation. In effect, it placed on Granville the burden of *disproving* that visitation would be in her daughters' best interest and thus failed to provide any protection for her fundamental right. The court also gave no weight to Granville's having assented to visitation even before the filing of the petition or subsequent court intervention. These factors, when considered with the Superior Court's slender findings, show that this case involves nothing more than a simple disagreement between the court and Granville concerning her children's best interests, and that the visitation order was an unconstitutional infringement on Granville's right to make decisions regarding the rearing of her children. Pp. 8-14.

(c) Because the instant decision rests on §26.10.160(3)'s sweeping breadth and its application here, there is no need to consider the question whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation or to decide the precise scope of the parental due process right in the visitation context. There is also no reason to remand this case for further proceedings. The visitation order clearly violated the Constitution, and the parties should not be forced into additional litigation that would further burden Granville's parental right. Pp. 14-17.

Justice Souter concluded that the Washington Supreme Court's second reason for invalidating its own state statute--that it sweeps too broadly in authorizing any person at any time to request (and a judge to award) visitation rights, subject only to the State's particular best-interests standard--is consistent with this Court's prior cases. This ends the case, and there is no need to decide whether harm is required or to consider the precise scope of a parent's right or its necessary protections. Pp. 1-5.

Justice Thomas agreed that this Court's recognition of a fundamental right of parents to direct their children's upbringing resolves this case, but concluded that strict scrutiny is the appropriate standard of review to apply to infringements of fundamental rights. Here, the State lacks a compelling interest in second-guessing a fit parent's decision regarding visitation with third parties. Pp. 1-2.

O'Connor, J., announced the judgment of the Court and delivered an opinion, in which *Rehnquist*, C. J., and *Ginsburg* and *Breyer, JJ.*, joined. *Souter, J.*, and *Thomas, J.*, filed opinions concurring in the judgment. *Stevens, J.*, *Scalia, J.*, and *Kennedy, J.*, filed dissenting opinions.

JENIFER TROXEL, *et vir*, PETITIONERS *v.* TOMMIE GRANVILLE

On Writ of Certiorari to the Supreme Court of Washington

[June 5, 2000]

Justice O'Connor announced the judgment of the Court and delivered an opinion, in which *The Chief*

Justice, Justice Ginsburg, and *Justice Breyer* join.

Section 26.10.160(3) of the Revised Code of Washington permits "[a]ny person" to petition a superior court for visitation rights "at any time," and authorizes that court to grant such visitation rights whenever "visitation may serve the best interest of the child." Petitioners Jenifer and Gary Troxel petitioned a Washington Superior Court for the right to visit their grandchildren, Isabelle and Natalie Troxel. Respondent Tommie Granville, the mother of Isabelle and Natalie, opposed the petition. The case ultimately reached the Washington Supreme Court, which held that §26.10.160(3) unconstitutionally interferes with the fundamental right of parents to rear their children.

I

Tommie Granville and Brad Troxel shared a relationship that ended in June 1991. The two never married, but they had two daughters, Isabelle and Natalie. Jenifer and Gary Troxel are Brad's parents, and thus the paternal grandparents of Isabelle and Natalie. After Tommie and Brad separated in 1991, Brad lived with his parents and regularly brought his daughters to his parents' home for weekend visitation. Brad committed suicide in May 1993. Although the Troxels at first continued to see Isabelle and Natalie on a regular basis after their son's death, Tommie Granville informed the Troxels in October 1993 that she wished to limit their visitation with her daughters to one short visit per month. *In re Smith*, 137 Wash. 2d 1, 6, 969 P. 2d 21, 23-24 (1998); *In re Troxel*, 87 Wash. App. 131, 133, 940 P. 2d 698, 698-699 (1997).

In December 1993, the Troxels commenced the present action by filing, in the Washington Superior Court for Skagit County, a petition to obtain visitation rights with Isabelle and Natalie. The Troxels filed their petition under two Washington statutes, Wash. Rev. Code §§26.09.240 and 26.10.160(3) (1994). Only the latter statute is at issue in this case. Section 26.10.160(3) provides: "Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances." At trial, the Troxels requested two weekends of overnight visitation per month and two weeks of visitation each summer. Granville did not oppose visitation altogether, but instead asked the court to order one day of visitation per month with no overnight stay. 87 Wash. App., at 133-134, 940 P. 2d, at 699. In 1995, the Superior Court issued an oral ruling and entered a visitation decree ordering visitation one weekend per month, one week during the summer, and four hours on both of the petitioning grandparents' birthdays. 137 Wash. 2d, at 6, 969 P. 2d, at 23; App. to Pet. for Cert. 76a-78a.

Granville appealed, during which time she married Kelly Wynn. Before addressing the merits of Granville's appeal, the Washington Court of Appeals remanded the case to the Superior Court for entry of written findings of fact and conclusions of law. 137 Wash.2d, at 6, 969 P. 2d, at 23. On remand, the Superior Court found that visitation was in Isabelle and Natalie's best interests:

> "The Petitioners [the Troxels] are part of a large, central, loving family, all located in this area, and the Petitioners can provide opportunities for the children in the areas of cousins and music.
>
> " ... The court took into consideration all factors regarding the best interest of the children and considered all the testimony before it. The children would be benefitted from spending quality time with the Petitioners, provided that that time is balanced with time with the childrens' *[sic]* nuclear family. The court finds that the childrens' *[sic]* best interests are served by spending time with their mother and stepfather's other six children." App. 70a.

Approximately nine months after the Superior Court entered its order on remand, Granville's husband formally adopted Isabelle and Natalie. *Id.*, at 60a-67a.

The Washington Court of Appeals reversed the lower court's visitation order and dismissed the Troxels' petition for visitation, holding that nonparents lack standing to seek visitation under §26.10.160(3) unless a custody action is pending. In the Court of Appeals' view, that limitation on nonparental visitation actions was "consistent with the constitutional restrictions on state interference with parents' fundamental liberty interest in the care, custody, and management of their children." 87 Wash. App., at 135, 940 P. 2d, at 700 (internal quotation marks omitted). Having resolved the case on the statutory ground, however, the Court of Appeals did not expressly pass on Granville's constitutional challenge to the visitation statute. *Id.*, at 138, 940 P. 2d, at 701.

The Washington Supreme Court granted the Troxels' petition for review and, after consolidating their case with two other visitation cases, affirmed. The court disagreed with the Court of Appeals' decision on the statutory issue and found that the plain language of §26.10.160(3) gave the Troxels standing to seek visitation, irrespective of whether a custody action was pending. 137 Wash. 2d, at 12, 969 P. 2d, at 26-27. The Washington Supreme Court nevertheless agreed with the Court of Appeals' ultimate conclusion that the Troxels could not obtain visitation of Isabelle and Natalie pursuant to §26.10.160(3). The court rested its decision on the Federal Constitution, holding that §26.10.160(3) unconstitutionally infringes on the fundamental right of parents to rear their children. In the court's view, there were at least two problems with the nonparental visitation statute. First, according to the Washington Supreme Court, the Constitution permits a State to interfere with the right of parents to rear their children only to prevent harm or potential harm to a child. Section 26.10.160(3) fails that standard because it requires no threshold showing of harm. *Id.*, at 15-20, 969 P. 2d, at 28-30. Second, by allowing " `any person' to petition for forced visitation of a child at `any time' with the only requirement being that the visitation serve the best interest of the child," the Washington visitation statute sweeps too broadly. *Id.*, at 20, 969 P. 2d, at 30. "It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a `better' decision." *Ibid.*, 969 P. 2d, at 31. The Washington Supreme Court held that "[p]arents have a right to limit visitation of their children with third persons," and that between parents and judges, "the parents should be the ones to choose whether to expose their children to certain people or ideas." *Id.*, at 21, 969 P. 2d, at 31. Four justices dissented from the Washington Supreme Court's holding on the constitutionality of the statute. *Id.*, at 23-43, 969 P. 2d, at 32-42.

We granted certiorari, 527 U. S. 1069 (1999), and now affirm the judgment.

II

The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household. While many children may have two married parents and grandparents who visit regularly, many other children are raised in single-parent households. In 1996, children living with only one parent accounted for 28 percent of all children under age 18 in the United States. U. S. Dept. of Commerce, Bureau of Census, Current Population Reports, 1997 Population Profile of the United States 27 (1998). Understandably, in these single-parent households, persons outside the nuclear family are called upon with increasing frequency to assist in the everyday tasks of child rearing. In many cases, grandparents play an important role. For example, in 1998, approximately 4 million children--or 5.6 percent of all children under age 18--lived in the household of their grandparents. U. S. Dept. of Commerce, Bureau of Census, Current Population Reports, Marital Status and Living Arrangements: March 1998 (Update), p. *i* (1998).

The nationwide enactment of nonparental visitation statutes is assuredly due, in some part, to the States' recognition of these changing realities of the American family. Because grandparents and other relatives undertake duties of a parental nature in many households, States have sought to ensure the welfare of the children therein by protecting the relationships those children form with such third parties. The States' nonparental visitation statutes are further supported by a recognition, which varies from State to State, that children should have the opportunity to benefit from relationships with statutorily specified persons--for example, their grandparents. The extension of statutory rights in this area to persons other than a child's

parents, however, comes with an obvious cost. For example, the State's recognition of an independent third-party interest in a child can place a substantial burden on the traditional parent-child relationship. Contrary to *Justice Stevens'* accusation, our description of state nonparental visitation statutes in these terms, of course, is not meant to suggest that "children are so much chattel." *Post*, at 10 (dissenting opinion). Rather, our terminology is intended to highlight the fact that these statutes can present questions of constitutional import. In this case, we are presented with just such a question. Specifically, we are asked to decide whether §26.10.160(3), as applied to Tommie Granville and her family, violates the Federal Constitution.

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington* v. *Glucksberg*, 521 U. S. 702, 719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.*, at 720; see also *Reno* v. *Flores*, 507 U. S. 292, 301-302 (1993).

The liberty interest at issue in this case--the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer* v. *Nebraska*, 262 U. S. 390, 399, 401 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534-535 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in *Pierce* that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.*, at 535. We returned to the subject in *Prince* v. *Massachusetts*, 321 U. S. 158 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.*, at 166.

In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, *e.g.*, *Stanley* v. *Illinois*, 405 U. S. 645, 651 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children `come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' " (citation omitted)); *Wisconsin* v. *Yoder*, 406 U. S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham* v. *J. R.*, 442 U. S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky* v. *Kramer*, 455 U. S. 745, 753 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Glucksberg*, *supra*, at 720 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the `liberty' specially protected by the Due Process Clause includes the righ[t] ... to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.

Section 26.10.160(3), as applied to Granville and her family in this case, unconstitutionally infringes on that fundamental parental right. The Washington nonparental visitation statute is breathtakingly broad. According to the statute's text, "*[a]ny person* may petition the court for visitation rights *at any time*," and

the court may grant such visitation rights whenever "visitation may serve *the best interest of the child.*" §26.10.160(3) (emphases added). That language effectively permits any third party seeking visitation to subject any decision by a parent concerning visitation of the parent's children to state-court review. Once the visitation petition has been filed in court and the matter is placed before a judge, a parent's decision that visitation would not be in the child's best interest is accorded no deference. Section 26.10.160(3) contains no requirement that a court accord the parent's decision any presumption of validity or any weight whatsoever. Instead, the Washington statute places the best-interest determination solely in the hands of the judge. Should the judge disagree with the parent's estimation of the child's best interests, the judge's view necessarily prevails. Thus, in practical effect, in the State of Washington a court can disregard and overturn *any* decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge's determination of the child's best interests. The Washington Supreme Court had the opportunity to give §26.10.160(3) a narrower reading, but it declined to do so. See, *e.g.*, 137 Wash. 2d, at 5, 969 P. 2d, at 23 ("[The statute] allow[s] any person, at any time, to petition for visitation without regard to relationship to the child, without regard to changed circumstances, and without regard to harm"); *id.*, at 20, 969 P. 2d, at 30 ("[The statute] allow[s] `any person' to petition for forced visitation of a child at `any time' with the only requirement being that the visitation serve the best interest of the child").

Turning to the facts of this case, the record reveals that the Superior Court's order was based on precisely the type of mere disagreement we have just described and nothing more. The Superior Court's order was not founded on any special factors that might justify the State's interference with Granville's fundamental right to make decisions concerning the rearing of her two daughters. To be sure, this case involves a visitation petition filed by grandparents soon after the death of their son--the father of Isabelle and Natalie--but the combination of several factors here compels our conclusion that §26.10.160(3), as applied, exceeded the bounds of the Due Process Clause.

First, the Troxels did not allege, and no court has found, that Granville was an unfit parent. That aspect of the case is important, for there is a presumption that fit parents act in the best interests of their children. As this Court explained in *Parham*:

> "[O]ur constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations. ... The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children." 442 U. S., at 602 (alteration in original) (internal quotation marks and citations omitted).

Accordingly, so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children. See, *e.g.*, *Flores*, 507 U. S., at 304.

The problem here is not that the Washington Superior Court intervened, but that when it did so, it gave no special weight at all to Granville's determination of her daughters' best interests. More importantly, it appears that the Superior Court applied exactly the opposite presumption. In reciting its oral ruling after the conclusion of closing arguments, the Superior Court judge explained:

> "The burden is to show that it is in the best interest of the children to have some visitation and some quality time with their grandparents. I think in most situations a commonsensical approach [is that] it is normally in the best interest of the children to spend quality time with the grandparent, unless the grandparent, *[sic]* there are some issues or problems involved

wherein the grandparents, their lifestyles are going to impact adversely upon the children. That certainly isn't the case here from what I can tell." Verbatim Report of Proceedings in *In re Troxel*, No. 93-3-00650-7 (Wash. Super. Ct., Dec. 14, 19, 1994), p. 213 (hereinafter Verbatim Report).

The judge's comments suggest that he presumed the grandparents' request should be granted unless the children would be "impact[ed] adversely." In effect, the judge placed on Granville, the fit custodial parent, the burden of *disproving* that visitation would be in the best interest of her daughters. The judge reiterated moments later: "I think [visitation with the Troxels] would be in the best interest of the children and I haven't been shown it is not in [the] best interest of the children." *Id.*, at 214.

The decisional framework employed by the Superior Court directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child. See *Parham*, *supra*, at 602. In that respect, the court's presumption failed to provide any protection for Granville's fundamental constitutional right to make decisions concerning the rearing of her own daughters. Cf., *e.g.*, Cal. Fam. Code Ann. §3104(e) (West 1994) (rebuttable presumption that grandparent visitation is not in child's best interest if parents agree that visitation rights should not be granted); Me. Rev. Stat. Ann., Tit. 19A, §1803(3) (1998) (court may award grandparent visitation if in best interest of child and "would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the child"); Minn. Stat. §257.022(2)(a)(2) (1998) (court may award grandparent visitation if in best interest of child and "such visitation would not interfere with the parent-child relationship"); Neb. Rev. Stat. §43-1802(2) (1998) (court must find "by clear and convincing evidence" that grandparent visitation "will not adversely interfere with the parent-child relationship"); R. I. Gen. Laws §15-5-24.3(a)(2)(v) (Supp. 1999) (grandparent must rebut, by clear and convincing evidence, presumption that parent's decision to refuse grandparent visitation was reasonable); Utah Code Ann. §30-5-2(2)(e) (1998) (same); *Hoff* v. *Berg*, 595 N. W. 2d 285, 291-292 (N. D. 1999) (holding North Dakota grandparent visitation statute unconstitutional because State has no "compelling interest in presuming visitation rights of grandparents to an unmarried minor are in the child's best interests and forcing parents to accede to court-ordered grandparental visitation unless the parents are first able to prove such visitation is not in the best interests of their minor child"). In an ideal world, parents might always seek to cultivate the bonds between grandparents and their grandchildren. Needless to say, however, our world is far from perfect, and in it the decision whether such an intergenerational relationship would be beneficial in any specific case is for the parent to make in the first instance. And, if a fit parent's decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination.

Finally, we note that there is no allegation that Granville ever sought to cut off visitation entirely. Rather, the present dispute originated when Granville informed the Troxels that she would prefer to restrict their visitation with Isabelle and Natalie to one short visit per month and special holidays. See 87 Wash. App., at 133, 940 P. 2d, at 699; Verbatim Report 12. In the Superior Court proceedings Granville did not oppose visitation but instead asked that the duration of any visitation order be shorter than that requested by the Troxels. While the Troxels requested two weekends per month and two full weeks in the summer, Granville asked the Superior Court to order only one day of visitation per month (with no overnight stay) and participation in the Granville family's holiday celebrations. See 87 Wash. App., at 133, 940 P. 2d, at 699; Verbatim Report 9 ("Right off the bat we'd like to say that our position is that grandparent visitation is in the best interest of the children. It is a matter of how much and how it is going to be structured") (opening statement by Granville's attorney). The Superior Court gave no weight to Granville's having assented to visitation even before the filing of any visitation petition or subsequent court intervention. The court instead rejected Granville's proposal and settled on a middle ground, ordering one weekend of visitation per month, one week in the summer, and time on both of the petitioning grandparents' birthdays. See 87 Wash. App., at 133-134, 940 P. 2d, at 699; Verbatim Report 216-221. Significantly, many other States expressly provide by statute that courts may not award visitation unless a parent has denied (or unreasonably denied) visitation to the concerned third party. See, *e.g.*, Miss. Code Ann. §93-16-3(2)(a) (1994) (court must find that "the parent or custodian of the child unreasonably denied the grandparent

visitation rights with the child"); Ore. Rev. Stat. §109.121(1)(a)(B) (1997) (court may award visitation if the "custodian of the child has denied the grandparent reasonable opportunity to visit the child"); R. I. Gen. Laws §15-5-24.3(a)(2)(iii)-(iv) (Supp. 1999) (court must find that parents prevented grandparent from visiting grandchild and that "there is no other way the petitioner is able to visit his or her grandchild without court intervention").

Considered together with the Superior Court's reasons for awarding visitation to the Troxels, the combination of these factors demonstrates that the visitation order in this case was an unconstitutional infringement on Granville's fundamental right to make decisions concerning the care, custody, and control of her two daughters. The Washington Superior Court failed to accord the determination of Granville, a fit custodial parent, any material weight. In fact, the Superior Court made only two formal findings in support of its visitation order. First, the Troxels "are part of a large, central, loving family, all located in this area, and the [Troxels] can provide opportunities for the children in the areas of cousins and music." App. 70a. Second, "[t]he children would be benefitted from spending quality time with the [Troxels], provided that that time is balanced with time with the childrens' *[sic]* nuclear family." *Ibid.* These slender findings, in combination with the court's announced presumption in favor of grandparent visitation and its failure to accord significant weight to Granville's already having offered meaningful visitation to the Troxels, show that this case involves nothing more than a simple disagreement between the Washington Superior Court and Granville concerning her children's best interests. The Superior Court's announced reason for ordering one week of visitation in the summer demonstrates our conclusion well: "I look back on some personal experiences ... . We always spen[t] as kids a week with one set of grandparents and another set of grandparents, [and] it happened to work out in our family that [it] turned out to be an enjoyable experience. Maybe that can, in this family, if that is how it works out." Verbatim Report 220-221. As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a "better" decision could be made. Neither the Washington nonparental visitation statute generally--which places no limits on either the persons who may petition for visitation or the circumstances in which such a petition may be granted--nor the Superior Court in this specific case required anything more. Accordingly, we hold that §26.10.160(3), as applied in this case, is unconstitutional.

Because we rest our decision on the sweeping breadth of §26.10.160(3) and the application of that broad, unlimited power in this case, we do not consider the primary constitutional question passed on by the Washington Supreme Court--whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation. We do not, and need not, define today the precise scope of the parental due process right in the visitation context. In this respect, we agree with *Justice Kennedy* that the constitutionality of any standard for awarding visitation turns on the specific manner in which that standard is applied and that the constitutional protections in this area are best "elaborated with care." *Post*, at 9 (dissenting opinion). Because much state-court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a *per se* matter.[1] See, *e.g.*, *Fairbanks* v. *McCarter*, 330 Md. 39, 49-50, 622 A. 2d 121, 126-127 (1993) (interpreting best-interest standard in grandparent visitation statute normally to require court's consideration of certain factors); *Williams* v. *Williams*, 256 Va. 19, 501 S. E. 2d 417, 418 (1998) (interpreting Virginia nonparental visitation statute to require finding of harm as condition precedent to awarding visitation).

Justice Stevens criticizes our reliance on what he characterizes as merely "a guess" about the Washington courts' interpretation of §26.10.160(3). *Post*, at 2. *Justice Kennedy* likewise states that "[m]ore specific guidance should await a case in which a State's highest court has considered all of the facts in the course of elaborating the protection afforded to parents by the laws of the State and by the Constitution itself." *Post*, at 10. We respectfully disagree. There is no need to hypothesize about how the Washington courts *might* apply §26.10.160(3) because the Washington Superior Court *did* apply the statute in this very case. Like the Washington Supreme Court, then, we are presented with an actual visitation order and the reasons why the Superior Court believed entry of the order was appropriate in this case. Faced with the Superior Court's

application of §26.10.160(3) to Granville and her family, the Washington Supreme Court chose not to give the statute a narrower construction. Rather, that court gave §26.10.160(3) a literal and expansive interpretation. As we have explained, that broad construction plainly encompassed the Superior Court's application of the statute. See *supra*, at 8-9.

There is thus no reason to remand the case for further proceedings in the Washington Supreme Court. As *Justice Kennedy* recognizes, the burden of litigating a domestic relations proceeding can itself be "so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated." *Post* at 9. In this case, the litigation costs incurred by Granville on her trip through the Washington court system and to this Court are without a doubt already substantial. As we have explained, it is apparent that the entry of the visitation order in this case violated the Constitution. We should say so now, without forcing the parties into additional litigation that would further burden Granville's parental right. We therefore hold that the application of §26.10.160(3) to Granville and her family violated her due process right to make decisions concerning the care, custody, and control of her daughters.

Accordingly, the judgment of the Washington Supreme Court is affirmed.

It is so ordered.

JENIFER TROXEL, *et vir*, PETITIONERS *v.* TOMMIE GRANVILLE

On Writ of Certiorari to the Supreme Court of Washington

[June 5, 2000]

Justice Souter, concurring in the judgment.

I concur in the judgment affirming the decision of the Supreme Court of Washington, whose facial invalidation of its own state statute is consistent with this Court's prior cases addressing the substantive interests at stake. I would say no more. The issues that might well be presented by reviewing a decision addressing the specific application of the state statute by the trial court, *ante*, at 9-14, are not before us and do not call for turning any fresh furrows in the "treacherous field" of substantive due process. *Moore* v. *East Cleveland*, 431 U. S. 494, 502 (1977) (opinion of Powell, J.).

The Supreme Court of Washington invalidated its state statute based on the text of the statute alone, not its application to any particular case.[1] Its ruling rested on two independently sufficient grounds: the failure of the statute to require harm to the child to justify a disputed visitation order, *In re Smith*, 137 Wash. 2d, 1, 17, 969 P. 2d 21, 29 (1998), and the statute's authorization of "any person" at "any time" to petition and to receive visitation rights subject only to a free-ranging best-interests-of-the-child standard, *id.*, at 20-21, 969 P. 2d, at 30-31. *Ante*, at 4. I see no error in the second reason, that because the state statute authorizes any person at any time to request (and a judge to award) visitation rights, subject only to the State's particular best-interests standard, the state statute sweeps too broadly and is unconstitutional on its face. Consequently, there is no need to decide whether harm is required or to consider the precise scope of the parent's right or its necessary protections.

We have long recognized that a parent's interests in the nurture, upbringing, companionship, care, and custody of children are generally protected by the Due Process Clause of the Fourteenth Amendment. See, *e.g.*, *Meyer* v. *Nebraska*, 262 U. S. 390, 399, 401 (1923); *Pierce* v. *Society of Sisters*, 268 U. S. 510, 535 (1925); *Stanley* v. *Illinois*, 405 U. S. 645, 651 (1972); *Wisconsin* v. *Yoder*, 406 U. S. 205, 232 (1972); *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978); *Parham* v. *J. R.*, 442 U. S. 584, 602 (1979); *Santosky* v. *Kramer*, 455 U. S. 745, 753 (1982); *Washington* v. *Glucksberg*, 521 U. S. 702, 720 (1997). As we first acknowledged in *Meyer*, the right of parents to "bring up children," 262 U. S., at 399, and "to control the

education of their own" is protected by the Constitution, *id.*, at 401. See also *Glucksberg, supra*, at 761 (*Souter, J.*, concurring in judgment).

On the basis of this settled principle, the Supreme Court of Washington invalidated its statute because it authorized a contested visitation order at the intrusive behest of any person at any time subject only to a best-interests-of-the-child standard. In construing the statute, the state court explained that the "any person" at "any time" language was to be read literally, at 137 Wash. 2d, at 10-11, 969 P. 2d, at 25-27, and that "[m]ost notably the statut[e] do[es] not require the petitioner to establish that he or she has a substantial relationship with the child," *id.*, at 20-21, 969 P. 2d, at 31. Although the statute speaks of granting visitation rights whenever "visitation may serve the best interest of the child," Wash. Rev. Code §26.10.160(3) (1994), the state court authoritatively read this provision as placing hardly any limit on a court's discretion to award visitation rights. As the court understood it, the specific best-interests provision in the statute would allow a court to award visitation whenever it thought it could make a better decision than a child's parent had done. See 137 Wash. 2d, at 20, 969 P. 2d, at 31 ("It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a `better' decision").[2] On that basis in part, the Supreme Court of Washington invalidated the State's own statute: "Parents have a right to limit visitation of their children with third persons." *Id.*, at 21, 969 P. 2d, at 31.

Our cases, it is true, have not set out exact metes and bounds to the protected interest of a parent in the relationship with his child, but *Meyer's* repeatedly recognized right of upbringing would be a sham if it failed to encompass the right to be free of judicially compelled visitation by "any party" at "any time" a judge believed he "could make a `better' decision"[3] than the objecting parent had done. The strength of a parent's interest in controlling a child's associates is as obvious as the influence of personal associations on the development of the child's social and moral character. Whether for good or for ill, adults not only influence but may indoctrinate children, and a choice about a child's social companions is not essentially different from the designation of the adults who will influence the child in school. Even a State's considered judgment about the preferable political and religious character of schoolteachers is not entitled to prevail over a parent's choice of private school. *Pierce, supra*, at 535 ("The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations"). It would be anomalous, then, to subject a parent to any individual judge's choice of a child's associates from out of the general population merely because the judge might think himself more enlightened than the child's parent.[4] To say the least (and as the Court implied in *Pierce*), parental choice in such matters is not merely a default rule in the absence of either governmental choice or the government's designation of an official with the power to choose for whatever reason and in whatever circumstances.

Since I do not question the power of a State's highest court to construe its domestic statute and to apply a demanding standard when ruling on its facial constitutionality,[5] see *Chicago* v. *Morales*, 527 U. S. 41, 55, n. 22 (1999) (opinion of *Stevens, J.*), this for me is the end of the case. I would simply affirm the decision of the Supreme Court of Washington that its statute, authorizing courts to grant visitation rights to any person at any time, is unconstitutional. I therefore respectfully concur in the judgment.

JENIFER TROXEL, *et vir*, PETITIONERS *v.* TOMMIE GRANVILLE

On Writ of Certiorari to the Supreme Court of Washington

[June 5, 2000]

Justice Thomas, concurring in the judgment.

I write separately to note that neither party has argued that our substantive due process cases were wrongly decided and that the original understanding of the Due Process Clause precludes judicial enforcement of unenumerated rights under that constitutional provision. As a result, I express no view on the merits of this matter, and I understand the plurality as well to leave the resolution of that issue for another day.*[1]

Consequently, I agree with the plurality that this Court's recognition of a fundamental right of parents to direct the upbringing of their children resolves this case. Our decision in *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), holds that parents have a fundamental constitutional right to rear their children, including the right to determine who shall educate and socialize them. The opinions of the plurality, *Justice Kennedy*, and *Justice Souter* recognize such a right, but curiously none of them articulates the appropriate standard of review. I would apply strict scrutiny to infringements of fundamental rights. Here, the State of Washington lacks even a legitimate governmental interest--to say nothing of a compelling one--in second-guessing a fit parent's decision regarding visitation with third parties. On this basis, I would affirm the judgment below.

JENIFER TROXEL, *et vir*, PETITIONERS *v.* TOMMIE GRANVILLE

On Writ of Certiorari to the Supreme Court of Washington

[June 5, 2000]

Justice St· ens, dissenting.

The Court today wisely declines to endorse either the holding or the reasoning of the Supreme Court of Washington. In my opinion, the Court would have been even wiser to deny certiorari. Given the problematic character of the trial court's decision and the uniqueness of the Washington statute, there was no pressing need to review a State Supreme Court decision that merely requires the state legislature to draft a better statute.

Having decided to address the merits, however, the Court should begin by recognizing that the State Supreme Court rendered a federal constitutional judgment holding a state law invalid on its face. In light of that judgment, I believe that we should confront the federal questions presented directly. For the Washington statute is not made facially invalid either because it may be invoked by too many hypothetical plaintiffs, or because it leaves open the possibility that someone may be permitted to sustain a relationship with a child without having to prove that serious harm to the child would otherwise result.

I

In response to Tommie Granville's federal constitutional challenge, the State Supreme Court broadly held that Wash. Rev. Code §26.10.160(3) (Supp. 1996) was invalid on its face under the Federal Constitution.[1] Despite the nature of this judgment, *Justice O'Connor* would hold that the Washington visitation statute violated the Due Process Clause of the Fourteenth Amendment only as applied. *Ante*, at 6, 8, 14-15. I agree with *Justice Souter, ante*, at 1, and n. 1 (opinion concurring in judgment), that this approach is untenable.

The task of reviewing a trial court's application of a state statute to the particular facts of a case is one that should be performed in the first instance by the state appellate courts. In this case, because of their views of the Federal Constitution, the Washington state appeals courts have yet to decide whether the trial court's findings were adequate under the statute.[2] Any as-applied critique of the trial court's judgment that this Court might offer could only be based upon a guess about the state courts' application of that State's statute, and an independent assessment of the facts in this case--both judgments that we are ill-suited and ill-advised to make.[3]

While I thus agree with *Justice Souter* in this respect, I do not agree with his conclusion that the State Supreme Court made a definitive construction of the visitation statute that necessitates the constitutional conclusion he would draw.[4] As I read the State Supreme Court's opinion, *In re Smith*, 137 Wash. 2d 1, 19-20, 969 P. 2d 21, 30-31 (1998), its interpretation of the Federal Constitution made it unnecessary to adopt a definitive construction of the statutory text, or, critically, to decide whether the statute had been correctly applied in this case. In particular, the state court gave no content to the phrase, "best interest of the child," Wash. Rev. Code §26.10.160(3) (Supp. 1996)--content that might well be gleaned from that State's own statutes or decisional law employing the same phrase in different contexts, and from the myriad other state statutes and court decisions at least nominally applying the same standard.[5] Thus, I believe that *Justice Souter*'s conclusion that the statute unconstitutionally imbues state trial court judges with " `too much discretion in *every* case,' " *ante*, at 4, n. 3 (opinion concurring in judgment) (quoting *Chicago* v. *Morales*, 527 U. S. 41, 71 (1999) (*Breyer, J.*, concurring)), is premature.

We are thus presented with the unconstrued terms of a state statute and a State Supreme Court opinion that, in my view, significantly misstates the effect of the Federal Constitution upon any construction of that statute. Given that posture, I believe the Court should identify and correct the two flaws in the reasoning of the state court's majority opinion, and remand for further review of the trial court's disposition of this specific case.

II

In my view, the State Supreme Court erred in its federal constitutional analysis because neither the provision granting "any person" the right to petition the court for visitation, 137 Wash. 2d, at 20, 969 P. 2d, at 30, nor the absence of a provision requiring a "threshold ... finding of harm to the child," *ibid.*, provides a sufficient basis for holding that the statute is invalid in all its applications. I believe that a facial challenge should fail whenever a statute has "a `plainly legitimate sweep,' " *Washington* v. *Glucksberg*, 521 U. S. 702, 739-740 and n. 7 (1997) (*Stevens, J.*, concurring in judgment).[6] Under the Washington statute, there are plainly any number of cases--indeed, one suspects, the most common to arise--in which the "person" among "any" seeking visitation is a once-custodial caregiver, an intimate relation, or even a genetic parent. Even the Court would seem to agree that in many circumstances, it would be constitutionally permissible for a court to award some visitation of a child to a parent or previous caregiver in cases of parental separation or divorce, cases of disputed custody, cases involving temporary foster care or guardianship, and so forth. As the statute plainly sweeps in a great deal of the permissible, the State Supreme Court majority incorrectly concluded that a statute authorizing "any person" to file a petition seeking visitation privileges would invariably run afoul of the Fourteenth Amendment.

The second key aspect of the Washington Supreme Court's holding--that the Federal Constitution requires a showing of actual or potential "harm" to the child before a court may order visitation continued over a parent's objections--finds no support in this Court's case law. While, as the Court recognizes, the Federal Constitution certainly protects the parent-child relationship from arbitrary impairment by the State, see *infra*, at 7-8 we have never held that the parent's liberty interest in this relationship is so inflexible as to establish a rigid constitutional shield, protecting every arbitrary parental decision from any challenge absent a threshold finding of harm.[7] The presumption that parental decisions generally serve the best interests of their children is sound, and clearly in the normal case the parent's interest is paramount. But even a fit parent is capable of treating a child like a mere possession.

Cases like this do not present a bipolar struggle between the parents and the State over who has final authority to determine what is in a child's best interests. There is at a minimum a third individual, whose interests are implicated in every case to which the statute applies--the child.

It has become standard practice in our substantive due process jurisprudence to begin our analysis with an

identification of the "fundamental" liberty interests implicated by the challenged state action. See, *e.g.*, *ante*, at 6-8 (opinion of *O'Connor, J.*); *Washington* v. *Glucksberg*, 521 U. S. 702 (1997); *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992). My colleagues are of course correct to recognize that the right of a parent to maintain a relationship with his or her child is among the interests included most often in the constellation of liberties protected through the Fourteenth Amendment. *Ante*, at 6-8 (opinion of *O'Connor, J.*). Our cases leave no doubt that parents have a fundamental liberty interest in caring for and guiding their children, and a corresponding privacy interest--absent exceptional circumstances--in doing so without the undue interference of strangers to them and to their child. Moreover, and critical in this case, our cases applying this principle have explained that with this constitutional liberty comes a presumption (albeit a rebuttable one) that "natural bonds of affection lead parents to act in the best interests of their children." *Parham* v. *J. R.*, 442 U. S. 584, 602 (1979); see also *Casey*, 505 U.S., at 895; *Santosky* v. *Kramer*, 455 U. S. 745, 759 (1982) (State may not presume, at factfinding stage of parental rights termination proceeding, that interests of parent and child diverge); see also *ante*, at 9-10 (opinion of *O'Connor, J.*).

Despite this Court's repeated recognition of these significant parental liberty interests, these interests have never been seen to be without limits. In *Lehr* v. *Robertson*, 463 U. S. 248 (1983), for example, this Court held that a putative biological father who had never established an actual relationship with his child did not have a constitutional right to notice of his child's adoption by the man who had married the child's mother. As this Court had recognized in an earlier case, a parent's liberty interests " `do not spring full-blown from the biological connection between parent and child. They require relationships more enduring.' " *Id.*, at 260 (quoting *Caban* v. *Mohammed*, 441 U. S. 380, 397 (1979)).

Conversely, in *Michael H.* v. *Gerald D.*, 491 U. S. 110 (1989), this Court concluded that despite both biological parenthood and an established relationship with a young child, a father's due process liberty interest in maintaining some connection with that child was not sufficiently powerful to overcome a state statutory presumption that the husband of the child's mother was the child's parent. As a result of the presumption, the biological father could be denied even visitation with the child because, as a matter of state law, he was not a "parent." A plurality of this Court there recognized that the parental liberty interest was a function, not simply of "isolated factors" such as biology and intimate connection, but of the broader and apparently independent interest in family. See, *e.g.*, *id.*, at 123; see also *Lehr*, 463 U. S., at 261; *Smith* v. *Organization of Foster Families For Equality & Reform*, 431 U. S. 816, 842-847 (1977); *Moore* v. *East Cleveland*, 431 U. S. 494, 498-504 (1977).

A parent's rights with respect to her child have thus never been regarded as absolute, but rather are limited by the existence of an actual, developed relationship with a child, and are tied to the presence or absence of some embodiment of family. These limitations have arisen, not simply out of the definition of parenthood itself, but because of this Court's assumption that a parent's interests in a child must be balanced against the State's long-recognized interests as *parens patriae*, see, *e.g.*, *Reno* v. *Flores*, 507 U. S. 292, 303-304 (1993); *Santosky* v. *Kramer*, 455 U. S., at 766; *Parham*, 442 U.S., at 605; *Prince* v. *Massachusetts*, 321 U. S. 158, 166 (1944), and, critically, the child's own complementary interest in preserving relationships that serve her welfare and protection, *Santosky*, 455 U. S., at 760.

While this Court has not yet had occasion to elucidate the nature of a child's liberty interests in preserving established familial or family-like bonds, 491 U. S., at 130 (reserving the question), it seems to me extremely likely that, to the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interests be balanced in the equation.[8] At a minimum, our prior cases recognizing that children are, generally speaking, constitutionally protected actors require that this Court reject any suggestion that when it comes to parental rights, children are so much chattel. See *ante*, at 5-6 (opinion of *O'Connor, J.*) (describing States' recognition of "an independent third-party interest in a child"). The constitutional protection against arbitrary state interference with parental rights should not be extended to prevent the States from protecting children against the arbitrary exercise of parental authority that is not in fact motivated by an

interest in the welfare of the child.[9]

This is not, of course, to suggest that a child's liberty interest in maintaining contact with a particular individual is to be treated invariably as on a par with that child's parents' contrary interests. Because our substantive due process case law includes a strong presumption that a parent will act in the best interest of her child, it would be necessary, were the state appellate courts actually to confront a challenge to the statute as applied, to consider whether the trial court's assessment of the "best interest of the child" incorporated that presumption. Neither would I decide whether the trial court applied Washington's statute in a constitutional way in this case, although, as I have explained, n. 3, *supra*, I think the outcome of this determination is far from clear. For the purpose of a facial challenge like this, I think it safe to assume that trial judges usually give great deference to parents' wishes, and I am not persuaded otherwise here.

But presumptions notwithstanding, we should recognize that there may be circumstances in which a child has a stronger interest at stake than mere protection from serious harm caused by the termination of visitation by a "person" other than a parent. The almost infinite variety of family relationships that pervade our ever-changing society strongly counsel against the creation by this Court of a constitutional rule that treats a biological parent's liberty interest in the care and supervision of her child as an isolated right that may be exercised arbitrarily. It is indisputably the business of the States, rather than a federal court employing a national standard, to assess in the first instance the relative importance of the conflicting interests that give rise to disputes such as this.[10] Far from guaranteeing that parents' interests will be trammeled in the sweep of cases arising under the statute, the Washington law merely gives an individual--with whom a child may have an established relationship--the procedural right to ask the State to act as arbiter, through the entirely well-known best-interests standard, between the parent's protected interests and the child's. It seems clear to me that the Due Process Clause of the Fourteenth Amendment leaves room for States to consider the impact on a child of possibly arbitrary parental decisions that neither serve nor are motivated by the best interests of the child.

Accordingly, I respectfully dissent.

JENIFER TROXEL, *et vir*, PETITIONERS *v.* TOMMIE GRANVILLE

On Writ of Certiorari to the Supreme Court of Washington

[June 5, 2000]

Justice Scalia, dissenting.

In my view, a right of parents to direct the upbringing of their children is among the "unalienable Rights" with which the Declaration of Independence proclaims "all Men ... are endowed by their Creator." And in my view that right is also among the "othe[r] [rights] retained by the people" which the Ninth Amendment says the Constitution's enumeration of rights "shall not be construed to deny or disparage." The Declaration of Independence, however, is not a legal prescription conferring powers upon the courts; and the Constitution's refusal to "deny or disparage" other rights is far removed from affirming any one of them, and even farther removed from authorizing judges to identify what they might be, and to enforce the judges' list against laws duly enacted by the people. Consequently, while I would think it entirely compatible with the commitment to representative democracy set forth in the founding documents to argue, in legislative chambers or in electoral campaigns, that the state has *no power* to interfere with parents' authority over the rearing of their children, I do not believe that the power which the Constitution confers upon me *as a judge* entitles me to deny legal effect to laws that (in my view) infringe upon what is (in my view) that unenumerated right.

Only three holdings of this Court rest in whole or in part upon a substantive constitutional right of parents

to direct the upbringing of their children[1] --two of them from an era rich in substantive due process holdings that have since been repudiated. See *Meyer* v. *Nebraska*, 262 U. S. 390, 399, 401 (1923); *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534-535 (1925); *Wisconsin* v. *Yoder*, 406 U. S. 205, 232-233 (1972). Cf. *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937) (overruling *Adkins* v. *Children's Hospital of D. C.*, 261 U. S. 525 (1923)). The sheer diversity of today's opinions persuades me that the theory of unenumerated parental rights underlying these three cases has small claim to *stare decisis* protection. A legal principle that can be thought to produce such diverse outcomes in the relatively simple case before us here is not a legal principle that has induced substantial reliance. While I would not now overrule those earlier cases (that has not been urged), neither would I extend the theory upon which they rested to this new context.

Judicial vindication of "parental rights" under a Constitution that does not even mention them requires (as *Justice Kennedy*'s opinion rightly points out) not only a judicially crafted definition of parents, but also--unless, as no one believes, the parental rights are to be absolute--judicially approved assessments of "harm to the child" and judicially defined gradations of other persons (grandparents, extended family, adoptive family in an adoption later found to be invalid, long-term guardians, etc.) who may have some claim against the wishes of the parents. If we embrace this unenumerated right, I think it obvious--whether we affirm or reverse the judgment here, or remand as *Justice Stevens* or *Justice Kennedy* would do--that we will be ushering in a new regime of judicially prescribed, and federally prescribed, family law. I have no reason to believe that federal judges will be better at this than state legislatures: and state legislatures have the great advantages of doing harm in a more circumscribed area, of being able to correct their mistakes in a flash, and of being removable by the people.[2]

For these reasons, I would reverse the judgment below.

JENIFER TROXEL, *et vir*, PETITIONERS *v.* TOMMIE GRANVILLE

On Writ of Certiorari to the Supreme Court of Washington

[June 5, 2000]

Justice Kennedy, dissenting.

The Supreme Court of Washington has determined that petitioners Jenifer and Gary Troxel have standing under state law to seek court-ordered visitation with their grandchildren, notwithstanding the objections of the children's parent, respondent Tommie Granville. The statute relied upon provides:

> "Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances." Wash. Rev. Code §26.10.160(3) (1994).

After acknowledging this statutory right to sue for visitation, the State Supreme Court invalidated the statute as violative of the United States Constitution, because it interfered with a parent's right to raise his or her child free from unwarranted interference. *In re Smith*, 137 Wash. 2d 1, 969 P. 2d 21 (1998). Although parts of the court's decision may be open to differing interpretations, it seems to be agreed that the court invalidated the statute on its face, ruling it a nullity.

The first flaw the State Supreme Court found in the statute is that it allows an award of visitation to a non-parent without a finding that harm to the child would result if visitation were withheld; and the second is that the statute allows any person to seek visitation at any time. In my view the first theory is too broad to be correct, as it appears to contemplate that the best interests of the child standard may not be applied in any visitation case. I acknowledge the distinct possibility that visitation cases may arise where, considering

the absence of other protection for the parent under state laws and procedures, the best interests of the child standard would give insufficient protection to the parent's constitutional right to raise the child without undue intervention by the state; but it is quite a different matter to say, as I understand the Supreme Court of Washington to have said, that a harm to the child standard is required in every instance.

Given the error I see in the State Supreme Court's central conclusion that the best interests of the child standard is never appropriate in third-party visitation cases, that court should have the first opportunity to reconsider this case. I would remand the case to the state court for further proceedings. If it then found the statute has been applied in an unconstitutional manner because the best interests of the child standard gives insufficient protection to a parent under the circumstances of this case, or if it again declared the statute a nullity because the statute seems to allow any person at all to seek visitation at any time, the decision would present other issues which may or may not warrant further review in this Court. These include not only the protection the Constitution gives parents against state-ordered visitation but also the extent to which federal rules for facial challenges to statutes control in state courts. These matters, however, should await some further case. The judgment now under review should be vacated and remanded on the sole ground that the harm ruling that was so central to the Supreme Court of Washington's decision was error, given its broad formulation.

Turning to the question whether harm to the child must be the controlling standard in every visitation proceeding, there is a beginning point that commands general, perhaps unanimous, agreement in our separate opinions: As our case law has developed, the custodial parent has a constitutional right to determine, without undue interference by the state, how best to raise, nurture, and educate the child. The parental right stems from the liberty protected by the Due Process Clause of the Fourteenth Amendment. See, *e.g.*, *Meyer* v. *Nebraska*, 262 U. S. 390, 399, 401 (1923); *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534-535 (1925); *Prince* v. *Massachusetts*, 321 U. S. 158, 166 (1944); *Stanley* v. *Illinois*, 405 U. S. 645, 651-652 (1972); *Wisconsin* v. *Yoder*, 406 U. S. 205, 232-233 (1972); *Santosky* v. *Kramer*, 455 U. S. 745, 753-754 (1982). *Pierce* and *Meyer*, had they been decided in recent times, may well have been grounded upon First Amendment principles protecting freedom of speech, belief, and religion. Their formulation and subsequent interpretation have been quite different, of course; and they long have been interpreted to have found in Fourteenth Amendment concepts of liberty an independent right of the parent in the "custody, care and nurture of the child," free from state intervention. *Prince*, *supra*, at 166. The principle exists, then, in broad formulation; yet courts must use considerable restraint, including careful adherence to the incremental instruction given by the precise facts of particular cases, as they seek to give further and more precise definition to the right.

The State Supreme Court sought to give content to the parent's right by announcing a categorical rule that third parties who seek visitation must always prove the denial of visitation would harm the child. After reviewing some of the relevant precedents, the Supreme Court of Washington concluded " `[t]he requirement of harm is the sole protection that parents have against pervasive state interference in the parenting process.' " *In re Smith*, 137 Wash. 2d, at 19-20, 969 P. 2d, at 30 (quoting *Hawk* v. *Hawk*, 855 S. W. 2d 573, 580 (Tenn. 1993)). For that reason, "[s]hort of preventing harm to the child," the court considered the best interests of the child to be "insufficient to serve as a compelling state interest overruling a parent's fundamental rights." *In re Smith*, *supra*, at 20, 969 P. 2d, at 30.

While it might be argued as an abstract matter that in some sense the child is always harmed if his or her best interests are not considered, the law of domestic relations, as it has evolved to this point, treats as distinct the two standards, one harm to the child and the other the best interests of the child. The judgment of the Supreme Court of Washington rests on that assumption, and I, too, shall assume that there are real and consequential differences between the two standards.

On the question whether one standard must always take precedence over the other in order to protect the right of the parent or parents, "[o]ur Nation's history, legal traditions, and practices" do not give us clear or definitive answers. *Washington* v. *Glucksberg*, 521 U. S. 702, 721 (1997). The consensus among courts

and commentators is that at least through the 19th century there was no legal right of visitation: court-ordered visitation appears to be a 20th-century phenomenon. See, *e.g.*, 1 D. Kramer, Legal Rights of Children 124, 136 (2d ed. 1994); 2 J. Atkinson, Modern Child Custody Practice §8.10 (1986). A case often cited as one of the earliest visitation decisions, *Succession of Reiss*, 46 La. Ann. 347, 353, 15 So. 151, 152 (1894), explained that "the obligation ordinarily to visit grandparents is moral and not legal"--a conclusion which appears consistent with that of American common law jurisdictions of the time. Early 20th-century exceptions did occur, often in cases where a relative had acted in a parental capacity, or where one of a child's parents had died. See *Douglass* v. *Merriman*, 163 S. C. 210, 161 S. E. 452 (1931) (maternal grandparent awarded visitation with child when custody was awarded to father; mother had died); *Solomon* v. *Solomon*, 319 Ill. App. 618, 49 N. E. 2d 807 (1943) (paternal grandparents could be given visitation with child in custody of his mother when their son was stationed abroad; case remanded for fitness hearing); *Consaul* v. *Consaul*, 63 N. Y. S. 2d 688 (Sup. Ct. Jefferson Cty. 1946) (paternal grandparents awarded visitation with child in custody of his mother; father had become incompetent). As a general matter, however, contemporary state-court decisions acknowledge that "[h]istorically, grandparents had no legal right of visitation," *Campbell* v. *Campbell*, 896 P. 2d 635, 642, n. 15 (Utah App. 1995), and it is safe to assume other third parties would have fared no better in court.

To say that third parties have had no historical right to petition for visitation does not necessarily imply, as the Supreme Court of Washington concluded, that a parent has a constitutional right to prevent visitation in all cases not involving harm. True, this Court has acknowledged that States have the authority to intervene to prevent harm to children, see, *e.g.*, *Prince*, *supra*, at 168-169; *Yoder*, *supra*, at 233-234, but that is not the same as saying that a heightened harm to the child standard must be satisfied in every case in which a third party seeks a visitation order. It is also true that the law's traditional presumption has been "that natural bonds of affection lead parents to act in the best interests of their children," *Parham* v. *J. R.*, 442 U. S. 584, 602 (1979); and "[s]imply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state," *id.*, at 603. The State Supreme Court's conclusion that the Constitution forbids the application of the best interests of the child standard in any visitation proceeding, however, appears to rest upon assumptions the Constitution does not require.

My principal concern is that the holding seems to proceed from the assumption that the parent or parents who resist visitation have always been the child's primary caregivers and that the third parties who seek visitation have no legitimate and established relationship with the child. That idea, in turn, appears influenced by the concept that the conventional nuclear family ought to establish the visitation standard for every domestic relations case. As we all know, this is simply not the structure or prevailing condition in many households. See, *e.g.*, *Moore* v. *East Cleveland*, 431 U. S. 494 (1977). For many boys and girls a traditional family with two or even one permanent and caring parent is simply not the reality of their childhood. This may be so whether their childhood has been marked by tragedy or filled with considerable happiness and fulfillment.

Cases are sure to arise--perhaps a substantial number of cases--in which a third party, by acting in a caregiving role over a significant period of time, has developed a relationship with a child which is not necessarily subject to absolute parental veto. See *Michael H.* v. *Gerald D.*, 491 U. S. 110 (1989) (putative natural father not entitled to rebut state law presumption that child born in a marriage is a child of the marriage); *Quilloin* v. *Walcott*, 434 U. S. 246 (1978) (best interests standard sufficient in adoption proceeding to protect interests of natural father who had not legitimated the child); see also *Lehr* v. *Robertson*, 463 U. S. 248, 261 (1983) (" `[T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in `promot[ing] a way of life' through the instruction of children ... as well as from the fact of blood relationship.' " (quoting *Smith* v. *Organization of Foster Families For Equality & Reform*, 431 U. S. 816, 844 (1977) (in turn quoting *Yoder*, 406 U. S., at 231-233))). Some pre-existing relationships, then, serve to identify persons who have a strong attachment to the child with the concomitant motivation to act in a responsible way to ensure the child's welfare. As the State Supreme

Court was correct to acknowledge, those relationships can be so enduring that "in certain circumstances where a child has enjoyed a substantial relationship with a third person, arbitrarily depriving the child of the relationship could cause severe psychological harm to the child." *In re Smith*, 137 Wash. 2d, at 20, 969 P. 2d, at 30; and harm to the adult may also ensue. In the design and elaboration of their visitation laws, States may be entitled to consider that certain relationships are such that to avoid the risk of harm, a best interests standard can be employed by their domestic relations courts in some circumstances.

Indeed, contemporary practice should give us some pause before rejecting the best interests of the child standard in all third-party visitation cases, as the Washington court has done. The standard has been recognized for many years as a basic tool of domestic relations law in visitation proceedings. Since 1965 all 50 States have enacted a third-party visitation statute of some sort. See *ante*, at 15, n. (plurality opinion). Each of these statutes, save one, permits a court order to issue in certain cases if visitation is found to be in the best interests of the child. While it is unnecessary for us to consider the constitutionality of any particular provision in the case now before us, it can be noted that the statutes also include a variety of methods for limiting parents' exposure to third-party visitation petitions and for ensuring parental decisions are given respect. Many States limit the identity of permissible petitioners by restricting visitation petitions to grandparents, or by requiring petitioners to show a substantial relationship with a child, or both. See, *e.g.*, Kan. Stat. Ann. §38-129 (1993 and Supp. 1998) (grandparent visitation authorized under certain circumstances if a substantial relationship exists); N. C. Gen. Stat. §§50-13.2, 50-13.2A, 50-13.5 (1999) (same); Iowa Code §598.35 (Supp. 1999) (same; visitation also authorized for great-grandparents); Wis. Stat. §767.245 (Supp. 1999) (visitation authorized under certain circumstances for "a grandparent, greatgrandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship with the child"). The statutes vary in other respects--for instance, some permit visitation petitions when there has been a change in circumstances such as divorce or death of a parent, see, *e.g.*, N. H. Rev. Stat. Ann. §458:17-d (1992), and some apply a presumption that parental decisions should control, see, *e.g.*, Cal. Fam. Code Ann. §§3104(e)-(f) (West 1994); R. I. Gen. Laws §15-5-24.3(a)(2)(v) (Supp. 1999). Georgia's is the sole State Legislature to have adopted a general harm to the child standard, see Ga. Code Ann. §19-7-3(c) (1999), and it did so only after the Georgia Supreme Court held the State's prior visitation statute invalid under the Federal and Georgia Constitutions, see *Brooks* v. *Parkerson*, 265 Ga. 189, 454 S. E. 2d 769, cert. denied, 516 U. S. 942 (1995).

In light of the inconclusive historical record and case law, as well as the almost universal adoption of the best interests standard for visitation disputes, I would be hard pressed to conclude the right to be free of such review in all cases is itself " `implicit in the concept of ordered liberty.' " *Glucksberg*, 521 U. S., at 721 (quoting *Palko* v. *Connecticut*, 302 U. S. 319, 325 (1937)). In my view, it would be more appropriate to conclude that the constitutionality of the application of the best interests standard depends on more specific factors. In short, a fit parent's right vis-à-vis a complete stranger is one thing; her right vis-à-vis another parent or a *de facto* parent may be another. The protection the Constitution requires, then, must be elaborated with care, using the discipline and instruction of the case law system. We must keep in mind that family courts in the 50 States confront these factual variations each day, and are best situated to consider the unpredictable, yet inevitable, issues that arise. Cf. *Ankenbrandt* v. *Richards*, 504 U. S. 689, 703-704 (1992).

It must be recognized, of course, that a domestic relations proceeding in and of itself can constitute state intervention that is so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated. The best interests of the child standard has at times been criticized as indeterminate, leading to unpredictable results. See, *e.g.*, American Law Institute, Principles of the Law of Family Dissolution 2, and n. 2 (Tentative Draft No. 3, Mar. 20, 1998). If a single parent who is struggling to raise a child is faced with visitation demands from a third party, the attorney's fees alone might destroy her hopes and plans for the child's future. Our system must confront more often the reality that litigation can itself be so disruptive that constitutional protection may be required; and I do not discount the possibility that in some instances the best interests of the child standard may provide insufficient protection to the parent-child relationship. We owe it to the Nation's

domestic relations legal structure, however, to proceed with caution.

It should suffice in this case to reverse the holding of the State Supreme Court that the application of the best interests of the child standard is always unconstitutional in third-party visitation cases. Whether, under the circumstances of this case, the order requiring visitation over the objection of this fit parent violated the Constitution ought to be reserved for further proceedings. Because of its sweeping ruling requiring the harm to the child standard, the Supreme Court of Washington did not have the occasion to address the specific visitation order the Troxels obtained. More specific guidance should await a case in which a State's highest court has considered all of the facts in the course of elaborating the protection afforded to parents by the laws of the State and by the Constitution itself. Furthermore, in my view, we need not address whether, under the correct constitutional standards, the Washington statute can be invalidated on its face. This question, too, ought to be addressed by the state court in the first instance.

In my view the judgment under review should be vacated and the case remanded for further proceedings.

FOOTNOTES

Footnote 1

All 50 States have statutes that provide for grandparent visitation in some form. See Ala. Code §30-3-4.1 (1989); Alaska Stat. Ann. §25.20.065 (1998); Ariz. Rev. Stat. Ann. §25-409 (1994); Ark. Code Ann. §9-13-103 (1998); Cal. Fam. Code Ann. §3104 (West 1994); Colo. Rev. Stat. §19-1-117 (1999); Conn. Gen. Stat. §46b-59 (1995); Del. Code Ann., Tit. 10, §1031(7) (1999); Fla. Stat. §752.01 (1997); Ga. Code Ann. §19-7-3 (1991); Haw. Rev. Stat. §571-46.3 (1999); Idaho Code §32-719 (1999); Ill. Comp. Stat., ch. 750, §5/607 (1998); Ind. Code §31-17-5-1 (1999); Iowa Code §598.35 (1999); Kan. Stat. Ann. §38-129 (1993); Ky. Rev. Stat. Ann. §405.021 (Baldwin 1990); La. Rev. Stat. Ann. §9:344 (West Supp. 2000); La. Civ. Code Ann., Art. 136 (West Supp. 2000); Me. Rev. Stat. Ann., Tit. 19A, §1803 (1998); Md. Fam. Law Code Ann. §9-102 (1999); Mass. Gen. Laws §119:39D (1996); Mich. Comp. Laws Ann. §722.27b (Supp. 1999); Minn. Stat. §257.022 (1998); Miss. Code Ann. §93-16-3 (1994); Mo. Rev. Stat. §452.402 (Supp. 1999); Mont. Code Ann. §40-9-102 (1997); Neb. Rev. Stat. §43-1802 (1998); Nev. Rev. Stat. §125C.050 (Supp. 1999); N. H. Rev. Stat. Ann. §458:17-d (1992); N. J. Stat. Ann. §9:2-7.1 (West Supp. 1999-2000); N. M. Stat. Ann. §40-9-2 (1999); N. Y. Dom. Rel. Law §72 (McKinney 1999); N. C. Gen. Stat. §§50-13.2, 50-13.2A (1999); N. D. Cent. Code §14-09-05.1 (1997); Ohio Rev. Code Ann. §§3109.051, 3109.11 (Supp. 1999); Okla. Stat., Tit. 10, §5 (Supp. 1999); Ore. Rev. Stat. §109.121 (1997); 23 Pa. Cons. Stat. §§5311-5313 (1991); R. I. Gen. Laws §§15-5-24 to 15-5-24.3 (Supp. 1999); S. C. Code Ann. §20-7-420(33) (Supp. 1999); S. D. Codified Laws §25-4-52 (1999); Tenn. Code Ann. §§36-6-306, 36-6-307 (Supp. 1999); Tex. Fam. Code Ann. §153.433 (Supp. 2000); Utah Code Ann. §30-5-2 (1998); Vt. Stat. Ann., Tit. 15, §§1011-1013 (1989); Va. Code Ann. §20-124.2 (1995); W. Va. Code §§48-2B-1 to 48-2B-7 (1999); Wis. Stat. §§767.245, 880.155 (1993-1994); Wyo. Stat. Ann. §20-7-101 (1999).

FOOTNOTES

Footnote 1

The Supreme Court of Washington made its ruling in an action where three separate cases, including the Troxels', had been consolidated. *In re Smith*, 137 Wash. 2d 1, 6-7, 969 P. 2d 21, 23-24 (1998). The court also addressed two statutes, Wash. Rev. Code §26.10.160(3) (Supp. 1996) and former Wash. Rev. Code §26.09.240 (1994). 137 Wash. 2d, at 7, 969 P. 2d, at 24, the latter of which is not even at issue in this case. See Brief for Petitioners 6, n. 9; see also *ante*, at 2. Its constitutional analysis discussed only the statutory language and neither mentioned the facts of any of the three cases nor reviewed the records of their trial court proceedings below. 137 Wash. 2d, at 13-21, 969 P. 2d, at 27-31. The decision invalidated both statutes without addressing their application to particular facts: "We conclude petitioners have standing but, *as written*, the statutes violate the parents' constitutionally protected interests. These statutes allow any

person, at any time, to petition for visitation without regard to relationship to the child, without regard to changed circumstances, and without regard to harm." *Id.*, at 5, 969 P. 2d. at 23 (emphasis added); see also *id.*, at 21, 969 P. 2d, at 31 ("RCW 26.10.160(3) and former RCW 26.09.240 impermissibly interfere with a parent's fundamental interest in the care, custody and companionship of the child" (citations and internal quotation marks omitted)).

Footnote 2

As *Justice O'Connor* points out, the best-interests provision "contains no requirement that a court accord the parent's decision any presumption of validity or any weight whatsoever. Instead, the Washington statute places the best-interest determination solely in the hands of the judge." *Ante*, at 8.

Footnote 3

Cf. *Chicago* v. *Morales*, 527 U. S. 41, 71 (1999) (*Breyer, J.*, concurring in part and concurring in judgment) ("The ordinance is unconstitutional, not because a policeman applied this discretion wisely or poorly in a particular case, but rather because the policeman enjoys too much discretion in *every* case. And if every application of the ordinance represents an exercise of unlimited discretion, then the ordinance is invalid in all its applications").

Footnote 4

The Supreme Court of Washington invalidated the broadly sweeping statute at issue on similarly limited reasoning: "Some parents and judges will not care if their child is physically disciplined by a third person; some parents and judges will not care if a third person teaches the child a religion inconsistent with the parents' religion; and some judges and parents will not care if the child is exposed to or taught racist or sexist beliefs. But many parents and judges will care, and, between the two, the parents should be the ones to choose whether to expose their children to certain people or ideas." 137 Wash. 2d, at 21, 969 P. 2d, at 31 (citation omitted).

Footnote 5

This is the pivot between *Justice Kennedy*'s approach and mine.

FOOTNOTES

Footnote 1

* This case also does not involve a challenge based upon the Privileges and Immunities Clause and thus does not present an opportunity to reevaluate the meaning of that Clause. See *Saenz* v. *Roe*, 526 U. S. 489, 527-528 (1999) (*Thomas, J.*, dissenting).

FOOTNOTES

Footnote 1

The State Supreme Court held that, "as written, the statutes violate the parents' constitutionally protected interests." *In re Smith*, 137 Wash. 2d 1, 5, 969 P. 2d 21, 23 (1998).

Footnote 2

As the dissenting judge on the state appeals court noted, "[t]he trial court here was not presented with any guidance as to the proper test to be applied in a case such as this." *In re Troxel*, 87 Wash. App. 131, 143, 940 P. 2d 698, 703 (1997) (opinion of Ellington, J.). While disagreeing with the appeals court majority's conclusion that the state statute was constitutionally infirm, Judge Ellington recognized that despite this disagreement, the appropriate result would not be simply to affirm. Rather, because there had been no definitive guidance as to the proper construction of the statute, "[t]he findings necessary to order visitation over the objections of a parent are thus not in the record, and I would remand for further proceedings." *Ibid.*

Footnote 3

Unlike *Justice O'Connor*, *ante*, at 10-11, I find no suggestion in the trial court's decision in this case that the court was applying any presumptions at all in its analysis, much less one in favor of the grandparents. The first excerpt *Justice O'Connor* quotes from the trial court's ruling, *ante*, at 10, says nothing one way or another about *who* bears the burden under the statute of demonstrating "best interests." There is certainly no indication of a presumption *against* the parents' judgment, only a " `commonsensical' " estimation that, usually but not always, visiting with grandparents can be good for children. *Ibid.* The second quotation, *ante*, at 11, " `I think [visitation] would be in the best interest of the children and I haven't been shown that it is not in [the] best interest of the children,' " sounds as though the judge has simply concluded, based on the evidence before him, that visitation in this case would be in the best interests of both girls. Verbatim Report of Proceedings in *In re Troxel*, No. 93-3-00650-7 (Wash. Super. Ct., Dec. 14, 1994), p. 214. These statements do not provide us with a definitive assessment of the law the court applied regarding a "presumption" either way. Indeed, a different impression is conveyed by the judge's very next comment: "That has to be balanced, of course, with Mr. and Mrs. Wynn [a.k.a. Tommie Granville], who are trying to put together a family that includes eight children, ... trying to get all those children together at the same time and put together some sort of functional unit wherein the children can be raised as brothers and sisters and spend lots of quality time together." *Ibid.* The judge then went on to reject the Troxels' efforts to attain the same level of visitation that their son, the girls' biological father, would have had, had he been alive. "[T]he fact that Mr. Troxel is deceased and he was the natural parent and as much as the grandparents would maybe like to step into the shoes of Brad, under our law that is not what we can do. The grandparents cannot step into the shoes of a deceased parent, per say *[sic]*, as far as whole gamut of visitation rights are concerned." *Id.*, at 215. Rather, as the judge put it, "I understand your desire to do that as loving grandparents. Unfortunately that would impact too dramatically on the children and their ability to be integrated into the nuclear unit with the mother." *Id.*, at 222-223.

However one understands the trial court's decision--and my point is merely to demonstrate that it is surely open to interpretation--its validity under the state statute as written is a judgment for the state appellate courts to make in the first instance.

Footnote 4

Justice Souter would conclude from the state court's statement that the statute "do[es] not require the petitioner to establish that he or she has a substantial relationship with the child," *In re Smith*, 137 Wash. 2d 1, 21, 969 P. 2d 21, 31 (1998), that the state court has "authoritatively read [the `best interests'] provision as placing hardly any limit on a court's discretion to award visitation rights," *ante*, at 3 (*Souter, J.*, concurring in judgment). Apart from the question whether one can deem this description of the statute an "authoritative" construction, it seems to me exceedingly unlikely that the state court held the statute unconstitutional because it believed that the "best interests" standard imposes "hardly any limit" on courts' discretion. See n. 5, *infra*.

Footnote 5

The phrase "best interests of the child" appears in no less than 10 current Washington state statutory

provisions governing determinations from guardianship to termination to custody to adoption. See, *e.g.*, Wash. Rev. Code §26.09.240 (6) (Supp. 1996) (amended version of visitation statute enumerating eight factors courts may consider in evaluating a child's best interests); §26.09.002 (in cases of parental separation or divorce "best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care"; "best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm"); §26.10.100 ("The court shall determine custody in accordance with the best interests of the child"). Indeed, the Washington state courts have invoked the standard on numerous occasions in applying these statutory provisions--just as if the phrase had quite specific and apparent meaning. See, *e.g.*, *In re McDoyle*, 122 Wash. 2d 604, 859 P. 2d 1239 (1993) (upholding trial court "best interest" assessment in custody dispute); *McDaniels* v. *Carlson*, 108 Wash. 2d 299, 310, 738 P. 2d 254, 261 (1987) (elucidating "best interests" standard in paternity suit context). More broadly, a search of current state custody and visitation laws reveals fully 698 separate references to the "best interest of the child" standard, a number that, at a minimum, should give the Court some pause before it upholds a decision implying that those words, on their face, may be too boundless to pass muster under the Federal Constitution.

Footnote 6

It necessarily follows that under the far more stringent demands suggested by the majority in *United States* v. *Salerno*, 481 U. S. 739, 745 (1987) (plaintiff seeking facial invalidation "must establish that no set of circumstances exists under which the Act would be valid"), respondent's facial challenge must fail.

Footnote 7

The suggestion by *Justice Thomas* that this case may be resolved solely with reference to our decision in *Pierce* v. *Society of Sisters*, 268 U. S. 510, 535 (1925), is unpersuasive. *Pierce* involved a parent's choice whether to send a child to public or private school. While that case is a source of broad language about the scope of parents' due process rights with respect to their children, the constitutional principles and interests involved in the schooling context do not necessarily have parallel implications in this family law visitation context, in which multiple overlapping and competing prerogatives of various plausibly interested parties are at stake.

Footnote 8

This Court has on numerous occasions acknowledged that children are in many circumstances possessed of constitutionally protected rights and liberties. See *Parham* v. *J. R.*, 442 U. S. 584, 600 (1979) (liberty interest in avoiding involuntary confinement); *Planned Parenthood of Central Mo.* v. *Danforth*, 428 U. S. 52, 74 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights"); *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 506-507 (1969) (First Amendment right to political speech); *In re Gault*, 387 U. S. 1, 13 (1967) (due process rights in criminal proceedings).

Footnote 9

Cf., *e.g.*, *Wisconsin* v. *Yoder*, 406 U. S. 205, 241-246 (1972) (Douglas, J., dissenting) ("While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. He may want to be a pianist or an astronaut or an oceanographer. To do so he will have to break from the Amish tradition. It is the future of the student, not the future of the parents, that is imperiled by today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that

we have today... . It is the student's judgment, not his parents', that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny."). The majority's disagreement with Justice Douglas in that case turned not on any contrary view of children's interest in their own education, but on the impact of the Free Exercise Clause of the First Amendment on its analysis of school-related decisions by the Amish community.

Footnote 10

See *Palmore* v. *Sidoti*, 466 U. S. 429, 431 (1984) ("The judgment of a state court determining or reviewing a child custody decision is not ordinarily a likely candidate for review by this Court"); cf. *Collins* v. *City of Harker Heights*, 503 U. S. 115, 128 (1992) (matters involving competing and multifaceted social and policy decisions best left to local decisionmaking); *Regents of the University of Michigan* v. *Ewing*, 474 U. S 214, 226 (1985) (emphasizing "our reluctance to trench on the prerogatives of state and local educational institutions" as federal courts are ill-suited to "evaluate the substance of the multitude of academic decisions that are made daily by" experts in the field evaluating cumulative information"). That caution is never more essential than in the realm of family and intimate relations. In part, this principle is based on long-established, if somewhat arbitrary, tradition in allocating responsibility for resolving disputes of various kinds in our federal system. *Ankenbrandt* v. *Richards*, 504 U. S. 689 (1992). But the instinct against over-regularizing decisions about personal relations is sustained on firmer ground than mere tradition. It flows in equal part from the premise that people and their intimate associations are complex and particular, and imposing a rigid template upon them all risks severing bonds our society would do well to preserve.

FOOTNOTES

Footnote 1

Whether parental rights constitute a "liberty" interest for purposes of procedural due process is a somewhat different question not implicated here. *Stanley* v. *Illinois*, 405 U. S. 645 (1972), purports to rest in part upon that proposition, see *id.*, at 651-652; but see *Michael H.* v. *Gerald D.*, 491 U. S. 110, 120-121 (1989) (plurality opinion), though the holding is independently supported on equal protection grounds, see *Stanley*, *supra*, at 658.

Footnote 2

I note that respondent is asserting only, *on her own behalf*, a substantive due process right to direct the upbringing of her own children, and is not asserting, *on behalf of her children*, their First Amendment rights of association or free exercise. I therefore do not have occasion to consider whether, and under what circumstances, the parent could assert the latter enumerated rights.

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