

Fundamental Rights and Liberty Interests:

Protecting the Constitutional Rights of Families Involved in Juvenile Dependency Proceedings



PRESENTERS:

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Learning Objectives



- ☞ Understand relevant case law
- ☞ Identify constitutional issues in dependency cases
- ☞ Learn to make a record on appeal

Discussion Topics



- ☞ Appointment of Counsel
- ☞ Parent's Rights Balanced with Children's Rights
- ☞ Testifying
- ☞ Competency
- ☞ Appellate Record

Why should we care about constitutional issues in child welfare?



- A) It is the theme of the conference
- B) We want to protect children
- C) We should not care... the big ones have been decided (freedom of speech, Miranda rights, right to privacy, et seq.)
- D) A and B Only
- E) None of the above

Gideon v. Wainright



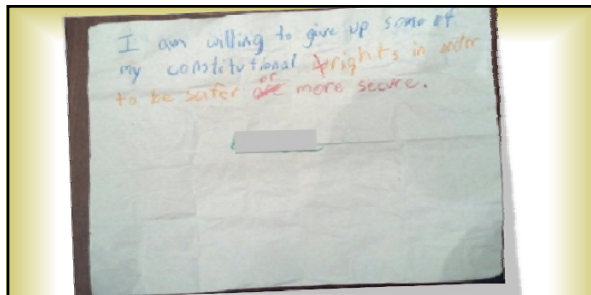
- ☞ Gideon: 8th grade education, ran away from home in middle school, spent time in and out of custody
 - ☞ Sound like anyone we may know?
- ☞ Court held:
Sixth Amendment's guarantee of counsel is a fundamental right essential to a fair trial and, as such, applies to the states through the Due Process Clause of the Fourteenth Amendment.

Right to Counsel



Children's Rights Balanced with Parent's Rights





Is it still relevant today?
Dad Furious After Finding This
Crayon-Written Paper in Florida
4th-Grader's Backpack

Equal Protection



Testifying and Competence



- ☞ Due Process
- ☞ Right to Remain Silent
- ☞ Civil Rights



Case Scenarios



Case Scenario #1

James is the father of two year old Chance and five year old Neveah. Chance is placed into protective custody by hospital staff because James will not consent to a blood transfusion for Chance. Chance suffers from severe anemia and James prays to God that Chance will heal but does not believe in blood transfusions. The juvenile court detains Chance on the petition and orders the blood transfusion. After the blood transfusion is administered, the court dismisses the petition. The hospital social worker also noted that Neveah is underweight for her age and observes bruising on her arms and legs. While James is visiting Chance in the hospital room the next day, the hospital social worker takes Neveah to the play room to talk to her. Neveah tells the social worker that she only eats at school and that her dad leaves them with "stinky" people. About 90 minutes later, James finds Neveah with the social worker in the play room. The hospital social worker talks to James about what Neveah told her. James gets upsets and tells the social worker she had no right to talk to his daughter and leaves the hospital with Neveah. The hospital social worker calls the CPS hotline to make a report of possible neglect. The next day while James and Neveah are visiting Chance, a CPS social worker comes in to talk to the family. The social worker observes that Neveah is underweight and asks to speak to both children privately. James denies this request and asks the social worker to leave so that he and his children can pray. Based on her observations of Neveah and lack of information from the father, the social worker lists the allegations of neglect as substantiated and files a warrant to place the children in protective custody.

Issue Spotting



- ☞ What are the constitutional issues you see?
- ☞ What objections would you make?
- ☞ What arguments would you make to preserve the record?

Case Law for Scenario #1

- ☞ **First Amendment: (300.5, 300(b))**
 - ☞ *In re Eric B.*, 189 Cal. App. 3d 996
 - ☞ *In re Phillip B.*, 92 Cal. App.3d 796
 - ☞ *In re Petra B.*, 216 Cal.App.3d 1163
- ☞ **42 USC 1983:**
 - ☞ *Humphries v. County of Los Angeles*, 554 F.3d 1170
 - ☞ *Burt v. County of Orange*, 120 Cal.App.4th 273
 - ☞ *Camreta v. Greene*, 588 F.3d 1011
 - ☞ *Dwight R. v. Christy B.*, (2013) 212 Cal.App.4th 697
 - ☞ *James v. Rowlands*, (2010) 606 F.3d 646
- ☞ **Fourth Amendment:**
 - ☞ *In re Christopher B.*, 82 Cal.App.3d 608
 - ☞ *M.L. v. Superior Court*, 172 Cal.App.4th 520

Case Scenario #2

Robin and Rick are the parents of Crystal, age eight and David, age five. David and Crystal were placed into protective custody by law enforcement after they were found during a drug raid of their home. Rick is in custody; Robin is out on bail. During interviews with her attorney, Robin appeared to "zone out" and not be responsive to the attorney's questions. Rick, on the other hand, was hostile towards his attorney. He told the court he did not want an attorney and his kids should not be in protective custody because he and Robin had "paperwork" that left the kids with his parents. At the jurisdictional and dispositional trial, Crystal wanted to testify that her mother never abused or neglected her and met all her needs. The court felt that allowing Crystal to testify would not be in her best interest and denied her testimony in court. Her attorney did tell the court that she wanted to go live with her mom. The father, who has pending criminal charges, does not want to testify, but is called to the stand by the county attorney. The court takes jurisdiction under Section (b) of WIC Code 300 and orders family reunification services. In preparation for six month review hearing held under 366.21, mother and her attorney met to discuss the recommendation of continued reunification services. The attorney was having a hard time getting mother to focus and was really not clear on how mother wanted to proceed. Mother wanted the attorney to meet with her and father together. However, father does not want an attorney and has "fired" his court-appointed attorney. At the hearing, mother's attorney sets the hearing for trial. The case progresses through reunification. Eventually, the court terminates reunification services and sets the case for hearing under section 366.26 for termination of parental rights and adoption. The minor's attorney sets the case for a settlement conference/trial. Crystal does not want to be adopted and still wishes to return home. Father does not want his parental rights terminated either. The court advises both mother and father to return for the settlement conference/trial. Mother and father do not show up; the case is not settled; the court terminates parental rights.

Issue Spotting



- ☞ What are the constitutional issues you see?
- ☞ What objections would you make?
- ☞ What arguments would you make to preserve the record?

Case Law for Scenario #2

- ☞ **Appointment of Counsel**
 - ☞ *Lussiter v. Department of Social Services*, (1981) 452 U.S. 18
 - ☞ *Adoption of Jacob C.*, (1994) 25 Cal.App.4th 617
 - ☞ *In re A.M.*, (2008) 164 Cal.App.4th 914 (Judge Downing's case)
 - ☞ *In re Angel W.*, (2001) 93 Cal.App.4th 1074
 - ☞ *In re M.F.*, (2008) 161 Cal.App.4th 673 (Includes GAL Issue)
- ☞ **Testimony**
 - ☞ *In re April C.*, (2005) 131 Cal.App.4th 599
- ☞ **5th Amendment**
 - ☞ *In re Candida S.*, (1992) 7 Cal.App.4th 1240 (Immunity Issue)
 - ☞ *In re Brenda M.*, (2008) 160 Cal.App.4th 772
 - ☞ *In re Mark A.*, (2007) 156 Cal.App.4th 1124
- ☞ **Competency: Due Process-GAL Issue**
 - ☞ *Contra Costa County Children & Family Services v. Superior Court*, (2004) 117 Cal.App.4th 111
 - ☞ *In re Daniel S.*, (2004) 115 Cal.App.4th 903
 - ☞ *In re Enrique G.*, (2006) 140 Cal.App.4th 676
 - ☞ *In re Esmeralda S.*, (2008) 165 Cal.App.4th 84
 - ☞ *In re Jaelyn S.*, (2007) 150 Cal.App.4th 278
 - ☞ *In re Jessica G.*, (2001) 93 Cal.App.4th 1180
 - ☞ *In re Sara D.*, (2001) 87 Cal.App.4th 661
 - ☞ *In re Stacey T.*, (1997) 52 Cal.App.4th 1415 (Due Process)

United States Supreme Court



United States Supreme Court Cases

- ☞ *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923)
- ☞ *Pierce v. Society of Sisters*, 268, U.S. 510, 534-535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925)
- ☞ *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 745 (1944)
- ☞ *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)
- ☞ *Wisconsin v. Yoder*, 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972)
- ☞ *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978)
- ☞ *Parham v. J.R.*, 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979)
- ☞ *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)
- ☞ *Lassiter v. Department of Social Services*, (1981) 452 U.S. 18
- ☞ *Smith v. Organization of Foster Families for Equity and Reform* (1977) 431 U.S. 816

Making a Record

“If it’s not in the record,
it didn’t happen!”

Appellate Record

- ☞ Make a plan that includes your legal theory, elements for cause of action, burden of proof, and opposing counsel’s argument.
- ☞ Make sure all exhibits are marked and all motions filed.
- ☞ When in doubt, object and get a ruling.
- ☞ Request to make an offer of proof when ruled against.
- ☞ Ensure that all arguments, requests and rulings are made on the record.
- ☞ Tell a clear and compelling story.
- ☞ Keep the record clean.
- ☞ Ask for a “stay” if necessary.

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QUESTIONS