First Case Scenario

- First Amendment: (300.5, 300(b))
  - In re Eric B. (1987)189 Cal. App. 3d 996

    The trial court adjudicated a minor a dependent ward of the court under Welf. & Inst. Code, § 300, subd. (a). The minor was diagnosed as having eye cancer and his parents, who were Christian Scientists, authorized the surgical removal of the eye, and no further evidence of the disease was found. The treating physicians advised chemotherapy and radiation and a regimen of periodic review for recurrences, but the parents indicated a preference for and intention to pursue only Christian Science treatment. The court ordered that the child remain a ward and directed that the medical review process take place against the parents' wishes.

    The Court of Appeal affirmed, holding that the trial court had acted within its discretion in finding that the best interests of the child required the periodic medical review, in that the child had a history of life-threatening illness that could recur in the absence of careful monitoring. The court held that the trial court had properly considered the effect of Welf. & Inst. Code, § 300.5, which requires that a court considering dependency under § 300 consider religious treatment in making its decision, noting that the statute does not require that the court defer to religious treatment.

  - In re Phillip B, (1979) 92 Cal. App.3d 796

    In a petition filed in the juvenile court, the juvenile probation department, alleging that a 12-year-old boy came within the provisions of Welf. & Inst. Code, § 300, subd. (b), because he was not provided with the necessities of life, requested that the child be declared a dependent child of the court for the special purpose of insuring that he receive cardiac surgery for a congenital defect. The boy, also suffering from Down's Syndrome, had been in a residential care facility since birth. Medical testimony noted the risk of cardiac surgery, the higher-than-average risk of postoperative complications for Down's Syndrome children, and the presence of pulmonary vascular changes in the boy, further increasing the risk. The parents had refused consent. The trial court dismissed the petition.

    The Court of Appeal affirmed. The court, holding that, although parental autonomy is constitutionally protected by U.S. Const., 14th Amend., the state has the right to protect children, set forth factors to be considered before a state insists on medical treatment rejected by parents: the seriousness of the harm to the child, professional medical evaluations, the risks involved in treatment, the child's preference, and, underlying all, the best interests of the child. The court held that there was substantial evidence to support the trial court's decision. The court further held that clear and convincing evidence was the proper standard of proof, and that there was no duty to inform the boy of his right to counsel where he was being represented by a deputy district attorney.

  - In re Petra B, (1989) 216 Cal.App.3d 1163

    The juvenile court declared a minor a dependent child of the juvenile court pursuant to Welf. & Inst. Code, § 300, subd. (a), and placed her with her parents under a maintenance program. The minor had been accidentally burned in an incident not involving any parental negligence, but the parents elected to treat the minor with nonconventional herbal treatments, and to "wait and see" the development of the injury before seeking conventional medical care. A social worker contacted the parents and took the minor to a medical center where a physician found an infection that was unlikely to have improved without medical intervention.

The Court of Appeal affirmed. It held that, although this was a close case, the evidence of the parents' attitude and confusion about proper medical treatment was sufficient evidence to support the trial court's assumption of jurisdiction. It also held that the involvement of the department of social services was not an unwarranted governmental intrusion into the family in violation of their constitutional right to privacy, where the parents did not oppose conventional medical treatment based on religious or cultural grounds but upon the parents' belief that the minor's condition was not serious enough to warrant taking her to a hospital.

- 42 USC 1983:
  - Humphries v. County of Los Angeles, (2009) 554 F.3d 1170

    Parents who had been arrested on charges of child abuse and felony torture, but subsequently found "factually innocent" after charges were dismissed, brought § 1983 action against state and county defendants, alleging that their continued listing in California's Child Abuse Central Index (CACI), pursuant to Child Abuse and Neglect Reporting Act (CANRA), violated due process. The United States District Court for the Central District of California, James V. Selna, J., granted in part defendants' summary judgment motion, dismissing claims related to the arrests and the continued listing in CACI. Parents appealed dismissal of their CACI-related claims.

    On denial of rehearing, the Court of Appeals, Bybee, Circuit Judge, held that:
    (1) erroneous listing in CACI satisfied "stigma" criterion of "stigma-plus" due process test;
    (2) "plus" criterion of "stigma-plus" due process test was satisfied by statutory scheme for consulting CACI;
    (3) governmental interest factor did not weigh against requiring state to furnish additional process for correction of erroneous CACI listings;
    (4) risk of erroneous deprivation weighed against finding of adequacy of existing safeguards against erroneous listings in CACI;
    (5) CANRA violated procedural due process;
    (6) individual officers of county sheriff's department were entitled to qualified immunity; and
    (7) triable issues existed regarding whether county adopted a custom or policy by failing to create an independent procedure that would allow parents to challenge their listing.
    Affirmed in part and reversed and remanded in part.

  - Burt v. County of Orange, (2004) 120 Cal.App.4th 273

    Parent filed petition for writ of administrative mandate, seeking to compel county's social services agency to grant her a hearing to challenge agency's decision to file report regarding allegation of suspected child abuse by parent. The Court of Appeal, Rylaarsdam, J., held that: (1) parent alleged sufficient facts to support right to relief, and (2) parent could petition for writ of mandate as remedy.

  - Camreta v. Greene, 588 F.3d 1011 –**9th circuit holding**

    Mother, personally and as next friend for her minor daughters, brought § 1983 action against, inter alia, child protective services caseworker and deputy sheriff, alleging violations of Fourth Amendment and their familial rights under Fourteenth Amendment's Due Process Clause. The United States District Court for the District of Oregon, Ann L. Aiken, J.,granted summary judgment for defendants. Mother appealed.

    The Court of Appeals, Berzon, Circuit Judge, held that:

(1) as a matter of apparent first impression, decision to seize and interrogate daughter, at school, in the absence of warrant, court order, exigent circumstances, or parental consent violated Fourth Amendment;
(2) caseworker and deputy sheriff were entitled to qualified immunity with respect to claims that they violated daughter's Fourth Amendment rights;
(3) absolute quasi-judicial immunity did not apply to preclude § 1983 liability of caseworker, based upon his alleged violation of due process in removing daughters from mother's custody;
(4) qualified immunity did not shield caseworker from liability on due process claims; and
(5) caseworker violated due process rights of mother and daughters by excluding mother from medical center while daughters underwent physical examinations.

- Dwight R. v. Christy B. , (2013) 212 Cal.App.4th 697

  Father brought action against daughters' family therapist for conspiring with state actors to violate his and his daughters' federal civil rights under § 1983. The Superior Court, San Bernardino County, No.CIVDS 1007327, David Cohn, J., granted anti-strategic lawsuit against public participation (SLAPP) motion. Father appealed.

  The Court of Appeal, King, J., held that:
  (1) father's § 1983 claim arose from protected activity under anti-SLAPP statute, and
  (2) father's evidence that therapist conspired or entered joint action with a state actor was unduly speculative.
  Affirmed.

- James v. Rowlands, (2010) 606 F.3d 646

  Father brought § 1983 action against two social workers and a deputy sheriff, alleging violations of his substantive and procedural due process rights under the Fourteenth Amendment. The United States District Court for the Eastern District of California, Garland E. Burrell, J., 2008 WL 2345098, granted summary judgment to the defendants on all claims. Father appealed.

  The Court of Appeals, Paez, Circuit Judge: held that:
  (1) father's rights to notification of investigation of abuse were not clearly established;
  (2) failure to inform father of temporary transfer of child's physical custody violated his substantive due process rights;
  (3) right was not clearly established; and
  (4) failure to notify did not violate procedural due process rights.

- Fourth Amendment:
  - In re Christopher B, (1978) 82 Cal.App.3d 608

    In proceedings to declare two children dependent children of the court (Well. & inst. Code, § 300, subd. (b), no suitable place of abode), the parents sought to suppress evidence of a search of their home and photographs subsequently taken, claiming that the exclusionary rule was applicable. The deputy who had conducted the search without a warrant testified as to the condition of the home and the children, and further testified that she had been given permission to search. The trial court sustained the petitions finding that they were supported by a preponderance of the evidence.

The Court of Appeal affirmed, holding the exclusionary rule inapplicable to. Welf. & Inst. Code, § 300, proceedings. The court further held that evidence of the deputy's observations, made with consent, was sufficient to support the findings even without the photographs, which were nonconsensual. Finally, the court held that proof by preponderance of the evidence is sufficient to sustain a finding of dependency where the parents are not deprived of custody in favor of a nonparent.

- M.L. v. Superior Court, (2009) 172 Cal.App.4th 520

  County human services agency detained newborn child and filed dependency petition. The Superior Court, Ventura County, No. J067204, Tari L. Cody and Manuel J. Covarrubias, JJ., detained newborn, ordered agency to arrange for temporary care of newborn, and sustained allegations of dependency petition. Mother filed petition for writ of mandate.

  The Court of Appeal, Gilbert, P.J., held that:
  (1) statute authorizing peace officer to take minor who is in hospital into custody does not limit authority of human services agency social workers;
  (2) human services agency's temporary detention of newborn barred mother from selecting newborn's adoptive parents;
  (3) social worker's detention of newborn was supported by exigent circumstances;
  (4) mother waived argument that juvenile court improperly disallowed her from contesting detention and presenting evidence;
  (5) mother waived challenges to newborn's detention and placement with foster parents;
  (6) juvenile court was not required to defer to mother's selection of adoptive parents after sustaining dependency petition; and
  (7) human services agency made reasonable efforts to prevent detention of newborn. Petition denied.

Second Case Scenario

- Appointment of Counsel
  - *Lassiter v. Department of Social Services,* (1981) 452 U.S. 18

    The District Court, Durham County, Samuel F. Gantt, J., terminated a mother's parental rights and appeal was taken. The North Carolina Court of Appeals, Robert M. Martin, J., 43 N.C.App. 525, 259 S.E.2d 336 affirmed, and certiorari was granted. The Supreme Court, Justice Stewart, held that failure to appoint counsel for indigent parents in proceeding for termination of parental status did not deprive parent of due process in light of circumstances which included that petition contained no allegations upon which criminal charges could be based, no expert witnesses testified, case presented no specially troublesome points of law, and presence of counsel could not have made a determinative difference for petitioner; such decision does not imply that appointment of counsel is other than enlightened and wise.

  - *Adoption of Jacob C.*, (1994) 25 Cal.App.4th 617

    In juvenile proceedings concerning two minors, the new wife of the minors' father filed petitions to terminate the mother's parental rights and to adopt the children. The mother had already disappeared and taken one of the children with her. The juvenile court issued an order requiring the mother to appear and show cause why she should not be adjudged in contempt, and why the action should go forward as a contested hearing if she did not personally appear. At the hearing, the mother's attorney made a general appearance on her behalf, stating that he had been in direct contact with her. However, she never personally appeared and never indicated any intention of making an appearance. The trial court ruled that, due to the appearance by her counsel, the mother was not in contempt, but it determined that she could not contest the matter unless she personally appeared. The court held an uncontested hearing, from which the mother's attorney was excluded, and in which the minors were unrepresented, due to the court's ruling that appointment of counsel was not appropriate. The court terminated the mother's parental rights as to the child who had not been taken away by the mother, and ruled that that child was amenable to adoption by the new wife. It also tentatively ruled that the mother's parental rights as to the other child were terminated, and that that child was also amenable to adoption.

    The Court of Appeal affirmed the order barring the mother's participation in the hearing on the termination petition; reversed the judgment as to both minors and vacated the decree of adoption; and remanded to the juvenile court for a new hearing, with directions to appoint independent counsel for the minors and to conduct an in-chambers interview with the minor whom the mother had not taken away. The court held that, under the circumstances, the juvenile court did not err in applying the disentitlement doctrine to bar the mother from participating in the hearing on the termination petition. However, the court held that the juvenile court erred in refusing to appoint independent counsel for the minors, and such error was prejudicial, especially since the juvenile court further erred in failing to interview the minor who had not been taken away by the mother.

  - *In re A.M.*, (2008) 164 Cal.App.4th 914

    In juvenile dependency proceedings, the Superior Court, Orange County, John C. Gastelum, J., entered orders sustaining allegations of protective custody petition, vesting sole physical custody of juvenile with juvenile's mother, and terminating jurisdiction with visitation orders granting juvenile's father monitored visits. Father appealed.

The Court of Appeal, Fybel, J., held that:
(1) juvenile court did not abuse its discretion by denying father's request for self-representation, and
(2) any error in denial of father's request for self-representation was harmless.

Parent's disruptive behavior may be sufficient to deny a request for self-representation in juvenile dependency proceedings, but it is not necessary; if it is reasonably probable that granting a parent's request for self-representation will lead to undue delay in the proceedings that would impair the child's right to a prompt resolution of custody, the juvenile court has discretion to deny the request regardless of whether the parent has ever behaved disruptively

- *In re Angel W.*, (2001) 93 Cal.App.4th 1074

  In a dependency proceeding, the trial court denied the mother's request to represent herself at the permanency planning hearing, terminated the mother's parental rights, and ordered the minor placed for adoption. At this hearing, the court had attempted to take a waiver of the mother's right to counsel, but she was too upset initially to respond appropriately. After a recess, the court denied her request without further inquiry on the issue of self-representation.

  The Court of Appeal affirmed, holding that, while the trial court erred in denying the mother's request to represent herself, the error was harmless. There is no constitutional basis for a right of self-representation in dependency proceedings. There is, however, a statutory right to self-representation in a proceeding to terminate parental rights pursuant to Welf. & Inst. Code, § 317, subd. (b). Under this provision, although the court need not engage in the full admonition and inquiry required in criminal cases, the court must nevertheless take a waiver of the right to counsel. Nothing in the exchange between the court and this mother indicated that she lacked basic competency to waive counsel or to represent herself, and the court erred in failing to make a second attempt, after the recess, to take a waiver of her right to counsel. Further, the record did not support a conclusion that the mother's conduct had reached a level of disruptiveness that justified denial of her self-representation motion. Nevertheless, denial of this statute-based right is analyzed under ordinary principles of harmless error. Under this analysis, the court held that the trial court's error was harmless, since it was not reasonably probable that a result more favorable to the mother would have been reached had she represented herself.

- *In re M.F.*, (2008) 161 Cal.App.4th 673 (GAL issue too)

  County Human Services agency filed dependency petition concerning child of juvenile mother. The Superior Court, San Joaquin County, terminated parental rights and ordered child placed for adoption. Mother appealed.

  The Court of Appeal, Cantil–Sakauye, J. held that:
  (1) mother was entitled to guardian ad litem at commencement of dependency proceedings; but
  (2) failure to appoint guardian ad litem was not jurisdictional error; but
  (3) failure to appoint guardian ad litem was prejudicial; and
  (4) claim of error was not waived. Reversed and remanded with directions.

  Juvenile mother was prejudiced by trial court's failure to appoint guardian ad litem for her at commencement of dependency proceedings that resulted in termination of her parental rights, where guardian ad litem would have been required to contest jurisdiction on basis that neither petition nor social worker's report alleged any wrongful conduct by mother, might have urged court to place

infant with mother as noncustodial parent, and could have argued that time limits for reunification were not applicable as basis to deny further services because child had been returned to mother at original dispositional hearing; mother's attorney appeared without a client at six-month review and dispositional hearings and offered no evidence or argument.

- Testimony
  - *In re April C.*, (2005) 131 Cal.App.4th 599
    County department of children and family services filed dependency petition as to two children based on allegations that father of younger child sexually abused older child, and that mother of both children failed to protect them. The Superior Court, Los Angeles County, Zeke D. Zeidler, Juvenile Court Referee, declared children to be dependents, sustaining finding of sexual abuse based on child victim's hearsay statements in department's reports, and denied father reunification services. Parents appealed.

    The Court of Appeal, Doi Todd, J., held that Sixth Amendment right of confrontation, as explicated in ***Crawford v. Washington*** does not extend to parents in dependency proceedings.

    We conclude that ***Crawford*** does not apply in juvenile dependency proceedings and does not afford a basis to discredit the analysis in ***Cindy L.*** or ***Lucero L.*** Our Supreme Court has unequivocally held that parents involved in dependency proceedings and criminal defendants are not similarly situated for purposes of the equal protection clause under the Fourteenth Amendment to the United States Constitution (***In re Sade C.*** (1996) 13 Cal.4th 952, 991, 55 Cal.Rptr.2d 771, 920 P.2d 716), and that the Sixth Amendment right to confrontation *****812*** does not apply to parties in civil proceedings, including juvenile dependency proceedings. (***In re Malinda S.*** (1990) 51 Cal.3d 368, 383, fn. 16, 384, 272 Cal.Rptr. 787, 795 P.2d 1244.) These distinctions stem from the fundamentally different purposes of criminal as opposed to juvenile dependency proceedings. Noting the practical difference between the application of constitutional principles in criminal cases versus those appropriate for dependency cases, ***In re Carmen O.*** (1994) 28 Cal.App.4th 908, 33 Cal.Rptr.2d 848, observed that "[i]n a criminal case the issue is the guilt of the defendant, whereas in a dependency case the subject is the well-being of the victim.... [W]hile it may be true that ' "it is better that ten guilty persons escape, than that one innocent suffer" ... few, if any, would agree it is better that 10 pedophiles be permitted to continue molesting children than that 1 innocent parent be required to attend therapy sessions in order to discover why his infant daughter was falsely making such appalling accusations against him.' " (***Id.*** at p. 922, fn. 7, 33 Cal.Rptr.2d 848, quoting ***In re Kaileeb B.*** (1993) 18 Cal.App.4th 719, 727, 22 Cal.Rptr.2d 485 (***Kaileeb B.***).)

- 5th amendment
  - *In re Candida S.*, (1992) 7 Cal.App.4th 1240 (immunity issue)
    After a contested six-month review hearing held pursuant to Welf. & Inst. Code, § 366.21, subd. (e), in a dependency proceeding regarding four minor children, the juvenile court found that reasonable reunification efforts had been offered to the parents and that they had not successfully satisfied the reunification plans. The juvenile court scheduled a 12-month review hearing pursuant to Welf. & Inst. Code, § 366.21, subd. (f), and each parent separately appealed.

    The Court of Appeal affirmed. The court held that although any admissions a parent makes during the course of treatment ordered as part of a reunification plan in child dependency proceedings is immune from use in criminal proceedings

against the parent, the trial court was not required to advise the father that he would be protected by use immunity if he admitted to sexual abuse. It also held that the trial court was not required to appoint an attorney for each child based on an alleged conflict of interest among them concerning their different wishes regarding visitation, since no actual conflict of interest was established.

- *In re Brenda M.*, (2008) 160 Cal.App.4th 772

  Marcelino M. appeals from the juvenile court's order sustaining the allegations of a ****687*** petition under Welfare and Institutions Code section 300 and declaring his two children, Brenda M. and Brandon M., dependents of the court. He contends the juvenile court committed prejudicial error by precluding him from presenting evidence or cross-examining witnesses as a sanction for invoking his Fifth Amendment privilege against self-incrimination at the jurisdiction/disposition hearing.

  In the recent case of ***In re MarkA.*** (2007) 156 Cal.App.4th 1124, 68 Cal.Rptr.3d 106 (***MarkA.***), a panel of this court concluded the juvenile court erred by striking testimony as a sanction for the father's invocation of the Fifth Amendment and refusal to testify at a jurisdiction and disposition hearing. The panel held the immunity provided by section 355.1, subdivision (f) [FN1] is more limited than the Fifth Amendment privilege against self-incrimination and therefore did not justify compelling the father to testify after asserting his Fifth Amendment rights. (***Mark A., supra,***156 Cal.App.4th at pp. 1128–1129, 68 Cal.Rptr.3d 106.)

  In this case, the juvenile court did not have the benefit of ***MarkA.*** when it similarly ordered Marcelino to testify at a combined jurisdiction/disposition hearing after he too had invoked his Fifth Amendment right against self-incrimination. When Marcelino refused to testify, the juvenile court, as a sanction, precluded him from offering any evidence or cross-examining any witnesses. The juvenile court erred in doing so.

- *In re Mark A.*, (2007) 156 Cal.App.4th 1124

  During the dispositional/jurisdictional hearing in a child dependency proceeding, father asserted his Fifth Amendment privilege against self-incrimination. The Superior Court, Orange County, concluded father's Fifth Amendment privilege was precluded by statutory immunity in dependency proceeding, imposed evidence sanction by striking testimony of father's two witnesses, adjudicated father's three children as dependent, and vested custody with county social services agency. Father appealed.

  The Court of Appeal, Ikola, J., held that:
  (1) statutory immunity was not coextensive with Fifth Amendment privilege;
  (2) absent grant of immunity coextensive with Fifth Amendment privilege, father was entitled to stand on his right to assert privilege;
  (3) imposition of evidence sanction was unauthorized; but
  (4) errors were subject to harmless error analysis; and
  (5) errors were harmless beyond a reasonable doubt.

- Competency: Due Process- GAL issue
  - *Contra Costa County Children & Family Services v. Superior Court*, (2004) 117 Cal.App.4th 111

    In dependency proceeding, mother moved to set aside jurisdictional and dispositional orders, based on alleged due process violation in appointment of

guardian ad litem for her at jurisdictional hearing. The Superior Court, Contra Costa County, granted motion. County agency petitioned for writ of mandate.

The Court of Appeal, Stein, Acting P.J., held that:
(1) appointment of guardian ad litem for mother at jurisdictional hearing did not violate her due process rights or prejudice her;
(2) as matter of first impression, holding of ***In re Sara D.*** establishing due process requirements for appointment of guardian ad litem could not be applied to vacate final orders in dependency proceedings, absent filing of modification petition.

– *In re Daniel S.*, (2004) 115 Cal.App.4th 903

After appointing a guardian ad litem for a mentally incompetent mother in dependency proceedings regarding her son, the Superior Court, San Diego County, made a true finding on the dependency petition, ordered son removed from mother's custody, and ordered reunification services. Mother appealed.

The Court of Appeal, Huffman, J., held that:
(1) mother was not properly notified of jurisdictional and dispositional hearing;
(2) appointment of guardian ad litem for mother without affording her the opportunity to be heard was improper; and
(3) error in failing to properly notify mother of hearings was harmless beyond a reasonable doubt. Affirmed.

Error in failing to properly notify mother, in dependency proceedings involving her son, of either the jurisdictional and dispositional hearing, or the hearing to appoint a guardian ad litem for her as a result of her mental illness, was harmless beyond a reasonable doubt; mother was a chronic paranoid schizophrenic who was unable to cooperate with her attorney, she had been placed in intensive care and was not allowed to attend the jurisdictional and dispositional hearing because she was "too much of a risk," and the juvenile court could not delay holding the hearings in light of strict statutory time lines

– *In re Enrique G.*, (2006) 140 Cal.App.4th 676

In dependency proceeding, the Superior Court, San Diego County, No. SJ11317, Peter E. Riddle, J., terminated parental rights after appointing a guardian ad litem for child's mother. Mother appealed.

Holdings: The Court of Appeal, Aaron, J., held that:
(1) appointment violated mother's due process rights, but
(2) appointment was trial error that was harmless beyond a reasonable doubt. Affirmed.

The procedure followed in appointing guardian ad litem (GAL) for mother in child dependency proceeding violated mother's due process rights; mother was not provided notice that her counsel was going to request appointment, she was not given opportunity to respond, no one explained to her nature or function of GAL or what authority she would cede to GAL, there was no inquiry as to whether mother understood nature of proceedings or was able to assist her counsel in protecting her rights, no one indicated why appointment might be necessary, and appointment order was based solely on counsel's statement that appointment would assist him in representing mother effectively.

- *In re Esmeralda S.*, (2008) 165 Cal.App.4th 84

  County department of children's services filed dependency petition. The Superior Court, San Bernardino County, No. J209746, James A. Edwards, J., appointed guardian ad litem for mother, and ordered termination of mother's and father's parental rights. Mother appealed.

  The Court of Appeal, McKinster, J., held that:
  (1) mother's right to due process was violated by appointment of guardian ad litem; but
  (2) appointment of guardian ad litem in violation of a parent's due process rights may be deemed harmless if outcome of hearings is not affected;
  (3) due process violation was harmless to determination of whether mother had American Indian ancestry for purposes of Indian Child Welfare Act (ICWA); and
  (4) due process violation was harmless to mother in termination of her parental rights. Affirmed.

- *In re Jaclyn S.*, (2007) 150 Cal.App.4th 278

  Mother appealed order of the Superior Court, Sonoma County, terminating her parental rights.

  The Court of Appeal, Stein, Acting P.J., held that:
  (1) mother did not forfeit claim that appointment of guardian ad litem for her was error;
  (2) appointment of guardian was error;
  (3) appointment did not violate due process; and
  (4) reversal was not required. Affirmed.

- *In re Jessica G.*, (2001) 93 Cal.App.4th 1180

  The trial court terminated a mother's parental rights pursuant to Welf. & Inst. Code, § 366.26. Prior to the hearing at which her parental rights were terminated, the trial court had appointed a guardian ad litem for the mother.

  The Court of Appeal reversed the order terminating parental rights and the order appointing a guardian ad litem and remanded the case for further proceedings. The court held that the appointment of a guardian ad litem for the mother violated her due process rights. At the Welf. & Inst. Code, § 366.26, hearing, the mother's counsel requested that a "G.A.L." be appointed on the mother's behalf. However, nobody explained to the mother that "G.A.L." stands for guardian ad litem, or what the appointment meant in general and what it would mean for her. The trial court made no inquiry of the mother to ascertain whether she was competent in the sense of being able to understand the proceeding and to assist her attorney. The trial court was required to make an inquiry and finding on the record. The court further held that the mother did not waive her right to challenge the appointment of the guardian ad litem by waiting to appeal from the final order terminating parental rights rather than by filing a writ application, since the trial court's order violated the mother's due process rights.

- *In re Sara D.*, (2001) 87 Cal.App.4th 661

  Juvenile proceedings were initiated based on a mother's inability to care for her minor child due to the mother's borderline personality disorder. During the jurisdictional hearing, the mother's counsel, in chambers and without the mother present, requested that the juvenile court appoint a guardian ad litem for the mother, and the court granted the request. At the subsequent dispositional hearing, the juvenile court awarded legal and physical custody of the child to the minor's father, granting the mother only supervised visitation rights, and dismissed the petition.

The Court of Appeal reversed the juvenile court's orders appointing the guardian ad litem and its jurisdictional and dispositional orders and remanded for further proceedings. The court held that the mother's due process rights were violated when the juvenile court appointed the guardian ad litem without affording the mother an opportunity to be heard at an informal hearing. Transferring direction and control of a dependency proceeding through appointment of a guardian ad litem may jeopardize the fundamental interest of a parent in the companionship, care, custody, and management of his or her child. Therefore, a parent has a constitutional due process right to an informal hearing and an opportunity to be heard (U.S. Const., 6th Amend., Cal. Const., art. I, § 15). The court further held that reversal of the juvenile court's jurisdictional and dispositional orders was required, since the error was not harmless beyond a reasonable doubt. The court also held that insufficient evidence supported the appointment, since the juvenile court relied on counsel's conclusionary statements, and the social studies considered by the court did not support a conclusion that the mother did not understand the proceedings or was unable to assist counsel.

– *In re Stacey T.*, (1997) 52 Cal.App.4th 1415 (Due Process)
In a dependency proceeding brought under Welf. & Inst. Code, § 300, subd. (b) (parent's inability to care for child due to substance abuse), the mother submitted to the minor's detention with the understanding that the department of social services would agree to a right of release of the minor to the mother and would explore placement with a relative. However, the mother denied the allegations of the petition and the matter was set for a settlement conference on jurisdictional and dispositional issues. The mother failed to appear at the settlement conference, and, on the basis of several social study reports, the juvenile court announced it intended to enter the mother's default. The mother's attorney objected on the ground that the mother was entitled to confront and cross-examine the preparers of the social study reports, only one of whom was present at the settlement conference. After hearing testimony from that social worker, the court entered the mother's default, entered a jurisdictional order finding the allegations of the petition true, and entered a dispositional order of foster care.

The Court of Appeal reversed the jurisdictional and dispositional orders and remanded for further proceedings. The court held that the mother was denied due process when, upon her failure to appear at a scheduled settlement conference, the juvenile court entered her default, found the jurisdictional allegations to be true, and entered a dispositional order of foster care, without giving the mother adequate notice of the consequences of her failure to appear at the settlement conference and an opportunity to confront and cross-examine the social workers whose reports formed the basis of the court's decision. Contrary to the juvenile court's local rules, the mother was not advised at the detention hearing that a failure to appear at the settlement conference would result in her "default," let alone the consequences of such a default. With the default, the mother missed her opportunity to call, confront, and cross-examine witnesses and to present her own evidence. Moreover, she missed the opportunity to be advised that she had these and other rights in the first instance and that she would be foregoing them by failing to appear at the settlement conference. The court held that the mother had the right to cross-examine the social workers who prepared the reports under Cal. Rules of Court, rule 1450(c) (social worker's report containing information relevant to jurisdictional hearing is admissible provided preparer of report is made available for cross-examination on parent's request).

United States Constitutional Cases

- *Meyer v. Nebraska,* 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923)

  "Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential, indeed, to the public welfare. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the amendment."

- *Pierce v. Society of Sisters,* 268 U.S. 510, 534-535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925)

  "The inevitable practical result of enforcing the act under consideration would be destruction of appellees' primary schools, and perhaps all other private primary schools for normal children within the state of Oregon. Appellees are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students, or the state. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

  [1][2] Under the doctrine of Meyer v. Nebraska, 262 U. S. 390, 43 S. Ct. 625, 67 L. Ed. 1042, 29 A. L. R. 1146, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children ***535** under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

- *Prince v. Massachussets,* 321 U.S. 158, 64 S.Ct. 438, 88 L.ed. 745 (1944)

  A state statute forbidding boys under 12 and girls under 18 to sell magazines, etc., in street or public places and penalizing the furnishing of such minors magazines, etc., with knowledge of minor's intent to sell them in street or public place, and penalizing parent, custodian, etc., who permits such minors to sell magazines, etc., in street or public place, is not unconstitutional as denying or abridging "freedom of religion" or denying "equal protection of the laws" as applied to member of a religious sect who furnished religious periodicals to minor girl who was under custody of member, and permitted girl to sell and distribute periodicals on the streets

- *Stanley v. Illinois,* 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)

  Dependency proceeding was brought by State of Illinois upon the death of the natural mother of the children. The determination of the Circuit Court of Cook County, John P. McGury, J., that the children were dependent was affirmed by the Supreme Court of Illinois, 45 Ill.2d 132, 256 N.E.2d 814. The children's natural father brought certiorari. The Supreme Court, Mr. Justice White, held that under the Due Process Clause of the Fourteenth Amendment, unwed father was entitled to hearing on his fitness as parent before his children could be taken from him in dependency proceeding instituted by the State of Illinois after the death of the children's natural mother.

- *Wisconsin v. Yoder,* 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972)
  The Circuit Court, Green County, Wisconsin, found defendants guilty of violating compulsory education law, and they appealed. The Wisconsin Supreme Court, 49 Wis.2d 430, 182 N.W.2d 539, reversed, and certiorari was granted. The Supreme Court, Mr. Chief Justice Burger, held that the First and Fourteenth Amendments prevent a state from compelling Amish parents to cause their children, who have graduated from the eighth grade, to attend formal high school to age 16.

- *Quilloin v. Walcott,* 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978)
  Stepfather of illegitimate child petitioned to adopt the child. The Superior Court, Fulton County, granted adoption, and natural father appealed. The Supreme Court of Georgia, 238 Ga. 230, 232 S.E.2d 246, affirmed. The natural father appealed. The Supreme Court, Mr. Justice Marshall held that: (1) natural father's substantive rights under due process clause were not violated by application of the "best interests of the child" standard where natural father had not petitioned for legitimation at any time in 11-year period between birth and filing of adoption petition, child had always been in mother's custody and adoption petition was filed over eight years after mother married and (2) equal protection principles did not require that natural father's authority to veto an adoption be measured by the same standard as applied to a divorced father since the state was not foreclosed from recognizing the difference in extent of commitment to a child's welfare between that of an unwed father who has never shouldered any significant responsibility for the child's rearing and that of a divorced father who at least will have borne some full responsibility for the child's rearing.

- *Parham v. J.R.,* 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979)
  Minor children brought action alleging that they and other class members had been deprived of their liberty without procedural due process by virtue of Georgia mental health laws which permit voluntary admission of minor children to mental hospitals by parents or guardians. A Three-Judge Court for the United States District Court for the Middle District of Georgia, 412 F.Supp. 112, ruled the laws unconstitutional. On appeal, the Supreme Court, Mr. Chief Justice Burger, while ruling that Georgia's procedures for admitting a child for treatment to a state mental hospital are reasonable and consistent with constitutional guarantees, held that the risk of error inherent in parental decision to have child institutionalized for mental health care is sufficiently great that some kind of inquiry should be made by a "neutral factfinder" to determine whether statutory requirements for admission are satisfied; although a formal or quasi-formal hearing is not required and inquiry need not be conducted by a law-trained or judicial or administrative officer, such inquiry must carefully probe child's background using all available sources and it is necessary that decision maker have authority to refuse to admit child who does not satisfy medical standards for admission; child's continuing need for commitment must be reviewed periodically by similarly independent procedure.

- *Santosky v. Kramer,* 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)
  Parents appealed from judgment of the Family Court, Ulster County, Elwyn, J., which adjudged their children to be permanently neglected. The New York Supreme Court, Appellate Division, affirmed, 75 A.D.2d 910, 427 N.Y.S.2d 319. The New York Court of Appeals dismissed the parents' appeal. Certiorari was granted. The Supreme Court, Justice Blackmun, held that before a state may sever completely and irrevocably the rights of parents in their natural child, due process requires that the state support its allegations by at least clear and convincing evidence, and, therefore, the "fair

preponderance of the evidence" standard prescribed by the New York Family Court Act for the termination of parental rights denied the parents due process.

- *Lassiter v. Department of Social Services,* (1981) 452 U.S. 18
  The District Court, Durham County, Samuel F. Gantt, J., terminated a mother's parental rights and appeal was taken. The North Carolina Court of Appeals, Robert M. Martin, J., 43 N.C.App. 525, 259 S.E.2d 336 affirmed, and certiorari was granted. The Supreme Court, Justice Stewart, held that failure to appoint counsel for indigent parents in proceeding for termination of parental status did not deprive parent of due process in light of circumstances which included that petition contained no allegations upon which criminal charges could be based, no expert witnesses testified, case presented no specially troublesome points of law, and presence of counsel could not have made a determinative difference for petitioner; such decision does not imply that appointment of counsel is other than enlightened and wise.

- *Smith v. Organization of Foster Families for Equity and Reform* (1977) 431 U.S. 816
  Individual foster parents and organization of foster parents brought action for declaratory and injunctive relief with respect to New York State and New York City statutory and regulatory procedures for removal of foster children from foster homes. A three-judge Court in the Southern District of New York, 418 F.Supp. 277, granted relief and state and city officials appealed. The Supreme Court, Mr. Justice Brennan, held that removal procedures under which foster parents were given ten days' advanced notice of removal, were permitted to request a preremoval conference with the social services department, and were entitled to full adversary administrative hearing, subject to judicial review, following the conference with no stay of removal pending the hearing and judicial review, and under which preremoval judicial review was provided with respect to children who have been in foster care for 18 months or more afforded sufficient due process protection to any liberty interests involved.