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ABSTRACT

Lesson plans, teaching materials, visual aids, and handouts for use in a workshop for child welfare workers on termination of parental rights are provided in this manual. The curriculum is designed to increase understanding of the legal system; knowledge of law, legal procedures, terms and concepts; and decision-making skills and skills needed for court preparation. The training curriculum for a 2-day workshop is divided into six units which are focused on: (1) barriers to termination; (2) grounds for termination; (3) termination cases and the legal process; (4) evidence for social workers; (5) preparation for court; and (6) testimony. The two final units are centered around a hypothetical case situation which allows participants to apply knowledge from previous units. Detailed descriptions for each unit include training objectives, lesson plans, training materials, and bibliographic references. Recommendations for expansion of topics are included in several of the unit descriptions. Examples of a 2-day workshop schedule and format, and topics and supplemental training materials for a 3-day workshop format are included. Selected reference materials and bibliographic information for further reading are given. (NRB)

Termination of Parental Rights: The Legal Aspects

REGION V CHILD WELFARE TRAINING CENTER

Center for Legal Studies

Sangamon State University
Springfield, Illinois

TERMINATION OF PARENTAL RIGHTS:

THE LEGAL ASPECTS

A Training Manual

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TERMINATION OF PARENTAL RIGHTS: THE LEGAL ASPECTS

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I. ABOUT THIS MANUAL

PROJECT PURPOSE

It is generally recognized that social workers need to know more about the legal system. This is particularly true of the child welfare worker who must deal regularly with juvenile court and child custody cases. Termination of parental rights cases are within one of the more difficult areas of family law. These cases are often highly contested, and because of the nature of the proceedings, generally require that complicated legal procedures be followed before termination of parental rights may be allowed. It has been recognized that many children remain in foster care too long. Delay in processing cases through the courts has been identified as a factor causing the phenomena often termed "foster care drift."

This training was designed to promote permanency for children. The training is designed to encourage and facilitate decision making in the child welfare field. Court action is generally required whether the permanency plan is to return the child home or to seek court action for adoption. This court procedure should be viewed as a safeguard to protect the rights of all parties to the proceedings. It should not be viewed as a barrier to action on the case. Unfortunately, too often the courts are viewed as barriers to permanency. The training is designed to increase the social workers' understanding of the legal process, knowledge of the law, and skills in case preparation for court.

The curricula manuals and training materials on termination of parental rights and child abuse and neglect were prepared by the Center for Legal Studies at Sangamon State University under a contract from the Region V Child Welfare Training Center at the University of Illinois School of Social Work. The Center agreed to design training materials on two topics involving the legal aspects of child welfare practice. Following a survey of the child welfare departments of the six states in Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), it was determined that the states' greatest training interests were in the areas of termination of parental rights and in child abuse and neglect court preparation. Training materials were developed in both areas.

The Center for Legal Studies has produced this training manual on termination of parental rights and a similar manual on child abuse and neglect court preparation. These manuals contain the lesson plans, teaching materials, visual aids, and handouts for conducting the workshops. The manuals also contain selected reference material and bibliographic information for additional reading. Videotapes have also been prepared for training in both topic areas.

In order to encourage the use of the training materials, telephone consultations, consultation visits and demonstration training sessions were made available to each state in Region V. The goals of the consultation visits and the demonstration training sessions were to identify and train prospective trainers on the material, teaching methodology, and alternative

ways to use the materials. Several attorneys attended the training sessions in all states. In addition, each session was evaluated by both prospective trainers and a trainee group in attendance to aid in curricula development. Only the termination of parental rights workshop package was demonstrated in each state due to time and budget constraints.

PROJECT PERSONNEL

Frank J. Kopecky, J.D. and Director of the Center for Legal Studies, was project director and Rebecca Wilkin, M.A., Legal Studies, and research associate in the Center for Legal Studies were the principal personnel. Frank Kopecky, Associate Professor, has taught in the legal studies program at Sangamon State seven years. He is an attorney with considerable experience in the child welfare field having served as director of a Legal Services Agency in Illinois specializing in juvenile and family matters and as chief counsel for the Illinois Department of Children and Family Services. He currently teaches juvenile, welfare, and administative law. He has written several articles and developed several child welfare and juvenile law training projects. He currently is project director of the Probation Officer Training Project for all Illinois probation officers. Rebecca Wilkin has worked on several research and training projects in the child welfare field. She has worked on research projects focusing on the relationship of juvenile court and child welfare personnel in the field and on the Illinois judiciary. She has assisted on past training projects including the development of curriculum material on child protective service investigations and delinquency prevention.

Several Center for Legal Studies personnel participated in the project at various times. Assistance was provided for legal reseach, curricula design, and development of the training manuals by Center graduate assistants Ada Melton, Barbara Olson, and Stephen Bremseth. Clerical assistance was provided by Janice Hurley, Miki Glass, and Brenda Todd. Miki Glass also assisted in the production of the videotape and photographic materials. Ada Melton, Barbara Olson, and Brenda Todd appeared in the videotape produced by the project for the termination of parental rights workshop.

ACKNOWLEDGMENTS

This project was funded by the Region V Child Welfare Training Center at the University of Illinois School of Social Work with funds made available by the U.S. Department of Health and Human Services. Joan Van Hull and Gary Schaffer of the Region V Child Welfare Training Center deserve special thanks for their support and encouragement. Vic Edwards, social worker and trainer with the Center for Legal Studies, was consulted from time to time on training aspects of the project.

The training coordinators of the child welfare departments of each Region V state deserve special recognition for their assistance and willingness to facilitate the use of the training materials within their states. The Illinois Department of Children and Family Services staff deserve special recognition for their assistance in the development of the training materials and for providing the trainee staff for the initial presentation and evaluation of the materials.

II. TERMINATION OF PARENTAL RIGHTS WORKSHOP

CURRICULA DESIGN

The curricula for the termination of parental rights workshop was designed to increase the child welfare workers' 1) understanding of the legal system; 2) knowledge of law, legal procedure, terms and concepts; and, 3) decision making skills and skills needed for court preparation. Underlying the curricula design is the assumption that children remain in foster care too long partly because courts do not actively and periodically review cases of children who are in foster care. The training in designed to give child welfare workers the ability to effectively prepare cases so that they can take the initiative in the decision making process. Child welfare workers must have an understanding of the legal system and their role and the role of others in the legal process in order to be active and effective participants.

The training curricula is divided into six units. It is designed to be conducted in two days. (A workshop schedule follows in this section.) Unit One emphasizes affective learning and attitude change. Units Two, Three and Four are designed primarily for cognitive learning through materials designed to increase knowledge of the law and legal process. Units Five and Six are designed to increase legal skills. Units Five and Six focus on a hypothetical case situation which allows them to apply the knowledge they have learned in previous units.

A considerable amount of time is spent in Unit One examining attitudes toward termination cases, philosophy, the roles of the various participants, and basic legal terms and concepts. The training curricula moves from these general theroetical issues to specific issues and finally to the application of knowledge and skill development. The trainees are given a hypothetical case situation which allows them to apply the knowledge they have learned in previous units.

Units Two, Three and Four, the cognitive units, could easily be expanded to an entire workshop, however, this would be a mistake. In order for learning to take place, the frustrations which many workers have with the legal system must be addressed. Once these emotional issues are discussed positive learning of legal questions can proceed. Also, legal rules and procedures make more sense if the person can understand the basic theories behind the rules. On the other hand, the skills components of the training can be shortened without losing a great deal from the learning process. The workshop could end with Unit Five, Preparing for Court. The materials in Unit Six, Testimony, could be combined with the testimony materials found in the child abuse and neglect training materials developed by this project into a separate workshop on Courtroom Preparation and Testimony.

These training materials were designed for child welfare workers with at least one year of field experience. Workers should have a general familiarity with a state's juvenile court act and procedure. The training will be of most benefit to those workers who are assigned to termination of parental rights, adoption, and foster care cases. The training materials could be incoporated into a total training workshop on foster care review and permanency planning.

A brief summary of the training units follows in this section. Detailed descriptions of the units and training materials for each unit are found in Section III of this manual. The descriptions include training objectives, lesson plans, training materials, and bibliographic references. Many of the units can be expanded for a more intensive study of a particular topic. Recommendations for expansion of topics are included in several of the unit descriptions. A third day of training can easily be added. Examples of a two-day schedule and format, and topics for a three-day workshop format are included in this section. Section IV of this manual, Supplemental Training Units, contains training materials which could be used in a three-day workshop format.

SUMMARY OF WORKSHOP UNITS

Unit One: Barriers to Termination

The unit has an introductory overview of the two-day workshop on the legal aspects of termination of parental rights. The unit includes a warm-up exercise on the interrelationship of the court and social workers. The unit concentrates on those items which are often considered barriers to permanency planning. It emphasizes that both social workers and legal professionals have difficulty dealing with termination of parental rights. It covers the legal foundations of family law and reviews definitional, procedural and substantive issues in termination cases.

Unit Two: Grounds for Termination

The unit is designed to review as thoroughly as possible the statutory grounds for involuntary termination in the state. The unit emphasizes the difficulty in proving a termination case and the necessity of early and thorough preparation to meet the requirements of the statutory grounds. The state termination statute is also analyzed around three conceptual categories of grounds: (1) abandonment, desertion or lack of interest or planning for child; (2) parental conduct; and, (3) parental character. The general types of information necessary to prove each category of termination ground are reviewed.

Unit Three: Termination Cases and Legal Process

The unit covers the court process involved in a termination case. The concept of due process, theory of the adversary process, and roles of the court participants are introduced. Voluntary relinquishment procedures are overviewed. The petition process is outlined with a perspective on potential problem areas.

Unit Four: Evidence for Social Workers

The unit outlines the trial process and the parts of a trial. The importance of preparation of the case by the social worker and other pretrial activities are emphasized. The rules of evidence are examined with an emphasis on specific evidentiary issues which are of concern in the child welfare field. A written exercise on the hearsay rule and admissibility is included in the unit.

Unit Five: Preparing for Court - The Baker Case

The unit has the trainees apply the materials from lecture to a hypothetical termination case, the Baker Case. The case is given out at the beginning of the workshop with the trainees expected to carefully read the case overnight. The exercise emphasizes the importance of case

preparation, case review, and potential weak points in the termination case. Rules of evidence and proof required to establish unfitness are discussed. The Baker Case also raises potential problem areas in a termination case such as the issue of the putative father.

Unit Six: Testimony

The unit presents an overview of the procedure in the trial and develops the importance of complete "threads of testimony" to sucessfully proving a case in court. The rules and procedures for courtroom testimony are reviewed. The role of defense counsel and defense strategies are pointed out. An exercise on illustrating a typical pattern of testimony for a witness is reviewed. A 30-minute videotape developed by the project is shown. The videotape consists of a short lecture about testimony and the Baker case and shows three trainees developing and role playing a testimony script for the caseworker as a witness in court for the Baker case.

TWO-DAY WORKSHOP FORMAT SUMMARY

DAY ONE

Unit One: Barriers to Termination

1. Lecture/Limited Discussion
2. Introduction/Hypothetical Case
3. Best Interests/Unfitness Exercise

Lunch

Unit Two: Grounds for Termination

Unit Three: Termination Cases and Legal Process

DAY TWO

Unit Four: Evidence for Social Workers

Unit Five: Preparing for Court - The Baker Case

1. Lecture
2. Hypothetical Case Analysis

Lunch

Unit Five: Preparing for Court - The Prosecuting Attorney

1. Court Report Exercise

Unit Six: Testimony

1. Brief lecture focusing on presenting a prima facie case and potential defense tactics
2. Introduce testimony material/Limited group exercise
3. Video Presentation
4. Close

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Child Welfare Training Project
Termination of Parental Rights Workshop

TRAINING SCHEDULE

DAY ONE

9:00 - 9:30 a.m.	UNIT I (1): Introduction to Workshop
9:30 - 11:15 a.m.	UNIT I (2): Barriers to Termination
11:15 - 12:00	UNIT I (3): Best Interest/Unfitness Exercise
LUNCH	
1:00 - 2:30 p.m.	UNIT II: Grounds for Termination
2:30 - 4:00 p.m.	UNIT III: Termination Cases and Legal Process

DAY TWO

9:00 - 10:30 a.m.	UNIT IV: Evidence/Court Preparation
10:30 - 12:00	UNIT V (1): Preparing for Court - The Baker Case
LUNCH	
1:00 - 2:00 p.m.	UNIT V (2): Preparing for Court - The Prosecuting Attorney
2:00 - 3:30 p.m.	UNIT VI: Testimony
3:30 - 4:00 p.m.	Closure/Evaluation

THREE-DAY WORKSHOP FORMAT SUMMARY

DAY ONE

Unit One: Barriers to Termination

1. Pre-Test/Warm Up
2. Introduce Hypothetical Case/Group Exercise Analyzing Facts for a Case Review and Permanency Goal
3. Barriers to Termination Lecture
4. Best Interests/Unfitness Exercise

Lunch

Unit Two: Due Process Hearing

1. Analyze Cases
2. Greater Emphasis on Administrative Due Process and Case Review
3. Analyze Leading Case on Termination in District

DAY TWO

Unit Three: Grounds for Termination

1. Review Statute and Case Law interpreting each ground
2. Emphasize evidence needed to prove each ground
3. Pitfalls on each ground

Unit Four: Legal Procedure for Termination

1. Jurisdiction/Due Diligence
2. Petition/Filing Process
3. Voluntary Relinquishment

Lunch

Unit Five: Evidence/Court Preparation

1. Adversary Process
2. Credibility
3. Rules of Evidence

Unit Six: Special Topics (optional)

1. One to two hour workshop on such topics as:

    a. Voluntary relinquishments
    b. Case reviews
    c. Adoption process
    d. Indian Child Welfare Act

e. Subsidized adoption
f. Termination unwed father, metally ill, etc.
g. Jurisdiction issues
h. Adoption studies
e. Foster parent rights

DAY THREE

Unit Seven: Preparing for Court

1. Lecture
2. Hypothetical Case Analysis
3. Importance of good relation with prosecuting attorney
4. Court report form exercise

Lunch

Unit Eight: Testimony

1. Lecture on credibility and questioning
2. Role play exercise
3. Video presentation (optional)

Unit Nine: Defense tactics - Closure

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III. UNIT DESCRIPTIONS AND MATERIALS

UNIT ONE: BARRIERS TO TERMINATION

Module 1: Introduction to Workshop
Module 2: Barriers to Termination Lecture
Module 3: Best Interest/Unfitness Exercise

Unit Training Objectives

The materials in this unit are designed to help students to:

- recognize the complexity and difficulties in a termination of parental rights case for both social workers and lawyers

- understand the strong legal tradition of protecting the integrity of the family

- become familiar with legal issues in termination of parental rights

- evaluate their own value judgments on the legal process as it operates in the best interest of the child

Summary of Training Content and Methodology

Module 1: Introduction to Workshop

Format: Group Discussion
Time: 1/2 hour
Materials: Introductory training materials
Training Schedule
Hypothetical case on termination
Copies of relevant state statutes, if available

The first part of the module is a warm-up exercise for the trainees on the relationship of the court and social work practice. It examines the perception social workers have in actual practice. The purpose of the exercise is two-fold. First, it serves as a warm up activity between the instructor and the trainee audience and between the trainees themselves. Second, since much social work and law literature addresses the problems in the interaction of law and social work, it provides a forum to air any problems or frustrations with the process. The training is designed to affectively address such feelings by demonstrating that knowledge about the legal process and improved skills in handling cases can alleviate some of the frustration.

This can be a solely discussion exercise or it can be combined into a written and discussion exercise. The instructor asks the trainees to respond with a word which comes to mind when the instructor says "court." The trainee answers are recorded on easel pads. In turn, the instructor proceeds to ask about the word "judge," and "prosecuting attorney." The exercise often elicits words connotating considerable frustration with the court and legal process. Alternatively, the trainees can be asked to simply write their words down on a piece of paper and hand them in anonymously for discussion. This procedure can be used with a mixed professional group of attorneys and social workers. These verbalized problems can be noted as being addressed by the workshop through presentation of material to improve workers' understanding and skills to more effectively work with the legal process.

The module continues with an introduction to the workshop's schedule and topics. The trainees should also be given the Baker Case and relevant state statutes on termination, if available. The importance of the Baker Case is discussed as it is the core of skill development and application of materials presented in lecture throughout the workshop. The introduction stresses that the workshop concentrate on the legal aspects of termination of parental rights for the permanency goal of adoption. It must be emphasized that the decision to select adoption as a permanency goal for a child is a casework decision. Although legal issues are stressed in the workshop, the decision must ultimately be supported by casework evidence that the parent-child relationship should be severed. Futhermore the fact that the training is about the permanency goal of adoption, should not minimize the importance of other permanency goals. The goal of adoption should be used only if other permanency goals such as returning the child to the home are not appropriate in the case. It should also be noted that the training is on termination of parental rights and not on the adoption process.

Module 2: Barriers to Termination Lecture

Format: Lecture
Time: 1 1/2 hours
Materials: Lecture Outline - Barriers to Termination
Resource Paper -U.S. Supreme Court and the Family
"The Ghosts in Permanency Planning" by Maggie Melvin, reprint from the Midwest-Parent Child Review
Resource and Training Aid - Summary of Santosky v. Kramer
Overheads

The module unit covers those issues which are often considered barriers to permanency planning. The module stresses the complexity and severity of termination as a legal act since in law it completely severs the parent-child relationship. It emphasizes that both social workers and

legal professionals have difficulty dealing with termination of parental rights cases. It traces the background of these difficulties through lecture. It covers the legal foundations of family law and reviews definitional, procedural, and substantive issues in a termination case.

The module relies on the work of Maggie Melvin who wrote "The Ghosts in Permanency Planning" which is reprinted in this unit. It is a thorough and concise treatment of the many issues which face social workers who must work on a termination case. Each of the items is reviewed and discussed. Many of the trainees will have faced some of the ghosts in the list. The lecture elaborates on the ghost of the unresponsive legal system by stressing that attorneys who deal with termination cases also have ghosts. They have additional ghost of no compromise since the adversary process in termination will not allow there to be a partial decision unless it is continued foster care (which is really not a decision at all).

The module also addresses the legal tradition of protecting the family unit as a barrier to termination. It stresses that the Constitution and religion combine to give powerful force to maintaining the integrity of the family unit. A review of U.S. Supreme Court cases dealing with parent-child issues traces the development of constitutional protections for the family. A short resource paper is included in this unit which gives a developmental synopsis of the Supreme Court cases included in the lecture. The Supreme Court cases can be covered in detail if more time is allowed, however, the end result of even a brief sketch of the cases should be that the right to raise one's child free from government interference has reached the status of a fundamental right. This strong legal presumption in favor of the family unit must be overcome by evidence in order to terminate a parent-child relationship.

Procedural protections such as the due process hearing and standard of proof are reviewed. The evidentiary standards are reviewed with particular emphasis on clear and convincing evidence as the constitutionally required minimum standard of proof. A short summary of Santosky v. Kramer, the U.S. Supreme Court case (1982) establishing the standard is included in this unit. Substantive safeguards are discussed through the issue of the unfitness and best interest tests for deciding a termination of parental rights case.

Module 3: Unfitness/Best Interest Standard

Format:	Discussion Exercise
Time:	1 hour
Materials:	Raymond V. Cotner case
	Painter v. Bannister case

This exercise is used to promote a better understanding of the role of the unfitness and best interest standard in the legal process. Two custody cases were selected for this exercise because of the actual outcome of the cases and their use of the two standards. The two cases

are Raymond v. Cotner, 175 Nebraska 158, 120 N.W.2d 892 (1963), a Nebraska Supreme Court opinion, and Painter v. Bannister, 258 Iowa 1390, 140 N.W.2d 152 (1966), an Iowa Supreme Court case. The Cotner opinion uses the unfitness standard and natural right of the parent as the reason for the decision while the Painter case uses the best interest standard.

The Cotner case is handed out first for reading and a discussion on why the group agrees or disagrees with the majority opinion. They also consider the dissenting opinion. Most social workers are in disagreement with the majority opinion which relies on a strict interpretation of the unfitness standard and applies the superior right of the natural parents where evidence showed that it was in the best interest of the child to remain with her grandparents. The dissent uses the best interest standard to reach opposite decisions even where there was no evidence that the father was an unfit parent.

Painter v. Bannister is then handed out, and read and discussed along the same lines. In Painter the court applies the best interest standard using very parochial and highly subjective standards on what is the better home for a child. The court relies heavily on the psychological relationship of the child and grandparents.

This exercise provides a value clarification mechanism on the use of the two standards. The standards can be discussed in terms of their value and clarity for a decision-maker. The exercise should clarify why the unfit parent standard, which is used prior to considering the best interest of the child, is used in termination of parental rights. If time permits, this exercise provides a parallel to a discussion of these issues as raised in the two books, Beyond the Best Interest of the Child and Before the Best Interest of the Child by Goldstein, Freud and Solnit.

Unit Comments

Module 1: This module takes considerable time to present. It is possible that this module could be eliminated and the workshop start with the cognitive material in Module 2. Starting with Module 2 is more advisable with inexperienced staff. Module 1 should be used with experienced staff since it is important to actively involve them in the training process early and to give them an opportunity to vent their frustrations. Social workers have many real and imagined complaints against the legal profession and the courts. Serious training cannot take place unless these complaints are aired and addressed. An alternative method of starting the workshop would be an exercise with an abbreviated form of the hypothetical case, the Baker case.

Module 2: This material should be covered quickly. The purpose of this module is to stress the procedural and substantive safeguards protecting parental rights. A quick review of the U.S. Supreme Court cases and the safeguards should leave the trainees with a sense of the importance that family privacy has in jurisprudence. Materials from the reference list may be distributed as readings. The "Ghosts" material is useful in pointing out the importance of permanency planning and in

assigning responsibility for failing to move cases in faster placement.

Module 3: The module illustrates the differences between the unfitness and best interest standard. Although the module takes a considerable amount of time to complete in exercise format, the concepts are difficult to address through lecture. As an added benefit the exercise exposes trainees to legal materials and appellate case briefing. Trainers may want to consider having the trainees read an appellate case from their jurisdiction which discusses the difference between the two tests.

The manual contains a supplemental training unit, The Due Process Hearing. This unit was designed to illustrate the concept of due process through the case analysis technique. Although the supplemental unit takes too long to seriously consider including it in the two-day format selected for this project, its use will generate considerable discussion and a basic understanding of the concept of due process.

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UNIT ONE: Barriers to Termination
Lecture Outline

BARRIERS TO TERMINATION

I. Introduction

A. Statement of difficulty involved with termination cases

B. Why do social service workers have difficulty with termination cases?

II. Difficulty of Termination for Social Workers

A. The Ghosts in Permanency Planning (Midwest Parent - Child Review, Summer, 1981)

1. Ghost of no decision
2. Ghost of inappropriate placements
3. Ghost of worker attitudes and staff turnover
4. Ghost of policies which keep parents uninvolved
5. Ghost of existing treatment programs
6. Ghost of children's impaired ability to form new relationships
7. Ghost of inappropriate state intervention
8. Ghost of foster care system
9. Ghost of unresponsive legal system

B. Unresponsive Legal System

1. Uninformed judges and attorneys
2. Social workers who abdicate their authority
3. Laws which hinder rather than help planning for permanency

III. Difficulty of Termination for Attorneys

A. The Ghosts in Permanency Planning discussed above also apply to attorneys

B. Attorneys have the additional ghost of "no compromise" in a termination case.

C. The legal training tradition

IV. Legal Training and Tradition in Family Law

A. Natural Law as basis for Family Law

1. Development in ecclesiastical courts
2. Association with morals and religion
3. Natural order

B. Constitutional Foundations of Family Law

1. The right to family privacy: Griswold v. Connecticut (1965); Loving v. Virginia (1967)

2. The Development of Family Privacy

a. Early Supreme Court cases

1. Meyer v. Nebraska (1923)
2. Pierce v. Society of Sisters (1925)

b. Parens Patriae and Family Privacy

1. Prince v. Massachusetts (1944)
2. Parens Patriae as basis for child abuse and public welfare legislation

c. Modern Supreme Court cases

1. Griswold v. Connecticut (1965) - individual privacy
2. Wisconsin v. Yoder (1972) - parental authority
3. Stanley v. Illinois (1972) - rights of the unmarried father
4. Parham v. J. L. (1979) - parental authority
5. H.L. v. Matheson (1981) - parental authority
6. Santosky v. Kramer (1982) - family integrity

C. Family as a Fundamental Right

1. As a result of the common law tradition in family law and the line of Supreme Court cases creating the concept of family privacy, the right to raise one's child has reached the status of a fundamental freedom.

2. Children are often cynically equated with property.

3. Family biological ties are almost revered or held sacred.

D. Procedural Safeguards

1. If something achieves the status of a fundamental right, such as the right to family privacy, then the State can interfere with this right only with compelling reason.

a. There is a presumption in favor of leaving the family alone.

b. If interference is allowed, the State has the burden of proving that it is necessary. Usually the State must show that intervention is necessary by producing a great deal of evidence (high standard of proof).

2. Definition of Terms

a. Presumption: An assumption of fact resulting from a rule of law which requires such fact to be assumed if a certain fact pattern exists; a conclusion or inference which must automatically be drawn by a court. Presumptive evidence . evidence which must be received and treated as true and sufficient unless rebutted by other evidence.

b. Burden of Proof: The duty of a party to substantiate an allegation or issue; The burden of proof may refer to the risk of nonpersuasion which essentially means that the party carrying the burden of proof will lose if the judge remains in doubt or is not convinced to the degree required.

c. Standard of Proof: The guideline, or criteria, of how much proof or evidence is necessary to substantiate an allegation and meet the burden of proof.

1. Preponderance of the Evidence: Evidence which is the more convincing to the trier of fact than the opposing evidence; Proof which shows that the issue is more probable than not. General standard of proof in civil cases.

2. Clear and Convincing Evidence: Evidence which clearly points to one conclusion with more than a majority of the evidence; Evidence which leads to a firm belief as to the facts sought to be established. (Greater proof than preponderance)

3. Beyond a Reasonable Doubt: Evidence which points to one conclusion and is so conclusive and complete that all reasonable doubts of the fact are removed. (The highest standard of proof)

4. Standard of proof in termination cases - Santosky v. Kramer, 50 LW 4333 (March 24, 1982). In Santosky the U.S. Supreme Court held that in a termination of parental rights case a state must prove its allegations by at least clear and convincing evidence.

E. Substantive Safeguards

1. Unfitness v. Best Interest: In most instances, if the court is deciding child custody between parents in a separation or divorce situation, the test is best interest of the child. If the state is permanently severing the parent-child relationship in a termination case, unfitness must be proven prior to considering the best interest of the child.

a. Best interests of the child: A criterion for judicial disposition which is used as a basis for determining who should have custody of a child. The decision is based on which placement will best promote and protect the physical, mental, and emotional well-being of a child.

b. Unfitness is the legal requirement that there be a court finding that a parent is unwilling or unable to care for his/her child properly before the parent-child relationship can be legally severed. The decision is based on parental conduct or condition which usually demonstrates fault or inability to perform parental duties.

2. Which test is better - Unfitness or best interest?

a. Raymond v. Cotner, 175 Neb. 158, 120 N.W.2d 892 (1963) - handout

1. Do you agree with majority or dissenting opinion? Also, consider the concurring opinion.
2. Why?

b. Painter v. Bannister, 258 Iowa 1390, 140 N.W. 2d 152 (1966) - handout

1. Do you agree with the court's decision?
2. Are there risks with the best interest standard?

V. What lessons can be learned from this unit on the barriers to termination?

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PERMANENCY PLANNING: DESTRUCTION OR RECONSTRUCTION OF PERMANENCE?

Issue Editor:

Maggie Melvin

In 1975 Selma Fraiberg coined the phrase "ghosts in the nursery" as a way of looking at the effects of impaired mother-infant relationships. This issue of the Midwest Parent-Child Review challenges us to look at the "ghosts" of permanency planning - those ingredients of our past and present policies and practices which impair our efforts at realizing a FOREVER home for every child. The ghosts resurrected in the following pages are those identified in the literature on permanency planning, from conversations in the field and from the author's personal experiences as a foster parent. These may not be your ghosts - they will be different for each individual, each agency, each locality - but ghosts they are. We challenge you to resurrect your ghosts with honesty, and to banish them with commitment and creativity - to look at permanency planning - and to ask "is it the destruction or reconstruction of permanence?"

Unit One: Barriers to Termination
Module 2
Resource Paper - Reprint,
"Permanency Planning",
Midwest Parent - Child Review
Author: Maggie Melvin

PERMANENCY PLANNING. . . . . .

Conceptually permanence is lasting, immutable, unaltered, unshifting, intact, unfailing, continuing, enduring, predictable, ALWAYS - FOREVER. In practice a permanent home is not one that is guaranteed to last forever, but one that is intended to exist indefinitely. A permanent home is one that holds together through many kinds of family crises. Such disruptions as prolonged illness, changes of residence, unemployment, marital problems and conflicts between parent and child are weathered and resolved within the framework of the family itself. A permanent family is one in which a child receives commitment and continuity in his relationship and with whom he shares a common future.

Permanence, the birthright of every child, comes for most children by birth into a family. But for some children, permanence within the family dissolves, and because of a family's incapacity, unwillingness or forfeiture of their rights, the state must PLAN PERMANENCE. Planning clearly identifies the purposes and goals of a child's current placement and sets in motion the events necessary to maintain or return a child to his natural family, or to provide the greatest degree of permanence via adoption or planned long term foster care.

While many systems and individuals impact on the success or failure of permanency planning, three systems are crucial:

The Protective Services System: Often when a family's crisis capitulates it into the system, it is the protective services system. As gatekeeper, the initial protective service decisions set a family on a path of the destruction or reconstruction of permanence. Often the direction is dictated by the protective service perspective - Is it one of permanency or safety? Does it take into account the past, present and future implications of out-of-home placement decisions? Does it view its decisions as ones of choice or of last resort?

The Foster Care System: The foster care system is the locus of many permanency planning initiatives. This is due to the backlog of children, who over the years have entered and remained drifting in the system with no plans.

The Legal System: The legal system determines the thrust and parameters of permanency planning.

The decisions, policies, practices and procedures of these three systems facilitate or undermine permanency planning. What are the ghosts in these systems - the ghosts that if left alone will cause the destruction of permanence - the ghosts that if faced and banished will move us toward the reconstruction of permanence?

DESTRUCTION OF PERMANENCE. . . . . RESURRECTING THE GHOSTS IN PERMANENCY PLANNING

THE GHOST OF NO DECISIONS:

Joey, [illegible], has been in foster care for three years. Although he has [illegible], he would rather be at home. The mother says she wants him back . . . "not right now though because the school is better in the neighborhood he is. . .not in summer because my neighborhood ain't that good for [illegible] the street all day." In the meantime, she changed her job to one that [illegible] possible for her to be available to Joey after school and weekends. . . . [illegible] boyfriend who was "nervous" around kids. . .sold Joey's bed when [illegible] and hasn't replaced it. Although there doesn't seem to be enough [illegible] termination of parental rights, the agency is hesitant to petition [illegible] with the mother's consent, the worker petitions the court for another six month's extension of custody. Joey begins his fourth year in foster care.

In an arena in which we are faced with decisions that impact on families for the rest of their lives, often made by the youngest of social workers with little life experience themselves, and made with families who are ambivalent and indecisive, it is no wonder that we become paralyzed. But life is not static, and no decision is, in fact, a kind of decision. How frequently do case plans evolve from no decisions! This is a most malevolant ghost, but it can be banished by 1) shared decision-making, 2) skillful working with ambivalent parents and 3) early case planning.

Shared decision-making provides the best guarantee that the best plan will be made; provides psychological/emotional support in difficult, painful decisions; lessens the possibility of bias and judgement errors and builds in accountability. It is essential in permanency planning.

In order to successfully plan permanence for children of ambivalent parents, we need to look critically at our own casework skills and our agency policies to make sure that they mitigate against, rather than support, ambivalence. Does our agency have, do we communicate and does our case practice bear out a clear position that long-term foster care is not appropriate? Without this, we give parents permission to take refuge in procrastination, to do dealing with the pain of growth through a series of temporary plans; in short, we give parents permission to be ambivalent. Some essentials of casework with ambivalent parents are:

1) Engaging the parent from the beginning of the decision process. Ways to engage include mutual goal setting and contracting, teaching prospective foster parents about their child, preparing the child for placement, accompanying the child and worker to the foster home, participating in case conferences, etc.
2) Relating to the parent as a person apart from the child. Without the basic nurturing of the parent as a person, it is unlikely that the parent ever will be able to either invest in the child or separate from him.
3) Building a trust relationship. In therapeutic intervention, we need to help the parent obtain gratification, relieve guilt and vent hostility. This is necessary to arrive at free decisions.
4) Confronting what the parent's behavior is saying and, based on that, arriving at decisions.

THE GHOST OF INAPPROPRIATE PLACEMENTS:

Thirteen year old Mary has lived with her grandparents since early infancy. Her mother, a drug addict, is presently institutionalized; her father is unknown. In the last year her grandparents have felt mounting stress over Mary's moodiness and constant complaints of boredom and dissatisfaction with living in the country. During the summer things worsen and, distraught, the grandmother calls social services to see if they can find a home for Mary in town. The grandparents just can't handle Mary anymore. The social worker finds a home in town and Mary enters foster care.

Placements are inappropriate when they disrupt permanent parent-child bonds without grave cause. This parent-child bond may be between child and natural parent, child and adoptive parent or child and foster parent. Even if grounds for removal of a child exist within the family, there is not justification to remove a child if we know that we cannot offer the child a less detrimental alternative. With this in mind, perhaps we should consider the following limiting guidelines for placement decisions:

1) Either the child is in serious physical or psychological danger because of the family dynamics, or the permanent relationships in the family have already been destroyed and
2) the new placement can offer the child a less detrimental alternative.

In the first case, a temporary separation to de-escalate the immediate crisis and assure the safety of the child is called for. In the second case, the removal of the child recognizes that the bond no longer exists and makes possible decisive planning for permanence within a new family.

Placements can be inappropriate, in another sense, when the form of substitute care is not appropriate to the child's needs. As a general rule, the child should be placed in the most normalizing and least restrictive environment. For most children, this is family foster care. For some children other options; such as group home, residential treatment center or independent living (for an older adolescent) are more growthful environments.

THE GHOST OF WORKER ATTITUDES AND STAFF TURNOVER:

Anne has been in foster care for two years. The first year three social workers from the department's intensive in-home treatment team worked with Anne's mother in a futile attempt to reunify the family. Failing, the team pulled out; six months later a new parent worker was assigned. The new worker, feeling that the mother was not ready to accept a permanent plan, developed a specific case plan to work toward permanence. This new plan was presented at a second hearing to extend custody and was accepted by the judge. Two days after the court hearing, the new worker left the agency. To date, no new worker has been assigned to implement the plan.

High staff turnover impairs continuity of planning and implementation. It often results in a longer time period to implement plans than is consistent with a child's sense of time. Changing staff destroys client-social worker trust relationships. Perhaps serious consideration of a minimum commitment of two years should be discussed at the time of initial hiring of protective service and foster care workers. This commitment, supported by agency policies and practices and community attitudes, could go a long way to prevent burnout.

Some of the attitudinal barriers to permanency planning are: 1) a negative attitude toward termination of parental rights, 2) pessimism about being able to find adoptive homes for older children, 3) pessimism about the options available to a child who has been in foster care for a long time and/or one who has experienced several placements, 4) pessimism about local judges' and county attorneys' willingness to consider or work toward the termination of parental rights and 5) reluctance to make a decision about a child's future and a tendency to drift with the status quo.

THE GHOST OF POLICIES AND PRACTICES WHICH KEEP NATURAL PARENTS UNINVOLVED:

Mrs. Wilson's five year old daughter, Sara, has been in foster care for four months. Sometimes Mrs. Wilson lays in bed at night and wonders what her little girl's new bedroom looks like and if the new "Mom" knows that Sara is afraid of cats. When Sara was first taken, she was in a receiving home for three weeks. While there, Mrs. Wilson couldn't even talk to her on the phone. Now she visits with Sara once a month, when the social worker brings Sara home. But Mrs. Wilson has never seen the daughter's new home and new Mom - or kindergarten teacher. She asked the social worker about going to the parent-teacher conference, but the social worker said the foster mother would take care of that. Sometimes Mrs. Wilson doesn't even feel like a "Mom" anymore.

The natural parent is key to any permanency planning effort. Yet, sometimes our actions say the opposite - "You are not important to your child; you do not have to be involved." We run the risk of communicating this message if we do not take specific steps to ensure that the parent(s) maintain a sense of being in control 1) by encouraging their participation in preplacement decision-making and their involvement in placement tasks and 2) by being careful to obtain their informed consent to significant case developments. This means seeing the parent as:

1) informed party. (Social workers honestly communicate what is and what might happen.)
2) negotiator. (Parents are given the opportunity to meet the prospective foster parents before the child does and to teach the foster parent about the child.)

3) parent. (Parents are encouraged to prepare the child for placement and accompany the worker in taking the child to the foster home.)
4) participator. (Parents are included in case conferences, planning and evaluation and are invited to participate with foster parents in activities with the child and decisions concerning the child.)

THE GHOST OF EXISTING PROGRAMS DICTATING TREATMENT:

Ten year old Kurt is about to be placed in his eleventh foster home. At a recent staffing, the psychologist's report supported the social worker's evaluation that the child's serious emotional and behavioral problems are likely to prohibit successful integration into a family setting and exceed the coping capacities of most families. The recommendation is for residential treatment. Unfortunately, the only available residential treatment center is filled. Without legal recourse, since there is no clear evidence that the child is a danger to himself or others, the social worker has been forced to try yet another foster home placement.

Sadly, all too often the only existing program is foster care which, of itself, provides neither treatment nor permanence. It is in this area that social workers have a fundamental advocacy role - they know the needs of families and the resources necessary to meet those needs. There will always be times when we can't provide the best alternative for a specific family because we lack the needed resource. But if those decisions repeat themselves with many families because of the lack of the same needed resources, then justification is difficult. If we, who work with families and know their hurts and their needs aren't creative and sensitive advocates, who will be?

THE GHOST OF CHILDREN'S IMPAIRED ABILITY TO TRUST, TO BOND, TO FORM NEW RELATIONSHIPS:

Nine year old Jane, who has been in multiple foster homes because of her disruptive behavior and inability to fit in, is now in a new adoptive home. Jane was placed in foster care after being severely beaten by her mother, who subsequently was imprisoned for the beating death of her infant son. This gave cause for the termination of parental rights and for Jane's adoptive placement. The adoptive parents, who have waited three years for an infant, finally agreed to an older child as long as the child was not handicapped.

The damaging effect of abuse and neglect and/or multiple placements does not speak well for future permanence within a family. As a result of home environments where cause and effect relationships were distorted and where a child's needs were not met, abused and neglected children are frequently unattached children who have developed self-parenting skills. These are not skills conducive to growing as a child within a family. If we are to speak of permanence for abused/neglected children, we need to consider such ways as:

1) A range of choices in living environments such as institutional care, safe houses, group homes and weekend families as well as adoptive, foster and natural family care.
2) The use of attachment therapy as a therapeutic intervention to assure psychological permanence.
3) Specialized diagnostic, placement and post-placement work with adoptive parents of abused/neglected children.

THE GHOST OF INAPPROPRIATE STATE INTERVENTION:

Karen is eleven. She has been in three different foster homes at three different times since she was five. Each time, placement was because of "unfit home conditions." Since there is not sufficient evidence to consider court termination of parental rights, Karen returns home again time the crisis fades and her Mom wants her back.

When and why should a child's relationship to his parents become a matter of state concern? Considering what a child loses when he passes, even temporarily, from the personal authority of parents to the impersonal authority of the law, what grounds for placing a family under state scrutiny are reasonable? Goldstein, Freud and Solnit, calling for minimum state intrusion, challenge us to consider these and only these as grounds for state intrusion:

1) Parental requests for the state to place the child (e.g. the request by a separating parent for the court to determine custody or a request by either or both parents for the court to terminate their rights to a child).
2) Familial bonds between children and longtime caretakers who are not parents (e.g. the request by a child's longtime caretakers to become his parents or the refusal by longtime caretakers to relinquish him to his parents).
3) Gross failures of parental care (e.g. the death or disappearance of both parents, the only parent or the custodial parent when coupled with their failure to make provision for the child's custody and care; the conviction or acquittal by reason of insanity of a sexual offense against one's own child; serious bodily injury inflicted by parents upon their child, an attempt to inflict such injury or the repeated failure of parents to prevent their child from suffering such injury).
4) Refusal by parents to authorize lifesaving medical care when a) medical experts agree that treatment is nonexperimental and appropriate for the child, b) denial of that treatment would result in death and c) the anticipated result of treatment is what society would want for every child - a chance for normal, healthy growth or a life worth living.

While we may not agree with the philosophy of minimum state intervention, or with the limits of these categories, I think they serve to challenge our sometimes ready invocation of state intervention for reasons such as "unfit homes," "parental conduct detrimental to mental health," "emotional neglect" or "emotional harm." My personal opinion is that these are cause for intervention, but my personal experience sees time after time where intervention in these instances has not helped. but made things worse - the children are removed and then eventually returned home to a deteriorated rather than strengthened family or the child is removed and begins a life of multiple placements. If we are going to move beyond minimum state intervention, then we need to be prepared with the knowledge, skill, commitment and community support to help.

THE GHOST OF AN UNRESPONSIVE LEGAL SYSTEM:

> *The Appletons are foster parents of Tom, a five year old who has lived with them for the last four years. They contest the court's decision to return Tom to his biological parents, and request the court to allow Tom to remain in their custody and, if possible, to be adopted by them. They cite evidence showing that Tom considers them his parents and wants to stay with them forever. The court decides that, since the agency to whom the child was awarded, is satisfied that the causes which gave rise to the committal no longer exist, the child should be returned to his natural parents.*

Since the legal system defines the limits of permanency planning, no discussion of it would be complete without looking at such barriers as: 1) uninformed judges, 2) social workers who have abdicated their authority to legal counsels and 3) laws which hinder rather than help planning for permanency. Solutions call for solid training and consistent advocacy efforts. Judges, counsels, guardians ad litem and public defenders need to be reached and sensitized to the real issues and concerns. Social workers repeatedly cite the need for court room procedure, evidence collection and documentation as the number one training need. Advocates need to analyze the impact of state permanency planning legislation. Although space prohibits analysis of specific state legislation, the following guidelines are suggested.

1) Do the laws insure careful review in order to prevent unnecessary placement?

2) Do the laws impose rapid implementation of the plan?
3) Do the emergency removal statutes a) set down tight criteria? b) require good documentation to prevent removal of borderline cases? c) define a timetable for adjudication and disposition? d) require findings of fact in the adjudication process? e) require notice of missing parents, including the non-custodial parent?
4) Do the statutes dealing with disposition a) call for the submission of the pre-disposition report prior to the hearing? b) focus on permanency planning issues? c) require visitation early on and in all stages of placement?
5) Do the statutes recognize the rights of psychological parents? After long-term placements, foster parents may, in fact if not by law, be true psychological parents. We must at least question that their rights as parents to the child may be stronger than the natural parents' rights. This may be true despite the fact that the initial placement may have been inappropriate, in violation of the original rights of parent and child and unable to stand up in a court of law. We have made mistakes in the past - bonds between natural parent and child have been disrupted without sufficient cause; children mistakenly placed in foster homes have bonded with new parents. Years later as we plan permanence for these children, not recognizing the psychological parent as the true parent means that children may again suffer for our mistakes.
6) Do the termination of parental rights statutes recognize the child's sense of time and, therefore, limit the length of time needed for the court process?

THE GHOSTS OF THE FOSTER CARE SYSTEM:

Mr. and Mrs. Jackson has been foster parents for four years. They always thought of themselves as the kids' parents as long as they were with them. They have a new worker who is encouraging them to invite Tommy's mother to school activities and conferences. The Jacksons feel real resentful of that.

Policies prohibitive of foster parent adoption and the traditional, limited view of the role of foster parents appear particularly detrimental to permanency planning. Many problems in potential future foster parent adoptions could be avoided if agency and social workers adhered to rigorous standards and procedures for the selection and licensing of foster parents, utilized professionally sound matching criteria for the original foster placement and took action toward permanency planning before the child has spent many years with a foster family. Sometimes agencies are so hard pressed to find foster homes that they license people who lack healthy motivation, emotional and marital stability and the capacity to parent. This places children at the risk of multiple foster care placements and repeated separation trauma or of bonding with inadequate parents with whom the system cannot endorse permanence.

The traditional role of foster parent as substitute parent can create conflicts in the foster parents' cooperating with and engaging in participation with the natural parent. Agency's perceptions of the foster parent as client casts the foster parent in a very isolated role and deprives case planning of their expert input. Permanency planning suggests new roles for foster parents - not as substitute parents but as parallel parents, not as clients but as vital team members.

U.S. SUPREME COURT AND THE FAMILY

The legal tradition of protecting family units from government interference has been given constitutional protection through U.S. Supreme Court cases which emphasize the maintenance of family integrity and family privacy. The U.S. Supreme Court has ruled on several occasions that there are important and fundamental rights attached to establishing and maintaining a family. These cases are usually based on a liberty interest or privacy interest in the family or individual.

The right to privacy and family integrity has given individuals the constitutionally protected right to marry, to procreate, to decide whether or not to have children and to have responsibility for their children. Parents have the primary right and authority to raise their children and decide what is in the best interest of their children.

The family is a constitutionally protected unit which, if functioning properly, is beyond state intervention. Decisions made within the family unit must be afforded a presumption of correctness and cannot be interfered with unless there is clear evidence that the actions of the family will harm the child.

While the Constitution and our common law traditions protect the family from state intervention, there is a countervailing body of law which can justify state intervention. This body of law is supported by the doctrine of parens patriae which in modern terms means "parent the state." Basically this doctrine holds that society or the state has a duty to protect those persons who are unable to care for themselves, i.e., children. The parens patriae doctrine is the basis for the modern welfare state.

It is important for social workers to recognize the importance placed on the integrity of the family unit and that the burden of proof for intervention in the family lies with the state. Courts are strongly inclined to give every protection to the family. The following cases illustrate the constitutional basis for the courts' position. The listing of U.S. Supreme Court cases gives a short summary of each of the major cases in the area. The development of these cases clearly shows the constitutional protections granted to the family unit in our society. (These U.S. Supreme Court cases are found in the lecture outline, Barriers to Termination, Unit One, Module 2.)

Griswold v. Connecticut, 381 U.S. 479 (1965). The constitutional right to privacy in matters of marriage and family life was invoked by the Court in this case which invalidated a Connecticut statute which prohibited the dispensing of contraceptives to married persons. The Court held that persons and the marital relationship are protected by the right to privacy. This right includes the right to determine whether to have children or not without state interference.

Loving v. Virginia, 388 U.S. 1 (1967). The case invalidated a state miscegenation statute on the grounds that the right to marry is a fundamental and basic civil right. The Court ruled that the state's interest in prohibiting interracial marriages was not legitimate and unduly infringed on the right to marry.

Meyer v. Nebraska, 262 U.S. 390 (1920). The Court invalidated a state law which prohibited parents and teachers from giving children instruction in the German language in school. Parents were held to have the right to control their children's destiny as a corollary right to their duty to provide for their children.

Pierce v. Society of Sisters, 268 U.S. 510 (1925). The Court declared unconstitutional a law requiring parents to send their children to a public school rather than a parochial school. As in Meyer, the Court ruled that the fundamental theory of liberty precludes any general state power over children.

Prince v. Massachusetts, 321 U.S. 158 (1944). The decision in this case went against parental authority by upholding a mother's conviction for violating a child labor law. The mother had allowed her daughter to sell religious tracts on the street in violation of state law. The parens patriae interest of the state was held to be more important than the parent's authority and the right to religious expression. Although Prince does support parens patriae , it is often cited to support parental authority because of the Court's following statement: "It is cardinal with us that the custody, care, and nuture of a child resides with the parents, whose primary function and freedom include preparation of obligations the state can neither supply nor hinder."

Wisconsin v. Yoder, 406 U.S. 205 (1971). Amish parents refused to send their children to school beyond the eighth grade and were prosecuted for violating the state's compulsory school attendance laws. The Court ruled that Amish parents did not have to send their children to school beyond the eighth grade. The Court ruled that Amish parents' First Amendment rights to free exercise of religion coupled with their liberty interests in raising their children outweighed the state's interest in educating children.

Stanley v. Illinois, 405 U.S. 645 (1972). This case involved an unwed father of three children who lived with the mother for eighteen years until her death. The state made the children wards without giving notice or having a fitness hearing for the father because he was not a "parent" by statute as the couple never married. The Court found that the unwed father had a privacy interest in his children which is constitutionally protected as are the married fathers' rights. The Court upheld the integrity of the family and ordered that the unmarried father must have notice and a hearing to determine his fitness as a parent.

Parham v. J.L. and J.R., 442 U.S. 584 (1979). This class action case involved minors who were hospitalized for psychiatric treatment by their parents without a formal preadmission hearing and against their wishes. The Court did find that the children had substantial liberty interests at stake; however, it linked the minors' interests to the parent's concern and responsibility for the children. The Court found that the decision to

commit a child was best left to the parent if the parental decision was judged appropriate by medical professionals. (Statutes in many states supersede this opinion.)

H.L. v. Matheson, 450 U.S. 398 (1981). This case involved a Utah statute which required that parents must be given notice by a physician before performing an abortion on a minor child. The Court had previously given minor children the right to obtain an abortion without parental consent because the minor's right to privacy outweighed the deference given to parental authority and concern for family integrity. (See, Planned Parenthood v. Danforth, 428 U.S. 52 (1976). This right was, however, qualified in Belloti v. Baird, 443 U.S. 622 (1979), where the Court held that a state may decide to require parental consent for a minor's abortion, but the state must also provide the minor with a proceeding which allows her to prove she is capable of making an informed decision or, even without the capability for an informed decision that the abortion is in her best interests.) In Matheson, however, the Court found that the notice requirement was constitutional because the Court felt the parent's right to direct a child's upbringing was too important to allow interference with the family relationship. The Court also held that the notice requirement did not interfere with the minor's right to obtain an abortion.

Lassiter v. Department of Social Services of Durham County, North Carolina, 452 U.S. 18 (1981). In this case a divded Court (5-4) ruled that indigent parents do not have an automatic right to appointed counsel in a termination of parental rights proceeding. The Court held that courts must make a case by case determination of a parent's need for counsel. The majority noted that the parent-child relationship commands protection absent a powerful countervailing state interest and that 33 states require counsel in termination cases. It based its decision, however, primarily on the fact that the right to appointed counsel has only been granted in criminal or quasi-criminal cases. The dissenting justices strongly objected by stressing the fundamental protections given to the family unit and the severity of state intervention into a family in a termination case. The dissent argued that the Constitution and fundamental fairness require that an indigent parent faced with the loss of his or her child, the legal complexities of a termination case, and the power of the State to prosecute, needs and should have counsel in every case.

Santosky v. Kramer, 50 L.W. 4333 (March 24, 1982). The Court decided in this case that the constitutionally required standard of proof in a termination of parental rights case should be at least clear and convincing evidence. The Court emphasized the importance of preservation of the family unit. The court rejected the use of the lower standard of proof, preponderance of the evidence, because it was not an adequate burden for the state to prove that family intervention was necessary.

SANTOSKY V. KRAMER

Style: John Santosky II and Annie Santosky v. Bernhardt S. Kramer, Commissioner, Ulster County Department of Social Services, et.al., 50 LW 4333 (March 24, 1982).

Facts: John and Annie Santosky are the natural parents of five children, two of whom were born after the case in question. The Ulster County Department of Social Services (New York) took custody of the three older children and placed them in foster care: Tina (neglect proceeding, 1973), John III (1974), and Jed (1974 when he was three days old on the ground that immediate removal was necessary to protect life and health). Since that time the Santoskys have had two more children which the State has taken no action to remove. In October 1978 the Department petitioned the Family Court for termination of parental rights based on permanent neglect. The Santoskys challenged the constitutionality of the New York standard of proof, a "fair preponderance of the evidence," used in the proceeding. The Family Court terminated parental rights finding that although the Santoskys had maintained contact with their children they were incapable of adequate parenting even with public assistance.

On appeal the New York Supreme Court, Appellate Division, affirmed the decision holding that the application of the preponderance of the evidence standard was "proper and constitutional." The New York Court of Appeals dismissed the Santoskys' appeal. The Santoskys appealed their constitutional claim to the U.S. Supreme Court.

Issues: Does a State's use of the preponderance of the evidence standard of proof in a termination of parental rights proceeding violate the Due Process Clause of the Fourteenth Amendment? If so, what standard of proof does the Constitution require in a termination of parental rights proceedings?

Holding: The U.S. Supreme Court held that the preponderance of the evidence standard violates the Due Process Clause of the Fourteenth Amendment. The Court set the required standard of proof by holding that "before a State may sever completely and irrevocable the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." Santosky at 4333.

Rationale: The U. S. Supreme Court emphasized the importance of the family and the family's established Constitutional protections. To answer the issue the Court used a due process analysis in which they balanced three factors to determine the nature of the process due in a termination of parental rights proceeding: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting the use of the challenged procedure. Id. at 4335 citing Matthews v. Eldridge, 424 U.S. 319,335 (1976).

The Court found that the first factor - "the private interest affected-weighs heavily against the use of the preponderance of the evidence standard at a State-initiated permanent neglect proceeding" because the hearing pits the State directly against the parents at the fact-finding stage. The Court emphasized that the child's interest and parents' interest are the same at the fact-finding hearing and that the family is preeminently important. Santosky at 4336.

The Court also found that the second factor, the risk of erroneous deprivation of an important right, was too great to be left to a low standard of proof. The Court listed numerous factors which can combine to unfairly allocate the risk of erroneous fact-finding to the detriment of the parents in the proceeding. These included imprecise neglect standards, the subjective nature of decision-making, and the power of the State to garner resources to prosecute the case. Id. at 4337.

The Court found two State interests in a termination proceeding - its parens patriae interest in the welfare of the child and its interest in keeping the fiscal and administrative burden of its procedure low. The Court rejected the use of preponderance of the evidence as inconsistent with both State interests. The Court rejected any parens patriae interest at the fact-finding stage of the hearing because "parens patriae favors preservation, not severance, of natural familial bonds." Id. at 4338. The Court noted that "Any parens patriae interest in terminating the natural parents' rights arises only at the dispositional phase, after the parents have been found unfit." (Emphasis in original.) Id. at note 17. The Court did not find any possible prohibitive administrative or fiscal burden through the use of the higher standard since 33 states use the higher standard "without apparent effect on the speed, form, or cost of their fact-finding proceedings." Id.

After balancing the three factors the Court found that the preponderance of the evidence standard was not constitutionally adequate for a termination of parental rights proceeding. The Court did not proscribe the use of the highest standard of proof, beyond a reasonable doubt, but did require that at least the clear and convincing evidence standard was necessary to satisfy the due process in a termination proceeding.

Decision: The U.S. Supreme Court vacated the decision of the New York Supreme Court, Appellate Division and remanded the case for proceedings consistent with the opinion. (5-4 vote).

Franklin H. Raymond v. Albert A. Cotner and Edna L. Cotner

Supreme Court of Nebraska

175 Neb. 158, 120 N.W.2nd 892 (1963)

Majority Opinion:

[Franklin Raymond and Charlotte Cotner were married in 1945 and had a daughter, Lin Dee in 1950. They were divorced in 1 ~2 and Charlotte was awarded custody of Lin Dee. Franklin had visitation ·ghts and a child support obligation. After the separation, Charlotte . Lin Dee moved from the Raymond home in Iowa to the home of her parents in Nebraska where they lived until Charlotte's death in 1961. Immediately following her death, the father filed for custody. The trial court awarded custody to the father and the grandparents appealed to the Nebraska Supreme Court.

The father, age 37, still lives in Iowa and is employed by a contracting firm. He owns his own home. He remarried in 1953 and has two children (ages 6 and 8) by the marriage and his wife's 12 year old daughter whom he adopted. His wife is 33 years old. Testimony showed that he was a good husbard and father and his wife kept their home in good order and cared for the children well.

The father always paid child support as it was due. Although the father saw Lin Dee three or four times a year when she was small, he had not seen her for the last 10 years because his former wife thought it best that he did not visit. The father's parents did visit Lin Dee once a month and informed him of her welfare.

The Cotners, the grandparents, reside on a farm which they own. Evidence indicated that the home is clean and well kept. Mr. Cotner, 69 years, and Mrs. Cotner, 67, are in good health. Mr. Cotner takes Lin Dee to and from school every day. Mrs. Cotner cared for Lin Dee most of the time since Charlotte worked. The Cotners testified that they had great affection for the child and that they had the means and desire to raise and educate her.]

Lin Dee Raymond was 11 years of age at the time of the trial. She was not in good health for 6 months after her birth but is presently in good health. There is some evidence that she became emotionally upset when informed that her father wanted to take her into his home. She attends school regularly and her school reports indicate she is a very good student. She was called as a witness and testified to her affection for the Cotners. She testified to the things provided for her care, comfort, and amusement. She said she had never seen her father until the day of the trial and that he was a complete stranger to her. She further stated that she was very happy with her grandparents, the Cotners, and that she did not want to leave them and go with her father, whom she does not know.

The applicable law to a case such as we have before us may be summarized as follows: When the custody of a minor child is involved in a custody action, the custody of the child is to be determined by the best interests of the child, with due regard for the superior rights of a fit, proper and suitable parent. The courts may not properly deprive a parent of the custody of a minor child unless it is affirmatively shown that such parent is unfit to perform the duties imposed by the relationship, or has forfeited that right.

It is true that the rights of a father to the custody of his minor child, upon the death or unfitness of the mother to whom legal custody was granted, may be defeated by his abandonment of the child, his complete indifference to its welfare, or by his own unfitness to have its custody. When the superior right of the father has been forfeited, the natural right of a father to have the custody of his minor child must give way to the best interests of the child, even though it results in placing the custody of the child in more distant relatives or unrelated persons. The evidence shows that plaintiff and defendants have suitable homes in which to care for this young girl. There is no evidence that the Cotners have failed in any respect in caring for her. They are suitable and fit persons to have her care and custody. The plaintiff is likewise a suitable and fit person to have the care and custody of his 11-year-old daughter. The decision must therefore rest on other considerations.

The father has a superior right to the custody of his daughter, unless he has forfeited that right. The issue resolves itself into the question of whether or not he has forfeited his natural right as the girl's father to have her custody...we find nothing in plaintiff's home and surroundings that militates against his right to the child's custody.

The plaintiff has made every payment of child support as it came due. The plaintiff visited the child when she was very small...[H] is failure to visit the child [during last 9 years] was in deference to the wishes of Charlotte and what he thought was the best interests of the child...Plaintiff has not failed to support the child. He has not abandoned the child. He has not voluntarily relinquished the child to the Cotners with the expectation that they would furnish care and support. We think the evidence shows that plaintiff is a fit and proper person to have the custody of his child and that he has done nothing that would sustain a finding that he had forfeited his superior right to her custody.

Dissenting Opinion:

We respectfully dissent from the holding of the majority of the court in this case. The opinion of the court states: "When the superior right of the father has been forfeited, the natural right of the father to have the custody of his minor child must give way to the best interests of the child***." We submit that this statement quoted is an accurate summarization of the holding of this court. We do not agree that is is a correct statement of the law. We believe that parental rights in child custody proceedings are preferential, not absolute, and that the rights, desires, and wishes of parents should be considered and respected in such proceedings except where they conflict with the welfare of the children involved. In most cases the best interests of the child require that its custody be awarded to its parent. The difficulty arises when the best interests of the child require that its custody be awarded to someone other than its parent.

[A] court is in no case bound to deliver a child into the custody of any claimant or of any person, but should, in the exercise of a sound discretion, after a careful consideration of the facts, leave it in such custody as the welfare of the child at the time appears to require. In short, the child's welfare is the supreme consideration, irrespective of the rights and wrongs of its contending parents, although the natural rights of the parents are entitled to due consideration.

"Due regard" [for the superior right of a parent] has become "absolute right"...we submit that judicial eyes should be open at all times to the paramount and overriding considerations of the best interests of the child. We do not quarrel with the proposition that the parental and blood relationship is normally a most potent producer of the care, love, and affection which is vital to the best interests of a child, and that such relationship should be given highly preferential consideration. We do quarrel with elevating a highly preferential consideration to the level of absolute right. Besides creating a judicial blindness as to the true considerations present, it results in a tortuous wrestling with the narrowed legal concept of "fitness" of a parent. It results in situations where, in order to permit the child to remain in an established and developed parental relationship with all that that imports, we are forced to strain the evidence in order to find the blood parent "unfit."

[Lin Dee] states she is happy with her grandparents and doesn't want to leave them and in fact indicated that she didn't even know her father, that he was a stranger to her.

The opinion of this court holds that this child should be taken from a stable and adjusted home where a normal parental relationship with love and security attachments has developed and that she should be thrust into a home among complete strangers.

We would find that Lin Dee should be allowed to remain with the applicants at this time. In the event that a change of circumstances occurs in the future so that it then becomes in the best interest of Lin Dee that a change in her custody be made, approximate proceedings may be had at that time.

Concurring Opinion:

We quite agree that the effect of the majority opinion is to hold that a fit, proper, and suitable parent, who has not forfeited his natural right as a parent, has a right superior to that of the state to control, rear, and educate his own children...The dissent complains that "due regard" has become "absolute right." We accept this statement as being correct where the parent is a fit, proper, and suitable person and has done nothing to forfeit his natural right as a parent.

The court has never deprived a parent of the custody of a child merely because on financial or other grounds a stranger might better provide. The statute declares and nature demands that the right shall be in the parent, unless the parent be affirmatively unfit. The statute does not make the judges guardians of all the children in the state, with power to take them from their parents,--so long as the latter discharge their duties to the best of their ability,--and give them to strangers because such strangers may be better able to provide what is already well provided. If that were the law it would be soon changed,--by revolution if necessary.

The dissent criticises the rigidity of the long-adopted rule of this court. The same could be said of the Ten Commandments and the Bill of Rights. In cases where the rights of a citizen are being protected against the power of the state, a precise and unqualified statement of the rule, labeled as rigidity by the dissent, is most appropriate to insure the maintenance of the right.

Unless the language "with due regard for the superior rights of a fit, proper, and suitable parent" means that such a parent has a superior right to all others, including the state, the words afford the parent no superior right that he can enforce. It is axiomatic that to grant a right and withhold a remedy is tantamount to the existence of no right at all.

This case, stripped of its nonessentials, raises the issue as to whether or not the power of the state over minor children is superior to that of a parent who has failed in no respect in his duties and obligations to his child. It is the position of the dissenting opinion that the right of the state is superior to the rights of the natural parent, however, fit, proper, and suitable he may be. It is the position of the majority that a fit, proper, and suitable father, and not the state, has the primary right to nurture and rear his child and to direct its training, education, and religious instruction. We assert that the rights of the state, exercised by the powers of a court of equity, are subordinate to the rights of a parent except where the parent is not a fit, proper, or suitable person or has forfeited his natural right as a parent. It is our position that such a parent is, as a matter of law, the proper person to determine the best interests of the child until it is affirmatively shown that he has become disqualified from doing so. We submit that the courts are not the guardians of all the children in the state. The right of a court to assume jurisdiction over minor children arises when parents have failed in their responsibilities or forfeited their natural rights as parents, excluding, of course, the determination of which of two contesting parents shall have the care and custody of their minor children.

[This is an edited version. Deletions are not indicated.]

PAINTER v. BANNISTER

Supreme Court of Iowa

258 Iowa 1390, 140 N.W.2d 152 (1966).

Certiorari denied 385 U.S. 949, 87 S.Ct.317, 17 L.Ed.2d 227.

We are here setting the course for Mark Wendell Painter's future. Our decision on the custody of this 7 year old boy will have a marked influence on his whole life.

The custody dispute before us in this habeas corpus action is between the father, Harold Painter, and the maternal grandparents, Dwight and Margaret Bannister. Mark's mother and younger sister were killed in an automobile accident on December 6, 1962 near Pullman, Washington. The father, after other arrangements for Mark's care had proved unsatisfactory, asked the Bannisters, to take care of Mark. They went to California and brought Mark to their farm home near Ames in July, 1963. Mr. Painter remarried in November, 1964 and about that time indicated he wanted to take Mark back. The Bannisters refused to let him leave and this action was filed in June, 1965. Since July 1965 he has continued to remain in the Bannister home under an order of this court staying execution of the judgment of the trial court awarding custody to the father until the matter could be determined on appeal. For reasons hereinafter stated, we conclude Mark's better interests will be served if he remains with the Bannisters.

Mark's parents came from highly contrasting backgrounds. His mother was born, raised and educated in rural Iowa. Her parents are college graduates. Her father is agricultural information editor for the Iowa State University Extension Service. The Bannister home is in the Gilbert Community and is well kept, roomy and comfortable. The Bannisters are highly respected members of the community. Mr. Bannister has served on the school board and regularly teaches a Sunday school class at the Gilbert Congregational Church. Mark's mother graduated from Grinnell College. She then went to work for a newspaper in Anchorage, Alaska, where she met Harold Painter.

Mark's father was born in California. When he was 2½ years old, his parents were divorced and he was placed in a foster home. Although he has kept in contact with his natural parents, he considers his foster parents, the McNelly's as his family. He flunked out of a high school and a trade school because of a lack of interest in academic subjects, rather than any lack of ability. He joined the navy at 17. He did not like it. After receiving an honorable discharge, he took examinations and obtained his high school diploma. He lived with the McNelly's and went to college for 2½ years under the G.I. bill. He quit college to take a job on a small newspaper in Ephrata, Washington in November 1955. In May 1956, he went to work for the newspaper in Anchorage which employed Jeanne Bannister.

We are not confronted with a situation where one of the contesting parties is not a fit or proper person. There is no criticism of either the Bannisters or their home. There is no suggestion in the record that Mr. Painter is morally unfit. It is obvious the Bannisters did not

approve of their daughter's marriage to Harold Painter and do not want their grandchild raised under his guidance. The philosophies of life are entirely different. As stated by the psychiatrist who examined Mr. Painter at the request of Bannister's attorneys: "It is evident that there exists a large difference in ways of life and value systems between the Bannisters and Mr. Painter, but in this case, there is no evidence that psychiatric instability is involved. Rather, these divergent life patterns seem to represent alternative normal adaptations."

It is not our prerogative to determine custody upon our choice of one of two ways of life within normal and proper limits and we will not do so. However, the philosophies are important as they relate to Mark and his particular needs.

The Bannister home provides Mark with a stable, dependable, conventional, middleclass, middlewest background and an opportunity for a college education and profession, if he desires it. It provides a solid foundation and secure atmosphere. In the Painter home, Mark would have more freedom of conduct and thought with an opportunity to develop his individual talents. It would be more exciting and challenging in many respects, but impractical and unstable.

Our conclusion as to the type of home Mr. Painter would offer is based upon his Bohemian approach to finances and life in general. We feel there is much evidence which supports this conclusion. His main ambition is to be a free lance writer and photographer. He has had some articles and picture stories published, but the income from these efforts has been negligible. At the time of the accident, Jeanne was willingly working to support the family so Harold could devote more time to his writing and photography. In the 10 years since he left college, he has changed jobs seven times. He was asked to leave two of them; two he quit because he didn't like the work; two because he wanted to devote more time to writing and the rest for better pay. He was contemplating a move to Berkeley at the time of trial. His attitude toward his career is typified by his own comments concerning a job offer:

"About the Portland news job, I hope you understand when I say it took guts not to take it; I had to get behind myself and push. It was very, very tempting to accept a good salary and settle down to a steady, easy routine. As I approached Portland, with the intention of taking the job, I began to ask what, in the long run, would be the good of this job: 1, it was not <u>really</u> what I wanted; 2, Portland is just another big farm town, with none of the stimulation it takes to get my mind sparking. Anyway, I decided Mark and myself would be better off if I went ahead with what I've started and the hell with the rest, sink, swim or starve."

* * *

The house in which Mr. Painter and his present wife live, compared with the well kept Bannister home, exemplifies the contrasting ways of life. In his words "it is a very old and beat up and lovely home". They live in the rear part. The interior is inexpensively but tastefully decorated. The large yard on a hill in the business district of Walnut Creek, California, is of uncut weeds and wild oats. The house "is not painted on the outside because I do not want it painted. I am very fond of the wood on the outside of the house."

* * *

Mr. Painter is either an agnostic or atheist and has no concern for formal religious training. He has read a lot of Zen Buddhism and "has been very much influenced by it". Mrs. Painter is Roman Catholic. They plan to send Mark to a Congregational Church near the Catholic Church, on an irregular schedule.

He is a political liberal and got into difficulty in a job at the University of Washington for his support of the activities of the American Civil Liberties Union in the university news bulletin.

There were "two funerals" for his wife. One in the basement of his home in which he alone was present. He conducted the service and wrote her a long letter. The second at a church in Pullman was for the gratification of her friends. He attended in a sport shirt and sweater.

These matters are not related as a criticism of Mr. Painter's conduct, way of life or sense of values. An individual is free to choose his own values, within bounds, which are not exceeded here. They do serve, however, to support our conclusion as to the kind of life Mark would be exposed to in the Painter household. We believe it would be unstable, unconventional, arty, Bohemian, and probably intellectually stimulating.

Were the question simply which household would be the most suitable in which to raise a child, we would have unhesitatingly chosen the Bannister home. We believe security and stability in the home are more important than intellectual stimulation in the proper development of a child. There are, however, several factors which have made us pause.

First, there is the presumption of parental preference. We have a great deal of sympathy for a father, who in the difficult period of adjustment following his wife's death, turns to the maternal grandparents for their help and then finds them unwilling to return the child. There is no merit in the Bannister claim that Mr. Painter permanently relinquished custody. It was intended to be a temporary arrangement. A father should be encouraged to look for help with the children, from those who love them without the risk of thereby losing the custody of the children permanently. This fact must receive consideration in cases of this kind. However, as always, the primary consideration is the best interest of the child and if the return of custody to the father is likely to have a seriously disrupting and disturbing effect upon the child's development, this fact must prevail.

* * *

Third, the Bannisters are 60 years old. By the time Mark graduates from high school they will be over 70 years old. Care of young children is a strain on grandparents and Mrs. Bannister's letters indicate as much.

We have considered all of these factors and have concluded that Mark's best interest demands that his custody remain with the Bannisters. Mark was five when he came to their home. The evidence clearly shows he was not well adjusted at that time. He did not distinguish fact from fiction and was inclined to tell "tall tales" emphasizing the big "I". He was very aggressive toward smaller children, cruel to animals, not liked by his classmates and did not seem to know what was acceptable conduct. As stated by one witness: "Mark knew where his freedom was and he didn't know where his boundaries were." In two years he made a great deal of improvement. He now appears to be well disciplined, happy, relatively secure and popular

with his classmates, although still subject to more than normal anxiety.

We place a great deal of reliance on the testimony of Dr. Glenn R. Hawks, a child psychologist. The trial court, in effect, disregarded Dr. Hawks' opinions stating: "The court has given full consideration to the good doctor's testimony, but cannot accept it at full face value because of exaggerated statements and the witness' attitude on the stand." We, of course, do not have the advantage of viewing the witness' conduct on the stand, but we have carefully reviewed his testimony and find nothing in the written record to justify such a summary dismissal of the opinions of this eminent child psychologist.

* * *

His investigation revealed: "...the strength of the father figure before Mark came to the Bannisters is very unclear. Mark is confused about the father figure prior to his contact with Mr. Bannister." Now, "Mark used Mr. Bannister as his father figure. This is very evident. It shows up in the depth interview, and it shows up in the description of Mark's life given by Mark. He has a very warm feeling for Mr. Bannister."

* * *

Dr. Hawks stated: "I am appalled at the tremendous task Mr. Painter would have if Mark were to return to him because he has got to build the relationship from scratch. There is essentially nothing on which to build at the present time. Mark is aware Mr. Painter is his father, but he is not very clear about what this means. In his own mind the father figure is Mr. Bannister. I think it would take a very strong person with everything in his favor in order to build a relationship as Mr. Painter would have to build at this point with Mark."

* * *

Mark has established a father-son relationship with Mr. Bannister, which he apparently had never had with his natural father. He is happy, well adjusted and progressing nicely in his development. We do not believe it is for Mark's best interest to take him out of this stable atmosphere in the face of warnings of dire consequences from an eminent child psychologist and send him to an uncertain future in his father's home. Regardless of our appreciation of the father's love for his child and his desire to have him with him, we do not believe we have the moral right to gamble with this child's future. He should be encouraged in every way possible to know his father. We are sure there are many ways in which Mr. Painter can enrich Mark's life.

For the reasons stated, we reverse the trial court and remand the case for judgment in accordance herewith.

Reversed and remanded.

[This is an edited version.]

PERMANENCY GOALS FOR CHILD

1. REMAIN AT HOME
2. RETURN HOME
3. ADOPTION
4. PERMANENT FAMILY PLACEMENT WITH UNRELATED FOSTER FAMILY
5. PERMANENT FAMILY PLACEMENT WITH RELATIVES
6. INDEPENDENCE
7. LONG-TERM CARE IN RESIDENTIAL FACILITY

THE GHOSTS IN PERMANENCY PLANNING

1. NO DECISION
2. INAPPROPRIATE PLACEMENT
3. WORKER ATTITUDE & STAFF TURNOVER
4. POLICIE WHICH KEEP PARENTS UNINVOLVED
5. EXISTING TREATMENT PROGRAMS
6. CHILDRENS IMPAIRED ABILITY TO FORM NEW RELATIONSHIPS
7. INAPPROPRIATE STATE INTERVENTION
8. FOSTER CARE SYSTEM
9. UNRESPONSIVE LEGAL SYSTEM

UNRESPONSIVE LEGAL SYSTEM

1. UNINFORMED JUDGES & ATTORNEYS
2. SOCIAL WORKERS WHO ABDICATE THEIR AUTHORITY
3. LAWS WHICH HINDER RATHER THAN HELP PERMANENCY PLANNING

STANDARDS OF PROOF

TYPE OF HEARING

STANDARD OF PROOF	DELINQUENCY HEARING	ADULT CRIMINAL	CIVIL CASES	DEPENDENCY OR NEGLECT	TERMINATION OF PARENTAL RIGHTS
BEYOND A REASONABLE DOUBT	X	X			
CLEAR AND CONVINCING				X (SOME STATES)	X (SANTOSKY CASE)
PREPONDERANCE			X	X (SOME STATES)	

ANALYZING CASE LAW

COMPONENTS OF A BRIEF

STYLE

FACTS

ISSUE

HOLDING

DECISION

RATIONALE

UNIT TWO: GROUNDS FOR TERMINATION

Unit Module: Grounds for Termination

Unit Training Objectives

The materials in this unit are designed to prepare students to:

-read a statute and understand a statute in relation to case law

-identify the specific grounds for termination of parental rights in the state

-relate the statutory grounds to information (evidence) needed to establish grounds

-analyze and understand the components and effect of an appellate opinion on child welfare practice

Summary of Training Content and Methodology

Unit Module: Grounds for Termination

Format: Lecture
Time: 1 1/2 hours
Materials: Lecture Outline - Proving the Case in Court
Type of Information Needed to Establish Grounds - handout
Example - Termination Statute in Conceptual Categories
State Statutes on Termination Grounds
Resource Paper - State Statutes and Case Law: Termination of Parental Rights
Annotated Termination Case - The Woods Case
Overheads

This unit is designed to review, as thoroughly as possible in the time allowed, the statutory grounds for involuntary termination in the state. The unit emphasizes the difficulty in proving a termination case since the evidence is collected over a lengthy span of time and often deals with difficult issues such as parent child interaction and events which occur over a long span of time. The necessity of early and thorough preparation to meet the requirements of the statutory grounds is stressed

The state's statutory grounds for termination are reviewed. The statute provides the guidelines for decision making. The statute plus agency rules and policy and local court practice provide the legal framework. In addition, case law can provide examples of the types of situations where termination was allowed by the court. It is not

necessary for workers to know the specific issues and technicalities of every case, however, cases can be used for examples of case situations and to show how appellate courts more specifically define the terms in the statutes through interpretation. It is important to emphasize that every child welfare case is different because of differing facts, times and place. Each factor will have an influence on the outcome of a particular case. A listing of appellate cases for each state using the termination statute is included as a reference resource in this section.

Additionally, an annotated appellate case on Illinois termination grounds is included to provide an example of the way in which a state case may be presented for training. The Woods Case used has been labeled to identify the various parts of an appellate opinion. Trainees can be asked to take it home for reading or the time can be expanded to include a thorough study of the case. Each state can adapt an appellate opinion from their particular state in a like manner. Reading the case familiarizes the student with an opinion and demonstrates the many factors which are considered when the appellate court renders a decision.

Three conceptual general categories of termination grounds are presented as a framework for studying a particular state's statute: (1) abandonment, desertion, or lack of interest in or planning for a child; (2) parental conduct which harms the child; and, (3) parental character. The three general categories are explored as they relate to the type of information which would be necessary to prove a termination case in court using that particular category. Each state's grounds can be categorized into one or more of the three general categories. An example of this using the Illinois termination grounds statute is included in this unit.

Unit Comments

The need to thoroughly understand the state statute defining the grounds for termination cannot be over emphasized. Many social workers are unfamiliar with the statutory language. This can be partially explained by the fact that the legislatures in most states have repeatedly amended the grounds section of the statutes over the last several years. The section of the statutes which define the grounds and the case review process should be handed out and reviewed line by line. If possible, the entire juvenile court act and other applicable statutes should be available to the trainees for reference.

The trainer should be prepared to interpret the language of the statute. Persons familiar with the state's appellate opinions and local interpretations should be available for discussion purposes. Discussion should be encouraged by the trainer. This material is basic to an understanding of the termination process and is needed to successfully complete the exercises on the hypothetical case used in this workshop.

Unit References

Downs, S. and C. Taylor. Child Welfare Training Permanent Planning in Foster Care: Resources for Training. Portland, Ore.: Regional Research Institute for Human Services, 1980.

Pike, V., et. al. Permanency Planning in Foster Care: A Handbook for Social Workers. Washington, D.C.: U.S. Department of Health, Education and Welfare; Office of Human Development Services; Administration for Children, Youth, and Families; Children's Bureau, 1979.

UNIT TWO: Grounds for Termination
Lecture Outline

PROVING THE CASE IN COURT

I. Necessity of Proving Unfitness

- a. Difficulty of proof in termination cases.
- b. The court as the last stop in a decision making process.
- c. Importance of early and thorough preparation.
- d. Adversarial process and advocacy.

II. Alleging Unfitness in a Petition

III. What Must be Proven

- a. Analysis of State Termination Statute (Hand out)
- b. Termination Grounds in General Categories
  1. Grounds directed at abandonment; desertion; or lack of interest or planning for a child.
  2. Grounds directed at parental conduct harming the child.
  3. Grounds directed at parents' general character.
- c. Dilemma in many termination cases is that once child is removed from the home time works against the child
  1. Foster care drift
  2. Importance of permanency planning.
  3. Unfitness must be proven before best interest is reached.
  4. Evidence needed to prove ground
     - a. When preparation begins.
     - b. Information to establish each of the three categories of grounds. (Hand out)

TYPE OF INFORMATION NEEDED TO ESTABLISH GROUNDS

GROUNDS DIRECTED AT ABANDONMENT, DESERTION, AND LACK OF PLANNING OR INTEREST

1. Leaving child alone for long periods of time.
2. Repeatedly leaving child with friends or relatives.
3. Minimal supervision of placement arrangements.
4. Statement indicating an intent to leave the area and not wishing to see the child.
5. Lengthy periods of no visitation while given the opportunity to visit.
6. Visits not kept.
7. No significant social contact with child, i.e., birthdays, holidays, school events.
8. Not paying support or meeting other financial responsibilities when financially able to do so.
9. Unwillingness to change life style to assume parental role.
10. Unwillingness to accept services.
11. Not planning for resumption of parenting role.
12. Participating in planning but not following through.
13. Lack of a bond between parent and child in the family's interactive pattern.
14. Not assuming a parental role when child is in the home.
15. What conditions were in the home when the child was removed.

GROUNDS DIRECTED AT PARENTAL CONDUCT HARMING THE CHILD:

1. Physical harm.
2. Failure to provide food, health care, support and other needs of the child.
3. Unsafe and unsanitary home conditions.
4. No concern about school and socialization.
5. Parental interaction patterns.

GROUND DIRECTED AT PARENTS GENERAL CHARACTER:

1. Sexual immorality which affects child's well-being.
2. Drunkenness.
3. Imprisonment.
4. Pattern of criminality.
5. Drug usage.

UNIT TWO: Grounds for Termination
Handout - Example: Termination Statute in Conceptual Categories

ILLINOIS TERMINATION GROUNDS: GENERAL CATEGORIES

1. GROUNDS DIRECTED AT ABANDONMENT; DESERTION; OR, LACK OF INTEREST IN OR PLANNING FOR A CHILD

   (a) Abandonment

   (b) Failure to maintain a reasonable degree of interest in a child

   (c) Desertion

   (l) Failure to demonstrate a reasonable degree of interest in a newborn

   (m) Failure to make reasonable efforts to correct conditions which were the basis for removal or reasonable progress for return of the child in 12 months

   (n) Failure to maintain contact or communicate or plan for a child for 12 months

2. GROUNDS DIRECTED AT PARENTAL CONDUCT WHICH HARMS THE CHILD

   (d) Substantial neglect if continuous or repeated

   (e) Extreme or repeated cruelty

   (f) Two or more findings of physical abuse; criminal conviction resulting from the death of any child

   (g) Failure to protect a child from conditions within his environment injurious to child's welfare

   (h) Other neglect of or misconduct toward the child

   (o) Repeated failure to provide child with adequate food, clothing, or shelter although physically and financially able

3. GROUNDS DIRECTED AT PARENT GENERAL CHARACTER

   (i) Depravity

   (j) Open and notorious adultery or fornication

   (k) Habitual drunkenness or addiction to drugs for one year prior to adoptive preceeding

   - statute sections paraphrased. ILL.REV.STAT.,Ch.40, sec. 1501D (a)-(n).

Child Welfare Training
Termination of Parental Rights
UNIT TWO: Grounds for Termination - Illinois
Handout

STATUTORY GROUNDS FOR TERMINATION - ILLINOIS

ILL.REV.STAT., Ch.40, Sec. 1501D(a)-(o), eff. 1/1/82

"Unfit person" means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption, the grounds of such unfitness being any one or more of the following:

a. abandonment of the child;

b. failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare;

c. desertion of the child for more than 3 months next preceding the commencement of the Adoption proceedings;

d. substantial neglect of the child if continuous or repeated;

e. extreme or repeated cruelty to the child;

f. two or more findings of physical abuse to any children under Section 4-8 of the Juvenile Court Act, or a criminal conviction resulting from the death of any child by physical child abuse; or a finding of physical child abuse resulting from the death of any child under Section 4-8 of the Juvenile Court Act;

g. failure to protect the child from conditions within his environment injurious to the child's welfare;

h. other neglect of, or misconduct toward the child; provided that in making a finding of unfitness the court hearing the adoption proceeding shall not be bound by any previous finding, order or judgment affecting or determining the rights of the parents toward the child sought to be adopted in any other proceeding except such proceedings terminating parental rights as shall be had under either this Act or the Juvenile Court Act;

i. depravity;

j. open and notorious adultery or fornication;

k. habitual drunkenness or addiction to drugs, other than those prescribed by a physician, for at least one year immediately prior to the commencement of the unfitness proceeding;

l. failure to demonstrate a reasonable degree of interest, concern or responsibility as to the welfare of a new born child during the first 30 days after its birth;

m. failure by a parent to make reasonable efforts to correct the conditions which were the basis for removal of the child from such parent, or to make reasonable progress toward the return of the child to such parent within 12 months after an adjudication of neglected minor under Section 2-4 or dependent minor under Section 2-5 of the Juvenile Court Act;

n. evidence of intent to forego his or her parental rights as manifested by his or her failure for a period of 12 months: (i) to visit the child; (ii) to communicate with the child or agency, although able to do so and not prevented from doing so by an agency or by court order; or (iii) to maintain contact with or plan for the future of the child, although physically able to do so.

Contact or communication by a parent with his or her child which does not demonstrate affection and concern does not constitute reasonable contact and planning under subdivision (n). In the absence of evidence to the contrary, such ability to visit, communicate, maintain contact and plan for the future shall be presumed. The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting such intent, shall not preclude a determination that such parent has intended to forego his or her parental rights. In making such determination, the court may consider but shall not require a showing of diligent efforts by an authorized agency to encourage the parent to perform the acts specified in subdivision (n);

o. repeated or continuous failure by the parents, although physically and financially able, to provide the child with adequate food, clothing, or shelter.

STATUTORY GROUNDS FOR TERMINATION - INDIANA

IND. CODE Sec. 31-6-5-4,as amended
by S.B. 21, effective September, 1982
Termination of Parental Rights

SECTION 4. A petition to terminate the parent-child relationship involving a delinquent child or a child in need of services may be signed and filed with the juvenile or probate court only by the attorney for the county department or the prosecutor; that person shall represent the interests of the state in all subsequent proceedings on the petition. The probate court has concurrent original jurisdiction with the juvenile court in proceedings on the petition. The petition shall be entitled "In the Matter of the Termination of the Parent-Child Relationship of _____, a child, and _____, the child's parent (or Parents)" and must allege that:

(1) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(2) there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied;

(3) termination is in the best interests of the child; and

(4) the county department has a satisfactory plan for the care and treatment of the child.

SECTION 4.1. (a) If an individual is convicted of the offense of:

(1) murder (IC 35-42-1-1);

(2) causing suicide (IC 35-42-1-2);

(3) voluntary manslaughter (IC 35-42-1-3);

(4) involuntary manslaughter (IC 35-42-1-4);

(5) rape (IC 35-42-4-1);

(6) criminal deviate conduct (IC 35-42-4-2);

(7) child molesting (IC 35-42-4-4);

(8) child exploitation (IC 35-42-4-4); or

(9) incest (IC 35-46-1-3);

and the victim of that offense was under sixteen (16) years of age at the time of the offense and is that individual's biological or adoptive child, the prosecuting attorney or the attorney for the county department may file a petition with the juvenile or probate court to terminate the parent-child relationship of the parent and the victim of the offense, the victim's siblings, or both. The probate court has concurrent original jurisdiction with the juvenile court in proceedings on the petition. The person filing the petition shall represent the interests of the state in all subsequent proceedings on the petition.

(b) The petition filed under subsection (a) shall be entitled "In the Matter of the Termination of the Parent-Child Relationship of _____, a child, and _____, the parent (or parents)" and must allege that:

(1) the child or the sibling of the child was the victim of an offense listed in subsection (a);

(2) the biological or adoptive parent of the child or the sibling of the child was convicted and imprisoned for the offense;

(3) the child has been removed from the parent under a dispositional decree, and the child has been removed from the parent's custody for at least six (6) months under a court order;

(4) there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied;

(5) termination is in the best interests of the child; and

(6) the county department has a satisfactory plan for the care and treatment of the child.

(c) A showing that an individual has been convicted of an offense described in subsection (a) is prima facie evidence that there is a reasonable probability that the conditions that resulted in the removal of the child from the parent under a court order will not be remedied.

IND. CODE Sec. 31-3-1-6 (g) (1980)
Adoption - Exceptions to consent required

Consent to adoption is not required of:

(1) A parent or parents if the child is adjudged to have been abandoned or deserted for six (6) months or more immediately preceding the date of the filing of the petition; or a parent of a child in the custody of another person, if for a period of a least one year he fails without justifiable cause to communicate significantly with the child when able to do so or knowingly fails to provide for the care and support of the child when able to do so as only token efforts to support or to communicate with the child, the court may declare the child abandoned by the parent or parents);

(2) The natural father of a child born out of wedlock whose paternity has not been established by a court proceeding;

(3) A parent who has relinquished his right to consent as provided in this section;

(4) A parent after the parent-child relationship has been terminated under IC 31-6-5 (31-6-5-1 - 31-6-5-6);

(5) A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent;

(6) Any legal guardian or lawful custodian of the person to be adopted other than a parent who has failed to respond in writing to a request for consent for a period of sixty (60) days or who, after examination of his written reasons for withholding consent, is found by the court to be unreasonably without his consent.

(h) Notice of hearing on a petition for adoption need not be given to a person whose consent has been filed with the petition or to a person whose consent is not required by subdivision (g)(3) or (g)(4) of this section.

(i) Where the parent-child relationship has been terminated under IC 31-6-5 (31-6-5-1 - 31-6-5-6), notice of the pendency of adoption proceeding shall be given to the agency or county department of public welfare ofwhich the child is a ward.

STATUTORY GROUNDS FOR TERMINATION - MICHIGAN

MICH.COMP.LAWS section 712A.19a,eff.1972
Permanent custody, final determination
and order, grounds

Sec. 19a. Where a child remains in foster care in the temporary custody of the court following the initial hearing provided by section 19, the court may make a final determination and order placing the child in the permanent custody of the court, if it finds any of the following:

(a) The child has been deserted and abandoned without provision for identification for a period of at least 6 months and the public or private agency having temporary custody of the child has made a reasonable attempt to locate the parent.

(b) The child is left with intent of desertion and abandonment by his parent or guardian in the care of another person without provision for his support or without communication for a period of at least 6 months. The failure to provide support or to communicate for a period of a least 6 months shall be presumptive evidence of the parent's intent to abandon the child. If, in the opinion of the court, the evidence indicates that the parent or guardian has not made regular and substantial efforts to support or communicate with the child, the court may declare the child deserted and abandoned by his parent or guardian.

(c) A parent or guardian of the child is unable to provide proper care and custody for a period in excess of 2 years because of a mental deficiency or mental illness, without a reasonable expectation that the parent will be able to assume care and custody of the child within a reasonable length of time considering the age of the child.

(d) A parent or guardian of the child is convicted of a felony of a nature as to prove the unfitness of the parent or guardian to have future custody of the child or if the parent or guardian is imprisoned for such a period that the child will be deprived of a normal home for period of more than 2 years.

(e) The parent or guardian is unable to provide a fit home for the child by reason of neglect.

(f) The child has been in foster care in the temporary custody of the court on the basis of a neglect petition for a period of at least 2 years and upon rehearing the parents fail to establish a reasonable probability that they will be able to reestablish a proper home for the child within the following 12 months.

Permanent Custody at Initial Dispositional Hearing:

MICH.COMP.LAWS Section 712A.2(b)(1)(2), eff.1972
Jurisdiction of probate court

(b) Jurisdiction in proceedings concerning any child under 17 years of age found within the county

(1) Whose parent or other person legally responsible for the care and maintenance of such child, when able to do so, neglects or refuses to provide proper or necessary support, education as required by law, medical, surgical or other care necessary for his health, morals, or who is deprived of emotional well-being, or who is abandoned by his parents, guardian or other custodian, or who is otherwise without proper custody or guardianship; or

(2) Whose home or environment, by reason of neglect,cruelty, drunkenness, criminality or depravity on the part of a parent, guardian or other custodian, is an unfit place for such child to live in, or whose mother is unmarried and without adequate provision for care and support.

MICH.COMP.LAWS Section 712A.20, eff.1966
Temporary or Permanent Custody

Sec. 20. The court in all cases shall state in the order for disposition or any supplemental order of disposition whether the child is placed in the temporary or permanent custody of the court. *** If the child is placed in the permanent custody of the court, all parental rights are terminated, though such rights may be reinstated by a supplemental order of disposition after rehearing pursuant to Section 21(712A.21).

STATUTORY GROUNDS FOR TERMINATION - MINNESOTA

MINN. STAT., Sec. 260.221 as
amended by Laws 1980,c.561,
Sec.10, eff. August 1, 1980

260.221 Grounds for Termination of parental rights:

The juvenile court may, upon petition, terminate all rights of a parent of a child in the following cases:

(a) With the written consent of a parent who for good cause desires to terminate his parental rights; or

(b) If it finds that one or more of the following conditions exist:

(1) That the parent has abandoned the child; or

(2) That the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental or emotional health and development, if the parent is physically and financially able; or

(3) That a parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause. This clause shall not be construed to state a grounds for termination of parental rights of a noncustodial parent if that parent has not been ordered to or cannot financially contribute to the support of the child or aid in the child's birth; or

(4) That a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be permanently detrimental to the physical or mental health of the child; or

(5) That following upon a determination of neglect or dependency, reasonable efforts under the direction of the court, have failed to correct the conditions leading to the determination; or

(6) That in the case of an illegitimate child the person is not entitled to notice of an adoption hearing under section 259.26 and either the person has not filed a notice of his intention to retain parental rights under section 259.261 or that such notice has been successfully challenged; or

(7) That the child is neglected and in foster care.

MINN.STAT.,sec. 260.015. Definitions
Subd. 18. "Neglected and in foster care" means a child

(a) Who has been placed in foster care by court order; and

(b) Whose parents' circumstances, condition or conduct are such that the child cannot be returned to them; and

(c) Whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition, or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

MINN.STAT.,sec. 260.155. Hearings
Subd. 7. Factors in determining neglect.

In determining whether a child is neglected and in foster care, the court shall consider, among other factors, the following:

(1) The length of time the child has been in foster care;

(2) The effort the parent has made to adjust to his circumstances, conduct, or condition to make it in the child's best interest to return him to his home in the foreseeable future, including the use of rehabilitative services offered to the parent;

(3) Whether the parent has visited the child within the nine months preceding the filing of the petition, unless it was physically or financially impossible for the parent to visit or not in the best interests of the child to be visited by the parent;

(4) The maintenance of regular contact or communication with the agency or person temporarily responsibile for the child;

(5) The appropriateness and adequacy of services provided or offered to the parents to facilitate a reunion;

(6) Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time; and

(7) The nature of the effort made by the responsible social service agency to rehabilitate and reunite the family.

MINN. STAT., Sec. 257.071 Children in foster homes; review (Effective July 1, 1978 as amended through laws 1981, c. 290, §§ 1 to 8)

Subdivision 1. Placement; plan. A case plan shall be prepared within 30 days after any child is placed in a residential facility by court order or by the voluntary release of the child by his parents.

For purposes of this section, a residential facility means any group home; family foster home or other publicly supported out-of-home residential facility, including any out-of-home residential facility under contract with the state, county or other political subdivision, or any agency thereof, to provide those services.

For the purposes of this section, a case plan means a written document which is ordered by the court or which is prepared by the social service agency responsible for the residential facility placement and is signed by the parent or parents, or other custodian, of the child, the child's legal guardian, the social service agency responsible for the residential facility placement, and if possible, the child. The document shall be explained to all persons involved in its implementation, including the child who has signed the document, and shall set forth:

(1) The specific reasons for the placment of the child in a residential facitilty, including a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from his home;

(2) The specific actions to be taken by the parent or parents of the child to eliminate or correct the problems or conditions identified in clause (1), and the time period during which the actions are to be taken;

(3) The financial responsibilities and obligations, if any, of the parents for the support of the child during the period the child is in the residential facility;

(4) The visitation rights and obligations of the parent or parents during the period the child is in the residential facility;

(5) The social and other supportive services to be provided to the parent or parents of the child, the child, and the residential facility during the period the child is in the residential facility;

(6) The date on which the child is expected to be returned to the home of his parent or parents;

(7) The nature of the effort to be made by the social service agency responsible for the placement to reunite the family; and

(8) Notice to the parent or parents that placement of the child in foster care may result in termination of parental rights but only after notice and a hearing as provided in chapter 260.

The parent or parents and the child each shall have the right to legal counsel in the preparation of the case plan and shall be informed of the right at the time of placement of the child. The child shall also have the right to a guardian ad litem. If unable to employ counsel from their own resources, the court shall appoint counsel upon the request of the parent or parents or the child or his legal guardian. The parent or parents may also receive assistance from any person or social service agency in preparation of the case plan.

After the plan has been agreed upon by the parties involved, the foster parents shall be fully informed of the provisions of the case plan.

Subdivision 2. Six month review of voluntary placements. If the child has been placed in a residential facitillilty pursuant to a voluntary release by his parent or parents, the case plan shall be subject to an administrative review 180 days after the initial placement of the parent or parents within that time. As an alternative to the administrative review, the social service agency responsible for the placement may bring a petition as provided in section 260.131, subdivision 1a, to the court for review of the foster care to determine if placement is in the best interests of the child. This petition must be brought to the court within six months and is not in lieu of the requirements contained in subdivision 3 or 4.

Subdivision 3. Review of voluntary placements. Subject to the provisions of subdivision 4, if the child has been placed in a residential facitility pursuant to a voluntary release by his parent or parents, and is not returned to his home within 18 months after his initial placement in the residential facility, the social service agency responsible for the placement shall:

(a) Return the child to the home of his parent or parents; or

(b) File an appropriate petition pursuant to section 260.131, subdivision 1, or 260.131, and if the petition is dismissed, petition the court within two years, pursuant to section 260.131, subdivision 1a, to determine if the placement is in the best interests of the child.

Sudivision 4. Review of developmentally disabled child placements. If a developmentally disabled child, as that term is defined in Title 42, United States Code, Section 6001(7), as amended through December 31, 1979, has been placed in a residential facility pursuant to a voluntary release by the child's parent or parents because of the child's handicapping conditions, the social service agency responsible for the placement shall bring a petition for review of the child's foster care status, pursuant to section 260.131, subdivision 1a rather that a petition as required by section 257.071, subdivision 3, clause (b), after the child has been in foster care for 18 months. Whenever a petition for review is brought pursuant to this subdivision, a guardian ad litem shall be appointed for the child.

MINN.STAT.,sec. 259.24 CONSENTS
Subd. 1. Exceptions

No child shall be adopted without the consent of the child's parents and the child's guardian, if there be one, except in the following instances:

(a) Consent shall not be required of a parent not entitled to notice of the proceedings.

(b) Consent shall not be required of a parent who has abandoned the child, or of a parent who has lost custody of the child through a divorce decree or a decree of dissolution, and upon whom notice has been served as required by section 259.26.

(c) Consent shall not be required of a parent whose parental rights to the child have been terminated by a juvenile court or who has lost custody of a child through a final commitment of the juvenile court or thorough a decree in a prior adoption proceeding.

(d) If there be no parent or guardian qualified to consent to the adoption, the consent may be given by the commissioner.

(e) The commissioner or agency having authority to place a child for adoption pursuant to section 259.25, subdivision 1, shall have the exclusive right to consent to the adoption of such child.

STATUTORY GROUNDS FOR TERMINATION - OHIO

OHIO REV. CODE ANN. Section 2151.414,eff.10-24-80.
Hearing, on motion for permanent custody; notice; determinations necessary for granting motion.

(A) Upon the filing of a motion for permanent custody of a child by a county department, board, or certified organization that has temporary custody of the child, the court shall give notice of the filing of the motion and of the hearing, in accordance with section 2151.29 of the Revised Code, to all parties to the action, which notice shall contain a full explanation that the granting of permanent custody permanently divests the parents of their parental rights and a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120, of the Revised Code if they are indigent, and shall conduct a hearing to determine all of the following:

(1) If the county department, board, or certified organization has made a good faith effort to implement the initial and comprehensive reunification plans for the child that were approved by the court pursuant to section 2151.412 [2151.41.2] of the Revised Code;

(2) If the parents have acted in such a manner that the child is a child without adequate parental care, and will continue to act in the near future in such a manner that the child will continue to be a child without adequate parental care. In making this determination, the court shall consider all relevant factors, including but not limited to, the following considerations:

(a) The extent to which the parents of the child have conformed to the initial and comprehensive plans for the child that were approved by the court pursuant to section 2151.412 [2151.41.2] of the Revised Code and the extent to which the parents have fulfilled their obligations under the plans;

(b) Any existing emotional or mental disorders of the parents and the anticipated duration of the disorders;

(c) Any physical, emotional, or sexual abuse of the child by the parents that occurs between the date that the original complaint alleging abuse was filed and the date of the filing of the motion for permanent custody;

(d) Any existing excessive use of intoxicating liquor or drugs of abuse by the parents;

(e) Any physical, emotional, or mental neglect of the child by the parents that occurs between the date the original complaint alleging neglect was filed and the date of the filing of the motion for permanent custody.

(3) If it is in the best interest of the child to permanently terminate parental rights.

(B) The court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that the child is not abondoned or orphaned and the parents have acted in such a manner that the child is a child without adequate parental care, and will continue to act in the near future in such a manner that the child will continue to be a child without adequate parental care, that the child is abandoned and the parents cannot be located, or that the child is orphaned and there are no relatives of the child who are able to take permanent custody. The court may consider the wishes of the child in relation to the motion for permanent custody and the custodial history of the child as factors in making its determination, but the wishes and custodial history of the child shall not control the decision of the court. If the court grants permanent custody of a child to a movant under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

OHIO REV. CODE ANN. Section 2151.353,eff.10-24-80
Disposition of neglected or dependent child.

(A) If the child is adjudged an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(1) Permit the child to remain with his parents, guardian, or other custodian, subject to such conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;

(2) Commit the child to the temporary custody of the department of public welfare, a county department of welfare which has assumed the administration of child welfare, county children services board, any other certified organization, the Ohio youth commission for the purpose of diagnostic study and report as provided by division (B) of section 5139.05 of the Revised Code, either parent or a relative residing within or outside the state, or a probation officer for placement in a certified foster home;

(3) Commit the child to the temporary custody of any institution or agency in this state or another state authorized and qualified to provide the care, treatment, or placement that the child requires;

(4) Commit the child to the permanent custody of the county department of welfare which has assumed the administration of child welfare, county children services board, or to any other certified organization, if the court determines that the parents have acted in such a manner that the child is a child without adequate parental care, it is likely that the parents would continue to act in such a manner that the child will continue to be a child without adequate parental care if a reunification plan were prepared pursuant to section 2151.412 [2151.41.2] of the Revised Code, and the permanent commitment is in the best interests of the child. If the court grants permanent custody under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding.

(B) No order for permanent custody shall be made at the hearing at which the child is adjudicated abused, neglected, or dependent except and unless the complaint alleging the abuse, neglect, or dependency contains a prayer requesting permanent custody and the summons served on the parents contains a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.

If after making dispositon as authorized by division (A)(2) or (3) of this section, a motion is filed in accordance with section 2151.413 [2151.41.3] of the

Revised Code, which motion requests permanent custody of the child, the court may grant permanent custody of the child to the movant in accordance with section 2151.414 [2151.41.4] of the Revised Code.

(C) No order of temporary custody shall be made unless the summons served on the parents contains a statement that an adjudication of abuse, neglect, or dependency may result in an order of temporary custody, a full explanation that the granting of an order of temporary custody will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests them of their parental rights, and a full explanation of their right to be represented by counsel and to have counsel appointed pursuant to Chapter 120. of the Revised Code if they are indigent.

OHIO REV. CODE ANN. Section 3107.07, eff. 3-23-81
Who need not consent to adoption

Consent to adoption is not required of any of the following:

(A) A parent of a minor, when it is alleged in the adoption petition and the court finds after proper service of notice and hearing, that the parent has failed without justifiable cause to communicate with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner.

(B) The putative father of a minor if the putative father fails to file an objection with the court, the department of public welfare, or the agency having custody of the minor as provided in division (F)(4) of section 3107.06 of the Revised Code, or files an objection with the court, department, or agency and the court finds, after proper service of notice and hearing, that he is not the father of the minor, or that he has willfully abandoned or failed to care for and support the minor, or abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or its placement in the home of the petitioner, whichever occurs first;

(C) A parent who has relinquished his right to consent under section 5103.15 of the Revised Code;

(D) A parent whose parental rights have been terminated by order of a juvenile court under Chapter 2151. of the Revised Code;

(E) A legal guardian or guardian ad litem of a parent judicially declared incompetent in a separate court proceeding who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably;

(F) Any legal guardian or lawful custodian of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably;

(G) The spouse of the person to be adopted, if the failure of the spouse to consent to the adoption is found by the court to be by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances that make it impossible or unreasonably difficult to obtain the consent or refusal of the spouse;

(H) Any parent, legal guardian, or other lawful custodian in a foreign country, if the person to be adopted has been released for adoption pursuant to the laws of the country in which the person resides and the release of such person is in a form that satisfies the requirements of the immigration and naturalization service of the United States department of justice for purposes of immigration to the United States pursuant to Sec. 101 (b)(1)(F) of the "Immigration and Nationality Act." 75 Stat. 650 (1961), 8 U.S.C., 1101 (b)(1)(F), as amended or reenacted.

STATUTORY GROUNDS FOR TERMINATION - WISCONSIN

WIS. STAT. section 48.415
Grounds for involuntary termination of parental rights.

At the fact-finding hearing the court may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

(1) Abandonment.

(a) Abandonment may be established by a showing that:

1. The child has been left without provision for its care or support, the petitioner has investigated the circumstances surrounding the matter and for 60 days the petitioner has been unable to find either parent;

2. The child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356(2) and the parent has failed to visit or communicate with the child for a period of 6 months or longer; or

3. The child has been left by the parent with a relative or other person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of one year or longer.

(b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a)2 or 3. The time periods under par. (a)2 or 3 shall not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.

(c) A showing under par. (a) that abandonment has occurred may be rebutted by other evidence that the parent has not disassociated himself or herself from the child or relinquished responsibility for the child's care and well-being.

(2) Continuing need of protection or services. Continuing need of protection or services may be established by a showing that the child has been adjudged to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363 or 48.365 containing the notice required by s. 48.356(2), that the agency responsible for the care of the child and the family has made a diligent effort to provide the services required by the court, and:

(a) The child has been outside the home for a cumulative total period of one year or longer pursuant to such orders and the parent has substantially neglected or wilfully refused to remedy the conditions which resulted in the removal of the child from the home; or

(b) The child has been outside the home for a cumulative total period of 2 years or longer pursuant to such orders, the parent has been unable to remedy the conditions which resulted in the removal of the child from the home and there is a substantial likelihood that the parent will not be able to remedy these conditions in the future.

(3) Continuing parental disability. Continuing parental disability may be established by a showing that:

(a) The parent is presently, and for a cumulative total period of a least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33(1)(a), (b) or (c), licensed treatment facilities as defined in s. 51.01(2) or state treatment facilities as defined in s. 51.01(15) on account of mental illness as defined in s. 51.01(13)(a) or (b) or developmental disability as defined in s. 55.01(2) or (5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(4) Continuing denial of visitation rights. Continuing denial of visitation rights may be established by a showing that:

(a) The parent has been denied visitation rights by court order in an action affecting marriage;

(b) At least 2 years have been elapsed since the order denying visitation rights was issued and the court has not subsequently modified its order so as to permit visitation rights; and

(c) The parent would not be entitled to visitation rights if he or she were to seek such rights at the time the petition for termination of parental rights is filed.

(5) Repeated abuse. Repeated abuse may be established by a showing that on more than one occasion the parent has caused death or injury to a minor or minors living in the parent's household resulting in 2 or more separate felony convictions.

(6) Failure to assume parental responsibility. (a) Failure to assume parental responsibility may be established by a showing that a child has been born out of wedlock, not subsequently legitimated or adopted, that paternity was not adjudicated prior to the filing of the petition for termination of parental rights and;

1. The person or persons who may be the father of the child have been given notice under s. 48.42 but have failed to appear or otherwise submit to the jurisdiction of the court and that such person or persons have never had a substantial parental relationship with the child; or

2. That although paternity to the child has been adjudicated under s. 48.423, the father did not establish a substantial parental relationship with the

child prior to the adjudication of paternity although the father had reason to believe that he was the father of the child and had an opportunity to establish a substantial parental relationship with the child.

(b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child or the mother during her pregnancy and whether the person has neglected or refused to provide care or support even though the person had the opportunity and ability to do so.

WIS. STAT. section 48.425 as amended by L.1981, C.81, Sec. 33, eff. February 1, 1982.
Court Report by an Agency.

(1) If the petition for the termination of parental rights is filed by the department, a county department of public welfare or social services or a licensed child welfare agency, or if the court orders a report under s. 48.424(4)(b), the agency shall file a report with the court which shall include:

(a) The social history of the child.

(b) A statement of the facts supporting the need for termination.

(c) If the child has been previously adjudicated to be in need of protection and services, a statement of the steps the agency or person responsible for provision of services has taken to remedy the conditions responsible for court intervention and the parents response to and the cooperation with these services. If the child has been removed from the home, the report should also include a statement of the reasons why the child cannot be returned to the family, and the steps the person or agency has taken to effect this return.

(d) A statement of other appropriate services, if any, which might allow the child to return to the home of the parent.

(e) A statement applying the standards and factors enumerated in s. 48.426(2) and (3) to the case before the court.

(f) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall be prepared by an agency designated in s. 48.427(3)(a) 1 to 4 and include a presentation of the factors which might prevent adoption, those which would facilitate it, and the agency which would be responsible for accomplishing the adoption.

(g) If an agency designated under s. 48.427(3)(a) 1 to 4 determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting, including the agency to be named guardian of the child.

(2) The court may waive the report required under this section if consent is given under s. 48.41.

(3) The court may order a report as specified under this section to be prepared by an agency in those cases where the petition is filed by someone other than an agency.

WIS. STAT. section 48.426, L.1979, C.330, eff.
September 1, 1980.
Standards and Factors.

(1) Court considerations. In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.

(2) Standard. The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.

(3) Factors. In considering the best interests of the child under this section the court shall consider but not be limited to the following:

(a) The likelihood of the child's adoption after termination.

(b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.

(c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.

(d) The wishes of the child.

(e) The duration of the separation of the parent from the child.

(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

WIS. STAT. section 48.41 as amended by 1981 Assembly Bill 3, Assembly Amendment, May 1982 Special Session
Voluntary Consent to Termination of Parental Rights

(1) The court may terminate the parental rights of a parent after the parent has given his or her consent as specified in this section. When such voluntary consent is given as provided in this section, the judge may proceed immediately to a disposition of the matter after considering the standard and factors specified in s. 48.426.

(2) The court may accept a voluntary consent to termination of parental rights only as follows:

(a) The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The judge may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent and is satisfied that the consent is informed and voluntary; or

(b) If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the court may accept the written consent of the parent given before a judge of any court of record. This written consent shall be accompanied by the signed findings of the judge who accepted the parent's consent. These findings shall recite that the judge questioned the parent and found that the consent was informed and voluntary before the judge accepted the consent of the parent.

(c) A person who may be the father of a child born out of wedlock, but who has not been adjudicated to be the father, may consent to the termination of any parental rights that he may have as provided in par. (a) or (b) or by signing a written, notarized statement which recites that he has been informed of and understands the effect of an order to terminate parental rights and that he voluntarily disclaims any rights that he may have to the child, including the right to notice of proceedings under this subchapter.

(d) If the proceeding to terminate parental rights is held prior to an adoption proceeding in which the petitioner is the child's stepparent, the child's birth parent may consent to the termination of any parental rights that he or she may have as provided in par. (a) or (b) or by filing with the court an affidavit witnessed by 2 persons stating that he or she has been informed of and understands the effect of an order to terminate parental rights and that he or she voluntarily disclaims all rights to the child, including the rights to the child, including the right to notice of proceedings under this subchapter.

(3) The consent of a minor or incompetent person to the termination of his or her parental rights shall not be accepted by the court unless it is joined by the consent of his or her guardian ad litem. If the guardian ad litem joined in the consent to the termination of parental rights with the minor or incompetent person, minority or incompetence shall not be grounds for a later attack on the order terminating parental rights.

WISCONSIN - TERMINATION OF PARENTAL RIGHTS OF PARENTS OF CHILDREN PLACED OUTSIDE HOME BEFORE SEPTEMBER 1, 1982

PARENTAL RIGHTS—TERMINATION

1981 Assembly Bill 2

Date published: May 27, 1981
Effective date: May 28, 1981

CHAPTER 7 , LAWS OF 1981

AN ACT relating to the termination of parental rights of certain parents.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1 Definitions. In this act:

(1) "Agency" has the meaning given under section 48.40 (1) of the statutes.

(2) "Court" means a court assigned to exercise jurisdiction under chapter 48 of the statutes.

SECTION 2 Duty of court to warn parents of children placed outside home before September 1, 1980. (1) If a court placed a child outside the home before September 1, 1980, because it found the child neglected, dependent or to be in need of protection or services, a court shall, at the request of an agency, send notice of grounds for termination of parental rights to the child's parents as provided in this SECTION. The agency requesting the sending of notice shall with due diligence attempt to ascertain the present address of the parents. The agency shall furnish the court with the present address or, if it cannot be ascertained, the last known address of the parents. The court shall send the notice not more than 30 days after the request is received by the court.

(2) The notice shall set forth the grounds for termination of parental rights under SECTION 4 of this act and the first date on which proceedings for the termination of parental rights may be commenced under SECTION 3 of this act. The notice shall inform the parents that the court has set aside a time, specified in the notice, for the parents to appear before the court for the purpose of having the contents of the notice explained.

(3) When requested to send a notice by an agency under this SECTION, the court shall set a time for the parents to appear before the court so that the court may explain the grounds for termination of parental rights under SECTION 4 of this act and the first date on which proceedings for the termination of parental rights may be commenced under SECTION 3 of this act. The court shall designate a time for the appearance which shall be not more than 10 days after the notice is sent.

(4) A court may on its own motions send the notice provided for in this SECTION.

(5) No notice may be sent under this SECTION after one year from the effective date of this act.

SECTION 3 Time for commencing termination of parental rights proceedings against parents of children covered by this act. A proceeding to terminate the parental rights of a parent to whom notice has been sent under SECTION 2 of this act may not be commenced prior to 180 days after the notice is sent.

SECTION 4 Grounds for termination of parental rights under this act. The grounds for termination of the parental rights of a parent to whom notice has been sent under SECTION 2 of this act are as provided in section 48.415 (intro.), (1) or (2) of the statutes, except that the requirement that the court order placing a child outside the parents' home contain the notice required under section 48.356 (2) of the statutes is not applicable. The requirement in section 48.415 (2) (intro.) of the statutes that the child has been adjudged to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under section 48.345, 48.357, 48.363 or 48.365 of the statutes may be met by showing that the child has been adjudged to be neglected, dependent or in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders.

SECTION 5 Applicability of other law. To the extent they are not inconsistent with this act, the statutes apply to notices given and proceedings commenced under this act.

SECTION 6 Certain termination orders not invalidated by this act. An order to terminate parental rights of parents of a child placed outside the home before September 1, 1980, resulting from a proceeding to terminate parental rights commenced before the effective date of this act, is not invalid for failure to follow the requirements of this act.

SECTION 7 Act as alternative procedure. This act does not preclude use of the procedures specified in chapter 48 of the statutes.

STATE STATUTES AND CASE LAW: TERMINATION OF PARENTAL RIGHTS

The following is a list of the applicable statute citations and appellate cases in each state for termination of parental rights. It includes citations for voluntary and involuntary termination cases. Each case entry is followed by a bracketed section number which refers to the section being considered by the court. In many cases multiple statue references are cited, however, this list only includes sections referring to grounds for termination or issues concerning consent.

ILLINOIS

ILL.REV.STAT.,Chapter 37, Sec. 701-1 et.seq., Juvenile Court Act
ILL.REV.STAT.,Chapter 40, Sec. 1501 et.seq., Adoption Act

Section 1501(a)-(o) Definition of unfitness
Section 1513 Consents, irrevocability

In re Adoption of Garrison, 93 Ill.App.3d 670, 417 N.E.2d 787 (1981) [1501D(a)]

In re Adoption of Markham, 91 Ill.App.3d 1122, 414 N.E.2d 1351 (1981) [1501D(a,c)]

Perkins v. Breitbarth, 99 Ill.App.3d, 424 N.E.2d 1361 (1981). [1501D(d)]

In re Tiffany A. Doolan, 101 Ill.App.3d 322, 427 N.E.2d 1348 (1981) [1501D(m)]

In re Smith, 95 Ill.App.3d 373, 420 N.E.2d 200 (1981) [1501D(m)]

In re Hoback, 95 Ill.App.3d 169, 419 N.E.2d 713 (1981) [1501D(m,n)]

In re Brown, 87 Ill.App.3d 1074, 427 N.E.2d 84 (1981) [1501D(g)]

In re Abdullah, 85 Ill.2d 300, 423 N.E.2d 915 (1981) [1501D(i)]

In re Nolan, 94 Ill.App.3d 1081, 419 N.E.2d 550 (1981) [1513]

In re Hillyer, 82 Ill.App.3d 505, 403 N.E.2d 36 (1980) [1501D(b)]

Pyatt v. Pyatt, 88 Ill.App.3d 8, 410 N.E.2d 241 (1980) [1501D(b)]

In re Drescher, 91 Ill.App.3d 658, 415 N.E.2d 636 (1980) [1501(m)(n)]

In re Edmonds, 85 Ill.App.3d 229, 406 N.E.2d 231 (1980) [1501D(m)]

In re Bennett, 80 Ill.App.3d 207, 399 N.E.2d 735 (1980) [1501D(m)]

In re Devine, 81 Ill.App.3d 314, 401 N.E.2d 616 (1980) [1501(d)(j)]

In re Prough, 60 Ill.App.3d 469, 376 N.E.2d 1078 (1980) [1501D(d)]

In re Dixon, 81 Ill.App.3d 493 (1981) [1501D(b,d,g)]

In re Ray, 88 Ill.App.3d 1010, 411 N.E.2d 88 (1980) [1501D(e)]

In re Sanders, 77 Ill.App.3d 78, 395 N.E.2d 1228 (1980) [1501D(k)(j)]

In re Adoption of Lucas, 87 Ill.App.3d 110, 408 N.E.2d 952 (1980) [1510, 1512]

In re Brendendick, 74 Ill.App.3d 949, 393 N.E.2d 675 (1979) [1501D(m)]

In re Loitra, 81 Ill.App.3d 962, 401 N.E.2d 1293 (1979) [1501D(m)]

In re Saadoon, 78 Ill.App.3d 319, 397 N.E.2d 178 (1979) [1501D(m)]

In re Nitz, 76 Ill.App.3d 15, 349 N.E.2d 887 (1979) [1501D(d)]

In re Austin, 61 Ill.App.3d 344, 378 N.E.2d 538 (1978) [1501D(m)]

In re Gates, 57 Ill.App.3d 844, 373 N.E.2d 568, (1978) [1501D(m)]

In re Tolbert, 62 Ill.App.3d 927, 372 N.E.2d 1135 (1978) [1501D(g)]

In re Buttram, 56 Ill.App.3d 950, 372 N.E.2d 1135 (1978) [1501D(i)]

Hale v. Hale, 57 Ill.App.3d 730, 373 N.E.2d 431 (1978) [1513]

In re Adoption of Rich, 51 Ill.App.3d 174, 366 N.C.2d 170 (1977) [1501D(c)]

In re Martin, 48 Ill.App.3d 341, 363 N.E.2d 29 (1978) [1501D(d)]

In re Woods, 54 Ill.App.3d 729, 369 N.E.2d 1356 (1977) [1501D(d)]

In re Love, 50 Ill.App.3d 1018, 366 N.E.2d 139 (1977) [1501D(b)]

In re Johnson, 54 Ill.App.3d 627, 370 N.E.2d 560 (1977) [1501D(1)]

In re Robertson, 45 Ill.App.3d 148, 359 N.E.2d 491 (1977) [1501D(m)]

In re Jennings, 68 Ill.2d 112, 368 N.E. 2d 864 (1977) [1510]

In re Kerwood, 44 Ill.App.3d 1040, 359 N.E.2d 183 (1977) [1512]

Regenold v. The Baby Fold, Inc., 68 Ill.2d 419, 369 N.E.2d 858 (1977) [1513]

Peyla v. Martin, 40 Ill.App.3d 373, 352 N.E.2d 407 (1976) [1501D(a,b)]

In re Adoption of Vienup, 37 Ill.App.3d 217, 345 N.E.2d 742 (1976) [1501D(c)]

In re Petition of Lehman, 37 Ill.App.3d 217, 345 N.E.2d 714 (1976) [1501D(c)]

In re Hurosky, 39 Ill.App.3d 954, 351 N.E.2d 386 (1976) [1501D(b)]

In re Ice, 35 Ill.App.3d 783, 342 N.E.2d 460 (1976) [1501D(b)]

In re Adoption of Kleba, 37 Ill.App.3d 165, 345 N.E.2d 714 (1976) [1501D(i)]

In re Taylor, 30 Ill.App.3d 906, 334 N.E.2d 194 (1975) [1501D(b)]

In re Grant, 29 Ill.App.3d 731, 331 N.E.2d 219 (1975) [1501D(b)]

In re Gibson, 25 Ill.App.3d 981, 322 N.E.2d 223 (1975) [1501D(b)]

In re Sims, 30 Ill.App.3d 406, 332 N.E.2d 36 (1975) [1513]

In re Adoption of Hoffman, 61 Ill.2d 569, 338 N.E.2d 862 (1975) [1513]

In re Adoption of Cech, 8 Ill.App.3d 642, 291 N.E.2d 21 (1972) [1501(a,c)]

In re Deerweester, 131 Ill.App.2d 952, 267 N.E.2d 505 (1971) [1501D(c)]

In re Petition of Huebert, 132 Ill.App.2d 793, 270 N.E.2d 464 (1971) [1513]

INDIANA

IND.CODE, 31-6-5-1 et.seq., Termination of the Parent-Child Relationship
IND.CODE, 31-3-1-1 et.seq., Adoption

Section 31-6-5-4 Petition for Termination of Parental Rights
Section 31-3-1-6 Adoption - Exceptions to Consent

Matter of Fries, 416 N.E.2d 908 (1981)(Ind.App.) [31-6-5-4]

Matter of Meidl, 425 N.E.2d 137 (1981)(Ind.) [31-6-5-1]

Matter of Myers, 417 N.E.2d 926 (1981)(Ind. App.) [31-6-5-4]

Matter of Snyder, 418 N.E.2d 1171 (1981)(Ind.App.) [31-3-1-6]

Stout v. Tippecanoe City Dept. of Pub. Welfare, 395 N.E.2d 444 (1981)(Ind.App.) [31-3-1-6, 31-6-5-1 thru 6]

Washington County Dept. of Pub. Welfare v. Konar, 416 N.E.2d 1334 (1981)(Ind.App.) [31-6-1-1]

Matter of Lemond, 413 N.E.2d 228 (1980)(Ind.) [31-1-5-4-3,8,10]

In re Adoption of Dove, 368 N.E.2d 6 (1977)(Ind.App.) [31-3-1-6(g)(i), 31-3-1-7(e)]

Graham v. Starr, 415 N.E.2d 772 (1981)(Ind.App.) [31-3-1-6(g)(i)]

Matter of Coohon, 427 N.E.2d 450 (1981)(Ind.App.) [31-3-1-6]

Putney v. Putney, 420 N.E.2d 1283 (1981)(Ind.App.) [31-3-1-7, 3-6-4-10, 31-6-5-4]

Matter of Adoption of Herman, 406 N.E.2d 277 (1980)(Ind.App.) [31-3-1-6]

MICHIGAN

MICH.COMP.LAWS,Chapter 712A, Probate - Juvenile
MICH.COMP.LAWS,Chapter 710, Probate - Adoption

Section 712A.2 Jurisdiction - Neglect
Section 712A.19a Permanent Custody
Section 712A.20 Temporary or Permanent Custody - Disposition
Section 710A.29 Revocation of Consent

Matter of Atkins, ____ Mich.App. ____, 316 N.W.2d 477 (1982) [712A.19a(c)(f)]

Westerville v. Kalamazoo County Dept. of Social Services, 534 F.Supp. 1088 (W.D.Mich., S.D.1982) [712A.2]

Matter of Wilson, ____ Mich.App. ____, 317 N.W.2d 309 (1982) [712A.2]]

Matter of Adrianson, 105 Mich.App. 300, 306 N.W.2d 487 (1981) [712A.19a(a,b,d-f)]

Matter of Ward, 104 Mich.App. 354, 304 N.W.2d 844 (1981) [712A.2]

Rozelle v. Dora, 103 Mich.App. 607, 303 N.W.2d 43 (1981) [712A.2]

Matter of Baby X, 97 Mich.App. 111, 293 N.W.2d 736 (1980) [712A.2]

Matter of Kurzawa, 95 Mich.App. 346, 290 N.W.2d 431 (1980) [712A.2, 712A.19a]

Matter of Baby Boy Barlow, 404 Mich. 216, 273 N.W.2d 35 (1978) [712A.18]

Sharpe v. Schaeffer, 68 Mich.App. 610, 243 N.W.2d 696 (1976) [712A.19a(b)]

Matter of Kidder, 59 Mich.App. 204, 229 N.W.2d 380 (1975) [712A.19a]

Matter of LaFlure, 48 Mich.App. 377, 210 N.W.2d 482 (1973) [712A.19a(a-f)]

Matter of Franzel, 24 Mich.App. 371, 180 N.W.2d 376 (1970) [712A]

Matter of Adoption of Knox, 8 Mich.App. 199, 154 N.W.2d 3 (1967) [712A.13]

In re Leach, 373 Mich. 148, 128 N.W.2d 475 (1964) [712A.13]

Fritts v. Krugh, 354 Mich. 97, 92 N.W.2d 604 (1958) [712A.19a(e)]

Matter of Hole, 102 Mich.App. 286, 301 N.W.2d 507 (1981) [710.29(9)]

Matter of Kozak, 92 Mich.App. 579, 285 N.W.2d 378 (1979) [710.36]

Matter of Baby Girl Fletcher, 76 Mich.App. 219, 256 N.W.2d 444 (1977) [710.28, 710.29]

MINNESOTA

MINN.STAT.,Chapter 260, Juvenile Court Act
MINN.STAT.,Chapter 259, Change of Name, Adoption
MINN.STAT.,Chapter 257, Custody of Children

Section 260.221 Grounds for Termination of Parental Rights
Section 259.24 Consents - Exceptions

Matter of Welfare of McDonald, 316 N.W.2d 19 (1982)(Minn.) [260.221(b)(2)]

Matter of Welfare of R.M.M. III, 316 N.W.2d 538 (1982)(Minn.) [260.221]

Matter of Welfare of C.L.L., C.W.L. Jr. and C.C.L., 310 N.W.2d 555 (1981)(Minn.) [260.221(b)(4)]

Matter of Welfare of H.G.B., 306 N.W.2d 821 (1981)(Minn.) [260 et.seq.]

Matter of Welfare of Chosa, 290 N.W.2d 766 (1980)(Minn.) [260.221]

Matter of Welfare of Clausen, 289 N.W.2d 153 (1980)(Minn.) [260.221]

Matter of Welfare of J.W.M., 290 N.W.2d 766 (1980)(Minn.) [260.221]

Matter of Welfare of Solomon, 291 N.W.2d 364 (1980)(Minn.) [260.221]

Matter of Welfare of Baby Girl Suchy, 281 N.W.2d 723 (1979)(Minn.) [260.221]

In re Welfare of H.M.P.W., 281 N.W.2d 188 (1979)(Minn.) [260.221]

Petition of Lineham, 280 N.W.2d 29 (1979)(Minn.) [260.221]

Matter of Welfare of Walker, 287 N.W.2d 642 (1979)(Minn.) [260.221(2)(4)]

Matter of Welfare of Kidd, 261 N.W.2d 833 (1978)(Minn.) [260.221]

Matter of Rosenbloom, 266 N.W.2d 888 (1978)(Minn.) [260.221]

Matter of Welfare of Larson, 312 Minn. 210, 251 N.W.2d 325 (1977) [260.221(a)]

Zerby v. Brown, 280 Minn. 514, 160 N.W.2d 255 (1968) [260.221]

Matter of Welfare of Sharp, 268 N.W.2d 424 (1978)(Minn.) [260.221]

Matter of Welfare of Alle, 304 Minn. 254, 230 N.W.2d 574 (1975) [259.26]

McDonald v. Copperud, 295 Minn. 440, 206 N.W.2d 551 (1973) [259.24, 260.221]

Eggert v. Van De Weghe, 279 Minn. 31, 155 N.W.2d 454 (1967) [259.24]

Wilson v. Barnet, 273 Minn. 32, 144 N.W.2d (1966) [259.24, 260.221]

Petition of Alsdurf, 270 Minn. 236, 133 N.W.2d 479 (1965) [259.24]

Petition of Parks, 267 Minn. 468, 127 N.W.2d 548 (1964) [259.24]

OHIO

OHIO REV. CODE ANN.,Chapter 2151, Juvenile Court
OHIO REV. CODE ANN.,Chapter 3107, Adoption

Section 2151.353 Disposition of Dependent or Neglected Child
Section 2151.414 Hearing - Permanent Custody
Section 3107.06 Adoption - Who Must Consent
Section 3107.07 Who Need Not Consent

In re Miller, 61 OhioSt.2d 184, 399 N.E.2d 1262 (1980) [2151.38]

State ex rel Heller v. Miller, 61 OhioSt.2d 6, 399 N.E.2d 66 (1980) [2151.352]

In re Cunningham, 59 OhioSt.2d 100, 391 N.E.2d 1034 (1979) [2151.35.3]

In re Justice, 59 OhioApp.2d 78, 393 N.E.2d 897 (1978) [2151.35.3]

In re Christopher, 54 OhioApp.2d 137, 376 N.E.2d 603 (1977) [Juv.R.4(B)(B)(2)]

In re Adoption of McDermitt, 63 OhioSt.2d 301, 408 N.E.2d 680 (1980) [3107.07]

Syversten v. Carrelli, 67 OhioApp.2d 105, 425 N.E.2d 930 (1979) [3107]

In re Johnson, 56 OhioApp.2d 265, 382 N.E.2d 1176 (1978) [3107.06]

In re Harshey, 45 OhioApp.2d 97, 341 N.E.2d 616 (1975) [3107.06]

In re Dickhaus, 41 OhioMisc. 1, 321 N.E.2d 800 (1974) [3107.06]

WISCONSIN

WIS.STAT.,Chapter 48, Children's Code

Section 48.40 et.seq. Termination of Prental Rights
Section 48.41 Termination of Parental Rights
Section 48.415 Grounds for Involuntary Termination of Parental Rights
Section 48.84-.86 Consent to Adopt (repealed)

Matter of A.M.K., 105 Wis.2d 91, 312 N.W.2d 840 (1981) [48.40 et.seq.]

Matter of J.L.W., 102 Wis.2d 118, 306 N.W.2d 46 (1981) [48.40 et.seq.]

Matter of T.R.M., 100 Wis.2d 681, 303 N.W.2d 581 (1981) [48.40 et.seq.]

Matter of Kegel, 85 Wis.2d 574, 271 N.W.2d 114 (1978) [48.40 et.seq.]

In re Adoption of Tachick, 60 Wis.2d 540, 210 N.W.2d 805 (1973) [48.40 et.seq.]

State ex rel Lewis v. Lutheran Social Services, 68 Wis.2d 36, 227 N.W.2d 643 (1975) [48.40 et.seq.]

In re Adoption of Randolph, 68 Wis.2d 64, 227 N.W.2d 634 (1975) [48.84(repealed)]

Matter of Adoption of R.P.R., 98 Wis.2d 613, 297 N.W.2d 835 (1980) [48.86(repealed)]

In re Adoption of Morrison, 260 Wis. 50, 49 N.W.2d 759 (1951) [48.86(repealed)]

READING A CASE: This is a termination of parental rights appellate case from the North Eastern Reporter. The North Eastern is an unofficial reporter of cases which contains the actual opinion plus head notes and key numbers which aid further research.

Official Citation	54 Ill.App.3d 729 12 Ill.Dec. 342
	In the Interest of Deborah, Harrold, Jr., and Agnes WOODS, minors.
Plaintiff	PEOPLE of the State of Illinois, Petitioner-Appellee,
	v.
Defendant	Harrold D. WOODS, Respondent-Appellant.
Case Number	No. 76-749.
Court	Appellate Court of Illinois, First District, Second Division.
Date	Nov. 15, 1977.
Summary of Opinion	Department of Children and Family Services filed petition seeking appointment of guardian to consent to adoption of children. The Circuit Court of Cook County, Peter F. Costa, P. J., entered order declaring natural father of children to be unfit parent and appointing guardian to consent to adoption of children, and father appealed. The Appellate Court, Pusateri, J., held that: (1) evidence sustained finding that natural father, who visited his children six times with total duration of approximately seven and one-half hours during period of almost 12 years while they resided in foster home, was unfit parent within meaning of adoption act, and (2) where all three children expressed their desire to remain with their foster parents, with whom they had lived for almost 12 years, order appointing guardian to consent to adoption of children was proper.
Holding	
Decision	Affirmed.
*Headnote and Key Number	1. Parent and Child ⇐2(1) Natural parent has superior rights to custody of his child as against others; this inherent right should not be abrogated absent compelling reasons.
	2. Infants ⇐16.3, 16.8 One compelling reason sufficient to abrogate inherent right of natural parent to custody of his child is parental unfitness demonstrated by parent's failure to maintain reasonable degree of interest, concern

*Headnotes summarize important parts of a case. Headnotes are assigned topic labels and Key Numbers which can be used to find other cases under the same topic in a digest. The North Eastern Reporter is published by West Publishing Company.

or responsibility as to child's welfare; state must meet burden of showing such unfitness by clear and convincing evidence. S.H.A. ch. 4, § 9.1-1, subd. D(b).

3. Infants ⇐16.4

Cases involving determination of parental unfitness are sui generis, and each must be decided in accordance with particular facts of each individual and varying situation. S.H.A. ch. 4, § 9.1 1, subd. D(a-l).

Statute* Interpreted

4. Infants ⇐16.15

Trial court's finding with respect to termination of parental rights should not be disturbed unless it is contrary to manifest weight of evidence. S.H.A. ch. 4, § 9.1 1, subd. D(a-l).

5. Adoption ⇐7.8(3)

Evidence in proceedings on petition for appointment of guardian to consent to adoption of three children was sufficient to establish that natural father of children, who visited his children six times with total duration of approximately seven and one-half hours during almost 12-year period they resided in their foster home, was unfit parent within meaning of adoption act. S.H.A. ch. 4, § 9.1-1, subd. D(b); ch. 37, § 705-9.

6. Adoption ⇐13

Where all three children of natural father declared to be unfit parent expressed desire to remain with their foster parents, with whom they had lived for almost 12 years, and two of the children indicated that they wanted to be adopted, and third child stated that he too desired that natural father's parental rights be terminated, order of trial court appointing guardian to consent to adoption of three children was proper. S.H.A. ch. 4, § 9.1-20a; ch. 37, §§ 701-2(3)(c), 705-9.

Attorneys

James J. Doherty, Public Defender of Cook County, Chicago, for respondent-appellant; Frances G. Sowa, Marc L. Fogelberg, Asst. Public Defenders, of counsel.

Bernard Carey, State's Atty. of Cook County, Chicago, for petitioner-appellee; Laurence J. Bolon, Myra J. Brown, Richard J. Barr, Jr., Asst. State's Attys., of counsel.

North Eastern Citation

PUSATERI, Justice:

Judge Writing the opinion

Respondent, Harrold D. Woods, appeals from an order declaring him an unfit parent and appointing a guardian to consent to the adoption of Deborah, Harrold, Jr. and Agnes Woods, respondent's children. Patricia Woods, the children's mother, also was declared an unfit parent in this cause by default and had not prosecuted an appeal. Respondent contends on this appeal that the evidence does not support the finding that he was an unfit parent under the provisions of the adoption act. Ill.Rev.Stat. 1973, ch. 4, par. 9.1 1 D(b).

Issue

In 1963 respondent's three children, then ages five, four and 2 respectively, were placed in the custody of the Department of Children and Family Services (hereafter "the Department") by dependency proceedings. The Department in turn placed the children in the foster care of Mr. and Mrs. Ernest Winters in March of 1964, where they have since remained. On June 25, 1975, the respondent filed a petition for relief in which he alleged that the foster parents had removed the children from the jurisdiction without prior court approval making him unable to visit with his children. Respondent also sought to have the guardianship status dissolved and the children returned to his custody. The Department subsequently petitioned the court on July 7, 1975, to appoint a guardian to consent to the children's adoption pursuant to section 5 9 of the Juvenile Court Act (Ill. Rev.Stat.1973, ch. 37, par. 705 9). Section 5 9(1)(3) of the Juvenile Court Act provides that the finding of parental unfitness must be made in compliance with the adoption act which in section 9.1-1 D(a) through (l) lists the grounds upon which a parent might be found unfit. The petition alleged under subsection (b) thereof that Harrold and Patricia Woods were unfit parents in that they failed to maintain a reasonable degree of interest, concern or responsibility as the the children's welfare.

Facts of the Case

Statutory Authority

Statutory Termination Ground (b)

*S.H.A. refers to Smith-Hurd Annotated Statutes which contains the Illinois statutes with annotations to cases. The Adoption Act which is now in ch. 40 used to be in ch. 4.

At the hearing on the petitions, the children's foster mother, Annie Winters, testified that the respondent had visited the children on six occasions for a total of approximately seven and one-half hours during the 12 year period they resided in her home. She stated that the first two visits occurred in 1965, one in the spring and one again in July or August. These visits lasted approximately two hours each; during both times the respondent was accompanied by another man and in both instances appeared to be intoxicated.

Mrs. Winters further testified that as a result of the respondent's condition on these two occasions, she arranged for the third visit at the foster agency. This office visit occurred in November 1966 and lasted 30 minutes. The last three visits occurred at the Winters' home, one in the spring of 1967 when the respondent arrived with a woman and stayed approximately one hour; then at Christmas time in 1967, where respondent arrived at 11:00 p.m. with a woman and a young man unannounced, again staying for approximately one hour, and finally in June 1975, eight years later.

Mrs. Winters further testified that during the 12 year period that respondent's children were in her home the respondent only sent them birthday cards during the first two years; that they received no other cards, letters or phone calls from him, and that the only presents he gave them were gifts of $75 to $85 worth of clothing in the spring of 1967, and that he gave each child $7 during his visit in June of 1975. Mrs. Winters also testified that the children never requested a meeting with their father, but that they had asked about him, that she never discouraged the respondent from seeing his children, and that she was always receptive to his visits. Mrs. Winters also testified that she had met the children's mother, Patricia Woods, on two occasions, the last being nine years prior to trial; that at the last meeting Mrs. Woods bought a bicycle for Harrold, Jr. but had not wanted to see any of the children.

Deborah Woods, the eldest child of respondent, age 17 at the time of trial, testified that she had lived with the Winters family since she was five and that she had seen the respondent three times during her stay. She stated that eight years had elapsed between the respondent's second and third visits, and that during this period the respondent had not sent her any letters, made any phone calls to her or given her any gifts. Deborah did remember receiving birthday cards from the respondent when she was smaller and stated that she received $7 from him during his last visit in June of 1975. On cross-examination Deborah testified that she understood that being adopted meant the termination of her father's rights, "that he wouldn't rule over us again," and stated that she didn't want to live with her father because "he can't support us" and also since the respondent hadn't shown any interest in her welfare in the past nine years.

Harrold Woods, Jr., who was almost 16 at the time of trial, testified that he had lived with the Winters family for 12 years; that prior to the respondent's last visit in June of 1975 respondent had not visited for eight years; that during this eight year interval the respondent had sent him one Christmas card but hadn't made any calls nor given him any gifts with the exception of the $7 he received during the respondent's last visit. Harrold also testified that he had no feelings about going back and living with his father, that he would like to visit him on occasion and that he did not want to be adopted. Harrold further stated that his sisters wanted to be adopted since "they don't want nothing like this to happen again." He testified that he wanted the respondent's rights to be terminated, desired to continue living with the Winters and when asked whether he would like to continue the relationship of father and son with respondent responded "No."

Agnes Woods, the youngest child, age 14 and a half at the time of trial, testified that she could not remember when she saw the respondent prior to his visit in June of 1967; that she remembered receiving a card and a watch from the respondent when she was "little," and had received $7 from him at the time of his last visit.

The first witness for the respondent, Harrold Dawson, an administrative assistant from Northwestern University Medical School, brought the clinical records pertaining to Harrold Woods to the hearing. On the basis of these records, the parties stipulated that the respondent was suffering from a heart condition and was treated at Northwestern University Clinic for this problem intermittently between August 1967 and December 27, 1974. The clinic's records disclosed that respondent was treated twice in 1967, no times in 1968, twice in 1969, twice in 1970, four times in 1971, three times in 1972, three times in 1973 and six times in 1974.

The respondent, Harrold Woods, testified that he saw the children two or three times in 1963 before they were placed in the Winters' home. He also testified that his heart condition impeded his visitation between 1965 and 1974; that he had a heart attack after his first three visits in February 1965 and had to remain in Cook County Hospital for 20 days and had a second heart attack in June of 1965 and was hospitalized for four months. He further testified that he would have visited the children more but for foster agency's discouragement; he urged the social worker to arrange visits between 1964 and 1966 but to no avail, and had not learned of the Winters' address until a social worker finally informed him of it in 1966. On his visit in the spring of 1964, respondent had to take a bus to the Winters' home, necessitating a four or five mile walk, taking two hours in both directions. The respondent was not supposed to be engaging in strenuous activity at this time, nor was he to go out in the cold weather.

Respondent made three other visits to the Winters' home during the warm months of 1966 accompanied by an unnamed friend. Woods further testified that he received a visit from a Department social worker in 1966 who told him not to visit the children too frequently because he would upset their program by his visits and make it hard for them to readjust. As a result, he cut his visits to two in 1967, one in 1968, one in 1969; he also stated that he attempted to visit the children at the Winters' home once in 1972 and once in 1973 but found no one home. He stated that the Department never offered him assistance in devising a plan to help him regain custody of his children, but only frustrated his expectations by informing him that he would have to remarry or have a woman in his home before they would be returned to him.

Woods further testified that during the period of 1970 1972 he sent the children birthday cards, Christmas cards and a letter but that he never received any response. He was informed by his children at the time of his June 1975 visit that they never received any of his correspondence; however, none of these items were ever returned to the respondent. Respondent further testified that he had called the children on several occasions, and on one occasion Agnes answered the phone; that he gave the children gifts of money on all of his visits, $5 per child on his first visit in 1966, $10 per child on his second visit in 1966, $10 per child on his first visit in 1967, $30 per child on his second visit in 1967, $20 per child in 1968 and $7 per child in 1975. Respondent also introduced evidence indicating that he was receiving money from the Veterans Administration and Social Security Administration as a result of his disability which were to be held for the children; he also had two insurance policies with the children as beneficiaries.

On cross-examination, when asked why he had not contacted the children for a five year period, respondent stated that he was going to school during the latter part of 1970 and 1971 and that he had made phone calls to the Winters' home during this time; that for the next three years he was in ill health and was advised by his doctor to "take it easy," and further that he talked to Mrs. Winters on three or four occasions during this time.

[1-3] We note at the outset that the purpose and policy behind the Juvenile Court Act and adoption act is "• • • to preserve and strengthen the minor's family ties whenever possible • • •" and fur-

[1-3] refers back to the headnote numbers

Framework for opinion's reasoning

ther, that the statute "• • • shall be administered in a spirit of humane concern. • • •" (Ill.Rev.Stat.1973, ch. 37, par. 701-2.) As a result, various principles have evolved in Illinois implementing this statutory enactment. It is well recognized that the natural parent has superior rights to the custody of his child as against others. (*McAdams v. McAdams* (4th Dist. 1964), 46 Ill.App.2d 294, 298, 197 N.E.2d 93; *In re Hrusosky* (3rd Dist. 1976), 39 Ill.App.3d 954, 957, 351 N.E.2d 386.) This inherent right therefore should not be abrogated absent compelling reasons. (*In re Grant* (1st Dist. 1975), 29 Ill.App.3d 731, 735, 331 N.E.2d 219.) One of these reasons is parental "unfitness" demonstrated by a parent's "failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." (Ill.Rev.Stat.1973, ch. 4, par. 9.1 1(D)(b).) The State must meet this burden by clear and convincing evidence. (*Rich v. Rich* (1st Dist. 1977), 51 Ill.App.3d 174, 9 Ill.Dec. 318, 366 N.E.2d 575.) It has also been recognized that cases of this nature are *sui generis*, each must be decided in accordance with the particular facts of each individual and varying situation. (*In re Hurley* (2nd Dist. 1976), 44 Ill.App.3d 260, 266, 2 Ill.Dec. 595, 357 N.E.2d 815.) Hence, in matters involving children and particularly in instances such as the one before us dealing with the permanent severance of parental rights, the facts must be reviewed with careful scrutiny.

Importance of Parental Rights

(Case Authority)

(Statutory Authority)

Evidence Standard

Importance of Facts

Judge's Reasoning Facts/Evidence

The respondent's sole contention is that his failure to communicate and visit with his children did not demonstrate his unfitness, since certain mitigating circumstances justified his actions; his ill health, poverty and lack of transportation coupled with the Department's discouraging advice impeded him from developing a close relationship with his children.

The evidence disclosed that the respondent visited his children six times with a total duration of approximately seven and one-half hours during the almost 12 year period they resided in their foster home. Respondent admitted not having any contact whatsoever with his children from 1964, the date they were placed in their foster home, until the spring of 1966. He testified that during this time he suffered two heart attacks which confined him to a hospital and rest home in 1965 and also claims that he was unaware of the children's location. When the respondent learned of his children's residence in 1966, he visited them three times that year, once allegedly alone causing him to walk four or five miles to the foster home and two other times accompanied by "strangers" who provided him with transportation. Respondent claims that his visits were curtailed due to the advice he received from the Department informing him not to visit too frequently since it made it more difficult for his children to readjust. As a result he claims to have visited his children twice in 1967, once in 1968, once in 1969 and then once in 1972 or 1973 but found no one home. He further claims to have brought the children gifts of money at each visit. Mrs. Winters, however, refuted his testimony by stating that he did not visit at all between 1965 and 1975. Respondent also attributes the sparse number of his visits to his unsuccessful attempt at running a business between 1969 and 1971 and going to school and poor health during the period of 1972 - 1975.

The evidence also indicates that the respondent sent his children birthday cards during the first two years they were in their foster home; thereafter at the most, respondent sent the children Christmas cards and birthday cards during 1970-1972 and called the Winters' home on several occasions, and at the least as testified to by respondent's children and Mrs. Winters, never sent any cards, letters, made no phone calls and demonstrated little if any interest in the children for a period of eight years.

Respondent cites several cases for the proposition that his illness, poverty and lack of transportation excuse his infrequent visitation and do not clearly and convincingly establish that he was an unfit parent. However, we find these cases to be factually dissimilar to the case at bar. The leitmotif in these cases emphasizes that it is

Discussion of Past Cases Using Ground (b) Fit Parent

"• • • efforts to carry out [one's] parental responsibilities rather than their success, which should be considered in determining the correctness of a finding of unfitness under subsection D(b). • • •" (*In re Taylor* (1st Dist. 1975), 30 Ill.App.3d 906, 909, 334 N.E.2d 194, 196.) Hence, in *In the Interest of Gibson* (2nd Dist. 1975), 24 Ill. App.3d 981, 322 N.E.2d 223, the respondent while intellectually and financially limited, visited her child seven times between 1968 and 1972, increased her visits after the petition was filed and had written her child often during the period of separation. In *In the Interest of Deerwester* (4th Dist. 1971), 131 Ill.App.2d 952, 267 N.E.2d 505, the court emphasized that the number of times the respondent attempted to arrange contacts was most important noting that the respondent was diligent in her inquiries and attempts to arrange visits; that she sent cards to her child who lived 80 miles away and the caseworker admitted that although the Department sometimes failed to return the respondent's calls, the respondent always attended promptly appointments that were arranged. Likewise in *In the Interest of Overton* (2nd Dist. 1974), 21 Ill.App.3d 1014, 316 N.E.2d 201, respondent visited her child three times within a year prior to her moving to Missouri but always wrote numerous letters to the caseworker explaining what she was doing and expressing concern for her child; and in *In re Massey* (4th Dist. 1976), 35 Ill.App.3d 518, 341 N.E.2d 405, respondent visited her children six times during the first three years and 18 times during the last three years of foster separation. Moreover, other cases, not cited by the respondent which reversed findings of unfitness, also stressed that the respondent's efforts were to be the measure of a parent's concern, interest or responsibility. See *Peyla v. Martin* (5th Dist. 1976), 40 Ill.App.3d 373, 352 N.E.2d 407 (where defendant-respondent while in the penitentiary attempted to set up two visits with his child while he was on a furlough), *In re Hurley* (2nd Dist. 1976), 44 Ill.App.3d 260, 267, 2 Ill.Dec. 595, 357 N.E.2d 815 (where visits by the respondent were arranged three to four times a month and respondent conversed with the caseworker at least once a week, although respondent could not always attend the meetings due to lack of transportation).

This Case Holding - Parental Unfitness

Unlike the aforementioned cases, the respondent in the case at bar failed to adequately communicate with his children or the department. We believe that the statement of the court in *In re Hrusosky* (3rd Dist. 1976), 39 Ill.App.3d 954 at page 957, 351 N.E.2d 386 at page 388, is applicable to the facts in the case at bar:

> "In other cases where the appellate court reversed the trial court['s] order terminating parental rights, the time of separation between the parent and the child was often much less than in the case before us. There were problems such as long distances between parent and child and a corresponding lack of transportation for the parent. The evidence showed in those cases an attitude of blocking visitation attempts on the part of the Department and there was usually a showing of many attempts at visitation by the parent, or at least constant inquiry by the parent as to the child's health and situation, and the regular sending of letters and presents to the child." [Citations.]

Discussion of Past Cases - Unfit Parent .

We further note that our court has previously held that lack of transportation and poverty does not excuse a parent's lack of concern or interest for his child. See *In re Ladewig* (1st Dist. 1975), 34 Ill.App.3d 393, 340 N.E.2d 150, where the court found that lack of transportation did not excuse the respondent's infrequent visits, or failure to call or write her child for over a six year period; in *In re Perez* (1st Dist. 1973), 14 Ill.App.3d 1019, 304 N.E.2d 109 (where respondent's lack of concern was demonstrated by her lack of phone calls, letters and only visiting her child four times in a five year period), *In re Grant* (1st Dist. 1975), 29 Ill.App.3d 731, 331 N.E.2d 219 (where lack of transportation and poverty did not excuse respondent's visiting her children four times in eight years and occasionally sending gifts and making phone calls).

While the respondent in the case at bar claims that the Department dissuaded him from visiting his children, the evidence discloses that the Department merely suggested that he not visit too frequently. In addition, the respondent admits that Mrs. Winters did in fact set up one visit at the Department and further that he initially received the Winters' address from the Department.

We are cognizant of the type of conduct on the part of the Department that has at times made it the subject of considerable controversy. Moreover, we are unconvinced that we should be critical of the Department's conduct in this instance. The facts in *In re Taylor* stand in sharp contrast to the facts in the case at bar. In that case, a social worker testified that the respondent constantly attempted to contact her children but received only negative responses from the department. In fact, the social worker admitted that it was only because he had denied respondent the opportunity that she was unable to contact her children. In addition, the guardian ad litem urged the court to render some finding other than adoption. The court in reversing the finding stated 30 Ill.App. at page 911, 334 N.E.2d at page 197, "• • • that, where official acts prevent a parent from maintaining contact with a child, unfitness under the Adoption Act cannot be proven by such lack of contact standing alone."

The case at bar also is distinguishable from the above situation in that the respondent's lack of visitation was not his only flaw. His failure to contact his children by phone or letter, lack of diligent inquiry regarding their affairs and failure to send them gifts for a period of eight years is reprehensible.[1] It cannot be said in this instance that the Department nurtured the foster parent/child relationship; it was respondent's lack of interest and concern for them that made them want to remain with their foster parents.

This Case Holding Parental Unfitness

[4,5] It is not the function of this court to substitute its judgment for that of the trial court. (*In re Hurley* (2d Dist. 1976), 44 Ill.App.3d 260, 268, 2 Ill.Dec. 595, 357 N.E.2d 815.) The trial court's finding with respect to the termination of parental rights should not be disturbed unless it is contrary to the manifest weight of the evidence. (*In the Interest of Jones* (1st Dist. 1975), 34 Ill.App.3d 603, 340 N.E.2d 269.) Under the circumstances, we believe that the evidence in the case at bar unequivocally satisfied the clear and convincing standard.

[4,5] refers to headnotes Trial court's Decision Affirmed

[6] Having reviewed the finding that respondent was an unfit parent, it is now proper for us to consider the best interests of the children prior to affirming the termination of a natural parent's rights. This is in accordance with the traditional theory that minors are wards of the court and is also prescribed by the Juvenile Court Act. (Ill.Rev.Stat.1973, ch. 37, par. 701-2(3)(c); also ch. 4, par. 9.1 20a.) In addition, while reaching an opposite result, we find the language in *In re Massey*, 35 Ill.App.3d at page 522, 341 N.E.2d at page 408, to be particularly suited to the case at bar:

[6] Refers to Headnote

Best Interest Standard Applied

"• • • [A] child is required to be placed in foster care early in its life and remains there for several years. The child receives loving care from the foster parents, grows to love them and relate to them as its real parents. Often, as here, the child needs special attention which the foster parents are especially suited to provide and the real parents at least partly through misfortune are not able to

1. While not applicable to the case at bar, we take judicial notice of Public Act 80-558 (effective October 1, 1977) amending the statutory provisions set forth in Section 1 of the Adoption Act (Ill.Rev.Stat.1975, ch. 4, par. 9.1-1) which imposes reciprocal duties on parent and Department and wherein it states in pertinent part as one of the grounds for parental unfitness that "failure, for a period of 12 months, to maintain reasonable contact with the child or to plan for the child's future, when the child is in the care of an authorized agency, whether or not the child is a ward of the court, provided the agency attempted to encourage and strengthen the parental relationship. Contact or communication by a parent with his or her child which does not demonstrate affection and concern does not constitute reasonable contact and planning."

provide. Returning the child to its natural parents would be traumatic to the child. Under these circumstances, the best interests of the child would clearly be served by permitting it to be adopted. • • •"

All three of the respondent's children expressed their desire to remain with their foster parents. Both Deborah and Agnes indicated that they wanted to be adopted. While Harrold, Jr. did not want to be adopted, he too desired the respondent's parental rights to be terminated. Since the trial court's finding only empowered the guardian to consent to the children's adoption, Harrold's right to choose against being adopted has not been violated. Accordingly, we affirm the trial court's order declaring respondent to be an unfit parent and appointing a guardian to consent to the adoption of Deborah, Harrold, Jr. and Agnes Woods.

Affirmed.

Decision
Concurring Judges

DOWNING, P. J., and STAMOS, J., concur.

PRIMARY SOURCES OF LAW

1. STATUTES
2. COURT CASES (OFTEN INTERPRETING STATUTES)
3. REGULATIONS

AND OF COURSE THE:

CONSTITUTION

CATEGORIES: TERMINATION GROUNDS

I. GROUNDS DIRECTED AT ABANDONMENT; DESERTION; OR LACK OF INTEREST IN OR PLANNING FOR A CHILD

II. GROUNDS DIRECTED AT PARENTAL CONDUCT WHICH HARMS THE CHILD

III. GROUNDS DIRECTED AT GENERAL PARENTAL CHARACTER

UNIT THREE: TERMINATION CASES AND LEGAL PROCESS

Unit Module: Termination Cases and Legal Process

Unit Training Objectives

The materials in this unit are designed to help students to:

-relate the concept of due process to the legal termination process

-understand the role and responsibilities of court participants

-learn the mechanics of the legal procedure for termination of parental rights as it is used in the juvenile court

-identify potential legal problem areas in a termination of parental rights case

Summary of Training Content and Methodology

Unit Module: Termination Cases and Legal Process

Format: Lecture
Time: 1 1/2 hours
Materials: Lecture Outline - Termination Cases and Legal Process
Suggested Material - Court Petition for Termination

This unit covers the court process involved in a termination case. The concept of due process, the theory of the adversary process, and the roles of the court participants are introduced. Preparation for court is again emphasized since the social worker has a primary role in a termination case. Voluntary relinquishment procedures are overviewed. The petition process is outlined with a perspective on potential problem ares.

The concept of due process is defined to provide the basic conceptual framework for all legal procedures and requirements surrounding the termination process. Basically, the teaching theory is that if one understands the theory of due process, which is the idea of fundamental fairness for all parties, the specific procedures and requirements of a termination hearing are much easier to understand. The specific requirements of due process can be raised through a discussion of procedural requirements for notice, right to counsel, right to cross-examination and the basic right to a hearing before an impartial decision maker.

The roles of the court participants are reviewed to give a perspective on the decision making responsibilities of the various participants including the judge, prosecuting attorney, defense counsel, guardian ad litem, court liaison, and social worker. The lecture includes a discussion of the philosophical approach of each decision-maker, the relationship of that person to the rest of the child welfare and legal system, the statutory authority for the person to act, and the limitations placed on the person's scope of decision making. The need for cooperation is stressed within a county. It is extremely important that workers become familiar with the personnel and local practice of the juvenile court. It must be emphasized that practice will vary from county to county and even from judge to judge with a county.

The petition process is reviewed. The use of an actual petition is a good teaching aid as it illustrates the legal requirements for a termination of parental rights hearing. It can be used in conjunction with statutes on the petition process. The use of the petition illustrates that the court's paperwork is relatively simple and form a basis for the hypothetical introduced later in the workshop. It is important that the instructor be familiar with the legal requirements of the particular region.

Because of time constraints in a two-day format, the unit only briefly touches on the requirements for taking a voluntary relinquishment. Legal requirements in this area are very specific. Since voluntary terminations are prevalent, it is critical that, where necessary, workers be adequately trained in the social work and legal requirements of the surrender process.

Special problem areas are only very briefly touched on in the two-day workshop format. In the two day format several topics are briefly overviewed with a caution to seek legal counsel when dealing with the following areas: unwed fathers, minors, the mentally incompetent, persons in prison, military personnel, and Indian children under the requirements of the federal Indian Child Welfare Act. There is a recommendation for an entire unit on problem areas in the Supplemental Training section of this manual.

Unit Comments

Inevitably there will not be enough time to complete this unit. The important parts of the outline that should be covered are the following sections: (1) petition, (2) jurisdiction and notice issues, and (3) the roles of the various participants. If time allows due process may be discussed and the special topic areas may be addressed. These special topics and voluntary relinquishment deserve several hours to discuss in detail. Questions involving complex factual situtations from the trainee's case load will be asked. If possible, separate or perhaps simultaneous workshops could be offered on these topics to allow trainees to select their area of interest. (See Supplemental Training Unit Two in this manual.) Since the questions are usually very technical, persons with legal training should be available during this unit.

Unit References

Bernstein, B.E. "The Attorney ad Litem: Guardian of the Rights of Children and Incompetents." 60 Social Casework 463 (Oct. 1979).

Brieland, D. and J. Lemmon. Social Work and the Law. St. Paul: West Publishing Co., 1977.

Fox, S.J. The Law of Juvenile Courts in a Nutshell (2nd ed.). St. Paul: West Publishing Co., 1977.

Klein, M.W., ed. The Juvenile Justice System. Beverly Hills, Claif.: Sage Publications, Inc., 1976.

Johnson, T.A. Introduction to the Juvenile Justice System. St. Paul, Minn.: West Publishing Co., (1975).

Also, see Bibliography for law review and journal articles which are state specific for legal process in a particular state.

UNIT THREE: Termination Cases and Legal Process
Lecture Outline

TERMINATION CASES AND LEGAL PROCESS

I. Concept of Due Process

   A. Hearing requirement

   B. Fair procedure

II. Preparation for Court

   A. Court reports & monitoring efforts

   B. Case review process

   C. Discovery

   D. Settlement efforts

III. Voluntary Relinquishment of Parental Rights

   A. Process for obtaining

   B. Who must sign a relinquishment

   C. When revocable?

   D. Coercion/Fraud and duress

IV. Role of Court Participants

   A. Prosecuting Attorney

      1. Nature of position
      2. Relation to child welfare department
      3. Concept of "the people"
      4. Prosecutorial discretion

   B. Judge

      1. Neutral role in system
      2. Juvenile justice system
      3. Attitude and philosophy
      4. Pretrial activities

C. Defense Counsel

1. Preparation activities
2. Ethical standards

D. Attorney for the child (Guardian ad litem)

E. Social Worker/Court Liaison

V. Petition

A. Parties

B. Allegations

C. Prayer for relief

D. Jurisdictional requirements (Concept of Jurisdiction)

E. Filing governed by local practice

VI. Notice and Services

A. Necessary Parties

B. Type of notice required (Obtaining personal jurisdiction)

1. Summons
2. Entry of appearance and waiver
3. Publication

a. Requirements
b. Due diligence

C. Notice to foster parents

VII. Special Problem Areas

A. Unwed fathers

B. Minors

C. Indian Child Welfare Act

D. Mentally incompetent

E. Persons in jail

F. Military personnel

UNIT FOUR: EVIDENCE FOR SOCIAL WORKERS

Module 1: Evidence for Social Workers
Module 2: Hearsay Exercise

Unit Training Objectives

The materials in this unit are designed to help students to:

-understand the adversarial nature of the trial process

-become familiar with the major admissibility issues in evidence for a child welfare case in court

-analyze evidentiary statements for possible hearsay

Summary of Training Content and Methodology

Module 1: Evidence for Social Workers

Format: Lecture
Time: 1 hour
Materials: Lecture Outline - Evidence for Social Workers
Optional Materials - Slides of rooms in neglectful condition

Evidence issues which typically arise in a termination of parental rights case are studied in this unit. Evidence is a complex, technical area of law and the specifics of evidence should be left to court and legal professionals to assess. It is, however, very necessary for social workers to become familiar with basic evidentiary concepts and the major admissibility issues which often arise in court. Social workers are often charged with collecting the evidence for a child welfare case and must testify in court. Trainers should stress the difficulty of proof in termination cases as a result of developing a case over a long period of time. Early and thorough preparation becomes more vital with a long time period.

The lecture reviews basic evidence issues such as the types of evidence and the concept of admissibility as well as specific issues which include privilege, hearsay, records, relevancy, and facts and opinion evidence. Slides of rooms of a home which are in a neglectful and harmful condition can be used as a teaching aid to develop verbal skills in describing the home in a factual manner. As often as possible, the instructor should key an evidence issue to examples of the types of evidence needed in a termination of parental rights case.

Module 2: Hearsay Exercise

Format: Group Discussion
Time: 1/2 hour
Materials: Exercise Sheet - Hearsay

The hearsay exercise included in this unit is handed out to the entire group. Through discussion the group determines whether or not the statements are hearsay and whether, if hearsay, they are admissible. This exercise helps the student identify hearsay and also points out what witness would be needed to make the statement in order to avoid hearsay.

Unit Comments

This unit is highly technical and should be conducted by an attorney or caseworker with considerable court experience. If possible, this may be an ideal place in the training to involve a local judge or attorney in the training. The trainer must emphasize that evidence rulings will vary from place to place. Throughout the session the trainer must stress that the social worker should not worry about the rules of evidence to the point that they neglect to gather or record information which may be admissable. The trainees should be instructed that if they are in doubt they should record the information and subsequently consult with the prosecuting attorney about its admissability.

There will be considerable discussion about questions of confidentiality and privilege, and on issues involving a search and the taking of photographs. Trainers must be prepared to deal with questions on these topics.

The articulation exercise using the slides of filthy rooms or similar neglect situations could easily be lengthened. Additionally, more time could be devoted to the use of expert witnesses and qualifying a social worker as an expert witness.

Unit References

Baker, E. and J. Dees. "How to Prepare Courtroom Presentations." 36 Public Welfare 30 (1978).

Bell, C. and W.J. Mlyniec. "Preparing for a Neglect Proceeding: A Guide for the Social Worker." 32 Public Welfare 26 (1974).

Marinez, A.V. "Social Work, Evidentiary Testimony, and the Courts." 16 Journal of Education for Social Work 66 (Winter 1980).

UNIT FOUR: Evidence
Lecture Outline

EVIDENCE FOR THE SOCIAL WORKER

I. Trial Process

A. What Happens at a Trial

1. Trial is to perform two functions

a. To inform
b. To persuade

2. Trials are conducted as part of the adversary process

a. Each side puts forth their evidence to the best of their ability; attacks the other side's evidence; and a neutral party decides the issue.

b. In reality, many of the issues have already been resolved prior to trial through settlement conferences and pre-trial motions and conferences.

c. There should be no surprises at trials. Trials should be analogous to a performance of a stage play. The play's script and the direction should have taken place earlier and the trial is the performance - Discovery minimizes surprise.

d. At a trial each witness adds a piece of information to the script. Each piece of evidence that is introduced builds upon and relates to the evidence already in the record. The end result should be to inform and persuade the decision-maker. Often times social workers do not see the entire case unfold because of sequestration of witnesses.

e. Local practice rules govern.

B. Preparation

1. Preparation for trial begins when the case is first opened.

2. Well prepared cases often do not go to trial-settlement process.

3. Administrative case review is an important aspect of case preparation. Case review gives notice and encourages decision-making and the marshaling of evidence.

II. Rules of Evidence

A. Types of Evidence

1. Testimony
2. Real
3. What is the difference between circumstantial and direct evidence?

B. Concept of Admissibility

1. Why have rules of evidence? Different rules at different stages of the trial process.
2. Weight of evidence

C. Objections

1. Sustained - Allowed - You may not testify
2. Overruled - Not Allowed - You may testify
3. Pre-trial motions
4. Motion to Strike

D. Specific Evidence Issues

1. Privileged Communication - What it is

   a. Social work privilege (if any)
   b. Medical, psychiatry privilege
   c. Husband and wife privilege

2. Hearsay Rule

   a. What it is and when applied - verbal facts
   b. Purpose of the rule
   c. Major exceptions
      1. Public documents
      2. Excited utterances
      3. Business records
      4. Admissions
         A. Must warnings be given? (Miranda type issues)
         B. Hearsay exercise
   d. What if not objected to?

3. Records

   a. Rules for admission of case records
   b. Significance of rules to casework practice
   c. Using records to refresh recollection (Illustration of technique)
   d. Using materials especially prepared for court testimony

4. Facts/opinion evidence

   a. Testify only to facts
   b. Stay away from conclusions, hedging - "I believe"
   c. Limits of language - When one can use conclusionary language
   d. Articulation exercises

5. Expert witness

   a. Qualification, costs and purpose of experts
   b. Types of issues for experts
   c. Social worker as experts
   d. Illustration of expert testimony

6. Relevancy

   a. Materiality - Does it support the allegations of the complaint
   b. Is it close in time
   c. Local practice/order of proof - linkage to later evidence (Proof by establishing a course of conduct.)

7. Real Evidence and Rules for Admission

   a. Case plans and client contracts
   b. Photographs
   c. Documents
   d. Tangible items
   e. Charts, graphs and other visual aids

8. Impeachment Testimony

   a. Prior inconsistent statement
   b. Felony conviction
   c. Truth and veracity reputation

HEARSAY

Which of each of the following statements would be hearsay, if a caseworker said the statement on the stand in a termination of parental rights hearing? If it is hearsay, would it be admissible as an exception to the hearsay rule? The child's name is Susie, a two year old. The parents, Mr. and Mrs. Smith, are at the hearing.

	HEARSAY? YES OR NO	ADMISSIBLE? YES OR NO
1. "I have been the Smith family's caseworker since May, 1979."		
2. "The counselor told me that Susie was a problem because of her hyperactivity."		
3. "Mr. Smith said that he would attend the required counseling session."		
4. "The neighbor told me that Mrs. Smith left Susie alone in the hallway for four hours Saturday night."		
5. "Mrs. Smith missed her four appointments at the mental health center."		
6. "Mrs. Smith told me that she beat the child on that Tuesday."		
7. "As I arrived at the home, the teen-age daughter ran out of the house and screamed, "Daddy's killing my Mom!"		
8. "Mrs. Smith missed all but two of her visitation appointments."		
9. "Mr. Smith told me that he was having money trouble."		
10. "According to the Smiths' previous caseworker, the house had always been unlivable."		

Exercise adapted from "Exercise: Hearsay" in S. Downs and C. Taylor, Child Welfare Training - Permanent Planning in Foster Care: Resources for Training.

UNIT FIVE: PREPARING FOR COURT

Module 1: Preparing for Court - The Baker Case
Module 2: Preparing for Court - The Prosecuting Attorney

Unit Training Objectives

The materials in this unit are designed to help students to:

-improve skill development by applying information learned in the workshop to a hypothetical case on termination of parental rights

-correlate state statutory termination grounds, necessary allegations, witnesses and evidence to the circumstances of a particular case

-recognize the linkage between case review and preparation for court and the elements needed to prove a termination case

-identify strong and weak elements of a case

-understand the importance and essential parts of a concise, organized case report for a prosecuting attorney

Summary of Training Content and Methodology

Module 1: Preparing for Court - The Baker Case

Format:	Group Exercise
Time:	1 1/2 hours
Materials:	Hypothetical Case - The Baker Case
	Easel Pads and markers

The Baker Case is a narrative developed from actual termination cases. Its facts are typical of many kinds of cases which are found in a child welfare department's caseload. It does not give every detail of the case and requires the students to use their imagination and experience to augment the brief summary of facts. The case narrative forms the basis for subsequent workshop exercises on court preparation and testimony.

The Baker Case raises a myriad of termination issues. All issues may be considered in training or the instructor may concentrate on only a few. It can be narrowed to a fairly simple case by concentrating on one parent, the mother, and the two older children in foster care. Alternatively, the case can be made more complicated by including the fathers and younger child. In some states termination is not possible for the younger child.

The case raises the following issues: 1) the putative father, 2) the father in prison, 3) the role of the child welfare agency and its workers in the case, 4) parental mental condition, 5) neglect and abuse, 6) long-term foster care, and 7) visitation issues.

The trainers divide into small groups (maximum size is 8 to 10 trainees) to analyze the Baker Case. They should have been given the case on the first day of the training and asked to read and become familiar with it. The groups are to analyze the case as if they were planning for a case review. They are to determine whether or not they would seek termination of parental rights in the case. Each group has an easel pad to record answers to questions. The groups are first asked: On what termination grounds could parental rights be terminated? (Allegations) A sample format for the easel pad would be:

Children	Parent		
	Sherrie Baker	Ronald Baker	John Logan
	(Note appropriate ground(s) for each)		
Sandy			
David			
Johnnie			

The groups are asked: (1) What information would be available to support a finding of unfitness on each of the chosen grounds? What additional information would be necessary to make a decision? (Evidence) (2) Who could present the evidence in court? (Witnesses). This information is listed on the easel pad in columnar format with headings: grounds, evidence, witnesses. The exercise should be discussed with entire group with emphasis on the importance of early and thorough preparation to obtain the necessary information. The instructor should assist each group as they work through the issues in the hypothetical case. In discussion the instructor should point out any problems which may occur with such things as rules of evidence which might keep a part of each case out of court.

Module 2: Preparing for Court - The Prosecuting Attorney

Format: Lecture/Discussion
Time: 1 hour
Materials: The Baker Case
Handout - Request for Court Action
Overheads

The trainees are asked to consider their worksheets from Module 1 on a case review and to correlate it with case information which should be presented to the prosecuting attorney. The group should reach the conclusion that the prosecuting attorney needs the same information as required from the case review. A sample form, "Request for Court Action," is handed out and reviewed to illustrate information which is needed by the prosecuting attorney. Brevity and the linkage on information needed for allegation, evidence and witness should be pointed out. The importance of local practice should also be stressed. If an area has developed a model form for presenting a possible case to the prosecuting attorney, training should be geared to the use of that form.

Unit Comments

Module 1: When dividing the group into small groups for the exercise, persons from different counties should be put in the same group. The trainer should let the group select a recorder and facilitator. Usually a senior staff member is selected. The trainer should be prepared to join in the groups analyses but not to dominate the group process. Following the small group analysis of the case it is important to discuss the case with the entire group. This discussion allows the trainer to emphasize central points and to eliminate misconceptions that may have developed during the small group exercise.

The hypothetical should be amended to comply more closely with a state's juvenile court act and the practice terminology. Also, issues involving the Indian Child Welfare Act or specific procedural issues can be added. A simplified version of the Baker case could be used to start the training workshop as an alternative to integrating the more complicated version.

Module 2: The need for brevity and conciseness must be stressed in presenting this form. Trainees could be asked to complete this as an extension of the group process in Module 1 or as a part of the next unit.

Unit References

Baker, E. and J. Dees. "How to Prepare Courtroom Presentations." 36 Public Welfare 30 (1978).

Bell, C. and W.J. Mlyniec. "Preparing for a Neglect Proceeding: A Guide for the Social Worker." 32 Public Welfare 26 (1974).

Bernstein, B.E. "Privileged Communications to the Social Worker." 22 Social Worker 264 (1977).

Bernstein, B.E. "The Social Worker as an Expert Witness." 58 Social Casework 412 (1977).

Bernstein, B.E. "The Social Worker as a Courtroom Witness." 56 Social Casework 521 (1975).

Marinez, A.V. "Socail Work, Evidentiary Testimony, and the Courts." 16 Journal of Education for Socail Work 66 (Winter 1980).

THE BAKER CASE

The following narrative is a conglomerate of several cases. It does not depict any one actual case although the facts are typical of a potential termination case found in the caseload of a child welfare department. In reading this case use your imagination and your experience as a child welfare worker to augment the brief summary of the facts. This narrative will be the basis for court preparation and testimony exercise.

Children:	Date of Birth
Sandy Baker	6-14-69
David Baker	5-28-70
Johnnie Baker Logan	12-27-79

Parents:

Sherri Baker - Mother

Ronald Baker - Father (Sandy and David)

John Logan - Father (Putative) (Johnnie)

Sherri Baker is a thirty-two year old mother of three children. She has lived in a city of Metro, population approximately 85,000, since the case first came to the attention of the Child Welfare Department seven years ago. She has never finished high school, has an I.Q. of 82, and has been hospitalized two times for emotional problems.

When she was eighteen Sherri married Ronald Baker who is now age thirty-six. Sandy was born during the first year of marriage and David one

year later. Ronald Baker has had a history of criminal activity. He was adjudicated a delinquent and served nine months in a juvenile institution when he was sixteen. At age nineteen he was convicted of auto theft and served six months in the county jail. Since that time he has been arrested on several occasions. Most of the charges had been dismissed.

The family first came in contact with the Child Welfare Department in December, 1974. A neighbor reported that the family was living in a trailer with a power turn-off. The neighbor feared for the health of David who was running a severe fever. Carl Price, the Department worker who investigated the case, discovered that Ronald was in jail and unable to make bond. Sherri was in an extreme state of depression and was at a loss to determine what action to take. The worker helped the family apply for public assistance and arranged for the hospitalization of David. Mrs. Baker responded well to the Department's services. She enrolled in a job training program. Ronald was released from jail and found work. The case was closed six months later. No juvenile court petition was filed.

In March, 1976 the family again came in contact with the Child Welfare Department. Following a domestic violence investigation at the Baker home, the police department reported an incident of child abuse to the Department. Ronald had beaten his two children and had threatened to kill Sherri. Mrs. Baker fled from the home to her mother's home. Criminal charges of battery and child neglect were filed against Ronald. These charges were eventually dropped.

A juvenile petition was filed as a result of the March, 1976 incident. The children were declared neglected and the Department was given authority to place the children. Sherri and David were placed in the Bryan foster home where they continue to reside. The Bryans have a small farm located 12 miles from Metro. Ronald moved to a neighboring community and has had

little contact with the family since the child abuse incident. Mrs. Baker became severely depressed and was hospitalized in the state mental hospital. She reponded well to chemotherapy.

In June, 1977 Mrs. Baker was released from the mental hospital although she continued out-patient counseling and medication. Carl Price was once again assigned as her caseworker. Mrs. Baker was to stablize her employment siutation, find a suitable home, and continue counseling prior to the return of her children. Her caseworker arranged for her to obtain employment in a sheltered workshop. Visitation was arranged which she kept regularly every two weeks. Mrs. Baker's aunt, Mrs. Willis, or her neighbor, Joan Smythe, drove her to the foster home in addition to driving her for groceries.

In August, 1978 she divorced her husband, Ronald. Carl talked to Mr. Baker on the phone shortly after the divorce in an effort to determine Ronald's plans for the children. He was told by Mr. Baker that "He never wanted to see either Sherri or the kids again." He was ordered to pay child support which he never paid.

In November, 1978, Carl left the Department to take employment with a private social service agency in Metro. No caseworker was actively assigned to this case for six months. Sherri began to miss visits with the children. In January, 1979 she started dating John Logan whom she met at the sheltered workshop. John moved in with Sherri and continued to live with her on an on and off basis until April 1981. John is an alcoholic. He has been institutionalized three times for his alcohol condition.

In May, 1979 Roberta Summers, the worker assigned to the case, made arrangements for Sherri to meet her at her office. Sherri missed the first meeting, but later called and the meeting was rescheduled for June, 1979. At this meeting Roberta discovered that Sherri was pregnant. Sherri said that John was the father of the baby. Sherri said that she was sorry

that she missed appointments and visits to her children but indicated that she did not have any transportation. A visit was scheduled. Roberta drove her to the foster home. Roberta told her that transportation could be arranged if needed.

In December, 1979 Johnnie Baker Logan was born. No paternity action was filed, but John told the caseworker, Roberta Summers, that the child was his. He gave money to Sherri to help care for the child for awhile. From July, 1979 through February, 1980 Sherri missed all except two visits. Mrs. Baker claimed she missed the visits with Sandy and David because of her pregnancy and the new baby.

In February, 1981, Roberta Summers visited the home of Sherri. There was no food in the house. Both Sherri and John were intoxicated. There were numerous liquor and beer bottles strewn around the house. The home was in total disarray and appeared to have several months worth of accumulated dirt in the house. The family had two dogs which had been locked in one of the four rooms for several days. Used "pampers" and dirty laundry were scattered through the house. The baby appeared to be fed, but was without diapers and the bedding was soaked with urine. The worker noticed some bruises on the baby. Mrs. Baker stated that John had struck the baby the day before. John immediately interrupted and stated that the baby had fallen. A child abuse investigation occurred. An indication of probable abuse was made and a juvenile petition was filed. The parents agreed to a finding of neglect. The juvenile court ordered both parents to seek and receive counseling and treatment.

The case plan was to work with the parents in order to allow Johnnie to remain in the home. Sherri was to see the older children, but the visitation schedule was reduced. A homemaker was placed in the home three days a week. Sherri has cooperated with the Department. She diligently

sees Francis Goodwin, a psychologist, at the Mental Health Center every week.

Sherri has tried to work with the homemaker, Dorothy Hatch. The goal has been to teach Sherri more efficient mothering techniques and homemaker skills. Mrs. Hatch has stated that Sherri will not pick up or care for the child unless she encourages her to do so. On days when the homemaker is not present, little housework or meal preparation takes place. Sherri indicates that she is not interested in housework and would rather have a job. Roberta Summers had encouraged Sherri to visit her older children. While she professes a willingness to do this, she only kept one visit which occurred in September, 1981. When questioned about her lack of visitations, she states that she has been unable to visit because she has no transportation and because of the demands made upon her by the younger child. She did call the older children at Christmas in 1981.

John has refused to seek treatment. He moved away from Sherri in April. In August he visited Johnnie for the only time since he moved out. He sent a Christmas card but has had no other contact with the child. He is currently residing in a tenement frequented by alcoholics and spends what little money he obtains on alcohol. He refuses to talk with anyone connected with the child welfare department.

During the entire time, Ronald was repeatedly contacted about the two older children, but he has failed to keep any appointments. Six months ago he was convicted of armed robbery and is currently serving a ten year sentence. He refused to sign a consent for adoption. Since being asked to sign the consent he has sent two long letters to each of his children.

The Department has reached a difficult point with this case. While Mrs. Baker may be able to function and care for Johnnie with the aid of a homemaker, there is reason to believe that she would be unable to maintain

this care if homemaker services were removed. During a two week period in November, 1981 when the homemaker was on vacation, the baby lost weight and the home was unkept. Roberta made several home visits during this period. Francis Goodwin, the psychologist, has indicated a concern about Sherri's mental ability and emotional stability to care for the child.

Sandy and David continue to live in the Bryan foster home. The Bryans have expressed a willingness to adopt the two older children if the children were free for adoption.

A. Assume that a case review is being planned for the purpose of deciding whether the appropriate permanency planning goal should be adoption.

1. On what termination grounds could the parental rights be terminated in this case? (Allegations)

2. What information would be available to support a finding of unfitness on each of these grounds? What additional information would be necessary to make a decision? (Evidence)

3. Who could present the information in court? (Witnesses)

4. Would you decide to terminate? Why? If not, what would you do?

B. Assuming that you wish to inform the prosecuting attorney of the decision, how would you present this matter to the prosecuting attorney?

REQUEST FOR COURT ACTION

Caseworker Name: _____

Address: _____

Phone: _____

Others with Information

Name/ Address/ Phone

_____

_____

_____

I. Case Identifying Information

Child(ren)s Name(s)	Age	Court Case #

II. Current Court Status of Case: (Summarize current court status and action on last review)

III. Court Action Requested: (State what you want to accomplish and other alternatives if this cannot be achieved.)

IV. Grounds for Court Action

Allegation 1: (Paraphrase statutory ground)

(Summarize evidence supporting each allegation and names of witness needed with phone number)

A.

B.

C.

Allegation 2:

A.

B.

C.

(Continue on Additional sheet, if needed)

V. Name and Address of Parents: (List name and address. If whereabouts unknown, state action taken or could be taken to locate.)

VI. Status of Parents: (Would parents sign a surrender/consent or possibly default if a petition is filed?)

VII. Placement Status of Child(ren): (Current placement. Is adoptive placement feasible?)

VIII. Department Efforts to Work with Family: (Attach case review, case goals, and progress evaluation)

IX. Likely Defenses: (Include arguments to offset these defenses.)

X. Special Aspects of Case: (Include information such as request for mental health exam, restriction of visitation)

REQUEST FOR COURT ACTION

INFORMATION ON CASEWORKER

I. CASE IDENTIFYING INFORMATION

II. CURRENT COURT STATUS

III. COURT ACTION REQUESTED

IV. GROUNDS FOR COURT ACTION

V. NAMES & ADDRESSES OF PARENTS

VI. STATUS OF PARENTS

VII. PLACEMENT STATUS OF CHILD

VIII. DEPARTMENT EFFORTS TO WORK WITH FAMILY

IX. LIKELY DEFENSES

X. SPECIAL ASPECTS OF CASE

PETITION ALLEGATION	FACTS/EVIDENCE THAT SUPPORT ALLEGATION	WITNESSES

UNIT SIX: TESTIMONY

Module 1: Courtroom Testimony
Module 2: Developing Courtroom Testimony

Unit Training Objectives

The material in this unit is designed to help students to:

-learn the procedural parts of a trial

-understand the importance of complete "threads of testimony" needed for a successful case

-evaluate credibility factors and the impact of a witness

-understand the place of direct and cross-examination in a trial

-recognize the role of defense counsel

Summary of Training Content and Methodology

Module 1: Courtroom Testimony

Format: Lecture
Time: 1 hour
Materials: Lecture Outline - Courtroom Testimony

This module is designed to present an overview of procedure in a trial and develops the importance of complete "threads of testimony" to successfully prove a case in court. The rules and procedures of courtroom testimony are reviewed. The role of defense counsel and defense strategies are analyzed.

This unit emphasizes the legal base for testimony. It is important for the worker to realize the stages in testimony and how the questions they may be asked are designed by the attorneys to fit into a complete "script" from all witnesses. The worker can then appreciate the line of questioning as a part of the whole. Additionally, analyzing possible testimony and the rules can help the worker to recognize the persons who will be able to give pertinent testimonial evidence in court. The importance of witness credibility factors must be stressed for both the worker and for other potential witnesses. Credibility must be assessed in terms of how the testimony relates to that of other witnesses and how the witness will present himself/herself in court. This module stresses the content of testimony. Minimal time is devoted to developing witness skills in this workshop.

The role of defense counsel and defense strategies are discussed to alleviate workers' apprehension at the prospect of being "attacked" during cross-examination on the witness stand. If a worker is aware that defense strategies are by the adversarial nature of the legal system, for example, to raise doubts about the credibility of a witness, a worker can better prepare to be a witness.

The lecture should point out the following areas which the defense attorney may raise during cross-examination: caseworker bias, competence of caseworker, the adequacy of agency services and planning to reunite the family, and any procedural deficiency which may have occurred.

Module 2: Developing Courtroom Testimony

Format: Lecture/Discussion
Time: 1 hour
Materials: Lecture Outline - Testimony: Direct and Cross-Examination
Handout - Direct Testimony Exercises
Videotape - Courtroom Testimony

This module reviewed a typical pattern of testimony for a witness. Due to time constraints in the two-day format, the lecture outline, Testimony: Direct and Cross-Examination, only can be briefly presented. The outline presents guidelines for witness testimony and an outline of a typical of a pattern of testimony. The typical pattern of testimony is further explained through the illustration on the case of Jack and Jill.

If time can be expanded for the testimony unit (at least 2 hours), there is training material included in this unit for a direct testimony exercise. The trainees are divided into four groups. Each group is assigned one of four potential witnesses in the Baker Case. Exercise worksheets on the following four witnesses are included: Roberta Summers, the caseworker; Carl Price, the original caseworker; Marilyn Hatch, the agency homemaker; and, Joan Smythe, the Baker's neighbor. Each worksheet gives additional information on the potential witness' experiences with the Baker case. The groups are to do three tasks: 1) Answer the question, What allegation(s) can this witness help prove in court? 2) Outline the "threads of evidence" that the witness can help develop; and 3) Prepare questions in script form to ask the witness. Each group role plays the testimony for their witness. The entire group raises objections and critiques the testimony.

Unit Comments

Module 1: This material should be a review of issues which have been discussed early in the lecture/discussion or group process. The material on the structure of testimony, parts of a trial, and credibility may have to be developed in greater detail if they were not adequately addressed earlier in the training.

Module 2: Time constraints in the two-day format limit the direct testimony exercise to a discussion of the mechanics of the exercise and how developing testimony scripts for potential witnesses illustrates what evidence a witness can provide on a case. A 30-minute videotape entitled "Courtroom Testimony" was prepared by this project and can be shown to illustrate the direct testimony exercise. The videotape consists of a short lecture about testimony and the Baker Case and shows three trainees developing and role playing a testimony script for Roberta Summers, the caseworker in the Baker Case. In using this videotape the trainer must

point out that 1) it illustrates the training exercise and not courtroom testimony, and 2) it is not designed to illustrate model testimony, but rather to point out the general structure of testimony. Trainees should be encouraged to develop the testimony of the witness in small groups either as part of additional training or on their own.

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UNIT SIX: Testimony
Module 1 - Lecture Outline

COURTROOM TESTIMONY

I. What happens at a Trial

- A. To inform
- B. to persuade

II. State has burden of establishing a prima facie case

- A. Case is established through the introduction of evidence at the hearing.
- B. Witnesses introduce information
  1. Threads of testimony
  2. Corroboration
- C. The party that has the burden of proof goes first. The state has burden of proof in termination or neglect cases in juvenile court.

III. Parts of a Trial

- A. Opening statements
- B. Case in chief - prima facie case
- C. Motion to dismiss for failure to prove case
- D. Defendants case
- E. Possible rebuttal
- F. Closing arguments

IV. Preparing for Trial

- A. When to begin preparation
- B. Developing a theory of the case
  1. Strong points
  2. Weak points
  3. Burden of proof/presumptions
- C. Types of proof in every trial
  1. Establish what the facts are
  2. Applying community standards to the facts

V. Witnesses

A. A trial consists of a series of witnesses. Each witness introduces a part of the total case. When all witnesses have testified all the issues in the case should have been addressed.

B. A subpoena can be issued for witnesses.

C. Some evidence may be admitted without direct testimony as a result of pre-trial stipulations or specialized rules of evidence governing admission of documents and depositions.

D. Order of Testimony

1. Direct
2. Cross-Examination
3. Redirect

E. Questioning - Witnesses are asked questions by counsel

1. Types of Questions

a. Narrative
b. Open
c. Closed
d. Leading

2. Objections to form of Questions

a. Generally, narrative and leading questions are improper.
b. Most questioning will be in an open or closed form. Practice will vary from court to court.
c. Leading questions may be used on cross-examination.

3. Witnesses should generally limit testimony to what they have perceived or what they did. If qualified, witnesses can testify to operation of mind questions (opinion).

F. Credibility factors

1. Credibility as opposed to admissibility
2. Credibility of testimony

a. Is it consistent with common experience?
b. Is it consistent with itself?
c. Is it consistent with established facts?

3. Credibility of witness

a. Is witness biased or neutral?
b. Does witness have special expertise?
c. What is witness demeanor?

1. Physical attractiveness
2. Personal style
3. Manner of testifying

d. What is witness socio-economic background?

VI. Defense Strategies

A. Review of Role of Defense Counsel

B. Likely Strategies of the Defense

1. Role of argument and review of burden of proof
2. Challenging credibility
3. Attacking state's case through cross-examination or in presenting affirmative evidence

C. Cross-Examination Techniques

1. Raising doubt
2. Type of questions
3. Scope of questioning
4. Impeaching a witness by prior inconsistent statement--illustration

VII. Illustration of Pattern of Testimony Exercise

A. Establish who the witness is

B. Establish how the witness knows about the case

C. Establish what the witness knows (perception, action, opinion)

1. Order of questions
2. Typical questions for a factual witness
3. Typical questions for an opinion witness

TESTIMONY: DIRECT AND CROSS-EXAMINATION

A. Guidelines for Testimony

1. Remember what you are trying to prove with each witness. Consider the allegations in the case and the evidence necessary to prove each allegation. Ask yourself how this witness can add to the case in support of the allegations.

2. Make an outline of the testimony of each witness and develop the questions which will be asked of each witness.

3. Develop the testimony in a logical and, if possible, chronological manner. Strive for consistency and credibility.

4. Tie the testimony of the witness together. Relate the testimony to that of other witnesses. By allowing one witness to corroborate or support another, a consistent thread of testimony is developed.

5. Initially, ask the witness questions which will allow the witness to establish personal credibility. Through foundation questions let the witness demonstrate his experience and knowledge of the case.

6. The first few questions should be designed to put the witness at ease.

7. If possible, structure the testimony so the more important information is developed first or last.

8. Make the questions as short as possible. Credibility is enhanced if the witness does the talking. Frame the questions in simple, plain language. Avoid technical terms and jargon.

9. To the greatest extent possible, allow the witness to present the information about the case in his own words. Interrupt as little as possible, but keep the testimony directed toward establishing the allegations. Ask follow up questions for details and emphasis. Make certain all points on the outline, which the witness can address, are covered.

10. Anticipate likely defenses and consider addressing these on direct; however, beware of opening up areas of testimony for cross examination.

B. Pattern of Testimony

The following pattern is usually followed in direct testimony:

1. Establish who the witness is, the background of the witness and general knowledge of the subject area. Design questions to put the witness at ease and establish personal credibility. Use open ended questions.

2. Through a series of questions connect the witness to the case. These questions are closed questions often leaning toward leading questions.

3. Ask witness to relate what he knows about some aspect of the case. Keep in mind the outline of the testimony and the allegations which must be proven. Use open to narrative questions.

4. Follow up with a series of open and closed questions to structure the witness' testimony, to elicit details and for emphasis.

5. Repeat numbers 3 & 4 until all the relevant information is obtained from the witness.

C. Typical Pattern of Testimony

This is the case of Jack and Jill who for years climbed the hill of John Meanperson to fetch water from a spring. Meanperson is tired of Jack and Jill and all the other neighborhood kids trespassing on his land. He decides to take action by building pits in the trail leading from the spring. Harold Watchman, a neighboring farmer, sees Jack and Jill go up the hill, fall and become injured.

Outline of the Testimony

I. Establish Watchman's identity and knowledge of the case
II. Testimony concerning fall
III. Extent of injury to Jack and Jill
IV. No warning or posting on the property
V. Conversation with Meanperson the day before

QUESTIONS

1. What is your name? Harold Watchman.

2. Where do you live? I live at R.R. #2, Fairyland, Illinois.

3. What do you do for a living? I am a farmer.

4. How long have you farmed at this location? 28 years.

5. Is your home located near the hill owned by Mr. Meanperson? Yes.

6. Can you see the hill from your home? From my kitchen window and patio I can see the hill. I often sit at my kitchen table or my patio and look at the hill.

7. On June 3, 1979, at approximately 3:30 p.m., did you have occassion to be looking at the hill? Yes.

8. What did you see at this time? I saw two children, Jack and Jill go up the hill. They were carrying a pail, there's a spring on the hill for water. Jack and Jill went up the hill on the trail that is near my home.

9. How many trails are there on the hill? Two.

10. How far is the first trail from your house? Approximately 30 yards.

11. How far is the second? Approximately 60 yards.

12. You can see both? Yes.

13. Did you see them get water? No. The spring is behind the crest of the hill and there are trees.

14. What did you see then? A few minutes later Jack and Jill came back down the hill on the path. They were skipping and singing. Suddenly Jack fell down and Jill came tumbling after.

15. What did you do then? I left my kitchen and ran to where they were. There was a large hole in the ground. Both the children were in the hole. They both were crying and were injured.

16. Can you describe this hole? Yes, it was three feet wide, six feet deep.

17. Where was it in relation to the trail? Right across the trail.

18. Did you notice any thing else about the hole? Yes, it looked as if it had been covered up. There were broken sticks in the hole and lots of loose dirt.

19. What happened to the children? Jack had a broken crown. He was bleeding profusely. Jill was holding her leg. Both were crying.

20. What do you mean crown? His head was bleeding.

21. What did you do after you reached the children? I talked to them for a minute and ran back to the house and called Doctor Adams.

22. Have other children gone up the hill? Yes, often. I have seen these two plus lots of others go up the hill. I sit and look out my kitchen window often and seen them virtually everyday.

23. Did you ever see any No Trespassing signs? No.

24. Did you ever see Mr. Meanperson warn children about going on his land? No.

25. Calling your attention to June 2, 1979, did you have a conversation with Mr. Meanperson? Yes.

26. Where and when did that conversation take place? It took place at the base of the hill near my house at approximately 3:30. I have a coffee break every day at about 3:30.

27. Why did you have a conversation with Mr. Meanperson? I saw him coming down the hill on the path. He was carrying a shovel. I had noticed him digging up on the hill earlier in the day. I thought it was neighborly to say hello.

28. Did you ask him what he doing that day? Yes.

29. What did he say? He said he was tired of all the kids coming on his property and was taking action to stop it. I recall that he said that "I'll keep these kids off my property if I have to break all their legs to do it."

30. Are you sure those were his exact words? Yes, sir.

Thank you!

UNIT SIX: Testimony
Module 2 - Handout

DIRECT TESTIMONY EXERCISE

There were several witnesses in the Baker hypothetical who could be called as witnesses. Our task is to develop the case against Mrs. Baker. The following facts are to be added to the hypothetical situation. You may elaborate on these facts or add further information if you desire.

Your witness is Roberta Summer, Current Caseworker

1. What allegation(s) can this witness help prove?

2. Outline "threads of evidence" that this witness can help develop.

3. Prepare questions for this witness.

Be prepared to role play your witness for the entire group who will raise "objections" and critique your testimony.

Roberta Summers, Current Caseworker

Robert Summers was employed by the Department in April, 1979. The Baker case was one of the first cases she worked on. She is twenty-four and she has a B.A. in psychology from the local university.

Since taking over this case, Mrs. Baker has been sporadic about keeping appointments with Roberta and in visiting the older children. Her case file indicates that she missed over half the appointment visits. Of the half she kept, over one-half of these were rescheduled. Roberta can testify to these dates. Mrs. Baker has kept her appointments with Francis Goodman at the Mental Health Center. Mrs. Baker has told Roberta that the missed appointments were either because of lack of transportation or the need to be at home with Johnnie. Roberta Summers has offered to arrange transportation and alternative child care. Roberta was particularly upset when Mrs. Baker missed the last case review. The meeting had been scheduled for Mrs. Baker's convenience and she had been repeatedly told of the importance of the case review. She did not, however, come to the meeting and did not call to explain her absence. When asked about not attending she stated that she had forgotten.

Roberta made four home visits to the home of Sherri Baker during the period of December 1 through 11 when the homemaker was on vacation. She can testify to the generally deteriorating conditions in the cleanliness of the house and the lack of food preparation which she observed. On the last days she visited, dirty laundry was scattered in the kitchen and perishable food was left on the table and sink. The supply of food in the home was almost exhausted. When Sherri was asked about this, her response was that "Marilyn Hutch, the homemaker will be back next week. It can wait until then."

Roberta has discussed the possibility of adoption for the child. At one point, Sherri was willing to sign surrenders for adoption of the older children. On October 23, 1981, she stated that "I no longer really like to visit them. They seem like strangers to me." She has since changed her mind.

Roberta believes the situation in the home will never improve. She is prepared to testify concerning the efforts the Department made and how there has been little progress or change. She can testify in great detail about the conditions in the home which brought about the filing of the neglect petition in February 1981.

DIRECT TESTIMONY EXERCISE

There were several witnesses in the Baker hypothetical who could be called as witnesses. Our task is to develop the case against Mrs. Baker. The following facts are to be added to the hypothetical situation. You may elaborate on these facts or add further information if you desire.

Your witness is Carl Price, MSW, Original Caseworker

1. What allegation(s) can this witness help prove?

2. Outline "threads of evidence" that this witness can help develop.

3. Prepare questions for this witness.

Be prepared to role play your witness for the entire group who will raise "objections" and critique your testimony.

Carl Price, MSW, Original Caseworker

Carl Price is currently employed as Director of the local family services agency. He has an MSW from the University of Chicago and has worked in child welfare for twelve years. His speciality in social work is in psychiatric social work. He has not seen Mrs. Baker since he left the department in 1979.

Carl spent an inordinate amount of time with the Baker family. He can testify to Mrs. Baker's total lack of interest in the older two children. The case file documents his efforts to communicate with Mr. Baker and to set up visitation. He worked with Mrs. Baker intensely. He was very supportive of her and arranged for her to become involved with a sheltered work program. He saw Mrs. Baker weekly. He also had Mrs. Baker enroll in a counseling program with the Mental Health Clinic. A letter from the clinic in the file indicates that Mrs. Baker was "borderline mentally retarded with an I.Q. of 82."

He arranged for visitation with the two children. He would call Mrs. Baker the day before and remind her of visitation. On several occasions he drove her to the visitations. Mrs. Baker often seemed anxious about attending the visits and on occasion expressed doubts about seeing the children. The case record documents Mrs. Baker's concerns about visitation.

The last entry Carl Price made in the case files states, "Mrs. Baker is making limited progress toward the eventual return of the children. She is working and continuing her drug therapy. She needs a great deal of support. This case should be monitored closely. I have doubts that Mrs. Baker can ever function independently."

DIRECT TESTIMONY EXERCISE

There were several witnesses in the Baker hypothetical who could be called as witnesses. Our task is to develop the case against Mrs. Baker. The following facts are to be added to the hypothetical situation. You may elaborate on these facts or add further information if you desire.

Your witness is Marilyn Hatch, Homemaker

1. What allegation(s) can this witness help prove?

2. Outline "threads of evidence" that this witness can help develop.

3. Prepare questions for this witness.

Be prepared to role play your witness for the entire group who will raise "objections" and critique your testimony.

Marilyn Hatch, Homemaker

Marilyn Hatch is a 29 year old mother of two. She resides in a nearby town. She has been a homemaker with the Department for three years. She has had contact with at least 25 different cases. Since March 16, 1981, she has been going to the home of Sherri Baker. She keeps a daily log of each visit with Mrs. Baker. She has worked with Mrs. Baker in an effort to help her develop homemaking skills, such as cooking, laundering and housecleaning. She has also encouraged Mrs. Baker to pay more attention to Johnnie and watch less television.

She can testify to the fact that little housework or cooking is done on the days she does not visit. She can testify to several visits in which the home was in a poorly kept condition. For example, on September 15, 1981, when she visited, the furniture was rearranged in a disorderly fashion and clothing, both soiled and clean, were scattered around the house. Perishable food was left on the kitchen table and used cans and garbage was strewn about the kitchen. Johnnie was playing with toys among these hazards. On November 24, 1981, when she went to the house the furnace had broken down. Mrs. Baker had tried to call her neighbor who fixes furnaces but had not made arrangments. The furnace had been broken for two days and Mrs. Baker did not know who else to call. Mrs. Baker was attempting to heat the home with gas burners on the stove and two electric space heaters. Johnnie was playing among these space heaters and extension cords.

Marilyn Hatch had been concerned about Mrs. Baker's lack of concern for the child. Johnnie suffers from many colds and fevers. On at least two occasions, Marilyn has had to fill prescriptions for Johnnie and on one occasion insisted that a doctors appointment be made. She has had several conversations with Mrs. Baker about child care. Mrs. Baker often goes hours without talking or noticing Johnnie. She ignores Johnnie by watching T.V. The child is often alone in a bedroom or plays outside. She could testify to lack of parental/child interactions. Johnnie often goes over to the Smythe's home next door. Mrs. Baker has told Marilyn that she doesn't like to be at home with the child and that she would rather have the child in foster care or day care so that she could get a job again. This conversation took place on December 22, 1981.

DIRECT TESTIMONY EXERCISE

There were several witnesses in the Baker hypothetical who could be called as witnesses. Our task is to develop the case against Mrs. Baker. The following facts are to be added to the hypothetical situation. You may elaborate on these facts or add further information if you desire.

Your witness is Joan Smythe, Neighbor.

1. What allegation(s) can this witness help prove?

2. Outline "threads of evidence" that this witness can help develop.

3. Prepare questions for this witness.

Be prepared to role play your witness for the entire group who will raise "objections" and critique your testimony.

Joan Smythe, Neighbor

Joan Smythe is the neighbor of Sherri Baker. They have lived next to each other since 1973. Joan works part-time as a waitress at night. She has access to a car and has driven Sherri to appointments and to the store. She has offered, on several occassions, to drive Sherri to places Sherri wants to go.

She has taken Mrs. Baker to visit the older children at the Bryan foster home. In recent years Mrs. Baker has not asked for transportation as much and has told her on the last visit that "She really doesn't enjoy seeing the children anymore and that they seem to be strangers." Mrs. Smythe has developed a friendship with the Bryans. She is on a bowling team with Mrs. Bryan.

Joan has become increasingly concerned about the child care given Johnnie. She feels that Mrs. Baker is repeating the same pattern of not caring for Johnnie, like she did with Sandy and David several years before. She believes that Sherri doesn't want to be responsible for children. She has been particularly concerned recently about the number of hours Johnnie plays outside. She can testify that on Friday, November 27, 1981, the day after Thanksgiving, Johnnie played outside for several hours with only slippers on and without a jacket. It was about forty degrees that day and drizzling. She invited Johnnie in and gave him some lunch. When she asked Mrs. Baker why Johnnie was out so long, Mrs. Baker seemed unconcerned about the whole situation.

She is also willing to testify that other neighbors have seen Johnnie playing outside for long periods of time in bad weather.

PURPOSE OF TRIALS

A. TO INFORM

B. TO PERSUADE

PARTS OF A TRIAL

1. OPENING STATEMENT
2. CASE IN CHIEF- DIRECT CASE
3. MOTIONS TO DISMISS FOR FAILURE TO PROVE A CASE
4. DEFENDANT'S CASE
5. POSSIBLE REBUTTAL
6. CLOSING ARGUMENTS

TYPES OF QUESTIONS

1. NARRATIVE
2. OPEN
3. CLOSED
4. LEADING

CREDIBILITY FACTORS

A. CREDIBILITY OF TESTIMONY
B. CREDIBILITY OF WITNESS

CREDIBILITY OF TESTIMONY

A. IS IT CONSISTENT WITH COMMON EXPERIENCE?

B. IS IT CONSISTENT WITH ITSELF?

C. IS IT CONSISTENT WITH ESTABISHED FACTS?

CREDIBILITY OF WITNESS

A. IS THE WITNESS BIASED OR NUETRAL?

B. DOES WITNESS HAVE SPECIAL EXPERTISE?

C. WHAT IS WITNESS DEMEANOR?

1. PHYSICAL ATTRACTIVENESS
2. PERSONAL STYLE
3. MANNER OF TESTIFYING

D. WHAT IS WITNESS SOCIO-ECONOMIC BACKGROUND?

IV. SUPPLEMENTAL TRAINING UNITS

SUPPLEMENTAL UNIT ONE: THE DUE PROCESS HEARING

Unit Training Objectives

The material in this unit is designed to prepare students to:

-understand the constitutional basis for the due process hearing

-learn the basic procedural components of a due process hearing

-determine the implications of case law for casework practice

-read an appellate opinion with understanding

Summary of Training Content and Methodology

Unit Module: The Due Process Hearing

Format:	Group Exercises/Discussion
Time:	1 1/2 hours
Materials:	U.S. Supreme Court Opinions Stanley v. Illinois Goldberg v. Kelly, In Re Gault. Worksheet - Reading Case Law Handouts - Analyzing Case Law (answers to worksheet questions in law brief format) Easel Pads and markers

The material in this unit is designed to emphasize and teach the role of the due process hearing in the legal process. It is a conceptual unit which forms a foundation for the procedural requirements of a termination of parental rights hearing. The analysis of U.S. Supreme Court cases dealing with due process gives the framework within which judicial decisions are made on the hearing requirements for any type of case. The unit gives students an opportunity to read and become familiar with case law materials.

The trainees divide into three groups. Each group reads one of the edited U.S. Supreme Court cases: Goldberg, Stanley or Gault. Each group answers the questions on the worksheet, Reading Case Law, and records the group's answers on easel sheets. Each group presents its answers to the class. The entire group discusses the worksheets in the context of the following questions on the due process hearing.

1. What is meant by due process?

2. Why is there a hearing requirement?

3. What type of due process hearing procedures are required in the case?

4. What were the implications of the case for casework practice?

5. Are the reasons for the due process hearing consistent with social work practice?

Following the discussion, the groups are given the handout, Analyzing Case Law, which shows how the questions they were asked on the worksheet parallels the main parts of a legal brief. The parts presented on the handout are (1) Style or Identification of Case (citation), (2) Facts, (3) Issue, (4) Holding, (5) Decision, and (6) Rationale. The method of paralleling informational questions to legal terminology and the structure of a legal brief gives a format for analyzing any appellate case.

The three cases were selected because they demonstrate the components of a fair hearing procedure and show the difference in due process requirements. Goldberg v. Kelley is a welfare case dealing with the hearing requirements necessary when a state terminates public assistance benefits. Stanley v. Illinois delineates the due process rights of the unwed father to a fitness hearing before his parental rights can be terminated. In Re Gault gives the Supreme Court's analysis of the due process requirements necessary in a juvenile court adjudication of delinquency for a minor. Other cases which may be effective for use in training are Matthews v. Eldridge and Santosky v. Kramer.

SUPPLEMENTAL UNIT ONE: Due Process Hearing
Worksheet

READING CASE LAW

1. What is the name of the case?

   When was the case decided?

   What court decided the case?

   Who is the appellant (the party who appealed the decision of the lower court)?

   Who is the appellee (the party, on appeal, who argues against changing the decision of the lower court)?

2. What were the circumstances which led to the court case? Summarize.

3. What was the specific issue(s) or question(s) that the Court had to decide?

4. How did the Court rule on the issue(s) in question 3?

5. Did the Court agree or disagree with the decision of the lower court?

6. What reasons did the Court give for its ruling? Consider the Court's discussion of the rights of the individual and the Court's response to the State's argument.

GOLDBERG, COMMISSIONERS OF SOCIAL SERVICES OF THE CITY OF NEW YORK v. KELLY, ET. AL.

Supreme Court of the United States, 1970.,
397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)

Mr. Justice Brennan delivered the opinion of the Court.

The question for decision is whether a State that terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment.

This action was brought in the District Court for the Southern District of New York by residents of New York City receiving financial aid under the federally assisted program of Aid to Families with Dependent Children (AFDC) or under New York State's general Home Relief program. Their complaint alleged that the New York State and New York City officials administering these programs terminated or were about to terminate, such aid without prior notice and hearing, thereby denying them due process of law. At the time the suits were filed there was no requirement of prior notice or hearing of any kind before termination of financial aid. However, the State and city adopted procedures for notice and hearing after the suits were brought and the plaintiffs, appellees here, then challenged the constitutional adequacy of those procedures.

[According to department regulations] A caseworker who has doubts about the recipient's continued eligibility must first discuss them with the recipient. If the caseworker concludes that the recipient is no longer eligible, he recommends termination of aid to a unit supervisor. If the latter concurs, he sends the recipient a letter stating the reasons for proposing to terminate aid and notifying him that within seven days he may request that a higher official review the record, and may support the request with a written statement prepared personally or with the aid of an attorney or other person. If the reviewing official affirms the determination of ineligibility, aid is stopped immediately and the recipient is informed by letter of the reasons for the action. Appellees' challenge to this procedure emphasizes the absence of any provisions for the personal appearance of the recipient before the reviewing official, for oral presentation of evidence, and for confrontation and cross-examination of adverse witnesses. However, the letter does inform the recipient that he may request a post-termination "fair hearing."

The constitutional issue to be decided, therefore, is the narrow one whether the Due Process Clause requires that the recipient be afforded an evidentiary hearing before the termination of benefits. The District Court held that only a pre-termination evidentiary hearing would satisfy the constitutional command, and rejected the argument of the state and city officials that the combination of the post-termination "fair hearing" with the informal pre-termination review disposed of all due process claims. The court said: "While post-termination review is relevant, there is one overpowering fact which controls here. By hypothesis, a welfare recipient is destitute, without funds or assets.... Suffice it to say that to cut

off a welfare recipient in the face of ....(brutal need) without a prior hearing of some sort is unconscionable, unless overwhelming considerations justify it." The court rejected the argument that the need to protect the public's tax revenues supplied the requisite "overwhelming consideration." "Against the justified desire to protect public funds must be weighed the individual's overpowering need in this unique situation not to be wrongfully deprived of assistance."

Appellant does not contend that procedural due process is not applicable to the termination of welfare benefits. Such benefits are a matter of statutory entitlement for persons qualified to receive them. Their termination involves state action that adjudicates important rights. The constitutional challenge cannot be answered by an argument that public assistance benefits are "a 'privilege' and not a 'right.'"... The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss," and depends upon whether the recipient's interest in avoiding that loss outweighs the government interest in summary adjudication. Accordingly, "consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved was well as of the private interest that has been affected by governmental action."

But we agree with the District Court when welfare is discontinued, only a pre-termination evidentiary hearing provides the recipient with procedural due process.

* * *

The requirement of a prior hearing doubtless involves some greater expense, and the benefits paid to ineligible recipients pending decision at the hearing probably cannot be recouped, since these recipients are likely to be judgment-proof.... [Thus, the interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens.

We also agree with the District Court, however, that the pre-termination hearing need not take the form of a judicial or quasi-judicial trial. We bear in mind that the statutory "fair hearing" will provide the recipient with a full administrative review. Accordingly, the pre-termination hearing has one function only: to produce an initial determination of the validity of the welfare department's grounds for discontinuance of payments in order to protect a recipient against an erroneous termination of his benefits.

"The fundamental requisite of due process of law is the opportunity to be heard." The hearing must be "at a meaningful time and in a meaningful manner." In the present context these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These rights are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.

* * *

The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard. It is not enough that a welfare recipient may present his position to the decision maker in writing or second-hand through his caseworker. Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assisttance. Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decision maker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision. The second-hand presentation to the decision maker by the caseworker has its own deficiencies; since the caseworker usually gathers the facts upon which the charge of ineligibility rests, the presentation of the recipients' side of the controversy cannot safely be left to him. Therefore a recipient must be allowed to state his position orally. Informal procedures will suffice; in this context due process does not require a particular order of proof or mode of offering evidence.

In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witneses.... [Welfare recipients must therefore be given an opportunity to confront and cross-examine the witnesses relied on by the department.

We do not say that counsel must be provided at the pre-termination hearing, but only that the recipient must be allowed to retain an attorney if he so desires.

Finally, the decision maker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing. To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law. And, of course, an impartial decision maker is essential. We agree with the District Court that prior involvement in some aspects of a case will not necessarily bar a welfare official from acting as a decision maker. He should not, however, have participated in making the determination under review.

Affirmed.

[Edited version of case. Citations omitted.]

STANLEY v. ILLINOIS

Supreme Court of the United States, 405 U.S. 645,
92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)

Mr. Justice White delivered the opinion of the Court.

Joan Stanley lived with Peter Stanley intermittently for 18 years, during which time they had three children. When Joan Stanley died, Peter Stanley lost not only her but also his children. Under Illinois law, the children of unwed fathers become wards of the State upon the death of the mother. Accordingly, upon Joan Stanley's death, in a dependency proceeding instituted by the State of Illinois, Stanley's children were declared wards of the State and placed with court-appointed guardians. Stanley appealed, claiming that he had never been shown to be an unfit parent and that since married fathers and unwed mothers could not be deprived of their children without such a showing, he had been deprived of the equal protection of the law guaranteed him by the Fourteenth Amendment. The Illinois Supreme Court accepted the fact that Stanley's own unfitness had not been established but rejected the equal protection claim, holding that Stanley could properly be separated from his children upon proof of the single fact that he and the dead mother had not been married. Stanley's actual fitness as a father was irrelevant.

Stanley presses his equal protection claim here. The State continues to respond that unwed fathers are presumed unfit to raise their children and that it is unnecessary to hold individualized hearings to determine whether particular fathers are in fact unfit parents before they are separated from their children. [We are deciding this case] to determine whether this method of procedure by presumption could be allowed to stand in light of the fact that Illinois allows married fathers--whether divorced, widowed, or separated--and mothers--even if unwed--the benefit of the presumption that they are fit to raise their children.

* * *

We must therefore examine the question that Illinois would have us avoid: Is a presumption that distinguishes and burdens all unwed fathers constitutionally repugnant? We conclude that, as a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment.

Illinois has two principal methods of removing nondelinquent children from homes of their parents. In a dependency proceeding it may demonstrate that the children are wards of the State because they have no surviving parent or guardian. In a neglect proceeding it may show that children should be wards of the State because the present parent(s) or guardian does not provide suitable care.

The State's right--indeed, duty--to protect minor children through a judicial determination of their interests in a neglect proceeding is not challenged here. Rather, we are faced with a dependency statute that empowers state officials to circumvent neglect proceedings on the theory that an unwed father is not a "parent" whose existing relationship with his children must be considered. "Parents," says the State, "means the father and mother of a legitimate child, or the survivor of them, or the natural mother of an illegitimate child, and includes any adoptive parent," but the term does not include unwed fathers.

Under Illinois law, therefore, while the children of all parents can be taken from them in neglect proceedings, that is only after notice, hearing, and proof of such unfitness as a parent as amounts to neglect, an unwed father is uniquely subject to the more simplistic dependency proceeding. By use of this proceeding, the State, on showing that the father was not married to the mother, need not prove unfitness in fact, because it is presumed at law. Thus, the unwed father's claim to parental qualification is avoided as "irrelevant."

In considering this procedure under the Due Process Clause, we recognize, as we have in other cases, that due process of law does not require a hearing "in every conceivable case of government impairment of private interest"...[and that] "what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action."

The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements."

The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential," Meyer v. Nebraska, 262 U. S. 390, 399 (1923), "basic civil rights of man," Skinner v. Oklahoma, 316 U. S. 535, 541 (1942), and "[r]ights far more precious...than property rights," May v. Anderson, 345 U.S. 528, 533 (1953). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, 321 U. S. 158, 166 (1944). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, Meyer v. Nebraska, supra, at 399, the Equal Protection Clause of the Fourteenth Amendment, Skinner v. Oklahoma, supra, at 541, and the Ninth Amendment, Griswold v. Connecticut, 381 U. S. 479, 496 (1965) (Goldberg, J., concurring).

Nor has the law refused to recognize those family relationships unlegitimized by a marriage ceremony. The Court has declared unconstitutional a state statute denying natural, but illegitimate, children a wrongful-death action for the death of their mother, emphasizing that such children cannot be denied the right of other children because

familial bonds in such cases were often as warm, enduring, and important as those arising within a more formally organized family unit. Levy v. Louisiana, 391 U. S. 68, 71-72 (1968). "To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue. For the Equal Protection Clause necessarily limits the authority of a State to draw such 'legal' lines as it chooses."

These authorities make it clear that, at the least, Stanley's interest in retaining custody of his children is cognizable and substantial.

For its part, the State has made its interest quite plain: Illinois has declared that the aim of the Juvenile Court Act is to protect "the moral, emotional, mental, and physical welfare of the minor and the best interests of the community" and to "strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal . . . ." These are legitimate interests, well within the power of the State to implement. We do not question the assertion that neglectful parents may be separated from their children.

But we are here not asked to evaluate the legitimacy of the state ends, rather, to determine whether the means used to achieve these ends are constitutionally defensible. What is the state interest in separating children from fathers without a hearing designed to determine whether the father is unfit in a particular disputed case? We observe that the State registers no gain towards its declared goals when it separates children from the custody of fit parents. Indeed, if Stanley is a fit father, the State spites its own articulated goals when it needlessly separates him from his family.

* * *

It may be, as the State insists, that most unmarried fathers are unsuitable and neglectful parents. It may also be that Stanley is such a parent and that his children should be placed in other hands. But all unmarried fathers are not in this category; some are wholly suited to have custody of their children. This much the State readily concedes, and nothing in this record indicates that Stanley is or has been a neglectful father who has not cared for his children. Given the opportunity to make his case, Stanley may have been seen to be deserving of custody of his offspring. Had this been so, the State's statutory policy would have been furthered by leaving custody to him.

* * *

[I]t may be argued that unmarried fathers are so seldom fit that Illinois need not undergo the administrative inconvenience of inquiry in any case, including Staney's. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and

efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.

Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.

* * *

The State's interest in caring for Stanley's children is de minimis if Stanley is shown to be a fit father. It insists on presuming rather than proving Stanley's unfitness solely because it is more convenient to presume than to prove. Under the Due Process Clause that advantage is insufficient to justify refusing a father a hearing when the issue at stake is the dismemberment of his family.

The State of Illinois assumes custody of the children of married parents, divorced parents, and unmarried mothers only after a hearing or proof of neglect. The children of unmarried fathers, however, are declared dependent children without a hearing on his parental fitness and without proof of neglect. Stanley's claim in the state courts and here is that failure to afford him a hearing on his parental qualifications while extending it to other parents denied him equal protection of the laws. We have concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody. It follows that denying such a hearing to Stanley and those like him while granting it to other Illinois parents is inescapably contrary to the Equal Protection Clause.

The judgment of the Supreme Court of Illinois is reversed and the case is remanded to that court for proceedings not inconsistent with this opinion. It is so ordered.

Reversed and remanded.

[Edited version of case. Citations omitted]

Stanley v. Illinois - Dissenting Opinion

Mr. Chief Justice Burger, with whom Mr. Justice Blackmun concurs, dissenting.

* * *

In regard to the only issue that I consider properly before the Court, I agree with the State's argument that the Equal Protection Clause is not violated when Illinois gives full recognition only to those father-child relationships that arise in the context of family units bound together by legal obligations arising from marriage or from adoption proceedings. Quite apart from the religious or quasi-religious connotations that marriage has--and has historically enjoyed--for a large proportion of this Nation's citizens, it is in law an essentially contractual relationship, the parties to which have legally enforceable rights and duties, with respect both to each other and to any children born to them. Stanley and the mother of these children never entered such a relationship. The record is silent as to whether they ever privately exchanged such promises as would have bound them in marriage under the common law. In any event, Illinois has not recognized common-law marriages since 1905. Stanley did not seek the burdens when he could have freely assumed them.

* * *

The Illinois Supreme Court correctly held that the State may constitutionally distinguish between unwed fathers and unwed mothers. Here, Illinois' different treatment of the two is part of that State's statutory scheme for protecting the welfare of illegitimate children. In almost all cases, the unwed mother is readily identifiable, generally from hospital records, and alternatively by physicians or others attending the child's birth. Unwed fathers, as a class, are not traditionally quite so easy to identify and locate. Many of them either deny all responsibility or exhibit no interest in the child or its welfare; and, of course, many unwed fathers are simply not aware of their parenthood.

Furthermore, I believe that a State is fully justified in concluding, on the basis of common human experience, that the biological role of the mother in carrying and nursing an infant creates stronger bonds between her and the child than the bonds resulting from the male's often casual encounter. This view is reinforced by the observable fact that most unwed mothers exhibit a concern for their offspring either permanently or at least until they are safely placed for adoption, while unwed fathers rarely burden either the mother or the child with their attentions or loyalties. Centuries of human experience buttress this view of the realities of human conditions and suggest that unwed mothers of illegitimate children are generally more dependable protectors of their children than are unwed fathers. While these, like most generalizations, are not without exceptions, they nevertheless provide a sufficient basis to sustain a statutory classification whose objective is not to penalize unwed parents but to further the welfare of illegitimate children in fulfillment of the State's obligation as parens patriae.

Stanley depicts himself as a somewhat unusual unwed father, namely, as one who has always acknowledged and never doubted his fatherhood of these children. He alleges that he loved, cared for, and supported these children from the time of their birth until the death of their mother. He contends that he consequently must be treated the same as a married father of legitimate children. Even assuming the truth of Stanley's allegations, I am unable to construe the Equal Protection Clause as requiring Illinois to tailor its statutory definition of "parents" so meticulously as to include such unusual unwed fathers, while at the same time excluding those unwed, and generally unidentified, biological fathers who in no way share Stanley's professed desires.

IN RE GAULT

Supreme Court of the United States
387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)

Mr. Justice Fortas delivered the opinion of the court.

[The Court first gave the facts of the case. Summary of facts: Gerald Gault, a 15 year old, and a friend were arrested by police as a result of a verbal complaint by a neighbor, Mrs. Cook, that they made lewd and indecent phone calls to her. Gault's parents were not notified by police about the arrest, and only learned of it secondhand. The Gaults were not served and did not receive a copy of the juvenile court petition filed by police for court hearing. The petition filed by a probation officer set forth no facts and only said that the minor was delinquent and in need of the juvenile court's protection. Gerald Gault was not advised of his right to remain silent and to be represented by counsel. No one was sworn at the initial hearing or a second one held a week later. Mrs. Cook did not appear at any time in court as a witness. There was no transcript or recording of either hearing. The probation officer's referral report was not seen by Gerald or his parents.

The juvenile court judge subsequently declared Gerald Gault to be a juvenile delinquent and committed him to a state school "for the period of his minority", six years, until age 21. If Gault had been 18, the maximum penalty for making obscene phone calls would have been a $50 fine or two months imprisonment.

The Gault's challenged the constitutionality of Arizona's Juvenile Code on the grounds that it lacked procedural due process guarantees provided by the Fourteenth Amendment in adult criminal trials. An Arizona superior court dismissed the writ and the Arizona Supreme Court affirmed, by stating that the proceedings which ended in the commitment of Gerald Gault complied with the due process concept. The Gaults appealed to the U.S. Supreme Court.]

Mr. Justice Fortas delivered the opinion of the court.

* * *

[A]ppellants...urge that we hold the Juvenile Code of Arizona invalid on its face or as applied in this case because, contrary to the Due Process Clause of the Fourteenth Amendment, the juvenile is taken from the custody of his parents and committed to a state institution pursuant to proceedings in which the Juvenile Court has virtually unlimited discretion, and in which the following basic rights are denied:

1. Notice of the charges;
2. Right to counsel;
3. Right to confrontation and cross examination;
4. Privilege against self-incrimination;
5. Right to a transcript of the proceedings; and
6. Right to appellate review.

As to these proceedings, there appears to be little current dissent from the proposition that the Due Process Clause has a role to play. The problem is to ascertain the precise impact of the due process requirement upon such proceedings.

* * *

[The Court continued with a discussion of the history and theory of the development of the juvenile court with its emphasis on helping the child in an informal procedural court environment. The court noted that in practice the results of the juvenile court system, "had not been entirely satisfactory."]

It is claimed that juveniles obtain benefits from the special procedures applicable to them which more than offset the disadvantages of denial of the substance of normal due process.... [T]he claimed benefits of the juvenile court process should be candidly appraised... [since] the high crime rates among juveniles...could not lead us to conclude the absence of constitutional protections reduces crime, or that the juvenile system, functioning free of constitutional inhibitions as it has largely done, is effective to reduce crime or rehabilitate offenders.

* * *

[The Court continued by stating that the unique and separate processing of juvenile offenders would not be affected by due process requirements. The State argued that confidentiality of juvenile court proceedings justified the limited notice procedures. The Court rejected that argument since juvenile records could remain confidential and since the parent was eventually informed of the proceeding although it was too late and inadequate to prepare a defense. The State also argued that the juvenile benefits from informal proceedings in the Court. The Court cited studies which refute the effectiveness of the gentle, paternal juvenile court judge when compared to a proceeding which gives "the appearance as well as the actuality of fairness, impartiality, and orderliness--in short, the essentials of due process...." The Court continued by stating that "while due process requirements will, in some instances, introduce a degree of order and regularity to Juvenile Court proceedings to determine delinquency, and in contested cases will introduce some elements of the adversary system nothing will require that the conception of the kindly juvenile court judge be replaced by its opposite, nor do we here rule upon the question whether due process requirements must be observed with respect to hearings to determine the disposition of the delinquent child."]

Ultimately, however, we confront the reality of that portion of the Juvenile Court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence--and of limited practical meaning--that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time.

In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court... The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were discarded in Gerald's case. The summary procedure as well as the long commitment was possible because Gerald was 15 years of age instead of over 18.

* * *

In Kent v. United States, we stated that the Juvenile Court Judge's exercise of the power of the state as parens patriae was not unlimited. We said that "the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness.... [T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony--without hearing, without effective assistance of counsel, without a statement of reasons." We announced with respect to such waiver proceedings that while "[w]e do not mean...to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment." We reiterate this view, here in connection with a juvenile court adjudication of "delinquency," as a requirement which is part of the Due Process Clause of the Fourteenth Amendment of our Constitution.

* * *

NOTICE OF CHARGES

The "initial hearing" in the present case was a hearing on the merits. Notice at that time is not timely; and even if there were a conceivable purpose served by the deferral proposed by the court below, it would have to yield to the requirements that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practical time, and in any event sufficiently in advance of the hearings to permit preparation. Due process of law requires notice of the sort we have described--that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding. It does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet. Nor, in the circumstances of this case, can it reasonably be said that the requirement of notice was waived.

RIGHT TO COUNSEL

A proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to

ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."

* * *

CONFRONTATION, SELF-INCRIMINATION, CROSS-EXAMINATION

We shall assume that Gerald made admissions [as to the lewd calls]. Neither Gerald nor his parents were advised that he did not have to testify or make a statement, or that an incriminating statement might result in his commitment as a "delinquent."

[J]uvenile proceedings to determine "delinquency," which may lead to commitment to a state institution, must be regarded as "criminal" for purposes of the privilege against self-incrimination.... For this purpose, at least, commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called "criminal" or "civil."

* * *

The "confession" of Gerald Gault was first obtained by Officer Flagg, out of the presence of Gerald's parents, without counsel and without advising him of his right to silence, as far as appears. The judgment of the Juvenile Court was stated by the judge to be based on Gerald's admissions in court. Neither "admission" was reduced to writing.... Apart from the "admissions," there was nothing upon which a judgment or finding might be based. There was no sworn testimony. Mrs. Cook, the complaintant, was not present.... Absent a valid confession adequate to support the determination of the Juvenile Court, confrontation and sworn testimony by witnesses available for cross-examination were essential for a finding of "delinquency" and an order committing Gerald to a state institution for a maximum of six years.

* * *

APPELLATE REVIEW AND TRANSCRIPT OF PROCEEDINGS

[The Court did not find it necessary to rule upon the failure to provide a transcript of the hearings, appellate review, or the failure of the juvenile judge to state the grounds for his conclusion. The Court did note the importance of an adequate record for the reviewing process.]

Judgment reversed and cause remanded with directions.

[Dissenting opinion omitted.]

[Edited version. Citations omitted.]

SUPPLEMENTAL UNIT ONE: Due Process Hearing
Handout

ANALYZING CASE LAW: GOLDBERG v. KELLY

1. What is the name of the case?
   When was the case decided?
   What court decided the case?
   Who is the appellant?
   Who is the appellee?

   Style or Identification of Case (Citation)

Name of Case		U.S. Supreme Court		
Appellant	Appellee	Vol.		Page
Goldberg v. Kelly,		397	U.S.	254
90 S.Ct. 1011, 25 L.Ed. 2d 287 (1970)				

Year decided

2. What were the circumstances which led to the court case? Summarize.

   FACTS

   Kelly and others were New York City residents who received welfare benefits under the federally assisted AFDC or state G.A. welfare programs. Aid to these recipients was terminated by the State welfare department without prior notice or a hearing. After a suit was filed in federal District Court on their behalf, the State adopted a procedure by which the recipient received written notice of the proposed termination and the opportunity to submit written statements for an informal review prior to termination of benefits. The welfare recipient also received notice that he could request a full hearing after the termination of benefits.

   The District Court rejected the New York process and decided that when welfare benefits are to be discontinued, a pre-termination full evidentiary hearing was required to comply with procedural due process. The New York Welfare Department appealed to the U.S. Supreme Court.

3. What was the specific issue(s) on question that the Court had to decide?

   ISSUE

   Does a State which terminates welfare benefits to a recipient without a complete evidentiary hearing prior to termination violate the Due Process Clause of the 14th Amendment?

4. How did the Court rule on the issue(s) in question 3?

HOLDING (Court's answer to Issue)

Yes. A State which terminates welfare benefits to a recipient without a complete evidentiary hearing prior to termination violates the Due Process Clause of the 14th Amendment. The Court held that "...when welfare is discontinued, only a pre-termination evidentiary hearing provides the recipient with procedural due process."

5. Did the Court agree or disagree with the decision of the lower court?

DECISION

The U.S. Supreme Court affirmed the decision of the U.S. District Court.

6. What reasons did the Court give for its ruling?

RATIONALE

The Court determined that eligible welfare recipients are statutorily entitled to their benefits and have an important interest protected by the Constitution in the uninterrupted receipt of benefits which provide essential food, clothing, housing, and medical care. The State argued that it needed to conserve tax revenues by preventing increased fiscal costs through additional hearing requirements.

In balancing the interests of the recipient and the State, the Court stated that the extent to which procedural due process must be afforded the recipient "is influenced by the extent to which he may be 'condemned to suffer grievous loss,'" and depends upon whether the individual's loss is outweighed by the government's interest. The Court rejected the State's argument on conserving fiscal resources because it was outweighed by the recipient's need and interest in the continuation of benefits until there was a full evidentiary pre-termination hearing and was outweighed by the State's interest in not erroneously terminating benefits.

The Court stated that the pre-termination hearing could be held in an informal manner rather than taking the form of a judicial trial. The recipient has to be given timely and adequate notice of the hearing and reasons for termination. Written submissions by the recipient were rejected. The recipient has to be given the opportunity to orally defend himself and to confront adverse witnesses before an impartial decision maker.

ANALYZING CASE LAW: STANLEY v. ILLINOIS

1. What is the name of the case?
   When was the case decided?
   What court decided the case?
   Who is the appellant?
   Who is the appellee?

   Style or Identification of Case (Citation)

Name of Case		U.S. Supreme Court	
Appellant	Appellee	Vol.	Page
Stanley v. Illinois,		405 U.S.	645

92 S.Ct. 1208, 31 L.Ed. 2d 551 (1972)

Year Decided

2. What were the circumstances which led the court case? Summarize.

   FACTS

   Peter and Joan Stanley lived together intermittently for 18 years out of wedlock. They had three illegitimate children during that time. When Joan Stanley died, under Illinois law, the circuit court declared the children wards of the State in a dependency proceeding and placed them with court-appointed guardians. Stanley did not receive notice or a hearing as to his fitness as a parent since he was not a "parent" as defined in the statute.

   The Illinois Supreme Court decided that the State did not have to provide Stanley with notice or a fitness hearing because he and the mother were never married.

3. What was the specific issue(s) or question that the Court had to decide?

   ISSUE

   Does the Due Process Clause of the Fourteenth Amendment require a State to provide an unmarried father with notice and a hearing on his fitness before making his children wards of the State?

4. How did the Court rule on the issue(s) in question 3?

   HOLDING (Court's Answer to Issue Question)

   Yes. The Due Process Clause of the Fourteenth Amendment requires a State to provide an unmarried father with notice and a hearing on his fitness before making his children wards of the State. The Court held that "...as a matter of due process of law, Stanley was entitled to a hearing on his fitness before his children were taken from him...."

5. Did the Court agree or disagree with the decision of the lower court?

DECISION

The U.S. Supreme Court reversed the decision of the Illinois Supreme Court.

6. What reasons did the Court give for its ruling?

RATIONALE

The Court determined that the unmarried father has an important and fundamental right to his children protected by the Constitution. The Court stated that Mr. Stanley's private interest in his children was important as is any man's interest in the children they had sired and raised. The Court emphasized the fundamental right of parents to their children and the protection of the family guaranteed by the Constitution.

The Court recognized that the State has a legitimate interest in protecting minors and the power to implement procedures to do so. The Court also noted the State's interest in prompt, efficient administrative procedures to determine placement of children.

The Court, however, determined that the methods the State used to achieve its interests were insufficient when balanced against the right of a father to his children. The Court emphasized that the State had little interest in caring for Stanley's children if Stanley was shown to be a fit parent. The Court rejected the State's insistence "on presuming rather than proving unfitness solely because it is more convenient to presume than prove. Under the Due Process Clause that advantage is insufficient to justify refusing a father a hearing when the issue at stake is the dismemberment of his family."

ANALYZING CASE LAW: IN RE GAULT

1. What is the name of the case?
   When was the case decided?
   What court decided the case?
   Who is the appellant?
   Who is the appellee?

   Style or Identification of Case (Citation)

Name of Case	U.S. Supreme Court Vol.	Page
In Re Gault, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)	387 U.S.	1

Year decided

2. What were the circumstances which led to the court case? Summarize.

   FACTS

   Gerald Gault, a 15 year old, and a friend were arrested by police as a result of a verbal complaint of a neighbor, Mrs. Cook, who said that they made lewd and indecent phone calls to her. Gerald's parents were not notified and did not receive a copy of the juvenile court petition. The petition contained no facts and only stated that Gerald was delinquent. Gerald was not advised of his right to remain silent or his right to counsel. Mrs. Cook did not appear as a witness at the two hearings. No transcript or recording was made of either hearing. The juvenile court judge commited Gerald to a state institution for six years (until age 21). If Gault had been 18 the maximum penalty would have been a $50 fine or two months imprisonment.

   The Gaults challenged the constitutionality of the juvenile procedures on due process grounds. The Arizona state courts decided that the procedures did not violate due process.

3. What was the specific issue(s) or question that the Court had to decide?

   ISSUE

   Does the Due Process Clause of the 14th Amendment require a State in a juvenile rt adjudication of delinquency, where institutional commitment follow, to provide a juvenile with any of the following procedural due process rights: right to notice, counsel, confrontation and cross-examination, privilege against self-incrimination, a transcript and appellate review?

4. How did the Court rule on the issue(s) in question 3?

HOLDING (Court's answer to issue)

The Due Process Clause of the 14th Amendment requires a State in a juvenile court adjudication of delinquency, where institutional commitment may follow, to provide a juvenile and his parents with the following due process rights: adequate and timely written notice of specific issues in advance of hearing; advisement of right to counsel and appointment of counsel if they cannot afford one; application of the privilege against self-incrimination; and, absent a valid confession, the rights of confrontation and cross-examination. The Court did not rule on appellate review and a transcript of the proceedings.

5. Did the Court agree or disagree with the decision of the lower court?

DECISION

The U.S. Supreme Court reversed the decision of the Arizona Supreme Court.

6. What reasons did the Court give for its ruling?

RATIONALE

The Court found that a juvenile has the fundamental constitutional right to the protection of his/her liberty. The juvenile's right to liberty in the face of possible incarceration in a delinquency proceeding was equated with an adult's constitutional rights in a criminal trial.

The State argued that informal juvenile court procedures were necessary to insure that the child would benefit from the helping nature of the juvenile court. The State asserted that due process was intact within the philosophical goals of the juvenile court and that imposition of strict due process procedures applicable in adult criminal court would destroy the juvenile court's goals.

Although the Court accepted the basic premise upon which the juvenile court developed, it rejected the argument that the benefits outweighed the necessity for due process procedures to protect the threat of a juvenile's potential loss of liberty. The Court criticized the unlimited discretion of the juvenile court and stated that "[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony - without hearing, without effective assistance of counsel, without a statement of reasons." While the Court did impose the basic due process requirements for the adjudication stage of a delinquency proceeding, it maintained that these could operate in an informal court environment.

SUPPLEMENTAL UNIT TWO: SPECIAL TOPICS

Unit Training Objectives

The material in this unit is designed to:

-provide additional information on special topics in termination of parental rights

-develop worker skills in dealing with problems areas which may be encountered in a termination case

Summary of Training Content and Methodology

Unit Module: Special Topics

Format:	Open
Time:	1 - 2 hours per unit
Materials:	Unit Module 1 - Voluntary Relinquishment
	Unit Module 2 - Indian Child Welfare Act

If the two-day format can be expanded, it is suggested that sessions on one or more special topics be selected according to the needs of the area.

Suggestions for special topics are:

1. Voluntary Relinquishment
2. Indian Child Welfare Act
3. Adoption Process
4. Case Review
5. Subsidized Adoption
6. Potential problems areas in termination, i.e. the unwed father, metally ill, and imprisoned parent
7. Jurisdictional Issues
8. Foster Parent Rights
9. Adoption Studies

Unit Module 1: Voluntary Relinquishment

Format: Lecture
Time: 1 hour
Materials: Lecture Outline - Voluntary Relinquishment
Handout - Considerations in Taking A Surrender
Suggested Material - State Statute on Voluntary Surrenders

The unit module is designed to present the important points in taking a surrender of a child or consent to adoption of a child in Illinois. The unit is Illinois specific and therefore it is designed for a state which allows surrenders to be taken outside the court by authorized representatives of a child welfare agency. The issues of duress and fraud are emphasized. The voluntary process is, however, important for all states since voluntary terminations of parental rights far outnumber court cases involving involuntary termination.

Unit Module 2: Indian Child Welfare Act

Format: Lecture
Time: 1 hour
Materials: Resource Paper - The Indian Child Welfare Act
Suggested Material - Federal Indian Child Welfare Act. State law and regulations

The federal Indian Child Welfare Act has special provisions for child welfare personnel to follow when dealing with Indian children in a foster care, adoption, termination or neglect situation. The provisions of the Act are applicable to every state. Child welfare personnel should be familiar with its provisions and applicable state law, regulations, and policy.

SUPPLEMENTAL UNIT TWO: Special Topics
Module 1 - Voluntary Relinquishment
Lecture Outline

VOLUNTARY RELINQUISHMENT IN ILLINOIS

I. Introduction

A. Importance of Voluntary Relinquishment Process

1. Voluntary surrender or consent to adoption of a child completely and with finality severs all parental rights to a child.

2. When family preservation or reunification efforts are inappropriate or unsuccessful and documentation supports the decision, counseling services should be provided for voluntary relinquishment. The use of service plans is increasing the number of surrenders being taken.

3. Surrenders are seldom overturned by courts, but many surrenders are challenged which ties up the adoption process. Every effort should be made to ensure that there are no grounds for a challenge.

4. Although only designated DCFS employees can take a surrender, the knowledge of the process is important because the family's caseworker plays a key role in documenting service plan and preparing family for relinquishment.

B. Statutes and Procedures Governing

1. The Adoption Act, Ch. 40, especially sections 1510-1515.

2. Juvenile Court Act, especially Section 705-9.

3. DCFS Procedure 327.3, Voluntary Termination of Parental Rights

C. Difference between a consent to adoption and a surrender.

1. Consent is a process whereby a child is released to adoptive parents. This may be done by an agency which has previously completed the surrender process, or directly by parents.

2. Surrender is a process by which the parents release their child to an agency with adoption as the goal. (We are primarily concerned with surrender process.)

II. Surrender/Consent/Statutory Process

A. Who must consent or sign a surrender

1. Mother - A consent or surrender cannot be taken until 72 hours following the birth of a child.

2. Father - A consent or surrender may be taken prior to birth; however, it can be revoked in writing within 72 hours after birth of the child. In the case of a cooperative, but unmarried father, he must acknowledge paternity.

a. Putative Father - Every effort must be made to involve putative father in counseling and his rights must be explained to him.

1. If father is uncooperative or missing, thorough and diligent efforts must be made to notify him that he has been named the father and that the mother intends to place the child for adoption in accordance with Ch. 40, see 1509 and 1515 and DCFS procedures.

If father files a declaration of paternity he receives notice on any subsequent hearing. If father files disclaimer of paternity, all rights are terminated.

2. If father is unknown, or whereabouts is unknown, newspaper publication must be made to locate.

3. A child or adult, age 14 and over, must consent to the adoption.

4. Legal guardian of the child, if there is no surviving parent.

5. The agency, if a child has been surrendered to the agency for adoption.

6. Any person having legal custody of a child by court order if parental rights have been terminated and the court having jurisdiction of guardianship authorizes the consent.

7. Guardian ad litem appointed by the court where there are statutorily specified circumstances and procedures involving parents adjudicated as incompetent by mental impairment or subject to involuntary admission or mentally retarded.

B. Consent/Surrender Process

1. By statute (Ch. 40, sec. 1512) consents/surrenders may be taken by a judge of court in which adoption petition filed, circuit clerks if authorized, representatives of DCFS or a licensed child welfare agecy, and other social service personnel designated by statute. (DCFS policy, only designated employees can take a surrender.)

2. There is no statutory requirement that consents/surrenders be executed in court except for mentally incompetent provisions; however, local practice may dictate that surrenders be taken before a judge. Surrenders must be accompanied by: 1) a certificate of acknowledgment signed by the person taking the surrender; 2) the certificate must be acknowledged by a notary public on appropriate form and attached with proof of office when surrender taken by someone other than a judge.

3. A surrender should not be taken in the following cases: 1) where parent is uncooperative and refuses to answer letters, phone calls; 2) where the parent is by reason of age, mental or emotional capacity presumed to be unable to give valid consent; 3) where parents disagree that relinquishment is best plan; 4) where parent vacillates about signing; and, 5) in all cases where coercion or lack of understanding is indicated. In these situations, a court should determine parental capacity or accept the surrender from a consenting parent. (DCFS Procedure 327.3b.)

4. When adoptive placement cannot reasonably be anticipated within three months, do not take a surrender. Court action is necessary.

III. Irrevocability of Consent/Surrender

A. Illinois statute governing irrevocability (Ch. 40, sec. 1513 as amended by P.A. 82-225, eff. 1/1/82):

A consent to adoption by a parent, including a minor, executed and acknowledged in accordance with the provisions of Section 8 of this Act, or a surrender of a child by a parent, including a minor, to an agency for the purpose of adoption shall be irrevocable unless it shall have been obtained by fraud or duress on the part of the person before whom such consent, surrender, or other document equivalent to a surrender is acknowledged pursuant to the provisions of Section 10 of this Act or on the part of the adopting parents or their agents and a court of competent jurisdiction shall so find. No action to void or revoke a consent to adoption, including an action based on fraud or duress, may be commenced after 12 months from the date the consent was executed. The consent or surrender of a parent who is a minor shall not be voidable because of such minority.

1. In Illinois following an execution of a consent there is no time period following an execution in which parent can revoke a consent.

2. The fraud or duress must have been on the part of the person before whom consent was executed or on the part of adoptive parents or their agent.

3. The consent/surrender process must be in accordance with the provisions of the Adoption Act.

B. Fraud and Duress Defined

1. Fraud Defined

a. Fraud includes anything calculated to deceive whether it be a single act or a combination of circumstances, subversion of truth or suggestion of what is false whether it be by direct falsehood, by speech or silence. (Regenold v. Baby Fold)

b. Fraud implies a wrongful intent - an act calculated to deceive (In re Adoption of Hoffman)

2. Duress Defined

a. A condition which exists where one is induced by the wrongful act of another to make a contract or perform or forego an act under circumstances which deprive him of his free will. There must be such compulsion affecting the mind as shows that the execution of the contract was not the voluntary act of the maker. Such compulsion must be present and operate at the time the instrument was executed. (Regenold v. Baby Fold)

b. Mere annoyance or vexation will not constitute duress. (Regenold)

c. Mere advice, argument, or persuasion does not constitute duress or undue influence if the individual acts freely when he executed the questioned documents though the same would not have been executed except for the advice, argument or persuasion. (Regenold)

C. Examples of Fraud and Duress from case law

IV. Considerations in Taking a Surrender (Handout)

CONSIDERATIONS IN TAKING A SURRENDER - ILLINOIS

Have designated DCFS employee take the surrender in accordance with DCFS procedures and forms. Do NOT have family's caseworker or the DCFS attorney take the surrender. (The family caseworker should not take to avoid conflict between counseling and the actual surrender process. The attorney may be needed later as an advocate for child welfare staff.)

Be aware of and follow local court practice.

Consult with legal staff if there are doubts about parental mental, physical, or emotional capacity to understand.

Have family caseworker involved in the process to 1) prepare the family and show them surrender forms; 2) to communicate with person who will take surrender; and, 3) to be a witness. (Note: The family caseworker should be careful about making promises to the parents, e.g., promising a specific adoptive placement although it can be a stated goal.)

Have two witnesses present in addition to person taking surrender. (In some counties, the judge must be a witness.)

Verify the legal parent-child relationship through birth and marriage certificates.

Take written notes on the answers to questions, conversations, demeanor of parent, etc. at the time of executing a surrender.

Explain the surrender form and its consequences fully. The parents must understand: what they are signing and the consequences of signing.

Read the actual surrender form in its entirety to the parent and ask if he/she understands. Paraphrase each paragraph in simple language. Remember to always read the form. This is especially important if parent is illiterate or blind.

State to parent: "If you sign this you are giving up all rights as a parent and to your child and you can never change your mind." Ask the parent if they understand.

Explain that they do not have to sign and ask if anyone has forced them to give up their child.

Ask the parents if there are any questions.

Ask the parents to sign if they are ready.

Be sensitive. Allow the parent to wait if you are sure they need time; feel threatened; or are too intensely emotional about the situation.

Have an interpreter present if parent speaks a foreign language or is hearing impaired. Prepare two forms - one in English and one in parent's language.

INDIAN CHILD WELFARE ACT OF 1978, 25 U.S.C. 1901

Purpose: The purpose of the Act is to protect and preserve Indian tribes and their resources. Its purpose is to prevent the unwarranted removal of Indian children from Indian families and their subsequent placement in non-Indian foster and adoptive homes or institutions. The Act establishes Congressional standards to protect Indian children and their tribal relationship. The Act was passed after extensive hearings and evidence which showed that Indian children have a very high rate of removal from their homes and placement in non-Indian homes. (For a historical perspective on the Act see, "Preserving the Indian Family," 2 Children's Legal Rights Journal 32 (May/June 1981.)

Indian Child Defined: For the purposes of the Act an Indian child is defined as any unmarried person who is under 18 and is either a member of a tribe or is eligible for membership as a biological child of a tribal member. Child welfare workers must check state agency rules and procedures if they suspect that a child might be eligible for tribal membership.

Child Custody Proceedings: The tribe has exclusive jurisdiction in child custody proceedings (foster care placement, termination of parental rights, preadoptive placement, and adoptive placement.) This is the case even where tribes have become subject to state jurisdiction. The tribe can intervene in state court at any time. The court must transfer unless 1) there is no tribal court for an advanced state of proceedings, i.e. just before the final adoption order; 2) inconvenience shown by witnesses; 3) objection by the parent; 4) child has had no tribal contact and child's heritage is subjective judgment; or 5) tribe can allow the proceeding in the state court. Even if the case remains in the state court and there is no tribal intervention in the case, the following provisions of the Act remain in effect for the Indian child and Indian parent or Indian custodian of an Indian child.

Surrenders:

1. Surrenders must be in writing only and always taken before a judge who certifies.
2. Any consent to adoption taken prior to the birth of a child or ten days following birth is invalid.
3. Consents to adoption or surrenders may be freely revoked up to the time of final entry of the termination or adoption decree.
4. Duress and fraud in the taking of the surrender or consent may be asserted after the final decree for a time period of up to two years.

Foster Care Placement:

1. Clear and convincing evidence is needed to remove child from home.
2. Two qualified experts must testify as to need for removal.
3. The state must show the effort that has been made to maintain the child in the home.
4. Every party in the action must be able to see all documents and reports on the child's case.
5. The foster care placement must be in the following order of priority: Extended family, a foster care home licensed by the tribe, a state licensed Indian home, or lastly, an institution licensed by the tribe.
6. An Indian parent's consent to voluntary foster care placement can be revoked at any time.

Termination of Parental Rights:

1. The evidentiary standard of proof is the highest standard - beyond a reasonable doubt.
2. Two experts must testify to the necessity of termination.
3. The State must show its efforts to maintain or reunite the family.
4. All reports and documents must be open to all parties.
5. Appointed counsel must be provided where the parents are indigent.

Adoptive Placement:

1. Preference in adoptive placement is given to (in order of priority): Extended family members, other members of the child's tribe, and lastly, another Indian family.
2. The State must keep records of all efforts to comply with the preference list.
3. The court must inform adopted Indian children at age 18 of their biological tribal affliation if requested by the adoped child.

Emergency Removal of a Child:

1. The State may follow state law for emergency removal of a child from a home. however, the state must transfer to tribal law immediately t initiate the custody proceeding.

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