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RIGHTS OF NEGLECTED CHILDREN AND ATTEMPTS BY THE STATE TO REGULATE FAMILY RELATIONSHIPS

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In attempts by the state to regulate familial relationships, the rights of parents, children and frequently third parties are necessarily interrelated. This interdependence is particularly pronounced when problems concerning the physical or legal custody of a child arise.

The United States Supreme Court has, in recent years, decided cases challenging some aspect of child custody or "substitute parenting activities" of the state.[1] But the court has yet to formulate norms about the permissible nature and scope of such substitute parenting, or about how custody decisions are to be made, or about criteria to control those decisions.

Yet it is widely acknowledged that in many cases the present system of state intervention, instead of working as envisioned, actually harms parents and/or children.[2] State intervention is usually criticized for one of three reasons: 1) Children are removed from their homes when they might remain in them if adequate efforts were made to protect and maintain them there.[3] 2) Children remain in foster care for long periods of time and are subject to multiple placements. 3) Children who cannot be returned to their parents are not placed in new permanent homes.

HOW THE EXISTING SYSTEM WORKS

All states have statutes authorizing court intervention into families, generally where children are alleged to be neglected.[4] These statutes usually focus on parental behavior rather than on measurable[5] harm to the child.[6] Proceedings are instituted by a complaint from some interested party[7] to any one of a number of social agencies--the police, the probation department, the welfare department--that a child is not being cared for properly. The complaint is investigated, generally by a social worker attached to the welfare or human services department. The investigating agency can drop the matter, convince the accused parents to voluntarily accept social services (including foster care placement for their children)[8] or file a neglect petition in a juvenile court.

If the agency petitions, the child is often placed in a foster home pending adjudication of the petition.[9] Such temporary placement can last for years; few states place a statutory limit on it.[10]

Neglect hearings are usually informal.[11] Typically, none of the parties is represented by counsel[12] and if anyone is represented, it is the state.[13] And generally, the hearing focuses on what placement should be arranged, rather than on whether anything should be done.[14]

If a child is found to be neglected,[15] a court can either order the child placed (or continued) in foster care, or leave the child with his parents and mandate that the parents accept remediative social services. Guidelines for such dispositional decisions are usually vague, if they exist at all.[16] And if the court decides to remove the child from his parents' home, the actual foster care placement decision is made not by the court, but by a social agency to which the court remands the child for "appropriate placement."[17] Some social agencies resist court review of their placement decisions once a child is remanded to them.[18] And most states do not specifically provide how long such placements should continue.[19] Only two states, New York and South Carolina,[20] provide for regular review of children in foster care with the purpose of either returning them to their parents or terminating their parents' custody so that another permanent home can be found for them.[21]

Available data indicate that about 50% of neglect proceedings result in removal of the child from his natural parents' home.[22] And unless parental rights to custody are terminated permanently,[23] such removal is ostensibly temporary.

It has been pointed out that foster care, although intended to be temporary, is often permanent;[24] that many children are likely to experience multiple separations and placements;[25] and that, for most children, there is an unplanned and unpredictable quality about the way the foster care system treats them.[26]

Also, although there is virtually universal agreement that all children need continuity in relationships with parents (biological or psychological); need to feel wanted and accepted; and need to have some sense that there is a dependable, regular quality to the world,[27] it is acknowledged that children in foster care usually spend long periods in a state of impermanence, uncertain about their future, and are often exposed to multiple separations.[28] There is a marked clinical consensus about the negative impact of growing up, as foster children do, in a state of "permanent impermanence."[29]

It should be noted here, however, that the evidence is not all one-sided. Several studies have found that some children have significantly improved physical health, behavior control, school performance and peer relationships following multiple foster home placement.[30]

It is usually believed that many of the problems presented by the foster care system stem from inadequate funding of social service programs[31] and yet, at least one commentator has suggested that additional funds alone will not solve the problem--that

"fundamental rethinking of the assumptions of the entire intervention system is necessary."[32]

GUIDING PRINCIPLES

This paper focuses on coercive state intervention. The need for more services, available on a voluntary basis, is not disputed.[33]

The search for principles to guide coercive state intervention involves two levels of analysis. First, should the legal structure presume that child rearing should generally be left to individual families or should it presume that the state has primary responsibility for rearing children and that parents are merely trustees who hold children only as long as they accomplish goals established by the state? Second, whichever presumption is made, what kinds of behavior justify state intervention? Intervention has traditionally been justified on one of two grounds:
1) to protect children from abusive or neglecting behavior;
2) to assure that children are exposed only to "healthy" ideas or environments--i.e., to ensure that they develop in a "normal" atmosphere.

A. State Control vs. Parental Autonomy

The interest of persons in establishing and maintaining a coherent, private family unit, free from intrusion by the state, is indisputably fundamental.[34] In decisions stretching over 50 years, the U.S. Supreme Court has recognized this interest as basic. In 1923 the court held that ". . . without doubt the liberty thus guaranteed (by the due process clause of the 14th Amendment) denotes . . . the right of the individual . . . to marry, establish a home and bring up children."[35] In 1944 the court reasserted: "It is cardinal with us that the custody, care and nurture of the child resides first in the parents. . . . And it is in the recognition of this that (our previous) decisions have respected the private realm of family life which the state cannot enter."[36] Most recently, in 1974, the court again restated the principle of family sanctity, citing Meyer, Prince, and a long line of similar decisions: "This court has long recognized that freedom of personal choice in matters of marriage and family is one of the liberties protected by the due process clause of the 14th Amendment."[37]

But increasingly, this presumption of parental autonomy has been questioned. Some educators and child development experts have argued that parents should not have control of their children all of the time and have advocated mandatory day care, Head Start or other early educational programs for children.[38] Other commentators

argue that our legal system should ensure that parents provide their children with an environment in which they can achieve maximum developmental potential.[39] It is questionable that the state's interest in providing such a vaguely described, albeit attractive, environment for children constitutes a sufficiently compelling and clearly defined state interest to justify coercive interference with the exercise of a fundamental right. And even if it were found to constitute such an interest, the formulation of standards about what conduct justifies state intervention under such a "trustee" system would be impossible. This is true because such standards would require agreement about what kind of adult we want to produce, what values parents should teach their children, and what childhood experiences produce specific adult behavior. Such standards, in short, would ignore cultural diversity, individual moral preference and the sorry state of knowledge about what makes children grow up to be happy, healthy, independent adults.[40]

We are left, therefore, with the traditional model of family autonomy.

It is briefly noted here that there are additional reasons for making the family the presumptive locus of decision-making authority, particularly if there is no social consensus about what is best for children or about what values they should be taught. First, family members are more likely to have direct knowledge about a particular child. Second, familial autonomy is consistent with the present distribution of authority and responsibility for children. It is for only a comparatively small percentage of children that judicial intervention is required. And lastly, children are more or less the recipients of the demands and teachings of their culture, and their development can be viewed as the emergence of a particular set of adaptive skills geared to particular social and environmental circumstances.[41] There is consensus that such circumstances, at least for young children, are best when consistent, from the physical environment and type of community they live in, to the way their daily life is organized.

B. Guiding Principles Under Autonomy System

As a basis for state intervention under an "autonomy system," the following premises are suggested:

1) Cases of familial dysfunction usually present for resolution issues that are peculiarly ill fitted for, and unbenefited by, legal analysis and judicial fact finding. The law is simply inept as a corrective of family dysfunction. Legal compulsion cannot restore or provide parent-child understanding and tolerance, nor can it build up mechanisms for conflict resolution within any given family.[42]

2) Many, if not virtually all, statutes conferring on courts the jurisdiction to intervene in cases of family dysfunction are arguably void for vagueness; language conferring such jurisdiction often falls short of such specificity as would allow the actor to determine what conduct fell within the prohibitions of the statute, so that he or she could gauge behavior accordingly. Given the typical overbreadth of these statutes, every family in the country could be made out to be the proper subject of court jurisdiction, if there were a sufficiently detailed chronicle of their behavior.

3) Allowing formal intervention in many cases of familial dysfunction isolates parents and children from each other, undermines familial autonomy and authority, and hinders development of mechanisms within the family to establish controls and resolve disputes. It thus impedes the child's maturation into an adult who possesses effective ways of handling problems of interpersonal relationships. Moreover, it encourages parents to abdicate their functions and roles to the court: court appearance bespeaks parental failure, and having been thus marked as failures, parents may be all too willing to give over children to a system that is all too willing to take them. It seems probable that many families are deflected from trying to work matters out in their own way simply because the court is there.

4) Similarly, the existence of court jurisdiction over cases of familial dysfunction weakens the responsibility of community agencies and dulls their ability to respond to problems that are essentially theirs.

5) The handling of cases of familial dysfunction requires a diversion of effort, time and resources that is vastly disproportionate to any good achieved. If such jurisdiction were limited to the most serious cases, resources and personnel could better attend and serve those cases involving conduct that more seriously endangers children and the community.

6) Available research indicates that no generalizations can be articulated about whether families are helped by any one particular complex of services. And it has also become apparent that the ideal of treatment is not without its own dangers; it legitimates more state intervention with fewer legal constraints.

The conventional viewpoint about rehabilitating families consists of three main assumptions:

The disposition should rehabilitate. The family should receive the correctional treatment best suited to inculcate

law-abiding habits. Rehabilitation should influence the choice of disposition, as well as the manner in which it is carried out.

· Predictive restraint is a second theme. The disposition, supposedly, should be based on a forecast of the family's--generally the parents'--likelihood of returning to the same pattern or conduct that initially brought them to the court's attention.

· Individualized decision making is the third assumption. The disposition is to be tailored to the family's need for treatment and the risk the parents pose to the child. To allow decisions to be individualized, sentencing courts and correctional officials are to be given wide discretionary powers of disposition, with as few legal constraints as possible.

During the first half of this century, these ideas had almost unchallenged ascendance. Although less fashionable notions (such as deterrence and retribution) did retain a measure of influence on the practical decisions of legislatures and judges, the dominant trio of assumptions was thought to represent the enlightened viewpoint. Although skepticism about these notions has been growing in the last two decades, the conventional assumptions retain considerable influence. A wide variety of rehabilitative programs have now been studied. A few successes have been reported, but the overall results are disappointing.[43] It would be an exaggeration to say that no treatment methods work, for some positive results have been reported.[44] But it is uncertain to what extent even the successes would survive replication. Until the success of a particular type of state intervention has been established, intrusion should be limited. Obviously, this is not an excuse to ignore the responsibility to continue attempts to develop successful programs; and since no one approach can be seen as a complete solution, a comprehensive range of services must be developed and monitored.

7) The state is obligated to observe strict parsimony in intervening in families, i.e., the state has the burden of establishing why any given intrusion, and not a lesser one, is necessary.

8) The basis for intervention in families should focus on the child, not on parental behavior. Basically, it should be limited to instances where a child has "suffered serious physical harm, sexual abuse or serious and narrowly defined emotional damage,"[45] or where there is a substantial likelihood that the child will imminently suffer such damage.

In fact, this concept is not new, it merely focuses emphasis where it has been all along. Neglect statutes are concerned with

parental behavior not as behavior per se, but only as it adversely affects a child.[46] Rather than focusing on the behavior itself, then, one ought to focus on the effects on the child, because every child embodies a unique combination of physical, psychological, social and emotional components. No child has the same weaknesses or strengths as another; no child is affected exactly the same way by parental behavior. But this is not to say that there aren't some behaviors that all would agree are harmful for all children.

IMPLICATIONS OF THESE PRINCIPLES

On the basis of these principles, some framework within which to consider state intervention into families can be articulated. It is suggested that such intervention should be:

- consistent with this society's conception of justice--i.e., there should be a consensus that certain experiences cause all children to stop developing or to regress in their development physically, mentally or emotionally, and that such experiences are undesirable for all children;

- universal--i.e., intervention will be invoked and exercised similarly in all cases where children of like age, experience, maturity, social history and economic ability have had an experience deemed by social consensus to be undesirable (except that intervention will be tailored, to the extent possible, to an individual child's age and social, ethnic, and economic experience);

- minimal--i.e., the intervention cannot exceed that necessary to satisfy the state's interest in intervening (that is, familial autonomy will be deferred to unless the state can demonstrate that unless that autonomy is interfered with, substantial and immediate harm to the child will occur).

Available literature indicates a basic lack of consensus about what constitutes dysfunction in a family and about when state intervention into dysfunctional families is justified.[47] This disagreement is probably based in part on disagreement about what conditions are necessary for the growth of children into mature adults physically, mentally and emotionally. But even if such conditions were identified, it is unlikely that they would be recognized as legal rights.[48] For example, children have no legal right to medical care or to a nutritionally adequate diet, although we know that these things make a difference not only in the incidence of disease and death among children[49] but also in the quality of life children lead.[50]

It has been suggested that a legal theory about children's rights would at least define those things recognized as minimally necessary for development.[51] Such necessities have been defined to include everything from prenatal care[52] to the right to an education "responsive to a child's needs."[53] But it is only necessary to ask the question "What are children's rights" in this context to begin to realize that the question has no "answer." A child's right to adequate nutrition, to cite only one example, may vary with his age and physical condition. And the same question asked about a different child, of a different age, with a different medical history, calls for another answer.

Development of a legal theory for children's rights, then, will not solve the complex problems presented by dysfunctional families, nor will it articulate a universal standard for state intervention into such families. On that, at least, there seems to be agreement. The understanding and development of programs to deal effectively with familial dysfunction are beyond the competence of any one of the related disciplines--law, medicine, social work, psychiatry, psychology and others--and beyond the capability of any single community resource--police, welfare department, courts, hospitals, children's service agencies, etc.--that deals with such cases. Effective programs require interdisciplinary efforts and coordination of resources.

A POSSIBLE, LIMITED ROLE FOR THE LAW

As has been pointed out, intervention into dysfunctional families is now exercised on the basis of broad standards that require highly individualized determinations. More precise standards would mitigate some obvious disadvantages of the application of indeterminate standards--such as "a child being in danger of being brought up to lead an idle, dissolute or immoral life"[54] --in cases of familial dysfunction.[55] These disadvantages are:

- An indeterminate standard makes the outcome of particular cases difficult to predict. This may encourage more litigation than would a standard that made the outcome of cases predictable.

- A broad standard for intervention that gives great discretion to a judge may encourage social workers, probation officers, policemen and other state officials to seek intervention in more cases than would a narrower standard.

- Indeterminate standards pose a great risk of violating the precept mentioned earlier that like cases should be decided similarly.[56]

A. A More Determinate Standard for Intervention

It is suggested that, coupled with procedural adjustments, the following determinate standard for intervention would confront these fundamental problems presented by an indeterminate system:

• A state may remove a child from parental custody without parental consent only if the state first demonstrates: 1) that the child has suffered serious physical harm, sexual abuse or serious and narrowly defined emotional damage;[57] or that there is a substantial likelihood that the child will imminently suffer such damage if not removed; 2) that the state has tried and failed to protect the child's physical and emotional health in his own home by the provision of appropriate supportive services, or that the case is so extreme that a child's physical and emotional health cannot be protected without removing him from his parents' custody; and 3) that a foster care placement exists for the child.[58]

Obviously this standard, although more narrowly defined than most existing standards, is still not without problems. Terms such as "appropriate," "serious," "imminently," and "substantial" are not self-defining. There is still enormous room for judicial discretion. However, this standard may possibly tease out heretofore unexpressed and therefore unquestioned prejudices that underlie certain decisions to intervene.

Another problem presented by this standard is how far the state must go in demonstrating that a child's physical and emotional health cannot be protected in his own home even with supportive services. One commentator has asked if the state is obligated to provide a full-time maid or housekeeper if it can be demonstrated that such help would maintain a family intact.[59] Possibly. The economic implications of this standard may well be enormous. However, so are the costs of foster care--several thousands of dollars per year per child.[60] At a minimum, this standard expresses a preference for expenditure of equivalent resources to protect and maintain children in their own homes before removal is sanctioned.

B. Procedural Safeguards

The due process clause in the 14th Amendment applies to certain "deprivations," which it defines as those of "life, liberty or property." An infringement of a temporary or limited nature is not any less a "deprivation,"[61] within the amendment's language, than is execution or imprisonment. Persons deprived of liberty or the companionship of their family have no chance to regain what is taken from them,[62] nor could there be any just compensation

made to them if it develops later than such deprivation was mistaken.[63]

The sole fact that the person invoking the 14th Amendment is a child cannot dilute the due process to which he is entitled. A child is no more immune to deprivation of liberty than an adult. Indeed, he is more vulnerable. To protect what is his, a child has a right to be heard. The notion that a child has less right to be heard than an adult has been specifically rejected by the Supreme Court.[64] And a child is surely competent to be heard when he speaks about his own conduct, his family's conduct or facts that will determine whether he is placed away from his family.

Since rights of a fundamental nature are at stake, and since there could be no equitable recompense in case of error, the state should never involuntarily intervene in dysfunctional families without the families' having access to independent counsel, without notice and an opportunity to be heard in recorded proceedings, to confront and examine those who allege dysfunction, to have those who petition bear the burden of proof beyond a reasonable doubt, to have the fact of dysfunction determined by a jury, to have the judicial decision detailed and reduced to writing, and to have adequate appellate review.

Of course, we are not talking here about emergency cases in which a child is removed from a situation where he is physically in danger. But even in such cases, the removal should be only for a restricted period, after which, if the removal is to continue, the standard articulated in the preceding paragraph should apply.

To some extent this has been recognized by the Supreme Court. Recent decisions of that court require that juvenile courts recognize certain constitutional rights of children alleged to be delinquent in the adjudicatory phase of a juvenile hearing, to assure due process of law. The procedural rights include written notice of the charges before the hearing, the right to counsel, the privilege against self-incrimination, the right to confront and cross-examine witnesses, and proof of delinquency beyond a reasonable doubt if the child is charged with an act that would constitute a crime if committed by an adult.[65] Although there is no right to jury trial for juveniles accused of delinquent behavior,[66] these procedural requirements provide a higher quality of due process and fairness in an adjudication of delinquency that justifies state intervention than is required in cases where the state intervenes because of other kinds of familial dysfunction. That is not to imply that all instances of juvenile delinquency are a result of familial dysfunction. But it is to say that juvenile delinquency is often symptomatic of familial dysfunction and that procedurally

the legal system addresses children in delinquency cases differently than it does children in neglect cases.

Access to Independent Counsel

The independent representation of a child by counsel in all proceedings in which his welfare or disposition is at stake has been called "the most significant and practical reform that can be made in the area of children and the law."[67] Since the adult's right to counsel as an adjunct to a fair trial is based on the incompetence of the layman to protect his interests in a judicial proceeding,[68] an even stronger argument for the child's right to counsel can be made on the basis of a child's inability to protect his interests or even make his interests known without the aid of counsel. It is unlikely, because of their dependence and minority,[69] that children will speak effectively on their own behalf in the absence of independent counsel acting solely for the child. Sometimes the interests of children and their parents conflict. In such a clash, a child, because of his basic dependence on his family, might be unwilling or unable to express his discontent. The appointment of counsel whose only duty is to represent the child seems necessary in light of the special problems children face in exercising their constitutional right to be heard.

It has been asserted that there is a crucial difference between child welfare proceedings in which there is no requirement of representation by counsel, and criminal or delinquency proceedings that recognize a right to counsel, since in the latter cases defendants are subject to loss of liberty. But, as is generally conceded, a child may be committed to an institution or agency and just as effectively deprived of freedom in neglect proceedings. And if criminal defendants threatened with a loss of personal autonomy have a right to counsel, then persons innocent of wrongdoing, who possibly have a diminished capacity to speak effectively on their own behalf, have the same right.

The right to counsel is not satisfied by the mere formality of an appointment.[70] A person is entitled to effective representation at every critical stage in the proceedings.[71] When the state intervenes in dysfunctional families, it is possible that children have the right to independent counsel as soon as they are identified as being "at risk."

When a child is not represented by counsel, his future is effectively determined by facts presented by his parents or by the state through social workers, probation officers, police officers, etc. In the first instance, the danger is that the

child's interests will be assumed to be identical to those of his parents, which they often are not; and in the second, they may be assumed to be similar to those of the state, an equally unacceptable presumption.[72]

The rationale for providing court-appointed counsel to indigent parents involved in child welfare proceedings parallels that of court-appointed counsel for a child. However, there are significant differences that suggest an even stronger case for court-appointed counsel for parents. The most apparent difference is that, when child welfare proceedings are initiated, the parent is placed in an adversative role against the state. He is a defendant in danger of losing custody of his child, and in some cases of facing criminal charges. The defendant parent is often left to his own devices to protect his judicially recognized right to rear his children as he sees fit.[73]

It appears that a reasonable application to child welfare proceedings of the due process clause of the 14th Amendment would guarantee an indigent parent the right to court-appointed counsel. Implicit in any requirement to provide counsel is recognition of a significant legal interest that warrants the protection afforded by legal representation.[74] This legal interest is the right of parents to have and rear children under their personal supervision.[75] The Supreme Court has said that this parental right is a "liberty" of which a person cannot be deprived without due process of law.[76] Thus, it should be apparent that the due process requirement of a fair hearing cannot be achieved unless court-appointed counsel is provided for the indigent parent.[77] Failure to provide counsel in child welfare proceedings denies the indigent parent the right to participate fully in litigation involving his fundamental rights.[78]

At present the courts of relatively few jurisdictions have recognized the right of indigent parents to court-appointed counsel,[79] but the trend seems to be in that direction.[80] It is hoped that courts or legislatures will modify the procedure of child welfare hearings to provide court-appointed counsel for children and indigent parents. Such action would go far toward attaining the greatest protection of the rights of all parties.

Trial

The right to a jury trial in criminal cases is basic in our legal system,[81] and finds expression both in the Constitution[82] and in its unquestioned implementation. A fundamental tenet of Anglo-American jurisprudence is that if a person is to be deprived of bodily liberty, it shall be done in open court pursuant to a verdict rendered by peers.[83] If such is the rule in criminal

cases, children threatened with curtailment of personal liberty and separation from their families also have the right to be heard publicly and to have the decision about their custody made by a jury of laymen.

The right to a trial implies the right to receive such notice of the proceedings as will permit preparation of an adequate response.[84] The definition of sufficient notice in pleadings varies from days to months.[85] Realistically, in defining adequate notice where bodily liberty is involved a balance must be struck between the right to a speedy decision and the right to sufficient time to prepare an answer. Thirty days seems a reasonable solution in view of these conflicting interests.

Also implicit in the right to be heard is the right to be confronted publicly by those who accuse, or allege the need for alternative placement.[86] It is their burden, or the state's, to prove the allegation.

Evidence

The term "burden of proof," in its strict sense, denotes the duty of establishing the truth of a stated proposition by such weight of the evidence as the law demands in the type of case in which the issue arises, whether civil or criminal.[87] In a criminal prosecution the state has to establish all the essential elements of the crime charged[88] and must prove the accused's guilt beyond a reasonable doubt.[89] The burden of proof to be sustained in criminal cases is "beyond a reasonable doubt," because it is a well established principle of common law, incorporated statutorily by many states, that a person accused of a crime is presumed innocent until proved guilty.[90] This presumption of innocence is a presumption of law--a legal inference--based on the fact that the great majority of persons are not criminals.[91]

If it cannot be presumed that a majority of the population is criminal, neither can it be presumed that a majority of families are dysfunctional. If popular dysfunction is not a tolerable assumption, the curtailment of a person's liberty or intrusion into a person's family on the ground that it is dysfunctional requires substantiation of the proposed dysfunction beyond reasonable doubt.

Decision and Appeal

All states now provide some appellate process for review of criminal convictions.[92] Statistics have demonstrated that a substantial proportion of lower court decisions are reversed by state appellate courts.[93] Therefore, to deny adequate reviews of custody

decisions means that many children may be placed in foster care or have their liberty curtailed, and families may be disrupted, because of unjust decisions that appellate courts would set aside.

A basic tenet of our legal system is that equal justice will be afforded to all and special privilege to none. There can be no equal justice where the kind of assistance or review persons get depends on the amount of money that have. Hence, the provision of counsel for the indigent and the decision of the Supreme Court in 1956 that destitute defendants must be afforded as adequate appellate review as defendants who have money.[94] To accomplish this, the court ordered that indigent defendants who desired to appeal were to receive a transcript of their trial.[95]

If appellate consideration is to be efficient and effective, a record of the entire earlier proceeding, including the court's decision and reasoning, should be available both to the appellant and to the court of review. It seems reasonable to assume that, as in criminal cases, there is a substantial margin for unwitting error in custody proceedings. Therefore effective appellate review is essential. Of course, at times mistakes may be made within a foster-care relationship. Children, or a representative of their interests, should have access to review on a continuing basis. The traditional view of continuing jurisdiction is that once properly acquired in an action, personal jurisdiction is never lost until a final judgment is entered, disposing of the litigation.[96] It may be suggested that the order awarding custody is the final judgment in a custody proceeding, and that subsequently a court must again establish jurisdiction to review. But in child custody cases,[97] if the court that originally appoints the custodian is in a position to enforce any modification of its orders--i.e., if the ward is physically present within the state--jurisdiction will continue to allow monitoring of placement and review of the custodian's decisions.[98]

It has been suggested that procedural reform cannot correct the fundamental fault--i.e., broad discretion--in the judicial system of intervention into cases of familial dysfunction.[99] Briefly, the argument is that providing counsel and other procedural protections to children in such cases will only shift the locus of discretion from judges to lawyers because the majority of children involved in such cases are young, and lawyers with young clients must, like judges, ascertain what is in the clients' best interests (according to the lawyers' own values) and then advocate that position.

But such an argument dissolves if procedural reforms are coupled with a change in the underlying standard for removal.

Although the attempt here to formulate a definitive legal standard is not completely realized, the suggested direction for change is clear: judicial (and by implication lawyers') discretion to remove children from their homes should be limited and the standards for such removal should focus more on the child than is now the case.

Stability

The principle objective of the foregoing reforms is to establish a legal process that will ensure greater stability for the child. In furtherance of this goal for children who must be placed in foster care, there should be a statutory requirement to set the maximum time they remain in care. The most direct way of doing this would be to require judicial review, after a fixed period, to determine whether the child can return home or should be placed in an adoptive home or some other stable, long-term environment. The advantage of a fixed time period--the outlines of which child development specialists are better able to define than am I--is that judges, lawyers and social workers will be compelled, within a specific period, to make permanent plans for a child's placement. Routine extensions of foster placement could not be the rule. Although fixing a time period is arbitrary, it is more attractive than giving judges or social workers unlimited discretion to continue indefinitely the foster care placement of children.

CONFIDENTIALITY

Courts have customarily used both reports by social workers[100] and evaluations by psychiatrists and psychologists[101] in making custody determinations. But recently the existence and disclosure of such records and reports have been questioned, and both Congress[102] and the federal courts have placed limits on the assemblage, access and dissemination of personal records and other information.

In placing these limits the courts and Congress recognized that such records do serve a useful public purpose. Thus, the courts attempted to balance the individual's right to maintain his privacy against the public's need to have certain information.[103] Basically, the standard that has emerged is that a record must be accurate and complete,[104] access to it must be strictly limited to parties having an actual interest in the information,[105] and dissemination must be timely--i.e., records that are "unreasonably old" should not be disseminated at all.[106]

Adherence to this standard is important because usually reports must be introduced as evidence in custody hearings.[107] Thus, even if a judge, after reading a report, rules that it is inadmissible, he may well be influenced by the information it contains in making his decision.

Some courts recently questioned the review of such reports by judges when parents who are their subject are not allowed to see them.[108] They have held that only in the "gravest of situations" should parents be refused permission to examine and copy records about them.[109] A "grave" situation has been described as one where a parent, if he had access to information about who the complainant was, for example, might be dangerous to that person.[110]

Similarly, courts have held that parents should be allowed to inspect all records relating to an agency's care of a child whose custody has been removed from them,[111] so long as such removal is temporary.

Other courts have held that all parties directly involved in a custody decision should have access to relevant social work, psychological or psychiatric reports.[112] Thus, it has been held that potential adoptive parents should have access to all reports about the physical and mental health and emotional stability of the biological parents of a child they want to adopt.[113]

Perhaps one of the most crucial issues is whether the child himself should have the opportunity to examine records about his family. Generally the answer, expressed in cases where adopted children attempted to gain access to information about their biological parents, is no.[114] Conversely, although it is recognized that children have a right to privacy, just as do adults,[115] courts have held that a child's right to the protection of his good name, reputation, honor and integrity does not extend to court records that concern him.[116] The child, in short, has no right to prevent access to records about him. The argument is that since children are being "protected" by the state in custody proceedings, their privacy is not invaded if the state controls access to information about them.

In view of the standards for record keeping that have been stipulated in statutes and case law to date, and in light of the standard and procedural reforms suggested here, the following can be stated:

- Record keeping about dysfunctional families should be done pursuant to reasonable procedures to assure maximum accuracy of information.

· Information about the nature of the record and about the recipients of the record within the last 6 months should be disclosed to the subjects of records, including an attorney representing a child, and possibly to older children themselves.

· Persons who are the subjects of records should have an opportunity to challenge the completeness and accuracy of any item in their files, to record the dispute if it is not resolved, and to correct any error.

· Access to records should be limited to those with a court order, with the subject's consent (or possibly the consent of all the subjects, if the report, as is generally the case, concerns itself with the entire family, not merely one or two family members), or to those with a legitimate professional need for information that cannot be obtained by any other means.

· Adverse information that is a specified number of years old should be deleted.

· The subject of a report should be notified when detrimental information about him is released.

CONCLUSION

The standard and procedural reforms suggested here are intended to limit the discretion exercised by professionals--judges, lawyers, physicians, social workers, psychologists, nurses, policemen, probation officers, etc.--who intervene in cases of familial dysfunction. The reforms are suggested primarily in response to a lack of proved methods of therapy, a lack of consensus about values and the ability to predict and/or provide those things that will help children become happy and healthy adults. They are also suggested because I believe that the eagerness we all feel to find effective ways to address the problems of dysfunctional families is not reason enough--given the limited state of our knowledge about human behavior and its infinite complexities--to sanction curtailment of human liberty and the fundamental interest family members have in maintaining a coherent family unit free from state interference except in the most serious cases.

NOTES AND REFERENCES

1. See, for example, Weinberger v. Wiesenfeld, 420 U.S. 636 (1975). And consider the state's increasing role in child rearing--through compulsory education laws, state-run day care programs, etc. Some commentators say families no longer perform essential family functions. Bronfenbrenner, Two Worlds of Childhood (1970), Chapter 4.
2. Gruber, Alan, Foster Home Care in Massachusetts: A Study of Foster Children, Their Biological and Foster Parents (1973); Sherman, Newman and Shyne, Children Adrift in Foster Care: A Study of Alternative Approaches (1974); Rein, Nutt and Weiss, "Foster Family Care: Myth and Reality" in Children and Decent People, p. 24 et seq. (A. Schorr, ed., 1974); Kadushin, A., Child Welfare Services (2d edition, 1974); Mandell, Where Are The Children? (1973); Mnookin, "Foster Care -- In Whose Best Interest?" 43 HARV. ED. REV. 599 (1973); Burt, "Forcing Protection on Children and Their Parents: The Impact of Wynam v. James," 69 MICH. L. REV. 1259 (1971).
3. A recent study conducted in New York state by the Child Welfare League of America demonstrated that enriched services to the family significantly reduced the number of child placements, or returned children to their homes after shorter placements. Jones, Neuman and Shyne, A Second Chance for Families: Evaluation of a Program to Reduce Foster Care (1976). See also Tracy and Clark, "Treatment for Child Abusers," 19 SOCIAL WORK 388 (1974); Pavenstedt, "An Intervention Program for Infants from High Risk Homes," 63 AM. J. PUB. HEALTH 393 (1973).
4. Katz, Howe and McGrath, "Child Neglect Laws in America," 9 FAMILY L.Q.I. (1975). Note that this paper focuses only on neglected children, not on abused children, delinquent or status offender children, or children voluntarily placed in foster care. The special problems presented by adoption, termination of parental custody and custody pursuant to annulment, separation and divorce are also not covered here, although they are related to this discussion and the principles articulated in this paper could be adapted to those situations.
5. Measurable is defined here in terms of the child's behavior--i.e., has the child's functioning been adversely affected by parental activity or inactivity?
6. Katz et al., supra. note 4 at 22-27.
7. Neighbor, relative, school teacher, social worker, etc.

8. Some commentators suggest that as many as half of the children in foster placements are there voluntarily. See Wald, "State Intervention on Behalf of 'Neglected' Children," STAN. L. REV. Vol. 28, No. 4, April, 1976 at p. 629, note 24; see also Burt and Wald, "Tentative Standards for State Intervention on Behalf of Neglected Children," January 1976 (unpublished paper prepared for the Institute of Judicial Administration/American Bar Association's Juvenile Justice Standards Project, 1974). Other commentators say few "voluntary" placements are actually voluntary. See Weiss and Chase, "The Case for Repeal of Section 383 of the New York Social Services Law" in Legal Rights of Children, 37 (1973).
9. Burt and Balyeat, "A New System for Improving the Care of Neglected and Abused Children," 53 CHILD WELFARE 167 (1974); Campbell, "The Neglected Child: His and His Family's Treatment Under Massachusetts Law and Practice and Their Rights Under the Due Process Clause," 4 SUFFOLK U. L. REV. 631 (1970); Levine, "Caveat Parens: A Demystification of the Child Protection System," 35 U. PITT. L. REV. 1 (1973).
10. Id.
11. This is important because the formal rules of evidence are not followed. One result is that hearsay is admissible. See Comment, "Dependent-Neglect Proceedings: A Case for Procedural Due Process," 9 DUQUESNE L. REV. 651 (1971).
12. Note, "Representation in Child Neglect Cases: Are Parents Neglected?" 4 COLUMBIA J. L. AND SOC. PROB. 230 (1968).
13. But there is an increasing body of case law holding that parents have the right to be represented by counsel in neglect cases. See, for example, Danforth v. State Department of Health and Welfare, 303 A.2d 794 (Me. 1973); In re B, 30 N.Y.2d 352, 285 N.E.2d 288 (1972).
14. On the disposition rather than the allegation, in other words.
15. There are no clear statistics available about what percentage of neglect petitions result in a finding of neglect.
16. They are usually to be made "in the child's best interests" or some similar language.
17. See Chappell, Barbara, "Organizing Periodic Review in Foster Care: The South Carolina Story," 54 CHILD WELFARE 477 (1975).
18. See Division of Family Services v. State, 319 So.2d 72 (Fla. App. 1975).
19. Twenty-four states and the District of Columbia apparently have no standard at all: Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Oregon, Rhode Island, Virginia, West Virginia. And if a state does have a standard, it is usually that

foster care shall continue "as long as it is in the child's best interests." See Katz et al., supra. note 4.

20. N. Y. Soc. Serv. Law Section 392 (McKinney Supp. 1974); S. C. Code Sections 71-221 - 71-227 (Michie Supp. 1975).
21. Every state has some statutory provision allowing termination of parental custodial rights. In 12 states, a court may order termination following a finding that the child is neglected. (For a summary of relevant laws see Areen, "Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases," 63 GEO. L. REV. 887, 928-30.) Six statutes specify the grounds on which a court may order termination. (See Katz, Howe and McGrath, supra. note 4 at pp. 73-362.) The most common grounds are abandonment, incompetent care, or repeated neglect. (Id.) Other states provide that termination may be effected only if the child's "best interests" indicate it or if the parents are "unfit." (For example, see KAN. STAT. ANN. Section 38-824(c) (1973).)
22. Mnookin, supra. note 2.
23. Supra. note 21.
24. Fanshel, D., "The Exit of Children From Foster Care: An Interim Research Report," CHILD WELFARE, Vol. 50, No. 2, February 1971; Jeter, H.R., Children, Problems and Services in Child Welfare Programs (Washington, D.C., U.S. Government Printing Office, 1963); Jenkins, S., "Duration of Foster Care: Some Relevant Antecedent Variables," CHILD WELFARE, Vol. 46 (Oct. 1967); Bryce, M. and Ehlert, R. "144 Children," CHILD WELFARE, Vol. 50, No. 9 (Nov. 1971); Gruber, A., supra. note 2.
25. Ibid.
26. Maas, H., and Engler, R., Children in Need of Parents (New York: Columbia University Press, 1959); Wiltse and Gambril, cited in Mnookin, R., "Foster Care--In Whose Best Interest?" HARV. ED. REV., Vol. 43, No. 4, Nov. 1973, pp. 599-638.
27. Wald, M., supra. note 8; Kline, D., "The Validity of Long-Term Task Family Care Serivce," CHILD WELFARE, Vol. 44, April 1965; Weaver, E., "Long-Term Foster Care: Default or Design? The Public Agency Responsibility," CHILD WELFARE, Vol. 47, No. 6, June 1968; Madison, B. and Shapiro, M., "Permanent and Long-Term Foster Care as a Planned Service," CHILD WELFARE, Vol. 47, No. 3, 1970; Andrews, "When Is Subsidized Adoption Preferable to Long-Term Foster Care?" CHILD WELFARE, Vol. 50, No. 4, April 1971; Fellner, I., and Solomon, C., "Achieving Permanent Solutions for Children in Foster Home Care," CHILD WELFARE, Vol. 52, No. 3, March 1973.

28. Solnit, "Child Placement--On Whose Time?" Vol. 12, No. 3, J. AMERICAN ACADEMY CHILD PSYCH., July 1973, pp. 385-392; Freud, A., in Witmer, H.L., and Gershenson, C.P. (eds.), On Rearing Infants and Young Children in Institutions (Children's Bureau Research Report No. 1, Washington, D.C., U.S. Department of HEW, 1967); Erikson, E., Identity: Youth and Crisis (New York: Norton, 1968); Joint Commission on Mental Health for Children, Crisis in Child Mental Health: Challenge for the 1970s (New York: Harper and Row, 1969).
29. Maas, H., and Engler, R., 1959, supra., note 26; Fanshel, D., and Maas, H., "Factorial Dimensions of the Characteristics of Children in Placement and Their Families," CHILD DEVELOPMENT, Vol. 33, 1962, pp. 123-144; Ersenberg, L., "The Sins of the Fathers: Urban Decay and Social Psychology," AMER. J. ORTHOPSYCH., Vol. 32, 1962.
30. Fanshel, "A Study of One Hundred Problem Children for Whom Foster Care Was Advised," AMER. J. ORTHOPSYCH. 107 (1971), and Meier, "Adults Who Were Foster Children," 13 CHILDREN (1966).
31. Schorr, "Poor Care for Poor Children" in Children and Decent People, supra. note 2. See also, Children's Defense Fund, Doctors and Dollars Are Not Enough (Cambridge, 1976).
32. Wald, supra. note 8 at 628.
33. CWLA goals cited in Claburn et al., "Periodic Review of Foster Care: A Brief National Assessment," CHILD WELFARE, LV, 6 (June 1976).
34. Cleveland Board of Education v. LaFleur, 94 S.Ct. 791; Roe v. Wade, 410 U.S. 155; Loving v. Virginia, 388 U.S. 1; Griswold v. Connecticut, 371 U.S. 479, 486; Pierce v. Society of Sisters, 268 U.S. 510, 534-535; Meyer v. Nebraska, 262 U.S. 390, 399. Most cases deal with the fundamental interest of the parents in protecting their right to rear their children as they wish. There are expressions, however, consistent with a finding that a child has a fundamental interest in being reared in a family. Meyer v. Nebraska, supra.; Pierce v. Society of Sisters, supra.
35. Meyer v. Nebraska, supra. note 34 at 399.
36. Prince v. Massachusetts, 321 U.S. 158, 166.
37. Cleveland Board of Education v. LaFleur, supra.; note 34. The rights of parents to control the upbringing of their children has been held to arise from the physical relationship of a parent and his child. Stanley v. Illinois, 405 U.S. 645, 652 (1972), held that an unwed father had a cognizable and substantial interest in his child.

38. Luckey, "Family Goals in a Democratic Society," J. MARRIAGE AND THE FAMILY, August 1964, p. 271.
39. Goode, The Family (1964); Foster and Freed, "A Bill of Rights for Children," 6 FAM. L. Q. 343 (1972).
40. Skolnick, The Intimate Environment: Exploring Marriage and the Family (1973).
41. Skolnick, A., "The Limits of Childhood: Conceptions of Child Development and Social Context," 39 LAW AND CONTEMPORARY PROBLEMS, No. 3, p. 38 (summer 1975).
42. I do not believe that the judicial system can mandate the provision of a nurturing environment for the child. Claburn et al., op. cit. Perhaps "case management services" would be able to do this more effectively than the judicial system.
43. See Greenberg, David, "Much Ado About Little: The Correctional Effects of Corrections," Department of Sociology, New York University, June 1974 (unpublished paper prepared for the Field Foundation, N.Y. City); and Lipton, Martinson and Weeks, Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies (New York: Praeger, 1975). Available long-term followup studies generally pertain to adult criminal populations. Hence, much of this material is derived from those studies. Therefore, the even more complex developmental questions presented by children and their families are not addressed here. There is no conclusive evidence that juveniles are helped by any one particular complex of services. For a summary of the deficiencies of existing evidence about juveniles, see Lundman, McFarline and Scarpitte, "Delinquency Prevention: A Description and Assessment of Projects Reported in the Professional Literature," CRIME AND DELINQUENCY 294 (1976).
44. For example, the model probation department project conducted by the California Youth Authority in Sacramento County between 1968 and 1969. (Unpublished material available from the Sacramento County Division, California Youth Authority.) And the success reported by the residential program for abusive parents run by the University of Colorado.
45. Wald, supra. note 8.
46. Gill, "The Legal Nature of Neglect," 6 NAT. PAROLE AND PROBATION J. 1, 5 (1960).
47. Compare Wald, supra. note 8 with Foster and Freed, "A Bill of Rights for Children," 6 FAM. L. Q. 343 (1972).
48. The United Nations has published a Declaration of the Rights of the Child. G.A. Res. 1386, 14 U.S. GAOR Supp. 16, at 19, U.S. Doc. A/4249 (1959).

49. Maternal and Child Health Service, USDHEW, Promoting the Health of Mothers and Children, Fiscal Year 1972, Federal Stock No. 1730-00029 (Washington, D.C., U.S. Government Printing Office, 1972); Hochheister et al., "Effect of a Neighborhood Health Center on the Use of the Pediatric Emergency Departments in Rochester, N.Y." NEW ENGLAND J. OF MEDICINE, Vol. 285 (July 1971); Hollister et al., Neighborhood Health Centers (Lexington, Mass.: Lexington Books, 1974); Mile Square Health Center, "Mile Square Health Center, Inc., 1973: Year of Transition" (Chicago, 1974).
50. Children's Defense Fund, Doctors and Dollars Are Not Enough, p. 13 (Washington, D.C., April 1976).
51. Worsford, "A Philosophical Justification for Children's Rights," 44 HARV. ED. REV. 142.
52. Id.
53. Massachusetts General Law, Chapter 766 (1972). (Massachusetts' comprehensive right-to-education law for special needs students.)
54. WASH. REV. CODE ANN. Section 13.04.010(2) (1962).
55. Mnookin, R., "Child Custody Adjudication: Judicial Functions in the Face of Indeterminacy," 39 LAW AND CONTEMPORARY PROBLEMS, No. 3, 226; see also, Rawls, J., A Theory of Justice, 237 (1971).
56. It has been suggested that no process for intervention could be fairer than one based on standards broad enough to permit judicial response to be tailored to each case. However, one commentator has pointed out that under an indeterminate standard--such as the "best interests" standard--the same case presented to different judges could be decided differently. (See Mnookin, supra. note 55, at 263.) And that under such a standard there is substantial risk that decisions will be made on the basis of unarticulated predictions or preferences not shared widely in our society, even among judges.
57. I suggest a definition of serious and narrowly defined emotional harm include that it be harm generally irreversible without therapeutic intervention and so substantial that it impairs a child's ability to complete daily activities common to children of his age, maturity, and economic and social background.
58. For similar suggestions, see Wald, supra. note 8, and Mnookin, supra. note 2.
59. Mnookin, supra. note 55 at 279.
60. Fanshel and Shinn, Dollars and Sense in the Foster Care of Children: A Look at Cost Factors (1972).

61. Sniadach v. Family Finance Corp, 395 U.S. 377; Fuentes v. Shevin, 407 U.S. 83; Bell v. Burson, 402 U.S. 533. These are cases dealing with deprivations that might last only a few days.
62. See Bell v. Burson, supra. note 61, at 326; Fuentes v. Shevin, supra. note 61, at 85.
63. See Fuentes v. Shevin, supra. note 61 at page 73, n. 6.
64. Tinker v. Des Moines Indep. Community School District, 393 U.S. 503, at 505-507.
65. In re Winship, 397 U.S. 358 (1970); In re Gault, 387 U.S. 1 (1967).
66. McKiever v. Pennsylvania, 403 U.S. 528 (1971).
67. Foster and Freed, "A Bill of Rights for Children," 6 FAM. L. Q. 343 (1972).
68. Gideon v. Wainwright, 372 U.S. 335 (1963), citing Powell v. Alabama, 287 U.S. 45, 68-69 (1932).
69. Childhood is a relatively helpless state, and it has been fashionable lately to perceive it as a cultural artifact (see J. Holt, Escape From Childhood, 1974). But any broad assertion that age is irrelevant inevitably collides with biological and economic realities.
70. Avery v. Alabama, 308 U.S. 444, 84 L.Ed. 377.
71. Wade v. Mayo, 344 U.S. 672, 92 L.Ed. 1647; Hawk v. Olson, 326 U.S. 271, 90 L.Ed. 61; Escobedo v. Illinois, 378 U.S. 478, 12 L.Ed. 2nd 977.
72. This is so on the basis of the problems associated with foster care, if nothing else. See infra. note 2 and accompanying text.
73. Meyer v. Nebraska, 262 U.S. 390, 399 (1923).
74. Comment, "Indigent Persons in Juvenile Proceedings: The Right to Appointed Counsel," 1969 LAW AND THE SOCIAL ORDER 467, 474 (1969).
75. Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).
76. Meyer v. Nebraska, supra. note 73.
77. Powell v. Alabama, 287 U.S. 45, 68-69 (1932).
78. 1 HOFSTRA L. REV. 324, 329-30 (1973) citing Stanley v. Illinois, 405 U.S. 645 (1972); Boddie v. Connecticut, 401 U.S. 371 (1971).
79. See Danforth v. State Dept. of Health and Welfare, 303 A.2d 794 (Me. 1973); In re Friesz, 190 Neb. 347, 208 N.W.2d 259 (1973); In re Ella B., 30 N.Y.2d 352, 285 N.E.2d 288, 334 N.Y.S.2d 133 (1972); State v. Jamison, 251 Ore. 114, 444 P.2d 15 (1968); In re R.I., 455 Pa. 29, 312 A.2d 601 (1973); In re Welfare of Luseier, 84 Wash. 2d 135, 524 P.2d 906 (1974).
80. See "Indigent Parents In Juvenile Proceedings: The Right to Appointed Counsel," supra. note 74.

81. Powell v. Alabama, supra. note 77; Escobedo v. Illinois, 378 U.S. 478.
82. Act III, section 3.
83. Blackstone, William, Commentaries Upon the Law of England, Vol. 3, p. 141-142. See also, Levy, The Law of the Commonwealth and Chief Justice Shaw (New York: Macmillan).
84. Peterfreund and McLaughlin, Civil Procedure (New York: West Publishing Co.).
85. Ibid.
86. Pointer v. Texas, 380 U.S. 400, 13 L.Ed. 2nd 923.
87. Smith v. Hill, 232 Mass. 188, 122 N.E. 310, aff'd: 260 U.S. 592, 67 L.Ed. 419, 43 S.Ct. 219. Of course, the party who must sustain the burden of proof in a particular case must produce competent evidence in support, evidence that conforms to the general principles governing evidentiary admissibility, relevancy, materiality and competency.
88. Holt v. U.S., 218 U.S. 245, 54 L.Ed. 1021.
89. Ibid.
90. See U.S. v. Fleischmann, 339 U.S. 349, 94 L.Ed. 906; Yee Hem v. U.S., 268 U.S. 178, 69 L.Ed. 904; Michaelson v. U.S., 266 U.S. 42, 69 L.Ed. 162; Schaefer v. U.S., 251 U.S. 466, 64 L.Ed. 360.
91. State v. Reilly, 85 Kan. 175, 116 P. 481.
92. Griffin v. Illinois, 351 U.S. 12, 100 L.Ed. 891. Under 28 U.S.C. sections 1291 and 1294, appeal from a conviction of crime in federal court is now also a matter of right. Hardy v. U.S., 375 U.S. 277, 11 L.Ed.2nd 331.
93. Ibid.; see also: Allen, "Griffin v. Illinois: Antecedents and Aftermath," 25 U. CHI. L. REV. 151.
94. Griffin v. Illinois, 351 U.S. 12.
95. Ibid.
96. Michigan Trust Co. v. Ferry, 288 U.S. 346, 33 S.Ct. 550.
97. Clark, Law of Domestic Relations (Minn.: West Publishing Co.).
98. Re Howard's Estate, 133 Cal. App.2nd 535, 284 P.2nd 966. A trial court is usually allowed liberal discretion in removing or refusing to remove a custodian and an appellate court will not interfere with such discretion unless it clearly appears that it has been abused. Ward v. Booth, 197 F.2nd 963; Brown v. Brown, 142 S.W. 23.
99. For example, see Mnookin, "Foster Care--In Whose Best Interest?" 43 HARV. L. REV. No. 4, p. 630, Nov. 1973.
100. See Note, "Use of Extra-Record Information in Custody Cases," 24 U. CHI. L. REV. 349 (1957), for discussion of an early case law regarding this problem.

101. For example, in Kesseler v. Kesseler, 10 NY2d 445, 225 NYS2d 1, 180 NE2d 402 (1962) the court ordered evaluations by both a psychiatrist and a psychologist, although the parties had already consented to an investigation by a social worker. A related question involves use of a confidential interview with the child in the judge's chambers. Note "Use of Extra-Record Information," supra. note 100, at 352. Although such an interview may allow the judge to garner additional information, it does not allow the parties involved an opportunity to be apprised of the facts in the case.

102. The Freedom of Information Act, 5 U.S.C. Section 552 (1966 as amended through 1974); Privacy Act of 1974, 5 U.S.C. Section 522a (1974); Fair Credit Reporting Act of 1970, 15 U.S.C. Section 1681 ob. seq. (1970); Professional Standards Review Act of 1972, 42 U.S.C. Section 1320c (1972); Social Security Act, 42 U.S.C. Section 1306(a) (1935 as amended through 1975); Juvenile Justice Delinquency Prevention Act of 1974, 42 U.S.C. Section 5601 ob. seq. (1974); Alcoholic Treatment Act, 42 U.S.C. Section 4581 ob. seq. (1974); Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g (as amended through December 31, 1974).

103. California Bankers Association v. Shultz, 416 U.S. 29, 94 S.Ct. 1494, 1510 (1974).

104. Menard v. Mitchell, 328 F. Supp. 718, 722 (D.C., 1971); Menard v. Saxbe, 498 F.2d 1017 (D.C., 1974); Tarlton v. Saxe, 507 F.2d 1116, 1122 (D.C., 1974); Sullivan v. Murphy, 478 F.2d 938 (D.C., 1973); Ackerley v. Credit Bureau of Sheridan, Inc., 385 F. Supp. 658 (D. Wyo., 1974).

105. Menard v. Mitchell, supra. note 104; Roe v. Ingraham, 480 F.2d 102, 108 (2nd Cir., 1973); Doe v. McMillan, 412 U.S. 306 (1973); Merriken v. Cressman, 364 F. Supp. 913 (E.D. Penn., 1973).

106. Menard v. Mitchell, supra. note 104; Rose v. Department of the Air Force, 495 F.2d 261 (2nd Cir., 1974).

107. Note "Use of Extra-Record Information," supra. at note 100.

108. Matter of Carla L., 45 A.D.2d 375, 357 N.Y.S.2d 987 (1974).

109. Id.

110. Id.

111. Id. and In re M.B., 535 P.2d 192 (Cobrado, 1975).

112. In re Harshey, 40 Ohio App. 2d 157, 318 NE2d 544 (1974), affirmed on other grounds at 45 Ohio App. 2d 97, 341 NE2d 616 (1974).

113. Id.

114. At this writing only five states permit adopted persons access to information about their biological parents. See: ALA. CODE tit. 27, Section 4 (Supp. 1973); CONN. GEN. STAT. ANN. Section 7-53 (1972); KAN. STAT. ANN. Section 65-2423 (1972); S. C. COMP. LAWS ANN. Section 25-6-15 (1967); VA. CODE Section 63.1-236 (1973). However, these states do not allow the public or the natural parent access to these records. Four of these states do grant the adoptive parent access. See, ALA. CODE tit. 27, Section 4 (Supp. 1973); CONN. GEN. STAT. ANN. Section 7-53 (1972); S. C. COMP. LAWS ANN. Section 25-6-15 (1967); VA. CODE Section 63.1-236 (19730.

115. Goss v. Lopez, 419 U.S. 565 (1975).

116. Fite v. Retail Credit Company, 386 F. Supp. 1045, 1047 (D. Mont., 1975).

END