

**CHALLENGING JUVENILE COURT CORRUPTION:
AN EXPOSÉ AND POINTS AND AUTHORITIES
IN SUPPORT OF THE PARENT'S RIGHT
TO A JURY TRIAL IN
JUVENILE COURT DEPENDENCY PROCEEDINGS**

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B.A., California State University, Sacramento, 1982

PROJECT

Submitted in partial satisfaction of
the requirements for the degree of

MASTER OF ARTS

in

GOVERNMENT

at

CALIFORNIA STATE UNIVERSITY, SACRAMENTO

Spring
1990

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Stephen David Konnoff

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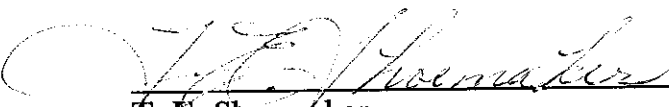
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A Project

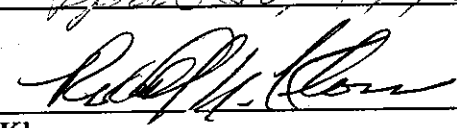
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Mignon Gregg, Graduate Coordinator Date
Department of Government

Abstract
of
**CHALLENGING JUVENILE COURT CORRUPTION:
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The juvenile courts of California are extremely powerful, secret bureaucracies where the opportunities for corrupt acts or omissions are unchecked by any countervailing powers. This is especially apparent with regard to the juvenile court's dependency proceeding which is the focus of this project. This project calculates where, when, how and by whom such corruption is perpetrated. This project also offers parents or legal counsel a lengthy legal argument in support of a parent's right to a jury trial in juvenile court dependency proceedings.

This project represents original research into the opportunities for corruption of the juvenile court dependency process. Four separate and relevant computer data bases were searched; dissertation abstracts from 1872 to present were searched and, of course, library holdings were also carefully checked. Not one of these investigations revealed a single article, book, or discussion of the specific problem of corruption in the juvenile court dependency process.

The opportunities for the occurrence of corruption in the California juvenile court dependency process are abundant and pervasive. The financial incentives to

such corruption are enormous, and there exists little or no disincentive to the successful perpetration of such corruption. The result is devastatingly harmful to children, families, and to the public.

Committee Chair's Signature of Approval

A handwritten signature in cursive script, appearing to read "L. E. Hovener", is written over a horizontal line.

Name of Student: Stephen David Konnoff

I certify that this student has met the requirements for format contained in the Manual of Instructions for the Preparation and Submission of the Master's Thesis or Master's Project, and that this thesis or project is suitable for shelving in the Library and credit is to be awarded for the thesis or project.

Mignon Gregg 5-1-90
Mignon Gregg, Graduate Coordinator Date
Department of Government

PREFACE

Due, in part, to my lobbying efforts at the California State Capitol I became well acquainted with California juvenile court law. I also met with dozens of parents and children, many lawyers, several judges and social workers, and others involved with or associated with the juvenile court. These meetings left me with numerous impressions and questions. To illustrate, from the parents and children I invariably heard reports of oppression and indignity suffered at the hands of juvenile court judges and bureaucrats. On the other hand, from the judges, lawyers and - especially - social workers my questions and attempts at discussion were, generally, greeted with condescension and contempt.

While the parents and children were always willing, and very often eager, to permit me to examine their court documents and case files and to answer questions, the social workers, judges, etc., would never discuss a case. Uniformly, these bureaucrats would claim "confidentiality". When I tried to discuss the system in abstract or theoretical terms I often heard an arrogant dismissal that, in effect, stated "you cannot possibly understand the system since you are not one of us", ie., a judge, a lawyer, or a social worker.

But, being a determined and persistent researcher, I was not to be so discouraged. From my growing knowledge of juvenile court statutory law and from my continuing association with parents and children who opened their files to me I began to perceive several common factors associated with the juvenile court dependency process. The common factors I discerned from hundreds of pages of court documents involved arbitrariness, fraud, perjury, greed and malice, and abuse

of power. The more familiar I became with these patterns, the more there emerged the unmistakably pernicious influence of corrupt absolute power and incalculable profit.

In each county the juvenile court sits at the apex of a system - an industry really - of county bureaucracies and private businesses that market children in return for huge amounts of money that flow from a multifaceted conglomerate of federal and state funding sources. This is a secret industry. It functions behind a secure wall of confidentiality invoked by the power of the court. It is, therefore, accountable to no one.

Accountable to no one? Initially the question seemed unreal to me, for surely all government institutions in America are structured in accordance with the wise theory of a system of checks and balances. Indeed, even the Central Intelligence Agency is answerable to Congress. Perhaps the appellate courts check the power of the juvenile courts? My research reveals that the appellate courts could provide countervailing power but, in practice, they clearly do not. There are numerous reasons for this lack of appellate oversight and these reasons are discussed in this project.

Corrupt and accountable to no one. That is the image of the juvenile court that is depicted from research. I am surprised that I seem to be the pioneer of this research. I searched the social science literature and I was amazed to discover not even one source dealing with corruption in the juvenile court dependency process (however there is some work concerning due process problems in the legal periodicals). I realize that the court itself discourages critical research from being attempted. It is, after all, a secret court. Alternatively, traditionally research in the

social sciences has been focused upon the criminal justice function of the juvenile court. Delinquency, I suppose is a sexier topic for the text publishers and the masses of social science students. The data is certainly more plentiful and accessible. Of course, the prevention and "treatment" of crime and delinquency is, as a topic for research, more likely to draw support and funding from the court system itself than is investigatory, critical research of the court's corruption.

I believe serendipity has played a large part in my discovery of this corruption problem. First, because of the many people - parents and children - that prompted my attention and interest. Second, because I had the time and ability to do the research and think through the problem(s). And, third, because I had become disenchanted with the study of social science. Previously I had been deeply bored with the status quo type sociology of brown-bag lunches, and with the annoying, tired, utopian Marxism so prevalent in the homilies of some schools of American sociology. I shudder at what has been done, redone, and redone again in the tedious, pedantic style of easychair, self-described "critical" sociologists and curve-drawing political scientists.

It is serendipitous to discover a true social problem. I find it invigorating to identify the problem and then propose solutions. I hope other researchers are similarly stimulated; the best solutions are the products of many efforts.

DEDICATION

**IN MEMORY OF FAMILY
AND LIBERTY**

ACKNOWLEDGEMENTS

I thank all those parents and children who shared with me their experiences and documentation. May the future vindicate you and reunite you with your families.

I thank all the proponents of family rights struggling to preserve the family against bureaucratic hegemony - and especially Georgia Uremovic.

I thank my mother and father, George and Olga Konnoff. They persistently encouraged me to obtain a college education. I have one and I cherish it. They were right all along.

To my children Illya Anton Konnoff, Anastasia Stephanie Marie Konnoff, and Ivan Stephan Konnoff: Learn from this.

Above all I thank my wife Loretta. She endured our travails and has done me good and not evil all the days of her life. Her background in sociology provided me with much valuable feedback. Beyond the intellectual efforts she contributed, I thank her for tolerating the mess my paperwork created all over the house and, especially, upon the kitchen table. But more, I thank her for who she is and I shall love her always.

Thanks also to Professors T. E. Shoemaker, R. M. Kloss, and M. Gregg for their guidance and assistance.

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PART I

OPPORTUNITIES FOR CORRUPTION IN JUVENILE COURT

Introduction

Corruption in government has been a social problem for a very long time. This fact of human social behavior was clearly understood by the authors of the United States Constitution. Indeed, the checks and balances of power explicitly written into the American Constitution represents a systematic and deliberate effort to minimize the opportunities for corruption in government. The formula of dividing government into executive, judicial and legislative parts creates interdependence and accountability. This formula is repeated in the constitutions of the several states.

However, the balance of power formula does not apply to the California Juvenile Court (and, quite likely, not to the juvenile courts of other states as well). This juvenile court is a secret court with the power and the resources to avoid accountability and to cover-up corruption. There can be no countervailing power to a power exercised in secrecy and which is thereby shielded from the scrutiny of the public or their elected representatives. In such a protected atmosphere corruption is likely to occur.

The focus of this project are the opportunities for corruption in the California Juvenile Court. Secrecy and power are, of course, two enabling factors for the exploitation of corrupt opportunities. Ability and incentive also add to the probability of occurrence. Another important factor is the lack of a negative sanction. For there really is no disincentive - negative sanction - realistically

threatening those who engage in corrupt activity in the secret empire of the juvenile court. All of the corrupt acts described herein are easily accomplished and easily concealed. It is extremely unlikely that any particular act could ever be successfully prosecuted criminally or civilly. Hence, there is simply no deterrent, no countervailing power to prevent the routine occurrence of corruption in the California Juvenile Court.

CHAPTER 1: OVERVIEW

Introduction

This project is concerned with corruption in the California Juvenile Court dependency process. Like nearly all other juvenile court systems in America, the California Juvenile Court has two significant and distinct functions. The juvenile court sits in judgment of juvenile criminal defendants, and it also decides which minor, non-criminal children brought before it shall be declared "dependents" of the state. It is this latter function upon which this project is focused.

Surprisingly little critical social science research or inquiry has been directed at the dependency function of the juvenile courts. Instead, the overwhelming majority of studies and critical reports have been concerned with the criminal justice function of the court. Indeed, the literature abounds with volumes discussing delinquency, due process, or disposition.¹ In order to fully appreciate the implications of this project, the reader may benefit from a brief review of the criticisms that have been pointedly aimed at the juvenile court's criminal justice function.

¹ Very good bibliographic sources are to be found in: National Clearinghouse for Mental Health Information, The Juvenile Court: A Status Report (Maryland: National Institute of Mental Health, 1971); and John C. Hall, et al, Major Issues in Juvenile Justice Information and Training (Ohio: Academy for Contemporary Problems, 1981).

The juvenile courts in America were, for the most part, established around the turn of the century, approximately 1900. Since this beginning², critics within and without the juvenile court have lamented the deleterious effects of the absence of due process, the vague and subjective statutory law relating to "delinquent" conduct, the high rates of recidivism and incarceration, and in general, the total failure of the juvenile courts to realize the ideal offered to justify their creation; that is, a specialized court which would deliver enlightened justice, compassion, rehabilitation and guidance to juveniles.

Since those early days the juvenile court's critics have been repeatedly disappointed and outraged with the courts' egregious performance. Finally, in 1966, in the due process case of In Re Gault, the U.S. Supreme Court summed up the disgust of legal and social science communities. The juvenile court, suggested the Supreme Court majority, is a "kangaroo court"³. Justice Fortas observed that:

the rhetoric of the juvenile court movement has developed without any necessarily close correspondence to the realities of court and institutional routines.⁴

The Supreme Court's sharp criticism in Gault was, in part, motivated by the recurrent abuses and failure of the juvenile courts over the previous fifty to sixty

² Ryerson reports that as early as 1911 "several major cities witnessed exposes and investigations of their courts" and that "in Illinois, the birthplace of reform, the legislature passed a bill which would have done away entirely with the juvenile court system had the governor not vetoed it". Ellen Ryerson, The Best Laid Plans: America's Juvenile Court Experiment (New York: Hill and Wang, 1978), 78.

³ In Re Gault 387 U.S. 1, at 28 (1966).

⁴ Gault, supra, at 30.

years. Gault extended some due process protections to juvenile defendants. The Gault court sighed with disapproval:

(j)uvenile court history has again demonstrated that unbridled discretion, however, benevolently motivated, is frequently a poor substitute for principle and procedure.⁵

Thus, the collective and widespread faults of the juvenile court's criminal justice function eventually - but belatedly - resulted in review by the U.S. Supreme Court.

The Gault decision and subsequent U.S. Supreme Court decisions⁶ ostensibly resulted in meaningful reform in America's juvenile criminal justice system. However, in reality such reform appears to be superficial. For example, Kittrie noted in 1971 that "Gault (and other) decisions remain restricted in application."⁷ He also concluded that numerous other due process questions remained unanswered by the U.S. Supreme Court.⁸ And, even to those issues addressed by the high court, there is evidence that the due process protections extended by Gault are not being respected in America's juvenile courts. As recently as 1980, Sprowls, in a study on discretion and lawlessness in juvenile courts, reports that "compliance and impact studies (have) suggested that juvenile court practices remained essentially

⁵ Gault, *supra*, at 19.

⁶ In Re Winship 397 U.S. 358 (1969); McKeiver et al. v. Pennsylvania 403 U.S. 528 (1971); Breed v. Jones 421 U.S. 519 (1975).

⁷ Nicholas N. Kittrie, The Right To Be Different: Deviance and Enforced Therapy (Baltimore: Johns Hopkins, 1971), 152.

⁸ Kittrie, 153.

unchanged"⁹ since the Gault decision. It must be noted that Sprowls' assessment occurs fourteen years after the U.S. Supreme Court's decision in the Gault case.

Juvenile Court Dependency Jurisdiction

The California Juvenile Court was established as a division of the superior courts in 1909.¹⁰ As previously mentioned, the court functions as both a child welfare court and as a juvenile criminal justice court. The child welfare function is authorized at section 202(b) of the California Welfare and Institutions Code (hereafter referred as WIC) which provides that:

(m)inors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment and guidance consistent with their best interests and the best interest of the public.

Hence, the juvenile courts of California are given an altruistic and normative-legal mandate to promote the well-being of a court dependent minor in accordance with the "best interests" of the child and the community. In reality such altruism accounts for very little of the court's activities and, in a consistent majority of cases, the well-being of the child and the community is actually harmed.¹¹

⁹ James T. Sprowls, Discretion and Lawlessness: Compliance in the Juvenile Court (Lexington: Heath, 1980), 23.

¹⁰ Stats 1909 Ch 133, sec. 1, p. 213, as amended by stats 1911 ch 48 sec. 1, p. 64, et seq. Presently known as the Arnold-Kennick Juvenile Court Law.

¹¹ Douglas Besharov observed that over half of the children in foster custody are in such custody for over two years, more than a third are away from their families for over six years, and further that up to half of such children in foster custody were in no immediate danger of serious physical injury when captured from their natural homes. Douglas J. Besharov, "How Child Abuse Programs Hurt Poor Children: The Misuse of Foster Care," Clearinghouse Review, July, 1988, pp. 219-227.

The Juvenile Court As A Social Problem

During the 1970s the United States Congress became aware that the juvenile courts of the various states were failing miserably in the courts' child welfare function.¹² Scandals were routinely reported in the media involving the unnecessary removal of children from their homes, the foster care homes and institutions were being filled beyond capacity, and seldom were such children reunited with their families.¹³ In response, Congress passed the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272). Among the most significant provisions of the law are provisions which require juvenile court judges to determine whether or not "reasonable efforts" have been made by child welfare agents to enable children to remain safely at home before they are placed in foster custody. This Act also required that "reasonable efforts" be made to reunite children with their biological parents where feasible.

In California, in 1988 data from the State Department of Social Services indicate that the goals of PL-96-272 are far from being realized. The average length of time a state dependent child remains in foster custody is 19.3 months.¹⁴

¹² Joint Hearings on Foster Care Before the House Subcomm. on Select Education and the Senate Subcomm. on Children and Youth, 94th Cong., 1st Sess. (1975).

¹³ See, e.g., J. Knitzer and M. L. Allen, Children Without Homes (Washington, D.C.: Children's Defense Fund, 1978); S. Vasaly, Foster Care in Five States: A Synthesis and Analysis of Studies from Arizona, California, Iowa, Massachusetts and Vermont (Washington, D.C.: Dept. of H.E.W., 1976).

¹⁴ State of California, Dept. of Social Services, Statistical Services Section, April 18, 1988.

Furthermore, of the 58,780 cases active in March of 1988, only 10,303 dependent children were reunified with their families (less than 20%).¹⁵ From March 1986 to March 1988 an additional 11,745 children¹⁶ were made dependents of the state of California. Clearly, the intent of Congress is not being realized in the juvenile court system.

One explanation often given by juvenile court supporters is the claim that so many children are being abused in their family homes. But, even the Director of the California State Department of Social Services (D.S.S.) admits that "approximately 60% of all child abuse reports are unfounded."¹⁷ Likewise, other D.S.S. data reveals that of 58,069 cases for the year ending in June 1988, fully 76% of these children were placed under foster custody for reasons other than physical or sexual abuse.¹⁸ Douglas Besharov, the first Director of the U.S. National Center on Child Abuse and Neglect (1975-1979) testified before a Congressional Committee in 1987 that nationwide "over 500,000 families are put through investigations of unfounded reports."¹⁹

In the light of such data and criticism it is obvious that the juvenile courts of California - like those of most of the other states - are acting contrary to the best

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ McMahon, Linda, Testimony at Little Hoover Commission Hearing, San Francisco, CA, Sept. 25. 1986.

¹⁸ Child Welfare Services and AFDC-Foster Care: Budget Analysis, 1989-1990 (Sacramento: California Coalition of Welfare Rights Organizations) April, 1989, 5.

¹⁹ Douglas J. Besharov, Statement Before The Select Committee on Children, Youth, and Families, March 3, 1987.

interests of children and society. The costs to the state of California of foster custody alone amounts to an estimated 904.1 million dollars (est. 1989-1990).²⁰ When these state expenditures are added to the foster custody contributions of the counties and the federal government, the total outlay in California for foster custody is a stunning \$1,267.7 billion dollars.²¹ These figures do not, of course, include the administrative cost of the court itself, nor, do these statistics detail the human misery in terms of destroyed families, or children injured or abused in the state's "care", etc. One sad example is the fact that even the state of California admits that approximately 800 children die annually in foster custody.²²

Absolute And Unaccountable Power

When compared to the adult divisions of the California Superior Courts, the juvenile court presents a picture of nearly limitless power. As Dean Pound phrased it in 1937, "(t)he powers of the Star Chamber were a trifle in comparison with those of our juvenile courts...."²³ This would be an understatement if made today. For the juvenile court exercises a power over the lives and property both children and adults

²⁰ Child Welfare Services and AFDC-Foster Care: Budget Analysis, 1989-1990, 1.

²¹ Ibid, 1.

²² Answer to interrogatory question by Dennis Eckhart, Deputy Attorney General, State of California in U.S.A. ex rel, Kevin M. Aslanian, et al vs. George Deukmejian, et al; CVS 88-1156 ELG -- EM.

²³ Foreword to Young, Social Treatment in Probation and Delinquency (1937), xxvii, as quoted in In Re Gault 387 U.S. 1, at 18.

that is virtually unbounded by time and space, constitutional or statutory law. To illustrate, the California Welfare and Institutions Code, section 245.5 states that:

In addition to all other powers granted by law, the juvenile court may direct all such orders to the parent, parents, or guardian of a minor who is subject to any proceedings under this chapter as the court deems necessary and proper for the best interests of or the rehabilitation of the minor.

This grant of a blank check power can be anything deemed "necessary and proper". It has been used to order a parent out of his own home indefinitely,²⁴ it has been used to force entire families to submit to coercive counseling - and to pay for it - and, as may be discerned, this statute can be used to justify virtually any and every oppressive, malicious, or corrupt activity of the court.

Furthermore, the statutory law describing "persons subject to the jurisdiction of juvenile court" is replete with predictive language. California Welfare and Institutions Code, section 300 et seq contains phrases like the following:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer....(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering...etc, (emphasis added).²⁵

Such prediction language is another grant of arbitrary and unlimited power to the juvenile court. For, it is clear, whenever there is an absence of evidence or fact the court need only assert a belief that there is an "at risk" situation. In other words, there need not be any actual abuse or neglect of a minor in order for the court to take that child away from his/her family. There need only be a belief that the child might, in the future, become abused or neglected. This is in sharp contrast to the

²⁴ Case of Richard and Crystal L., Sacramento County, CA, 1988.

²⁵ For the complete text of California Welfare and Institutions Code, section 300, refer to Appendix #1.

criminal justice proceeding of the juvenile court where, at least, there must be an alleged criminal act before the court can incarcerate a child.

For all the peculiarities of juvenile court law, there are two predominant and interrelated characteristics that enable the court to be an agency of almost unlimited power and injustice. The first is that the juvenile court is a secret court. In either a criminal or dependency proceeding neither the public nor the press is permitted to observe the action. In a dependency proceeding there is often no court recording²⁶ and, in many instances, a parent involved in a dependency proceeding will not be informed of the exact allegations being brought against the parent until the moment he or she is called before the judge. Simple recordkeeping, where it exists, is not standardized among the many jurisdictions and, in fact, the counties do not collect and report to the state even such elementary information as, for example, how many dependency actions were sustained and/or upon what allegations were dependency proceedings instituted. Consequently:

No component of the criminal justice system except the jury is better able to protect its interests or shield its activities from external scrutiny, however, than is the juvenile court. While "confidentiality" in the juvenile court has long been cherished because of the protection it ostensibly provides the juvenile, there is every reason to believe that the principle of confidentiality is infinitely more functional as a device for protecting the court.²⁷

Indeed, it would be utterly remarkable - and it is highly improbable - if such secrecy were never used to cover-up misfeasance, malfeasance, or non-feasance in the juvenile court. Clearly, the ability, opportunity, potential, and incentive exist for the

²⁶ A court recording may be made upon motion. However, few parents can afford the costs of transcription.

²⁷ Sprowls, 88.

court to utilize secrecy to perpetuate or cover-up any act or pattern of acts of corruption.

The second characteristic enabling the juvenile court to exercise unchecked power is the absence of a jury. In the adult criminal justice system juries function as a check upon arbitrary power. The citizen as trier of fact serves as counterweight to the awesome power of the state and the machinations of overzealous or malicious prosecutors. And, as a citizen representative of the electorate, the juror serves as a reminder to the elected officials of the court - judge and prosecutor - that flagrant misconduct or abuse of power can have political consequences for those officials. However, since there is no jury in the juvenile court, the judge not only makes the final decision in the case before him, but, he is also insulated from the scrutiny of the community. Thus, the lack of a jury trial may be the single most important factor in the juvenile court's ability to exercise virtually omnipotent power and to effectively resist or ignore all efforts to reform it.

CHAPTER 2: STATEMENT OF THE PROBLEM

Corruption in the dependency process of California's juvenile courts can have the most severe and devastating social consequences. The lives of hundreds of thousands of children, mothers, fathers, and grandparents, may be forever destroyed or irreparably damaged. Entire families may be extinguished as their only heirs or heiresses are concealed from the family in the apparatus of the huge dependency bureaucracy/industry. Parents and children, brothers and sisters may never again see one another; children may never know their real names, their real parents, real grandparents or relatives. Such children may never know a real home.

Such corruption and injustice for power and profit threatens the very heart of liberty, freedom, and democracy. The secret tyranny of the juvenile court is antithetical and repugnant to the actual and ideal self-evident truths of human rights and life, liberty and pursuit of happiness. The corrupt acts or omissions of the juvenile court are crimes against humanity. The secret juvenile court is a totalitarian institution of government which forcibly teaches those unfortunate persons who are brought under its control that they are not citizens endowed with certain secured and unalienable rights, but rather, it teaches both parents and children that they are mere creatures of the state without any innate human rights. Such lessons are seldom forgotten, and those who are treated to such lessons are likely to be angry, frustrated and hostile to the society that tolerates such totalitarian institutions.

The children torn from their families, shifted from one government "care" facility to another, abused or neglected in some, exploited or experimented with in others, may be supposed to develop without any trust in the lofty political or social

principals of the adult world. State-raised, these youth will have no role-models of parents and relatives who love them and care for them. They will know only strangers whose concern for them extends not beyond official hours, duties and funding. It may be supposed that, accustomed to such institutionalization, these youths will engage in behaviors that lead them back to the state's care in prison or in mental hospitals.

Of course, it is the taxpayers of California who bear the financial burdens created and perpetuated by a corrupt juvenile court. The taxpayers are thrice defrauded and deceived. First, the juvenile court very often fails the mission assigned to it, that is, to act in the best interests of children, and to provide protection and assistance to children in need. Thus, the court accomplishes nothing worthwhile at a very, very high financial cost. Second, the juvenile court very often acts as a conduit for the exploitation of children by individuals and businesses at taxpayer expense. Third, the taxpayers are burdened with the effects of the court's corrupt activities, that is, children or families consequently involved in the welfare or criminal justice systems.

The problem of corruption in the juvenile court dependency process derives from secrecy, power, ability, and incentive. The opportunity for corruption exists at each of the twelve phases of the dependency process. This first section of this project is an exploration of where in the dependency process corruption can occur, what type of corruption can occur, and who may be the perpetrators of such corruption. At each point, with each type of corruption, the reader should keep in mind that a potential perpetrator has the opportunity by virtue of secrecy, power, ability, and incentive, to engage in one or several of the activities possible. Likewise,

the reader is also reminded that multiple perpetrators and multiple acts of corruption are possible - even feasible - at each phase of the dependency process.

The second section of this project consists of a document known in the legal profession as points and authorities. This legal document may be used by parents or their legal counsel in support of a motion for a jury trial in juvenile court, or in support of a Writ of Prohibition or Mandate seeking the jury trial in juvenile court.

The points and authorities are written so as to address specific constitutional and parental rights issues and, thus, the facts or issues of any particular case will precede and be supported by such due process arguments. The result is a model points and authorities in support of a parent's right to a jury trial in juvenile court dependency proceedings.

CHAPTER 3: DEFINITION OF ESSENTIAL TERMS

Introduction

Qualitative definitions are inherently more difficult to describe than are, for example, quantitative definitions. Qualitative definitions often involve personal or normative judgements about what is "good" or "bad", "right" or "wrong". Developing an operational definition of a qualitative phenomenon is problematic. Consider the difficulty of defining "crime". The task appears to lead invariably into the area of value judgements. However, such philosophical hair-splitting is the province of professional methodologists. And, rather than become mired in the false dichotomy of moral absolutism versus moral relativism, this project proffers a normative, common sense approach to the problem of defining a value-laden term, that is, "corruption". We rely on the commonly accepted understanding of the term.

Corruption

Defining the term corruption has proven to be a difficult task for the few researchers who have attempted it.²⁸ The problem arises from trying to describe what is essentially a normative phenomenon in empirical terms. Those researchers

²⁸ Cf. J. S. Nye, "Corruption and Political Development: A Cost Benefit Analysis", American Political Science Review, LXI, 2 (June, 1967); or Edward C. Banfield, Political Influence (New York: The Free Press, 1961).

who favor an empirical approach may be represented by Nye²⁹ who suggests that corruption may be defined as:

behavior which deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains: or violates rules against the exercise of certain types of private-regarding influence.

Nye's definition is inadequate however. First, it excludes forms of corruption which occur within the formal duties of officials or agents. For example, a public prosecutor may use her power, position, and authority lawfully but with malice or with racial prejudice, etc. Likewise, the formal duty of a police officer includes the lawful use of deadly force, but, the actual use of deadly force might be motivated by a corrupt influence such as racism, revenge, or incompetence. Nye's conceptualization of corruption also excludes systemic or organizational corruption, that is, behavior which regards or is influenced by the work environment, the organization's demand for secrecy, or external pressure from other organizations, etc.

A better definition of corruption is suggested by McKinney who sub-categorizes corruption as fraud, waste, and abuse³⁰. McKinney combines a normative description of what corruption is with an empirical description of what corruption does. McKinney's sub-categories are:

1. Fraud, waste and abuse are violations of public trust.
2. They serve to convert public resources to private ends.
3. They constitute perversion of authority and make the uses of authority less accountable.
4. They involve failure to enforce laws, rules and regulations or to apply sanctions to a given situation.

²⁹ Nye, 1967, 416.

³⁰ Jerome B. McKinney and Michael Johnston, eds. Fraud, Waste, and Abuse in Government: Causes, Consequences and Cures. (Philadelphia: ISHI, 1986).

5. They involve the misapplication or wasteful use, intentional or otherwise, of available resources³¹.

McKinney's definitions are more comprehensive and detailed than Nye and, generally, McKinney at least touches many of the various manifestations and forms of corruption. Still, as McKinney himself says "these administrative pathologies involve behavior that violates or perverts some agreed upon standard...."³² This normative aspect of the "problem" of defining corruption seems to be inevitable, but it does not necessarily jeopardize the external or internal validity of a definition of corruption.

It is here asserted that where the subject of a corruption inquiry is itself a legal or normative social institution, the subject provides the ideals, value judgements, or situation-specific normative standards against which a measure of corruption can be made. Plainly where the very existence of a social institution is founded upon certain normative community standards and expectations, the optimal measure of corruption is deduced from the difference or similarity between the ideal and the real. The subject of this corruption investigation - the California Juvenile Court - provides the standards against which a legal-normative definition of corruption can be applied.

The California juvenile court is statutorily mandated to provide court dependent children with "care, treatment and guidance consistent with their best interests and the best interests of the public" (WIC 202(b)). This is obviously one specific, legal-normative standard of the court. But, there is also a more general

³¹ Ibid, 5.

³² Ibid, 6.

normative standard against which the court's behavior can be measured. Justice³³, fairness, equity, and compliance with the law are normative expectations which should be applied to all legitimate courts of law or equity. The business and duty of legitimate courts is justice. The degree to which a single court or a system of courts deviates from the duty to produce justice is the measure of its corruption - for whatever reason.

Therefore, for the purposes of this project the legal-normative standards which define the role, duty and reason for existence of the California juvenile court dependency proceeding (specifically WIC 202(b); generally, justice, fairness, and compliance with law) are the standards against which the following definition of corruption shall be applied. Corruption is:

1. Immoral; perverted; depraved. 2. Marked by venality and dishonesty. 3. Decaying; putrid. 4. Impure; contaminated; unclean. 5. Containing errors or alterations.... To destroy or subvert the honesty or integrity of 2. To ruin morally; to pervert. 3. To taint; contaminate; infect. 4 To cause to become rotten; spoil. 5. To change the original form of....³⁴

The reader will recognize that the above definition contains many of the same elements and key phrases utilized by McKinney in his description of what corruption

³³ "Justice" is itself a normatively loaded word. Even Socrates could do no justice to a definition of the word "justice", and in the generations since the time of Socrates there has been little improvement upon the definition, ie., a definition that is all-inclusive, empirical, and objective. Perhaps the word "justice" is incapable of such a scientific definition. I personally favor a formulation of the concept of justice based upon the Christian "Golden Rule", that is, doing unto others as one would have done to oneself.

³⁴ "Corrupt," The American Heritage Dictionary of the English Language, 1981. Interestingly Black's Law Dictionary contains a definition which is much less elaborate than the one we cite above.

does.³⁵ "Subverting or perverting the integrity", or "perversion of authority" are phrases that contain a special relevance for application to a legal-normative institution such as the juvenile court. We assert the above definition as used here to be tenable, compelling and valid.

The California Juvenile Court

To avoid a tedious literary style, the California Juvenile Court will often be referred to as simply "the court". Furthermore, the term "the court" is intended to apply to the entire California Juvenile Court system and it's related personnel such as judges, court social workers, county counsel, etc. Where specification is needed it will be employed, otherwise, "the court" includes all of the court's official personnel.

Child Welfare Services (C.W.S.)

As used here, C.W.S. includes the bureaucracies within or related to the juvenile court. Child protective services (C.P.S.), for example, is within the larger C.W.S. bureaucracy and is often, but not always, closely related to the activities of the juvenile court. C.W.S. agents function in a variety of ways; they may perform the pre-adjudication investigations of dependency cases, they file the dependency petitions, they operate as diagnosticians, they supervise foster custody children, they

³⁵ McKinney's description seems to include normative-legal concepts, that is activities that are criminal, unethical, or civilly wrong.

can recommend counseling or psychological examinations etc., and they are responsible for family maintenance or reunification efforts, etc. In many counties, C.W.S. is a separate department under the administration of the larger county welfare department bureaucracy.

Service Providers

Private, for profit or "non-profit" businesses or individuals often contract with the county C.W.S. and juvenile court bureaucracies to provide foster custody facilities, psychological and/or medical examinations or treatments, etc. Generally, the counties rely very heavily on these businesses, and these private entities are usually involved in every phase of the dependency process.

Auxiliary Service Providers

These are businesses that recruit and screen other service providers such as foster custodians or group custody facilities. This category also includes the provision of specialized types of psychological or medical services or treatments.

Juvenile Court Dependency Process

In a strictly legal interpretation, the juvenile court dependency proceeding is officially begun when a legal petition for dependency is filed with the juvenile court. This project utilizes a definition of dependency process which includes the pre-

judicial and after-judicial phases of the dependency process. In defense of this larger scope it must be recognized that juvenile court dependency law structures and determines the reporting and interrogation phases before a dependency petition is filed and, plainly, the court determines and shapes the outcome of any specific case after disposition.

CHAPTER 4: THE JUVENILE COURT DEPENDENCY PROCESS AND THE OPPORTUNITIES FOR CORRUPTION

Introduction

The following pages illustrate the flow of the court dependency process (Figure 1), and describes the types of corrupt opportunities. Following the flow chart and the descriptions of corrupt opportunities is a Table of Corrupt Opportunities and Probable Perpetrators. This table indicates at what point in the dependency process a specific type of corruption may occur and identifies the probable perpetrator. It must be emphasized that there may be more opportunities for corruption at each point than are reported here. Every effort was made to include every opportunity, perpetrator, and corrupt act or omission. However, there are probably some corrupt acts or omissions which were beyond our understanding or knowledge.

Additionally, although the tables include all of the persons officially related to the court dependency process, the reader is reminded that persons not officially to the court may also be involved in the corrupt activities. For example, the spouses of social workers or judges, etc., may, very easily, be in "therapy" schemes or other service provider businesses.

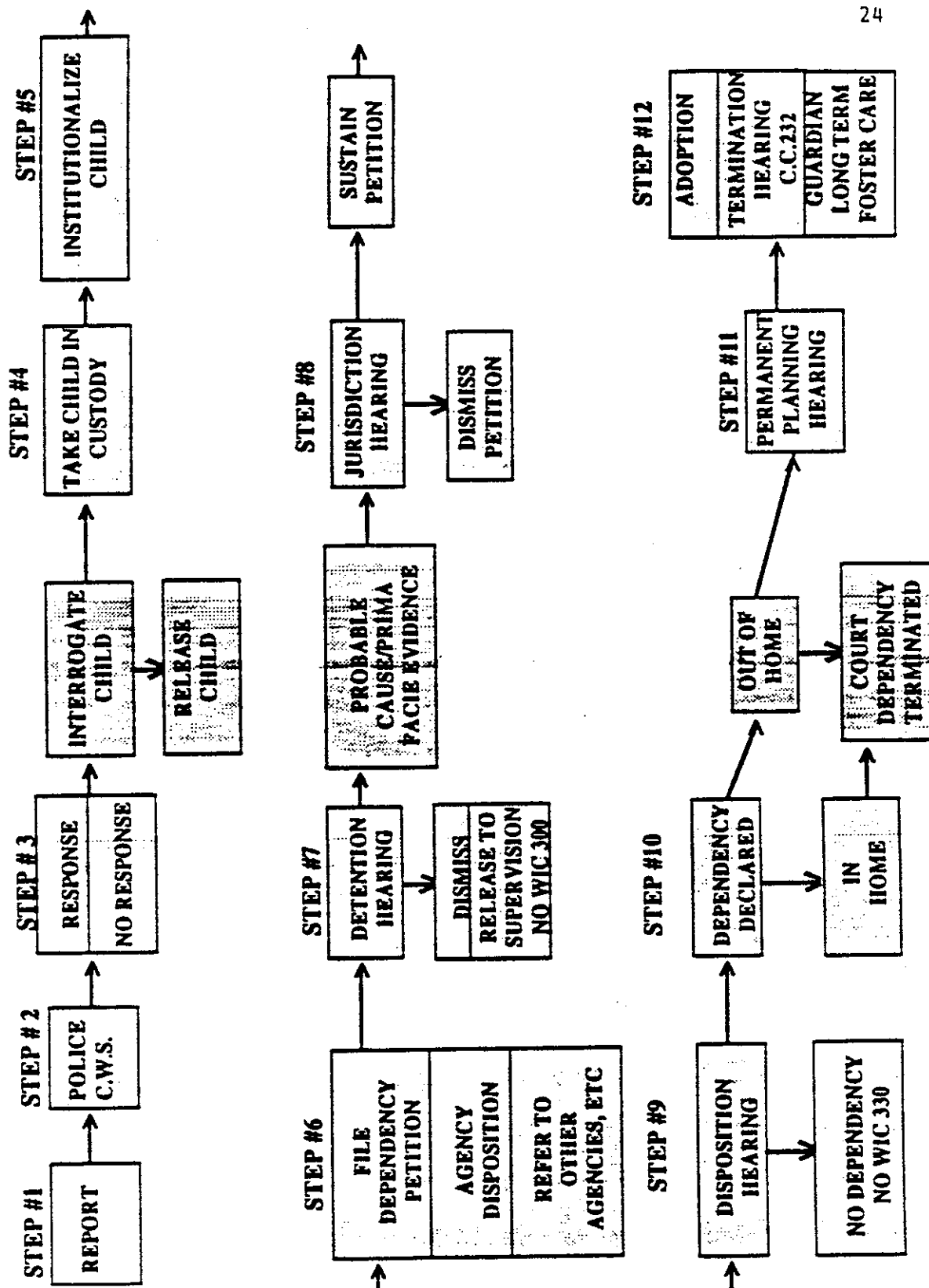


FIGURE #1- JUVENILE COURT DEPENDENCY PROCESS

Types of Corruption Described³⁶

Abuse, neglect of child: This may occur while the child is in the control of the state or county, ie. institutional or foster custody. It may involve either sexual or physical abuse or both. The primary opportunities for this type of corruption are available to C.W.S. staff, foster custodians, other confined youth, judges, etc. Neglect may be psychological, emotional, physical, medical, or legal. Deaths sometimes occur.

Accepting false reports: Such corruption occurs for various reasons. Among these reasons are the anonymity of the reporters, loose or contradictory definitions of child abuse or neglect in statutory and regulatory law, and the lack of education and experience of the report taker. Also, there are economic incentives that drive a county to capture large numbers of children (cf. the discussion of the political economy of the juvenile court in Chapter 5).

Adoption blackmarketing: C.W.S., court personnel, and service providers have the opportunity to sell children on the adoption blackmarket. All of the court's personnel, especially, have the ability to shape and influence the outcome that a particular case is directed towards. Service providers probably function more as "middle-men", locating and bargaining with prospective adopters, and arranging such illegal adoptions with the court or C.W.S.

Agency generated false reports: These reports may or may not involve malice. For example, a public health nurse might attempt to "qualify" the child of a homeless

³⁶ The following descriptions are not intended to be comprehensive but, rather, descriptive examples of each type. Plainly, each type may have many manifestations or variations. The reader is encouraged to envision how each type of corruption might be more comprehensively described.

family for medical benefits, etc. by overstating the child's medical condition to the C.W.S. On the other hand, law enforcement agents may seek to utilize the C.W.S./juvenile court agencies to bring pressure on a parent or parents in order to obtain information, cooperation or testimony in an unrelated criminal investigation or prosecution.

Altruistic false reports: These reports arise from error, ignorance, overreaction, hearsay, or misinformation, etc., on the part of well-intentioned persons.

Bribe offering/bribe taking: The offering or taking of a bribe of money or other consideration by anyone involved in the C.W.S. or court system.

Bureaucratic expedient: Handling a case in manner convenient to the agent or agency but not necessarily proper or in the best interests of the child or family. Thus, as in a case where the child is kept in solitary confinement in order to pressure the child into cooperation.

Case "banking"/case "cooking": A form of caseloading or caseunloading, this type of corruption differs in that the impetus is not solely the avoidance of work, but, rather bureaucratic expediency and/or political-economic manipulation. Thus, a C.W.S. agent may "bank" a case, ie., take no action until or unless another more "provable" report is received concerning the same child. Case "cooking" can involve deliberately letting a case remain officially off the books until the child is severely abused, neglected, or dead. Such cases once reported in the media along with the agent's denial of knowledge, can be effective in securing public support for increased funding and/or agency power. For an actual case in point see Deshaney vs. Winnebago County Dept. of social Services, 89 Daily Journal D.A.R. 2180 (1989).

Caseloading/unloading: Whether or not to accept or reject a case can depend upon the agent's own caseload, that of the agency, or the fiscal ambitions of the agency. For example, a new C.W.S. agent may be eager to establish herself as a zealous "child saver", or, alternatively, a C.W.S. agent with a large caseload may reject a case in order to avoid the extra work.

Coercion, intimidation of child/parent: Can involve threats to either parent or child in order to obtain cooperation or information. A parent may be intimidated into signing a "confession" under the threat of forever being separated from his/her child. A child may be threatened with the arrest of either or both parents unless he/she "cooperates".

Delay process: Any number of paperwork delays can be used to put pressure upon the parent. This creation of a hostage situation can enable the C.W.S. agency or the court to wear down an uncooperative parent or child. Also, where the child was initially captured upon little or no evidence, the delay of process provides the agencies time to fabricate evidence or statements.

Deprive child of civil rights: This type of corruption takes many forms and manifests itself at each point in the dependency process. Typical examples: At the first interrogation of the child, the child has a right to have legal counsel present. This is very rarely the situation in reality. Also, the child has a right to refuse a physical body search or examination. In reality such refusals are not respected by C.W.S. personnel.

Deprive parents of civil rights: Again, this type of corruption occurs everywhere in the Court dependency system from beginning to end. Examples: Refusing the parent the right to see, visit or speak with his/her child. Issuing an order to the

parent to leave his/her home, or ordering the parent to submit to psychological examinations, denying the parent(s) the right to a jury trial, etc.

Economic exploitation: Where the child or family is kept within the system solely to economically benefit a service provider, etc., or, where the service provider overcharges, or maintains a family or child within the system longer than is necessary. And, this includes the general economic benefit that a County economy derives from obtaining state funding for foster custody, etc.

Experimentation: In this instance a "therapist" or service provider uses the child or family as experimental subjects for the testing of a new psychological technique or theory, or medical therapy.

Extortion: Nearly every court or C.W.S. official, or service provider has the opportunity to extort money, property, or other forms of consideration from the family, parents or child.

Fabrication of evidence: This includes fabricating physical and testimonial "evidence". The fabrication of so-called "case histories" is routine; the deliberate fabrication of medical, psychological, and law enforcement reports by court bureaucrats, C.W.S., or service providers may be perpetuated to aid or cover-up corrupt acts or omissions, or to simply obtain the child. Absolute civil immunity for court social workers was created by court decision in Myers vs. Contra Costa County Dept. of Social Services, 812 Fed. 1154 (9th Cir., 1987).

Failure to inform the child of civil rights: Common sense and case law indicates that every child should be informed of his/her basic civil rights whenever a state agent attempts to interrogate him/her. Plainly, such a Mirandization is implied in Constitutional law, and moral propriety suggests that state agents exceed the

boundaries of human decency when they grill an uncooperative minor for information. The right to refuse to answer questions is but one example of the many rights of which a child should be informed upon contact with any county or state agent.

Failure to inform parents of civil rights: Miranda type warnings are almost never given to parents by C.W.S. personnel or the court. Before a parent or parents are questioned, or before the home is searched, parents should be advised of their civil rights. Such rights include the right of testimonial privilege, the right to refuse to submit to psychological examinations, the right to refuse a warrant-less search, etc.

Failure to investigate: Generally, C.W.S. workers or court social workers do not perform investigations. Instead, they rely on hearsay or statements extracted from the child or parents. Actual police-type investigations, with the careful collection and evaluation of evidence, are almost non-existent in the majority of dependency cases.

Fatigue expedient: This form of corruption arises when the C.W.S. agent, perhaps overburdened or fatigued, embellishes a case with false or misleading information in order to move the case along in the system. It may be supposed that irritability, personal problems, etc., can affect the decision-making of any C.W.S. or court worker.

Favor for friend: The friend or relative of a C.W.S. agent involved in a divorce-custody proceeding could benefit from the investigation and subsequent recommendation of C.W.S. These agents have the power to take a child away from one parent and give that child to the other parent without ever invoking the jurisdiction of the juvenile court.

Holding child incommunicado: Depriving the parents and child of communication is a common corrupt technique. This form of pressure is used to increase the agent's ability to get the parents or child to cooperate with the agency. Likewise, this is an effective method of keeping defense attorneys or parents from informing the child of his/her rights.

Inappropriate placement: This type of corrupt activity occurs for many reasons and has various forms. The placement of an allegedly neglected youth in a group facility containing children convicted of crimes is a frequent occurrence. Also, it often happens that children who refuse to cooperate with the court or C.W.S. agents are sent to psychiatric hospitals for "treatment". Children are sent to out-of-county or to out-of-state facilities in order to prevent or discourage visitation with family members.

Inclusion of hearsay: In all reports written for courts and/or agencies the inclusion of hearsay is so common that few court bureaucrats would recognize this as a potential evil. Indeed, in many cases, the only "evidence" offered is hearsay.

Ignorance, misinformation: This form of corruption is especially insidious. Ignorance and misinformation about child abuse can lead to hysterical and unwarranted intrusion into the lives of many families. Judges and social workers are especially susceptible to unreplicated, invalid or poorly done research. Agents in the field are not generally knowledgeable about physical or medical conditions which might be wrongly construed to be "symptoms" of child abuse or neglect.

Impose unnecessary services: The motives for this form of corrupt activity are several. These may include referring a family to an agent's spouse or a fellow agent for counseling, etc. Or, where there is an absence of deliberate or conscious

corruption, this may involve sending a child to a sexual abuse examination when such sexual abuse was never indicated or reported. Ordering parents to attend parenting classes - which teach how to care for infants - is unnecessary when the parent's children are teenagers.

Ignore exculpatory evidence: Court agents or C.W.S. agents can exclude information or evidence which proves that the allegations of child abuse or neglect are false. Such selective filtering of information thereby presents to the juvenile court judge a very one-sided version of the case.

Interagency favor: A police agency may request C.W.S. agents to capture the child of a parent from whom the police want information or cooperation in an unrelated criminal investigation. Such a tactic can be used to pressure reluctant witnesses into testifying on behalf of a police investigation.

Isolate child, deprive of comforts: Where a child refuses to "talk" or cooperate with C.W.S. agents, the child may be placed in isolation, denied food, or access to toilet facilities, etc.

Kickbacks: Court or C.W.S. agents may receive money from group facility operators to refer some children to the group facility. Judges have the opportunity to receive actual cash or campaign contributions from psychiatrists and psychologists, etc., for steering court ordered "evaluations" their way. There are numerous paths for C.W.S. agents or court agents to receive money from private court-related service providers and others.

Malice: Plainly, C.W.S. and court personnel are in positions of power which provide them with opportunities to make decisions based upon malice, anger, or frustration.

Malicious false reports: These reports may arise in the context of a divorce-custody dispute. One or both parents may allege that the other parent "abused" or permitted the child to be abused. Hostile neighbors, angry or malicious teenage children, or anyone else can also generate malicious false reports.

Medicating for control: Group facility operators, foster custodians, etc., can use drugs to control the behavior of the children under their control.

Oppressive control of family: This may be manifested by requiring a parent to leave the family home for an indefinite time. The court might order a parent to submit to a house search at any future time, or, to submit to costly psychological counseling. One parent was ordered to stop having her teenage children help with household chores.

Overcharging for Services: Service providers can charge exorbitant rates for counseling, parenting classes, etc. Court or C.W.S. workers often charge parents twenty-five dollars and up for an hour of "supervised" visitation with their youngster.

Perjury: Court social workers, C.W.S. agents and other persons officially related to the juvenile court dependency process have absolute immunity from civil liability for giving perjurious testimony. Foster custodians, psychologists, group care custodians, and other "expert" witnesses or interested parties have pecuniary and/or personal incentives to commit perjury in the juvenile court.

Political consideration: The juvenile court can be used - and has been used - to harass children and parents who participated in civil rights demonstrations. The court can also manipulate the funding process by suddenly being "overwhelmed" with child abuse/neglect cases. Typically, such caseload increases occur around the end of the fiscal year.

Racism, sexism, ethnocentrism: These forms of corruption are self-explanatory. But, to add impact to the obvious, the author has observed on numerous occasions that most C.W.S. agents are white, middle-class women. The data on foster care reveals that minority children spend a much longer time in foster custody and that the number of minority foster children is disproportionately high in comparison to the representation of minorities in the general population.

Record tampering: Court social workers and C.W.S. agents may tamper with records for many reasons. The more obvious reasons include: To cover-up negligence or error, to bolster a weak case, or to conceal bribe-taking or kickbacks, etc. The opportunity exists at all levels and phases.

Referral to agent's business: C.W.S. agents as well as court personnel may own foster group facilities, psychiatric hospitals, counselling services, etc. Their friends or relatives might also be in the business.

Sexual exploitation: One recent report surfaced where it was revealed that a juvenile court judge was having homosexual affairs with dependent boys. If the boys refused the judge's sexual advances, the judge had them committed to a psychiatric hospital for "treatment". Parents too may be subjected to such sexual exploitation. A male judge is in a powerful position over the female parent. This opportunity also exists for all court and C.W.S. personnel, and some service providers such as psychologists.

Unlawful detention: This may involve exceeding the statutory deadline for filing a petition, or where a youngster is taken or kept in custody without any evidentiary basis or probable cause to believe the child is abused or neglected or will be.

Unnecessary medical/psychological exams: For a variety of reasons a court or C.W.S. agent may order or arrange unneeded medical or psychological exams. Some of these exams can be especially intrusive and/or traumatic to a child, as in the case of a sexual abuse examination.

Unrealistic case plan: A case plan for reunification of the child with the parents can be sabotaged by the C.W.S. worker. For example, visitation with a child might be thwarted by charging the indigent parent a sum of money to have the C.W.S. worker supervise the visit. Another tactic is to schedule required visitation with a child who is in foster custody several hundred miles away from his/her home.

Violation of professional ethics: The codes of professional conduct of lawyers, judges and C.W.S. personnel who participate in the juvenile court are routinely violated. For example, the ex parte communication of judges and county C.W.S. workers is plainly forbidden, yet, such communication is common.

Violation of regulatory/statutory law: The violation of state and federal laws and regulations is routine, frequent and pervasive in the juvenile court.

TABLE OF CORRUPT OPPORTUNITIES AND PROBABLE PERPETRATORS*

POINT 1: REPORTS OF ALLEGED CHILD ABUSE OR NEGLECT

	<u>CWS/POLICE</u> <u>ETC.</u>	<u>PRIVATE</u> <u>CITIZENS</u>	<u>SCHOOLS,</u> <u>HOSPITALS,</u> <u>ETC.</u>
Agency generated false reports	X		
Altruistic false reports	X	X	X
Malicious false reports	X	X	

POINT 2: INTAKE OF REPORTS

CWS/POLICE

Accepting agency false reports	X
Accepting altruistic false reports	X
Accepting malicious false reports	X

POINT 3: FIRST INTERROGATION/CONTACT

CWS/POLICE

Case banking/Case cooking	X
Caseloading/unloading	X
Coercion, intimidation of child/parent	X
Deprive child of civil rights	X
Fabrication of evidence	X
Failure to inform child of civil rights	X
Failure to inform parents of civil rights	X
Fatigue expedient	X
Favor for friend	X
Ignorance, misinformation	X
Ignore exculpatory evidence	X
Inclusion of hearsay	X
Interagency favor	X
Racism, sexism, ethnocentrism	X
Record tampering	X
Violating statutory/regulatory law	X

*Refers to Figure #1

POINT 4: TAKE CHILD INTO CUSTODY, TRANSPORTATIONCWS/POLICE SERVICE
PROVIDER

Caseloading/unloading	X	X
Coercion, intimidation		
of child/parent	X	X
Deprive child of civil rights	X	X
Experimentation		X
Fabrication of evidence	X	X
Failure to inform child		
of civil rights	X	X
Failure to inform parents		
of civil rights	X	X
Failure to investigate	X	
Fatigue expedient	X	X
Favor for friend	X	
Holding child incommunicado	X	X
Ignorance, misinformation	X	X
Ignore exculpatory evidence	X	X
Interagency favor	X	
Isolate child, deprive		
of comforts	X	X
Political consideration	X	
Pursue unnecessary services	X	X
Overcharging for services	X	X
Racism, ideology, ethnocentrism	X	X
Record tampering	X	X
Unlawful detention	X	X
Unnecessary medical/psychological		
exams	X	X
Violation of statutory/		
regulatory law	X	X

POINT 5: INSTITUTIONALIZATION

	<u>CWS/COURT</u>	<u>SERVICE</u>	<u>AUX.</u>
	<u>PROVIDER</u>	<u>PROVIDER</u>	<u>PROVIDER</u>
Abuse/neglect of child	X	X	X
Bribe offering/bribe taking	X	X	X
Bureaucratic expedient	X	X	X
Caseloading/unloading	X	X	X
Coercion, intimidation of			
child/parent	X	X	X
Deprive child of civil rights	X	X	X
Deprive parents of civil rights	X	X	
Economic exploitation	X	X	X
Experimentation	X	X	X
Extortion	X	X	X
Fabrication of evidence	X	X	X
Failure to inform child of civil rights	X	X	X
Failure to inform parents of			
civil rights	X	X	
Failure to investigate	X	X	
Fatigue expedient	X	X	X
Favor for friend	X		
Holding child incommunicado	X	X	
Ignore exculpatory information	X	X	X
Inappropriate placement	X	X	X
Interagency favor	X	X	
Isolate child, deprive of comforts	X	X	X
Kickbacks	X	X	X
Malice	X	X	
Medicating for control	X	X	X
Overcharging for services	X	X	X
Political consideration	X		
Pursue unnecessary services	X	X	X
Racism, ideology, ethnocentrism	X	X	X
Record tampering	X	X	X
Sexual exploitation	X	X	X
Unlawful detention	X		
Unnecessary medical/psychological			
exams	X	X	X
Unnecessary psychological exams	X	X	X
Violation of statutory/			
regulatory law	X	X	X

POINT 6: AGENCY DISPOSITION.
REFERRAL TO OTHER AGENCIES. FILE PETITION FOR DEPENDENCY

	<u>CWS/COURT</u>	<u>SERVICE</u>	<u>AUX.</u>
	<u>PROVIDER</u>	<u>PROVIDER</u>	<u>PROVIDER</u>
Abuse/neglect of child	X	X	X
Bribe offering/bribe taking	X	X	X
Bureaucratic expedient	X	X	X
Caseloading/unloading	X	X	X
Coercion, intimidation of			
child/parent	X	X	X
Delay process	X	X	
Deprive child of civil rights	X	X	X
Deprive parents of civil rights	X	X	
Economic exploitation	X	X	X
Experimentation	X	X	X
Extortion	X	X	X
Fabrication of evidence	X	X	X
Failure to inform child of civil rights	X	X	X
Failure to inform parents of civil rights	X	X	
Failure to investigate	X	X	X
Fatigue expedient	X	X	X
Favor for friend	X		
Holding child incommunicado	X	X	
Ignore exculpatory evidence	X	X	X
Impose unnecessary services	X	X	X
Interagency favor	X		
Kickbacks	X	X	X
Malice	X	X	X
Medicating for control	X	X	X
Oppressive control of family	X	X	
Overcharging for services	X	X	X
Political consideration	X		
Racism, ideology, ethnocentrism	X	X	X
Record tampering	X	X	X
Referral to agent's business	X	X	X
Sexual exploitation	X	X	X
Unlawful detention	X		
Unnecessary medical/psychological			
exams	X	X	X
Unrealistic "case plan"	X	X	X
Violation of statutory/regulatory law	X	X	X

POINT 7: DETENTION HEARING

	<u>CWS/COURT</u>	<u>SERVICE</u>	<u>AUX.</u>
	<u>PROVIDER</u>	<u>PROVIDER</u>	<u>PROVIDER</u>
Abuse/neglect of child	X	X	X
Adoption blackmarketing	X	X	X
Bribe offering/bribe taking	X	X	X
Bureaucratic expediency	X	X	X
Caseloading/unloading	X	X	X
Coercion, intimidation of			
child/parent	X	X	X
Delay process	X	X	
Deprive child of civil rights	X	X	
Deprive parents of civil rights	X	X	
Economic exploitation	X	X	X
Experimentation	X	X	X
Fabrication of evidence	X	X	X
Failure to inform child of civil rights	X	X	
Failure to inform parents of civil rights	X	X	
Fatigue expediency	X	X	X
Favor for friend	X	X	
Holding child incommunicado	X	X	
Ignore exculpatory evidence	X	X	X
Impose unnecessary services	X		
Inappropriate placement	X	X	X
Inclusion of hearsay	X	X	X
Interagency favor	X	X	
Kickbacks	X	X	X
Malice	X	X	X
Medicating for control	X	X	X
Oppressive control of family	X	X	
Overcharging for services	X	X	
Perjury	X	X	X
Political consideration	X		
Racism, ideology, ethnocentrism	X	X	X
Record tampering	X	X	X
Referral to agent's business	X	X	X
Sexual exploitation	X	X	X
Unlawful detention	X		
Unnecessary medical/psychological			
exams	X	X	X
Violation of statutory/regulatory laws	X	X	X
Violation of professional ethics	X	X	X

POINT 8: JURISDICTION HEARING

	<u>CWS/COURT</u>	<u>SERVICE</u>	<u>AUX.</u>
	<u>PROVIDER</u>	<u>PROVIDER</u>	<u>PROVIDER</u>
Abuse/neglect of child	X	X	X
Adoption blackmarketing	X	X	X
Bribe offering/bribe taking	X	X	X
Bureaucratic expedient	X	X	X
Caseloading/unloading	X	X	X
Coercion, intimidation of			
child/parent	X	X	X
Delay process	X	X	
Deprive child of civil rights	X	X	X
Deprive parents of civil rights	X	X	X
Economic exploitation	X	X	X
Experimentation	X	X	X
Extortion	X	X	X
Fabrication of evidence	X	X	X
Failure to inform child of civil rights	X	X	X
Failure to inform parents of civil rights	X	X	
Fatigue expedient	X	X	X
Favor for friend	X		
Holding child incommunicado	X	X	X
Ignore exculpatory evidence	X	X	X
Impose unnecessary services	X	X	X
Inappropriate placement	X	X	X
Inclusion of hearsay	X	X	X
Interagency favor	X		
Kickbacks	X	X	X
Malice	X	X	X
Medicating for control	X	X	X
Oppressive control of family	X	X	
Overcharging for services	X	X	X
Perjury	X	X	X
Political consideration	X		
Racism, ideology, ethnocentrism	X	X	X
Record tampering	X	X	X
Referral to agent's business	X	X	X
Sexual exploitation	X	X	X
Unlawful detention	X		
Unnecessary medical/psychological			
exams	X	X	X
Unrealistic case plan	X	X	X
Violation of statutory/regulatory laws	X	X	X
Violation of professional ethics	X	X	X

POINT 9: DISPOSITION HEARING

	<u>CWS/COURT</u>	<u>SERVICE</u>	<u>AUX.</u>
	<u>PROVIDER</u>	<u>PROVIDER</u>	<u>PROVIDER</u>
Abuse/neglect of child	X	X	X
Adoption blackmarketing	X	X	X
Bribe offering/bribe taking	X	X	X
Bureaucratic expedient	X	X	X
Caseloading/unloading	X	X	X
Coercion, intimidation of			
child/parent	X	X	
Delay process	X	X	
Deprive child of civil rights	X	X	X
Deprive parents of civil rights	X	X	X
Economic exploitation	X	X	X
Experimentation	X	X	X
Extortion	X	X	X
Fabrication of evidence	X	X	X
Failure to inform child of civil rights	X	X	X
Failure to inform parents of civil rights	X	X	
Fatigue expedient	X	X	X
Favor for friend	X		
Ignore exculpatory evidence	X	X	X
Impose unnecessary services	X	X	X
Inappropriate placement	X	X	X
Inclusion of hearsay	X	X	X
Interagency favor	X		
Kickbacks	X	X	X
Malice	X	X	X
Medicating for control	X	X	X
Oppressive control of family	X	X	X
Perjury	X	X	X
Political consideration	X		
Racism, ideology, ethnocentrism	X	X	X
Record tampering	X	X	X
Referral to agent's business	X	X	X
Sexual exploitation	X	X	X
Unlawful detention	X		
Unnecessary medical/psychological			
exams	X	X	X
Unrealistic case plan	X	X	X
Violation of statutory/regulatory laws	X	X	X
Violation of professional ethics	X	X	X

POINT 10: DEPENDENCYOUT OF HOME

	<u>CWS/COURT</u>	<u>SERVICE</u>	<u>AUX.</u>
	<u>PROVIDER</u>		<u>PROVIDER</u>
Abuse/neglect of child	X	X	X
Adoption black marketing	X	X	X
Bribe offering/bribe taking	X	X	X
Bureaucratic expedient	X	X	X
Caseloading/unloading	X	X	X
Coercion, intimidation of			
child/parent	X	X	
Deprive child of civil rights	X	X	X
Deprive parents of civil rights	X	X	
Economic exploitation	X	X	X
Experimentation	X	X	X
Extortion	X	X	X
Fabrication of evidence	X	X	X
Failure to inform child of civil rights	X	X	X
Failure to inform parents of civil rights	X	X	
Favor for friend	X	X	
Impose unnecessary services	X	X	X
Inappropriate placement	X	X	X
Interagency favor	X		
Isolate child, deprive of comforts	X	X	X
Kickbacks	X	X	X
Malice	X	X	X
Medicating for control	X	X	X
Oppressive control of family	X	X	
Political consideration	X		
Racism, ideology, ethnocentrism	X	X	X
Record tampering	X	X	X
Referral to agent's business	X	X	X
Sexual exploitation	X	X	X
Unnecessary medical/psychological			
exams	X	X	X
Unrealistic case plan	X	X	X
Violation of statutory/regulatory laws	X	X	X
Violation of professional ethics	X	X	X

IN-HOME

	<u>CWS/COURT</u>	<u>SERVICE</u>	<u>AUX.</u>
	<u>PROVIDER</u>	<u>PROVIDER</u>	<u>PROVIDER</u>
Bribe offering/bribe taking	X	X	X
Bureaucratic expedient	X	X	X
Caseloading/unloading	X	X	X
Coercion, intimidation of			
child/parent	X	X	X
Experimentation	X	X	
Extortion	X	X	X
Fabrication of evidence	X	X	X
Failure to inform child of civil rights . X		X	X
Failure to inform child of civil rights . X		X	X
Impose unnecessary services	X	X	X
Inclusion of hearsay	X	X	X
Kickbacks	X	X	X
Oppressive control of family	X	X	X
Political consideration	X		
Racism, ideology, ethnocentrism X		X	X
Record tampering	X	X	X
Referral to agent's business	X	X	X
Sexual exploitation	X	X	X
Unnecessary medical/psychological			
exams	X	X	X
Violation of statutory/regulatory laws . X		X	X
Violation of professional ethics X		X	X

POINT 11: PERMANENCY PLANNING HEARING (WIC 366.25)

	<u>CWS/COURT</u>	<u>SERVICE</u>	<u>AUX.</u>
	<u>PROVIDER</u>	<u>PROVIDER</u>	<u>PROVIDER</u>
Abuse/neglect of child	X	X	X
Adoption blackmarketing	X	X	X
Bribe offering/bribe taking	X	X	X
Bureaucratic expediency	X	X	X
Caseloading/unloading	X	X	X
Coercion, intimidation of			
child/parent	X	X	
Deprive child of civil rights	X	X	X

Deprive parents of civil rights	X	X	X
Economic exploitation	X	X	X
Experimentation	X	X	X
Extortion	X	X	X
Fabrication of evidence	X	X	X
Failure to inform child of civil rights	X	X	X
Failure to inform parents of civil rights	X	X	X
Fatigue expediency	X	X	X
Favor for friend	X	X	
Ignore exculpatory evidence	X	X	X
Impose unnecessary services	X	X	X
Inappropriate custody	X	X	X
Inclusion of hearsay	X	X	X
Interagency favor	X		
Kickbacks	X	X	X
Malice	X	X	X
Medicating for control	X	X	X
Oppressive control of family	X	X	X
Perjury	X	X	X
Political consideration	X		
Racism, ideology, ethnocentrism	X	X	X
Record tampering	X	X	X
Referral to agent's business	X	X	X
Sexual exploitation	X	X	X
Unnecessary medical/psychological exams	X	X	X
Unrealistic case plan	X	X	X
Violation of statutory/regulatory law	X	X	X
Violation of professional ethics	X	X	X

POINT 12: TERMINATION OF PARENTAL RIGHTS HEARING
(CAL. CIV. CODE 232)

CWS/COURT SERVICE **AUX.**
PROVIDER **PROVIDER**

Abuse/neglect of child	X	X	X
Adoption blackmarketing	X	X	X
Bribe offering/bribe taking	X	X	X
Case loading/unloading	X	X	X
Coercion, intimidation of child/parent	X	X	
Deprive child of civil rights	X	X	X
Deprive parents of civil rights	X	X	X
Economic exploitation	X	X	X

Experimentation	X	X	X
Fabrication of evidence	X	X	X
Failure to inform child of civil rights	X	X	X
Failure to inform parents of civil rights	X	X	X
Fatigue expediency	X	X	X
Favor for friend	X		
Ignore exculpatory evidence	X	X	X
Inappropriate placement	X	X	X
Inclusion of hearsay	X	X	X
Interagency favor	X		
Kickbacks	X	X	X
Malice	X	X	X
Medicating for control	X	X	X
Perjury	X	X	X
Political consideration	X		
Racism, ideology, ethnocentrism	X	X	X
Record tampering	X	X	X
Referral to agent's business	X	X	X
Sexual exploitation	X	X	X
Violation of statutory/regulatory law	X	X	X
Violation of professional ethics	X	X	X

CHAPTER 5: DISCUSSION

Introduction

In the foregoing pages the opportunities for corruption were identified and the types of corruption possible - apart from substantive and procedural due process³⁷ - were described. Here other extra-legal factors conducive to corruption in the court will be discussed. There are many corrupting influences and aspects which pervade the court system and which are not apparent from flow charts and tables.

The Hostage Situation

Regardless of the process due to parents whose children are the subjects of a juvenile court dependency petition, the practical and actual situation of the child is that of a hostage. A child who is institutionalized in either facility custody or foster custody is undoubtedly subjected to tremendous and persistent psychological manipulations and pressures. For example, foster custodians may entice and tempt an attractive child with gifts, treats, clothes, vacations and the like in order to persuade the child to renounce or denounce the natural parent in order to set the stage for adoption, permanent placement or long-term foster custody. Childless

³⁷ The possible variants of corruption of due process are practically innumerable. And, even optimal due process is of little remedy where the affect of extra-legal or quasi-legal corruption is rampant. We suspect this project has only scratched the surface of the corruption of the juvenile court.

foster custodians may thereby quickly obtain a child. Other foster custodians may simply enjoy the added income and benefits.

Court social workers or C.W.S. agents can make advantageous use of this hostage situation in several ways. First, by isolating the child away from the natural parents the child may become more compliant and willing to cooperate with the court. The child can be coaxed to make incriminating statements against the parents. This type of psychological manipulation was, interestingly, recognized by the U.S. Supreme Court in the Gault case. Addressing the issue of self-incrimination in the juvenile criminal proceeding the Gault court declared that:

the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.³⁸

Unfortunately, as previously noted, decisions of the U.S. Supreme Court have little effect upon the juvenile courts of America. Such extra-legal psychological manipulation of children in custody is routine and, in situations where the foster custodian is a willing accomplice of such machinations, the practice is difficult to stop and even more difficult to counteract.

Another advantage of the hostage situation for the court social worker is the active participation of the foster custodian. Under California law, a foster custodian can testify against a natural parent in any of the hearings in a dependency action. The foster custodian may give impressionistic testimony, that is, testimony such as "the child seems frightened when her mother is mentioned", or "the child appears to have nightmares about her natural family". Also, under the extremely liberal

³⁸ Gault, supra, at 55.

evidentiary rules of the juvenile court, the foster custodian can attribute any hearsay statement to a child. Hence, a sharp and willing foster custodian can condemn a parent and obtain a child permanently. Or, by cooperating with the social worker in such fabricated testimony the foster custodian can cultivate favoritism with the court thereby securing a steady supply of foster children and the foster custody money that accompanies them.

The hostage situation also enables the court or C.W.S. to "break" the parents. Quite naturally, parents whose children have been captured by the court or C.W.S. are usually very distressed. The court or C.W.S. worker may play on the fear, distress or depression of such parents in order to get them to cooperate and submit to the court. The hostage situation enables the social worker to threaten or otherwise manipulate the parents. The C.W.S. or court social worker may say "if you don't confess you will never see your child again", or, "agree to the court's case plan or else I'll take your other children", or "your child is stating that she does not want to come home", etc. Where there is a two parent family involved, the court or C.W.S. worker will often try to turn one parent against the other. In some jurisdictions it seems to be routine that the C.W.S. or court social workers make filing for divorce a condition of visitation with or return of the child to the "good" parent.

For the parents the hostage situation makes the feeble due process of the juvenile court even more impotent. In addition of having to cope with the disingenuous entreaties of the court to "cooperate in the best interests of the child", the parents are burdened with extraordinary financial and emotional considerations and egregious dilemmas. Consider this mockery of due process: if the parents deny

the allegations and choose to legally challenge the court's dependency action, they will be involved in a very costly legal battle during which all visitation with their child (if there was any to begin with) may be ended, and which will probably take months and possibly years to be litigated. Typically, the parents will lose, but, if the rare occasion should arise where they win on the original allegations, the court or C.W.S. can then refile the dependency petition on the allegation that, for example, the child has now "psychologically bonded" with the foster custodian, or alternatively, the court may allege that the parents are no longer financially capable of caring for the child. And, of course, the parents might - by then - actually be financially destitute after having spent their life savings and sold their house in order to fight the court the first time. Certainly, there are few families with the resources and tenacity to fight a second costly and lengthy battle with the court. On the other hand, if the parents "admit" the allegations the child may or may not be returned to the family. In either event the entire family will then be subject to any order of the juvenile court; the parents can be ordered to attend counseling or "therapy" and pay for it, their other children may be taken into custody upon the prima facie evidence of their "admission", and virtually any other order of the court may be imposed upon them. The dependency of the child under the court can last until the child is twenty-one years of age, conceivably subjecting the entire family to over two decades of intrusive, total state control. Finally, in either the case where the parents challenge the court or where the parents submit to the court, the parents are financially liable for all the costs of foster custody, medical or psychological examination or "treatments", and/or the costs of court-appointed counsel.

The hostage situation also wears on the emotional integrity of the natural family. It is easily imagined how the distress and shock of losing a child to the court's custody can affect the relationship between a husband and wife. Plainly, the stresses will destroy all but the most secure and stable of marriages. But, what of the single parent? A single mother or father may have no family to turn to for emotional support. It would seem that the single parent is especially susceptible to the ravages of emotional pressure such as acute depression and even suicide.

The hostage situation can also impact any children remaining in the family home. Fear, loneliness, and anguish at losing one's sibling to the court may approximate the experiences associated with losing a loved one to death. A child may also - and rightly so - fear that he or she will become the next victim of the court or C.W.S. An older child, an adolescent perhaps, may develop a rebellious or antagonistic attitude toward the parent(s) and resort to all sorts of misbehavior, invoking the threat of the court or C.W.S. when chastised by the parents. Thus, the court created hostage situation can interrupt and subvert the families' home life.

The Court Club

In addition to the impact of graft upon the juvenile court dependency process, there are certain characteristics of the juvenile court staff which tend to increase the likelihood of corruption. The judge, county counsel, the court social worker, C.W.S. and the public defender are all county employees. The prosecution or court sanction of a C.W.S. worker who engages in perjury or the fabrication of evidence is highly improbable. And, it is also unlikely that the public defender is going to

vigorously challenge the testimony of his fellow county employees, the court social worker, C.W.S., or county counsel. Researchers of the juvenile criminal proceeding have also commented upon the cozy relationships among court staff. Bortner found that:

The public defender assigned to the court enjoys widespread respect and friendship with court personnel. She is considered hardworking by most staff members and has considerable working knowledge of the manner in which the juvenile court operates and the alternatives available, including placement options. Although this familiarity is an advantage, the public defender is less able or apt to severely challenge court personnel than are private attorneys, for she must maintain ongoing relationships with all court personnel. What is perceived by court workers as a vicious attack on one worker may have detrimental effect on the public defender's relationship with other personnel.³⁹

That such a cozy network of court comrades could subvert "due process" is fairly obvious; that such interlocking comraderie is an invitation to collusion, exploitation, conspiracy and abuse of power is clearly obvious⁴⁰.

Except for the attorneys and judges, the staffs of the juvenile courts typically have little or no professional training or education. The Little Hoover Commission reported that:

Child welfare staff who work directly with families where child abuse and neglect have been reported often have varying degrees of professional training and experience. Only 50 percent of the professional staff providing emergency response and family maintenance program services are required to have a Masters Degree in social work or a related field. In addition, current regulations do not specify qualifications for staff involved with family reunification and permanent placement services. According to the National

³⁹ M. A. Bortner, Inside a Juvenile Court: The Tarnished Ideal of Individualized Justice (New York: NYU, 1982), 140-141

⁴⁰ The reader is encouraged to recall that the juvenile court proceeding is characterized by an absence of checks and balances. There is no countervailing power to the juvenile court bureaucracy.

Association of Social Workers, many counties employ child welfare workers without professional training in social work. They cite the basic problem as being no uniform statewide standard for professional staff.⁴¹

The fact that C.W.S. or court personnel are so often uneducated and/or unacquainted with professional social work philosophy portends more than gross incompetence, it cautions that such persons may be in the juvenile court business simply for the money. Furthermore, it may be supposed that without the formal social work indoctrination such court staff will be less resistant to the temptations of graft and the influence of racism, class prejudice, or simple malice.

The court club is securely protected. The county juvenile justice commissions which ostensibly provide oversight and are statutorily required to "inquire into the administration of juvenile court law" (WIC 229) are composed entirely of persons approved by the presiding judge of the juvenile court (WIC 225). Research has revealed not a single incidence of a commission or commissioner ever challenging a juvenile court judge or the administration of juvenile "justice".

Appeals from juvenile court dependency judgements are rare. And, since very few of the appeals sought by unhappy parents result in a reversal of the juvenile court it may be assumed that the reach of the juvenile court club is extensive. In Pennsylvania, Sprowls reports that:

the Juvenile Law Center of Philadelphia has on several occasions sought a writ of prohibition against a county court (other than Philadelphia) for detaining juveniles in excess of seventy-two hours without a detention hearing. In each instance the reviewing court delayed action until such time as the juvenile was released then

⁴¹ Commission on California State Government Organization and Economy, Children's Services Delivery System in California: Final Report, (State of California, October 1987), 94

declared the issue moot. It is alleged that informal telephone conversations between the court and the juvenile-court judge were used to facilitate this finding.⁴²

Appellate oversight in California is practically non-existent and probably for the same reasons that Sprowls describes above. But, there is also the fact that California public defenders who work in the juvenile court do not, in general, practice law in a manner which challenges the court, the social worker's recommendations, "evidence", etc., and thereby preserves appealable issues.

The Political Economy of the Juvenile Court

The dependency activities of the court do provide a tremendous stimulus to the local county economy. In a Keynesian fashion the juvenile court can prime the economic pump of a county economy by bringing in millions of dollars in state foster custody money. For example, in Los Angeles County:

the largest single service item purchased from the private sector in 1984-85 was foster care, including \$73.7 million spent for Aid to Families with Dependent Children (A.F.D.C.) and \$1.8 million spent by the Probation Department for non-A.F.D.C. children.⁴³

Therefore, foster custody is a real bargain for a county. In California a county receives ninety-five dollars for every five dollars it expends on foster custody. Of course, the millions of dollars in state money are subsequently spread throughout the

⁴² Sprowls, p. 84

⁴³ The Childrens Budget of Los Angeles County Government: The Los Angeles Roundtable for Children, 1986, at 21. The phrasing in the quote is misleading. In fact, children made dependents of the juvenile court are classified and funded under A.F.D.C.-F.C. (foster care) and thus the county's share of the cost of each child is a mere 5%.

economy of the county. Group custody facilities hire employees, rent houses, utilize schools and medical facilities, and purchase supplies and services, etc.

Foster custody also helps a county clear its welfare rolls because if the family no longer has any children at home they are no longer eligible to receive welfare. The county benefits economically twice from this situation. First, it shifts the welfare family off its welfare rolls⁴⁴, and second, it puts the child into the foster custody program where the state funds ninety-five percent of the cost. Dennis Lepak, a deputy probation officer for juveniles in Contra Costa County, told a Congressional Committee that "the placement worker sees a bottomless pit of placement money available for the asking." Lepak told the same committee that:

All the incentives push the worker to remove the child. Foster care funding streams, the most expensive of the available options, are the most easily accessible and least expensive for the counties. Reasons are rationalized, and families are broken.⁴⁵

Thus, the political economy of the juvenile court's authority provides powerful financial incentives to the counties to constantly bring children into the system. The counties literally kidnap children for the ransom that flows from the state's mandated "bottom-less pit" of foster custody funding.

The private industry side of this corrupt political economy is equally avaricious and callous. Lepak also told congress that:

The great majority of group home placements in California refuse to accept placements unless they are assured that children will be placed

⁴⁴ Welfare families are easy targets since they do not have resources to fight the court or C.W.S.

⁴⁵ U.S. Congress, House of Representatives, Select Committee on Children, Youth, and Families, and Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means, Testimony of Dennis Lepak, hearing , April 13, 1988.

for at least one year. This is an industry standard. The practice is normally justified in one of two ways. The programs simply state that they have found that the problems of the children they serve are so severe that a year is the minimum period of time they need to do effective work with the child. The other justification is that the program is designed so that the child is rewarded for good behavior and for "working the program" by advancement through program steps or "phases" these are known as "phase programs" and are usually designed to keep the child in residence for at least a year. This program design allows the program to very effectively manage both group and individual behavior and resident turnover. Phase programs are used routinely for both probation and welfare department placements.... There is no incentive for foster homes and group homes to return children to families. Rapid turnover results in a loss of funds from unoccupied beds, and the difficulties encountered in breaking in new kids. All the incentives for placement operators work against family reunification.⁴⁶

In actuality then, Lepak describes an industry that collaborates or conspires with county C.W.S. agents to deliberately detain children so that the private "service provider" and the county can milk the state's funding mechanism. Or, in other words, the county is in a business partnership with "service providers" that produces revenues by actively and deliberately destroying families and exploiting children. This is certainly a most repugnant form of corruption.

An example of how outrageous - and even criminal - such county and service provider conspiracies can be is illustrated by a group facility case reported in the final report of the Santa Barbara County Grand Jury 1986-87. That report describes a group custody facility where children had obtained the pornographic photographs of the facility's operators - a husband and wife. But, the Grand Jury inquiry found much more during the course of the investigation. Specifically it found that:

- a. Live-in staff had little or no experience in dealing with troubled children. They were either uncompensated

⁴⁶ Lepak, p. 7

(working for room and board) or given a token allowance.

- b. If a client were ill, he or she was forced to go to school anyway, or to the only one of the licensees' four homes that was attended during school hours.
- c. The grand jury heard testimony to the effect that the basis for rate setting called for the expenditure of \$79.00 per client, per week for food. The amount actually spent was \$25.00 for girls, \$30.00 for pregnant teenagers, and \$35.00 for boys. Because live-in staff shared rations with the clients, the actual amount per client was still less.
- d. If live-in staff were not present when clients returned from school, the house would be locked, forcing clients to stay outside or go elsewhere.

The list of complaints is far more extensive, but the foregoing should serve to get the point across. This was a disgraceful operation.... Title 22 mandates minimum standards for the operation of such activities as group foster homes, yet the licensees have been allowed to operate in flagrant violation of many of its requirements. Our impression is that Title 22 has created a bureaucracy which deems these standards a lofty goal whose achievement represents some sort of victory over nearly insurmountable odds. In short, the system seems to exist for the benefit of the bureaucrats and licensees, not the children.⁴⁷

The Santa Barbara County Grand Jury concluded that:

What emerged during staff testimony and review of the documents was a situation bordering on the Dickensian. More chilling still was the fact that from the standpoint of the foster home administrator, as well as county and state officials, the situation seemed to make sense.⁴⁸

It was only the pornography incident that brought the group facility to the attention of the Grand Jury in the first instance, and, except for the pornography incident, the business-as-usual attitude of the county toward the every day operation of the facility is indicative of the pervasive influence of the corrupt political economy of the

⁴⁷ Santa Barbara County Grand Jury Final Report, 1986-87, pp. 63-65

⁴⁸ Ibid, p. 63

juvenile court dependency function. Evidently the official kidnapping and exploitation of children is just too lucrative for county agents and private service providers to be hindered by laws and regulations, human rights and human dignity.

Conclusion

Secrecy, power, ability, and incentive. It is this mix of factors that create opportunities for corruption in the juvenile court dependency business. It is a sad and frightening reality that the actual incidence and pervasiveness of the court's corruption is limited only by the personal virtues of the persons working in and around the court's dependency authority. The probabilities seem great that when powerful people are making decisions concerning the lives of powerless people, that is, children and impoverished families, there will be some occurrence of corruption, oppression, and exploitation. Greed or the intoxication of power can afflict anyone, even judges and child welfare workers.

Someone once wisely observed that "the road to tyranny is paved with good intentions." Ninety years of juvenile court history reveals how far down the road to tyranny the court has traveled, and how naive and dangerous good intentions can be. Perhaps the failure of the juvenile court can be fixed upon its ideological roots; the legal theory or doctrine of *parens patriae* was always a very questionable rationale. Being adopted from British Imperial law, the theory is necessarily and starkly in conflict with fundamental American political theory, that is, the theory of the Sovereign people and the corollary of limited governmental power.

The contemporary juvenile court, with all the power that it has acquired, it certainly an alien entity in American life. In a very vivid and tangible sense the juvenile court experiment proves at least one of the basic tenants of American political philosophy: government can never be trusted with absolute power. The temptations and opportunities presented by absolute power are too great to be resisted by human nature.

Opportunities for corruption are invitations to corruption. Unfortunately the actual frequency of occurrence and the pervasiveness of corruption in the juvenile court dependency process cannot now be known. Corruption, like many crimes, usually happens in secrecy. But, opportunities for corruption can be perceived and anticipated. As was seen and explained in the preceding pages, there are, at least, forty-six different types of corruption that have the opportunity to occur at the twelve steps of the juvenile court dependency process. Surely this accounting of the opportunities for corruption demands, without equivocation, that the secrecy of the court must be eliminated. For, if secrecy remains corruption is inevitable. The elimination of secrecy in the court, while not the only solution, is a very important, necessary and fundamental step toward the eradication of juvenile court corruption.

The most important change needed to reform the juvenile court is the recognition of the parents' right to a trial by jury in dependency proceedings. This single reform would transform the entire structure of the court. It would make the judge and court bureaucracy accountable to the public; it would necessitate changes in the court's rules of evidence and due process. It would remove the ultimate decision-making authority from the judge and place it in the hands of the electorate. Hence, it would remove certainty from the calculations and predations of scheming

service providers, adoption blackmarketers, and corrupt court personnel. It would devastate the old reliable incentives of the juvenile court political economy and thus save the taxpayers billions of dollars. A jury trial for parents would induce the appellate courts to exercise meaningful review of the juvenile court. In short, a jury trial in juvenile court would bring justice to that court.

The sum of our sentiments regarding the issues raised during the course of this project were expressed by U.S. Congressman Earl F. Langrebe:

to give the government total unconditional authority to prescribe regulations empowering the state to take children away from parents may be characteristic of a totalitarian state such as Nazi Germany or Soviet Russia. It certainly has no place in the United States of America.⁴⁹

⁴⁹ Congressman Earl F. Landgrebe.

PART II

CHALLENGING COURT CORRUPTION

Introduction

The following Points and Authorities may be used by parents or their counsel in support of a motion or Writ of Prohibition or Mandate seeking a jury trial for parents whose children are the subjects of a juvenile court dependency proceeding in California.

The following document contains arguments based upon the Constitutions of the United States of Americas and the State of California, and case law. In the main such arguments involve constitutionally secured natural rights and the force and effect given to such rights by the Congress of the United States, the federal and state judiciaries, and the California State Legislature.

Parents or counsel will, obviously, need to precede such general arguments with the facts and issues specific to their particular circumstances. Likewise, the efficacy or wisdom of seeking a jury trial in juvenile court is strictly a matter of personal choice which can only be decided by the parties to a specific actions.

The following Points and Authorities are offered ONLY as supplementary information. These documents are not intended to be considered as legal advise to pursue a certain course of legal action. While authorization is hereby given to anyone to use the following Points and Authorities as they desire - with right of acknowledgement of the author reserved - the decision to use this document and any consequences resulting therefrom are solely the responsibility of such persons utilizing this document.

**CHAPTER 1: POINTS AND AUTHORITIES
IN SUPPORT OF THE PARENT'S RIGHT TO A
JURY TRIAL IN JUVENILE COURT DEPENDENCY PROCEEDINGS**

ARGUMENT

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I. THE CONSTITUTION OF THE STATE OF CALIFORNIA
IS EXPLICIT AS TO THE INVIOLEATE RIGHT
TO TRIAL BY JURY IN EITHER CRIMINAL
OR CIVIL PROCEEDINGS.

(1) The Constitution of the State of California at Article I, section 16, secures to all persons the right to a trial by jury in both civil and criminal proceedings. Pursuant to Article I, section 26 of the Constitution of the State of California it is mandatory that trial by jury is an inviolate right and shall be secured to all. Ita lex scripta est.

(2) Article I, section 16 of the Constitution of the State of California declares:

Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

(3) Article I, section 24 of the Constitution of the State of California declares:

Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.
This declaration of rights may not be construed to impair or deny others retained by the people.

(4) Article I, section 26 of the Constitution of the State of California declares:

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

(5) It is a well-established rule that constitutional provisions that are complete in themselves, clear and without ambiguity are self-executing and controlling, Western P.R. Co. v. Godfrey, 166 C 343 (1913). Unless a contrary intent is expressed, the words utilized in a constitutional provision must be understood to indicate the meaning that they bear in ordinary usage among the people, County of Los Angeles v. State of California, 43 C 3d. 46 (1987); San Francisco v. McGovern 28 CA 491 (1915). Of equal importance, Article I, section 24 makes it clear that "this declaration of rights may not be construed to impair or deny others retained by the people."

(6) Article I, section 26 of the California Constitution makes it clear that the provisions of Article I, section 16 are mandatory. Since no exceptions are expressed concerning the inviolate right to a trial by jury, the rule that constitutional provisions are mandatory must be regarded as controlling, McDonald v. Patterson, 54 C 245 (1880); Navajo Mining and Development Co. v. Curry, 147 C 581 (1905).

II. PARENTAL RIGHTS ARE FAR MORE PRECIOUS THAN PROPERTY RIGHTS

(7) Equal protection of the law and the requirements of fair procedure and substantial justice demand that parental rights be protected by rigorous due process. The U.S. Supreme Court has acknowledged that parental rights are "rights far more precious than property rights," May v. Anderson, 345 U.S. 528, 533 (1953), and the

right to parent is also recognized as among the "...basic civil rights of man", Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

(8) In Parham v. J.R., 442 U.S. 584 (1979) the U.S. Supreme Court wisely observed that:

As with so many other legal presumptions, experience and reality may rebut what the law accepts as a starting point; the incidence of child neglect and abuse cases attests to this. That some parents 'may at times be acting against the interests of their child'...creates a basis for caution, but is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child's best interests.... The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition.

Thus, parental rights are secured by the Constitution of the United States of America and, we assert, by the California Constitution - and thereby enjoy the protections of the highest standards of due process of law. And, when the government seeks to intrude into family life or otherwise interferes with the parent-child bond, the government's actions must be subject to strict scrutiny and the parents must not be denied due process of law because of their status as parents of minor children.

(9) The petitioners in the instant case offer the following syllogism as true:

If property rights enjoy the protection of the right to a trial by jury, and parental rights are far more precious than property rights, then parental rights also enjoy the protection of the right to a trial by jury.

Clearly, government intrusion into the parent-child relationship can portend much more than a petty annoyance or "benevolent" inconvenience. Such government intrusion may approximate or even exceed the most severe of criminal penalties.

For example, under California law the state may permanently terminate parental rights (California Civil Code, S. 232). As a consequence, the parents can lose not only the care, custody and companionship of their child, but, perhaps their only heir. Such a termination of parental rights may thus effectively and forever end a family lineage.

(10) The parent-child relationship embodies all that may be characterized as life, liberty, property, and pursuit of happiness. Those certain inalienable rights must include:

not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. Meyer v. Nebraska, 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. at 626.

Indeed, the federal judiciary has found the rights of parents to be located in several of the Amendments to the Constitution of the United States of America: Amendment One (freedom of association); Amendment Two (primary and home security); Amendment Four (due process of law); Amendment Nine (penumbra of rights reserved to the people); and Amendment Fourteen (equal protection of the law). The preeminent cases which are in accord with these principles are: Boyd v. United States, 116 U.S. 616 (1886); Myers v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Olmstead v. United States, 277 U.S. 438 (1928); Griswold v. Connecticut, 381 U.S. 479 (1965); Stanley v. Illinois, 405 U.S.

645 (1972); Wisconsin v. Yoder, 406 U.S. 205 (1972); Zablocki v. Redhail, 434 U.S. 344 (1978); Santosky v. Kramer, 455 U.S. 745 (1982).

(11) It is here asserted that parental rights are secured by and enjoy equal protection under both the Constitution of the United States of America and the Constitution of the State of California. As all persons in the State of California enjoy the right to trial by jury in both civil and criminal proceedings, the parents of minor children likewise must be equally protected.

(12) Parents whose minor children are the subjects of juvenile court dependency proceeding are entitled, as a matter of constitutional right, to have the facts determined at trial by jury. THERE IS NO CASE AUTHORITY OR STATUTORY LAW PERMITTING THE DENIAL OF THIS RIGHT.

(13) Case law pertaining to juvenile defendants must be distinguished from the case at hand. The issue(s) involved in the case law pertinent to the rights of juveniles are clearly not comparable to the rights of adults. Hence, the decisions of the courts at McKeiver v. Pennsylvania, 403 U.S. 528 (1971), Richard M. v. Superior Court, 4 Cal. 3d 370 (1971), In re Daedler, 194 Cal. 320 (1924), and In re T.R.S., 1 Cal. App 3d 178 (1969), do not dispose of the issue of the constitutional rights of parents in the juvenile court.

III. WHETHER A JUVENILE COURT DEPENDENCY PROCEEDING IS A CRIMINAL OR CIVIL PROCEEDING?

(14) A California court has similarly framed the issue. In the case of In re Donna A., 177 Cal. App 3d 195 (Jan. 1986), the court reasoned:

The crucial issue here, then, is not the fact that Dolly is a child, but whether a dependency proceeding is civil or criminal in nature. The answer to that question turns upon whether we view a dependency action from the vantage point of the parent or that of the child. There is authority for the view that a dependency proceeding is a 'true civil cause, comparable in essentials to a child custody controversy between parents, except that the controversy is not between parents but one between a parent (or parents) and the state as parens patriae.' (In re Robinson (1970) 8 Cal. App. 3d 783, 786 (87 Cal. Rptr. 678); cert. den. sub nom Kaufman v. Carter (1971) 402 U.S. 964 (29 L. ed. 2d 128, 91 S. Ct. 1624.)) The Robinson court adopts, in essence, the view of the child for whom the question of custody is truly civil.

However, from the vantage point of the parent, especially a parent who is facing the loss of future contact with his child because of the alleged 'depravity' of his own behavior, the dependency proceeding is more nearly criminal in nature. 'In most dependency matters the focus is against the parent and the prospect faced is the drastic result of loss of his child. Although legal scholars may deemphasize the adversary nature of dependency proceedings and characterize the removal of the child from parental custody as nonpunitive action in the best interests of the child, most parents would view the loss of custody as dire punishment.' Lois R. v. Superior Court (1971) 19 Cal. App. 3d 895, 901 (97 Cal. Rptr. 158.)

Here, defendant faced not only loss of custody of Dolly, but also criminal charges, both punitive actions arising from the same alleged acts of molestation.... The dependency proceeding was, in this instance, more nearly criminal than civil.... (In re Donna A., supra, at 202, 203.)

The Donna A. court's conclusion is cogent and its reasoning is persuasive. Most parents will indeed view the loss of custody of their child as "dire punishment". Losing one's child is certainly a punishment which has life long consequences for the family, the parents, and the child.

(15) The Donna A. court is correct in rejecting the case authority that views a dependency proceeding as "comparable in essentials to a child custody controversy between parents" (Donna A., supra, at 202). First, it should not be presumed that a minor child will look favorably upon the intrusion of the state into his/her family. This is especially true where the state is reacting to a false allegation or over-reacting to a minor complaint, eg. normal parent-child conflict. A minor child faces the undesirable and highly probable situation of being forced into the dangerous and dehumanizing world of the state's institutional or foster custody, complete loss of contact with his/her entire natural family, including siblings and grandparents, and the consequent loss of his/her family lineage, history and inheritance.

(16) Second, the juvenile court dependency proceeding is not "in essentials" similar (Donna A., supra at 202) to a civil custody proceeding because the minor "child is not the mere creature of the state", Pierce v. Society of Sisters, 268 U.S. 570, 535 (1925). The state is not the biological progenitor of the child. The state has no right to custody of the child in either natural law, the social contract, or by consent of the governed. The state's interest in the child is merely legalistic and extends only while the minor child is legally a minor. Conversely, the right and interest of the parents is biological, familial, multigenerational, and natural. The parents' interest in their child extends beyond the minority of the child, indeed, it extends beyond their own natural lives to all the generations of their family yet to be born. A parent's interest in his or her natural child precedes, transcends and endures the establishment of civil government.

(17) Third, a contest between the state and a citizen is not a contest between equals. It is a contest between the leviathan and the individual. The state, in a juvenile court dependency proceeding, possesses nearly limitless resources that no parent, no family can ever match. As in a criminal proceeding, the power, the expertise, the knowledge, and the institutional routines of the state are all focused against the parent whose child is the subject of a juvenile court proceeding. In the face of such power, a parent can offer little effective resistance. And, the situation is all the more desperate and grim for the family since the state may be holding the minor child as a virtual hostage. Few, if any, child custody disputes between parents are characterized by such a complete lack of a balance of power.

IV. A JUVENILE COURT DEPENDENCY PROCEEDING IS MORE NEARLY CRIMINAL THAN CIVIL IN SUBSTANCE AND CONSEQUENCE

(18) Since the Donna A. courts decision in 1986 the California State Legislature has revised the W & I code section 300 (Persons Subject to Jurisdiction). This revision, effective January 1, 1989, results in statutory law which is clearly focused upon the acts or behavior of the parents and consequently results in a juvenile court dependency proceeding which is "more nearly criminal than civil", (Donna A., supra, at 203). The W & I section 300 states in pertinent part:

- (a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian....(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or

her parent or guardian...or by the willful or negligent failure of the parent or guardian....(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage...as a result of the conduct of the parent or guardian....(d) The minor has been sexually abused...by his or her parent....(e) The minor...has suffered severe physical abuse by the parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. (f) The minor's parent or guardian has been convicted of causing the death of another child through abuse or neglect. (g) The minor has been left without any provision for support; or the minor's parent has been incarcerated or institutionalized....(i) The minor has been subjected to an act or acts of cruelty by the parent or guardian...or the parent or guardian has failed to adequately protect the minor...when the parent or guardian knew or reasonably should have known....

As the foregoing illustrates it is the parents' alleged guilty acts, omissions or guilty knowledge upon which the juvenile court will render its verdict.

(19) The California Rules of Court at Rule 1364 (b) (admission of allegations; prerequisites to acceptance) make it clear that it is the parent who is on trial. Rule 1364 (b) states:

The court shall then inquire whether the parent or guardian intends to admit or deny the truth of the allegations of the petition. If the parent or guardian neither admits nor denies the truth of the allegations, the court shall indicate for the record that the parent or guardian does not admit the truth of the allegations. Before accepting an admission that the allegations of the petition are true, the court should satisfy itself that the parent or guardian understands the trial rights enumerated in subdivisions (a), and that the parent or guardian is admitting the petition because that person did in fact commit the acts alleged.

(20) Likewise, California Rules of Court at 1364 (d) states in pertinent part:

If the court is satisfied that the admission should be received, the court shall then ask whether the parent or guardian admits or denies the truth of the allegations in the petition.

While these sections of law - W & I 300 and Rule 1364 - are prima facie evidence that, in fact, it is the actus reus of the parent that is on trial, Rule 1364 (a) (2) provides that the court shall advise the parent(s) of "the right to assert the privilege against self-incrimination" (emphasis added). This is also compelling evidence that the juvenile court dependency proceeding is criminal in nature.

(21) The parents of a child adjudicated dependent of the juvenile court are subject to severe, costly and almost unlimited deprivation of their life, liberty and property. For example, W & I 370 provides that the parents may be placed under the supervision of a probation officer; W & I 361 (a) permits a court to limit the parental control of a child; W & I 361.5 (a) permits a court to order the parents to submit to "treatment"; W & I 303 allows a court to retain jurisdiction over a "child" until the age of 21; W & I 362 (a) (b) (c) and (d), enables a court to order the parents to pay for such "treatment". Furthermore, W & I 364 (c), W & I 366.21 (e) and (f) direct a court to consider "the failure of the parent or guardian to participate regularly in any court-ordered treatment" as prima facie evidence that the return of their child (to the parents) would be detrimental. To add insult to injury, the parents are responsible for all costs such as foster or institutional custody, appointment of counsel for the minor, "expert" witnesses, etc., according to W & I 903 et seq.

V. BY A VAST PREPONDERANCE OF LEGAL TESTS
THE JUVENILE COURT DEPENDENCY PROCEEDING
IS SHOWN TO BE A CRIMINAL PROCEEDING

(22) The U. S. Supreme Court has looked to the potential maximum authorized penalty possible in criminal cases when analyzing the application of the Sixth Amendment right to a jury trial, Frank v. United States, 395 U.S. 147, 148 (1969); Duncan v. Louisiana, 391 U.S. at 159-161. In Baldwin v. New York the Court stated:

Indeed we long ago declared that the Sixth Amendment right to jury trial is not to be construed as relating only to felonies, or offenses punishable by confinement in the penitentiary. It embraces as well some classes of misdemeanors, the punishment of which involves or may involve the deprivation of the liberty of the citizen.' (citing Callan v. Wilson, 127 U.S. 540, 549, 32 L. Ed 223, 226, 8 S. Ct 1301 (1888); Baldwin v. New York, 399 U.S. 66, 26 L. Ed. 2d 437 at 441 (1886)).

(23) The U.S. Supreme Court has often had occasion to consider whether or not an Act of Congress is punitive (criminal) or regulatory (civil) in character and effect. In doing so, the Court has developed and applied several tests. Consequently, in Kennedy v. Mendoza-Martinez (272 U.S. 168, 83 S. Ct. 554 at 567 (1963)) the Court listed some of these tests as: "whether the sanction involves an affirmative disability or restraint" (citing at note 22 Ex Parte Garland, 4 Wall 333, 377, 18 L. Ed. 366; United States v. Lovett, 328 U.S. 303, 316, 66 S. Ct. 1073, 1079; Fleming v. Nestor, 363 U.S. 603, 617, 80 S. Ct. 1367, 1376); "whether it has historically been regarded as a punishment" (citing at note 23 Cummings v. Missouri, 4 Wall, 277, 320-321, 18 L. Ed. 356; Ex Parte Wilson, 114 U.S. 417, 426-429, 5 S. Ct. 935, 939-941, 29 L. Ed. 89; Mackin v. United States, 117 U.S. 348, 350-352, 6 S. Ct. 777, 778, 29 L. Ed. 909;

Wong Wing v. United States, 163 U.S. 228, 237-238, 16 S. Ct. 977, 981, 41 L. Ed. 140. Text omitted); "whether it comes into play only upon finding scienter" (citing at note 24 Helwig v. United States, 188 U.S. 605, 610-612, 23 S. Ct. 427, 428-429, 47 L. Ed. 614; Child Labor Tax Case, 259 U.S. 20, 37-38, 42 S. Ct. 449, 450-451, 66 L. Ed. 817); "whether its operation will promote the traditional aims of punishment, retribution and deterrence" (citing at note 25 United States v. Constantine, 296 U.S. 287, 295, 56 S. Ct. 223, 227, 80 L. Ed. 233; Trop v. Dulles, 356 U.S., at 96, 78 S. Ct., at 595 (opinion of the Chief Justice); *id* at 111-112, 78 S. Ct., at 603 (Brennan, J., concurring); "whether the behavior to which it applies is already a crime (citing at note 26 Lipke v. Leduce, 259 U.S. 557, 562, 42 S. Ct. 549, 551, 66 L. Ed. 1061; United States v. La Franca, 282 U.S. 568, 572-573, 51 S. Ct. 278, 280, 75 L. Ed. 551; United States v. Constantine, 296 U.S. at 295, 56 S. Ct., at 227); "whether an alternative purpose to which it may be rationally connected is assignable for it" (citing at note 27 Cummings v. Missouri, 4 Wall., at 319, 18 L. Ed. 356; Child Labor Tax Case, 259 U.S., at 43, 42 S. Ct., at 452; Lipke v. Lederer, 259 U.S., at 561-562, 42 S. Ct., at 550-551; United States v. La Franca, 282 U.S., at 572, 51 S. Ct., at 280; Trop v. Dulles, 356 U.S., at 96-97, 78 S. Ct., at 595-596; Flemming v. Nestor, 363 U.S., at 615, 617, 80 S. Ct., at 1375, 1376); "and whether it appears excessive in relation to the alternative purpose assigned" (citing at note 28 Cummings v. Missouri, 4 Wall at 318, 18 L. Ed. 356; Helwig v. United States, 188 U.S., at 613, 23 S. Ct. at 429; United States v. Constantine, 296 U.S., at 295, 56 S. Ct., at 227; Rex Trailer Co. v. United States, 350 U.S. 148, 154, 76 S. Ct. 219, 222, 100 L. Ed. 149. But cf. Child Labor Tax Case, 259 U.S., at 41, 42 S. Ct., at 452; Flemming v. Nestor, at 614, 616 and n. 9, 80 S. Ct., 1374, 1375).

(24) The foregoing criteria are especially informative in considering the instant case. Certainly, the dire consequence of losing the custody of one's child for years or, perhaps, permanently is plainly an "affirmative disability or restraint". So also is the prospect of being subjected to the supervision of a probation officer (W & I 360). The parents and children may suffer the probation officer's or juvenile court's control for, possibly, twenty-one years (W & I 303; W & I 245.5). Such control is virtually unlimited and the court may even order a parent out of his/her own home indefinitely. Forcing parents to submit to and pay for "treatment" is plainly an "affirmative disability and restraint". Such forced "treatment" can cost tens of thousands of dollars (W & I 361.5 (a); W & I 362 (a), (b), (c), (d)). Refusal of the parents to submit to such "treatment" may result in the permanent loss of their child (W & I 364 (c); W & I 366121 (e)). These are serious restraints upon the parents, family and child.

(25) "(M)ost parents would view the loss of custody (of their child) as dire punishment" Lois R. v. Superior Court (1971) 19 Cal App. 3d 895, 901 (97 Cal Rptr. 158). The California Appellate court here recognizes the natural and inevitable effect that loss of child custody has upon most parents. Such a loss will be viewed as very serious indeed, perhaps far more punitive than imprisonment. As Chief Justice Rehnquist observed:

Few consequences of judicial action are so grave as the severance of natural family ties. Even the convict committed to prison and thereby deprived of his physical liberty often retains the love and support of family members. Santosky v. Kramer, 455 U.S. at 787

(26) Examination of the W & I 300 reveals that its provisions come into play only upon a finding of "scienter", Kennedy v. Mendoza-Martinez, supra at 567, and that it is the mens rea and the actus reus of the parent that the juvenile court will judge.

The acts or omissions proscribed by W & I 300 are malum in se and:

Inquiry into whether the offense is morally offensive and malum in se or merely malum prohibitum is one factor often employed in determining whether an offense is petty. United States v. Arbo, 69 F. 2d 862 at 864 (9th Cir. 1982) (emphasis added)

If an offense is serious, that is, malum in se, the accused is entitled to a trial by jury as a matter of right under the Sixth Amendment of the Constitution of the United States of America. District of Columbia v. Clawans, 300 U.S. 617, 625 (1987); District of Columbia v. Colts, 282 U.S. 63, 67 (1930); United States v. Sanchez-Meza, 547 F. 2d. 461, 464 (9th Cir. 1976). It is obvious that the provisions of W & I 300 "promote the traditional aims of punishment-retribution and deterrence." Kennedy v. Mendoza-Martinez supra at 567. The "dire consequences", the penance, payment or retribution that may be exacted upon the parent can involve the liberty, property, and child of the parent.

(27) Additionally, a studied consideration of many of the subsections of the W & I 300 reveals that "the behavior to which it applies is already a crime". Kennedy v. Mendoza-Martinez, supra at 567. Thus, W & I 300 (a) corresponds to California Penal Code (hereafter noted as C.P.C.) Section 273a(1) and (2) and 273(d); W & I 300 (b) corresponds to C.P.C. 270; W & I 300 (c) corresponds to C.P.C. 273 a (1) and (2); W & I 300 (d) corresponds to C.P.C. 11165 (b); W & I 300

(e) corresponds to C.P.C. 273a (1) and (2) and C.P.C. 273 (d); W & I 300 (g) corresponds with C.P.C. 270 and C.P.C. 271; W & I 300 (i) corresponds with C.P.C. 273 a (1) and (2) and 273 (d); W & I 300 (j) corresponds with C.P.C. 273 a (1) and (2), C.P.C. 273 (d), and C.P.C. 11165 (b).

(28) It is also relevant to recognize that the juvenile court dependency proceeding permits a district attorney to represent the government in such a proceeding, thus:

the district attorney or county counsel shall, with the consent or at the request of the juvenile court judge or welfare department, represent the petitioner and shall assist in the ascertaining and presenting of evidence. (W & I 351.5).

(29) In a decision consistent with the view that the juvenile court dependency proceeding is a criminal proceeding, the United States Court of Appeal for the Ninth Circuit has held that juvenile court social workers act as prosecutorial agents. In Myers v. Contra Costa County Dept. of Social Services, 812 F 2d 1154 (9th Cir 1987) the court held that:

Social workers are entitled to absolute immunity in performing quasi-prosecutorial functions connected with the initiation and pursuit of child dependency proceedings (supra, at 1157).

The Meyers court's analysis found juvenile court social workers to be so very similar to prosecutors that it held that:

such absolute immunity from liability was applicable even where the prosecutor knowingly used perjured testimony, deliberately withheld exculpatory information, or failed to make a full disclosure of all facts casting doubt upon the state's testimony (Myers, supra, at 1157, citing Imbler v. Pachtman, 424 U.S. 409, 424-426).

(30) California courts also view the juvenile court social worker as an agent of prosecution and have also extended the doctrine of prosecutorial absolute civil immunity to such social workers. Hence, the juvenile court social worker "has absolute immunity against the alleged misrepresentation of facts and failure to disclose or consider all evidence since such acts are like (those) of a prosecutor", Jenkins v. County of Orange, 212 Cal. App. 3d 278, at 286 (July, 1989) (citations omitted).

(31) These decisions have added to the already formidable power of the juvenile court bureaucracy and, in light of the decisions of the Myers and Jenkins courts, it must now be recognized that juvenile court social workers have a state sanctioned power which far exceeds the power of the county prosecutor. Unlike county prosecutors, the power of juvenile court social workers is not now subject to the deliberation and wisdom, and balance of power of a trial by jury. Unlike county prosecutors, the activities of the juvenile court social worker are not subject to public scrutiny, accountability and political process, ie., the juvenile court dependency proceeding is a secret proceeding and social workers are not elected. Unlike county prosecutors, juvenile court social workers are not answerable to the negative sanctions of peer review process - such as the Bar Association. Unlike county prosecutors, juvenile court social workers are not sworn to uphold the laws and the Constitutions of the United States of America and the State of California. Unlike county prosecutors, juvenile court social workers are not required to establish guilt beyond a reasonable doubt.

(32) Superficially, "whether an alternative purpose to which it (a court sanction) may be rationally connected is assignable for it," Kennedy v. Mendoza-Martinez, supra, at 567, appears to provide the juvenile court with it's raison d'etre. However, such an "alternative purpose" does not negate the jeopardy to the parent whose minor youngster is the subject of a juvenile court dependency proceeding. Furthermore, the juvenile court system as a whole has consistently been found to fall far short of the goals claimed for it. The U.S. Supreme Court recognized that:

Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.... The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness. In re Gault, 387 U.S. 1, at 18-19

Under our constitutional form of government the sovereign people may not be deprived of life, liberty or property without due process of law. Arbitrariness is the antithesis of due process of law. Regardless of the alternative purpose of juvenile court dependency law, its affect upon the parent and family is always punitive and costly.

(33) Plainly the negative sanctions that a juvenile court may impose upon a parent can be "excessive in relation to the alternative purpose assigned", Kennedy v. Mendoza-Martinez, supra at 567, to the juvenile court. The permanent loss of a relationship with one's child, "treatment" or detention fees for thousands of dollars, or, being subjected to court orders for many, many years are excessive and serious deprivations of the fundamental liberty interests of parents. Similarly, it is also

excessive and in neither the best interests of a child nor the public that the average length of stay for a youth in foster custody is nearly two years.

VI. CONCLUSION

(34) Presumed benevolent ends do not justify arbitrary, oppressive, or unconstitutional means. Even assuming that in some cases the state does provide some children with care that surpasses that of the natural parents - which is a highly questionable assumption in light of available data - this is still, at best, a poor excuse for the wholesale denial of parent's explicit constitutional rights. The federally protected and fundamental liberty interests of parents and, specifically, the Constitution of the State of California demands and requires that a jury trial for the parents in a juvenile court dependency proceeding is a matter of right. Parental rights, far more precious than property rights, are inherent in and inseparable from the rights of life, liberty, and pursuit of happiness. Therefore, parental rights must be secured by the highest constitutional protections of due process of law.

§ 280

WELFARE AND INSTITUTIONS CODE

Historical Note

1987 Legislation

The 1987 amendment substituted "358, 358.1, 361.5, 364, 366, 366.2, or 366.21 as is appropriate for the specific hearing, or, for a hearing as provided by Section" for "or" in the first sentence of the second paragraph.

Law Review Commentaries

Forever torn asunder: Charting evidentiary parameters, the right to competent counsel and the privilege against

self-incrimination in California child dependency and parental severance cases. William Wesley Patton, 27 Santa Clara L.Rev. 299 (1987).

The relationship of family and juvenile courts in child abuse cases. Judge Leonard P. Edwards, 27 Santa Clara L.Rev. 201 (1987).

§ 281. Investigation; reports

Notes of Decisions

A. Evidence

Social study report which was not ordered by court was nevertheless admissible at jurisdictional hearing on dependency petitions where social worker that prepared report was present in court and available for cross-examination; report contained relevant information regarding allegations in petition that parents of minor children had violated court's no-contact order and that previous disposition of children had not been effective. *Eduardo A. v. Juan A.* (App. 2 Dist.1989) 261 Cal.Rptr. 68, 209 Cal.App.3d 1038.

Social study reports were properly admitted in dependency proceeding, despite hearsay statements therein; mother cross-examined social worker who prepared the reports, she presented evidence, and she could have subpoenaed persons

whose hearsay statements appeared in reports if she had so desired. *In re Jose M.* (App. 4 Dist.1988) 254 Cal.Rptr. 364, 206 Cal.App.3d 1098, review denied.

Social study report prepared by social worker was properly admitted at jurisdictional hearing on dependency petitions, notwithstanding father's claim that rule permitting introduction of such evidence was void because it conflicted with Evid.Code § 1200 precluding admission of hearsay; under Evid.Code § 1200(b), hearsay evidence is inadmissible "except as provided by law," and Welf. & Inst.Code §§ 281 and 355 authorized admission of relevant hearsay evidence in a social study at a jurisdictional hearing on a dependency petition. *In re Donald R.* (App. 3 Dist.1987) 240 Cal.Rptr. 821, 195 C.A.3d 703.

ARTICLE 6. DEPENDENT CHILDREN—JURISDICTION

Section

300. Minors subject to jurisdiction; legislative intent and declarations; guardian defined; duration.
300. Minors subject to jurisdiction; legislative intent and declarations; guardian defined.
- 300.1. Dependent minors freed for adoption; family reunification services.
301. Assumption of jurisdiction regardless of custody by one or both parents; notice to parents of proceedings; reports of probation officers; custodial rights.
303. Retention of jurisdiction.
304. Custody of minor; jurisdiction; review of records; restraining order.
- § 300. Minors subject to jurisdiction; legislative intent and declarations; guardian defined; duration

Text of section operative until Jan. 1, 1992.

Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual

Additions in text are indicated by underline; deletions by asterisks * * *

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treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The minor shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in " " Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

(e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness. A minor may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the probation officer has made an allegation of severe physical abuse pursuant to Section 332.

(f) The minor's parent or guardian has been convicted of causing the death of another child through abuse or neglect.

(g) The minor has been left without any provision for support; " " the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The minor has been freed for adoption from one or both parents for 12 months by either relinquishment or termination of parental rights " " or an adoption petition has not been granted.

(i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.

(j) The minor's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the minor will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.

It is the intent of the Legislature in enacting this section to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. This protection includes provision of a full array of social and health services to help the child and family and to prevent reabuse of children. That protection shall focus on the preservation of the family whenever possible. Nothing in this section is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a

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particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section "guardian" means the legal guardian of the child.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date. (Added by Stats.1987, c. 1485, § 4, operative Jan. 1, 1989. Amended by Stats.1989, c. 913, § 3.)

For text of section operative Jan. 1, 1992, see § 300, post.

Historical Note

1989 Legislation

The 1989 amendment, in subd. (d), substituted reference to Pen.C. § 11165.1 for reference to subd. (b) of Pen.C.

§ 11165: in subd. (b), deleted "and an emancipatory decree has not been granted pursuant to Section 224a of the Civil Code" following "parental rights"; extended the repeal date from Jan. 1, 1990, to Jan. 1, 1991; and made nonsubstantive changes.

§ 300. Minors subject to jurisdiction: legislative intent and declarations; guardian defined

Text of section operative Jan. 1, 1992.

Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment or nontreatment proposed by the parent or guardian (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The minor shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, or withdrawal, untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian

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APPENDIX A