False Allegations ~ False Accusations ~ Recovered Memories

sexual abuse ~ sexual assault ~ child molestation ~ rape of child
sexual offender profiles ~ pedophiles ~ supervised visitation ~ custody
fathers' rights ~ grandparents' rights ~ men's rights
stranger rape ~ student rape ~ spousal rape
sexual harassment ~ executive separation agreements

Federal Class Action Against Utah: Termination of Parental Rights

X. PRAYER FOR RELIEF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Case No. 2-99-CV-146
Judge Dee V. Benson

JETAIME, ERICK, JESSICA, and CHRISTOPHER RODRIGUEZ, their parents, DAVID and TERESA RODRIGUEZ, and their grandparents, OSCAR P. and DALIA RODRIGUEZ; JOHN and SUSAN ALLISON and their children, JOHN ALLISON, JR., JASON, JACOB, JOSHUA, JARED and JASMINE ALLISON; SHAMALA BANASH, BRENT JAY GRIFFIS, and their children, CHINELL, JUSTINE, JENTRI, and BRANDON GRIFFIS; RICHARD FOSTER and his daughter, GINA FOSTER; JAMES LOUGH; on their own behalf and on of families, parents, children, and citizens of the State of Utah similarly situated,
Plaintiffs,
vs.

JAN GRAHAM, both individually and as the Attorney General of the State of Utah; STEVEN HARDING, former principal of Edison Elementary School; PERRI ANN BABALIS, LISA OPLIN, and other as yet unknown John Doe assistant attorneys general representing the Division of Child and Family

Services; ROBIN ARNOLD-WILLIAMS, Executive Director of the Utah Department of Human Services; KEN PATTERSON, Director of the Utah Divison of Child and Family Services; LEE ROBINSON, KELLY KENDALL, STEPHANIE McNEIL, MERILEE BOWCUTT, and other as yet unknown John Doe caseworkers employed Services; STERLING M. SAINSBURY, CHARLES BEHRENS, and other as yet unknown John Doe Judges of the Utah Juvenile Courts; THE UTAH BOARD OF JUVENILE COURT JUDGES; KRISTIN BREWER, Utah Guardian ad Litem Director; KRISTIN FADEL, RON WILKINSON, and other as yet unknown John Doe Guardians ad Litem; RICHARD C. HOWE, Chief Justice of the Utah Supreme Court; I. DANIEL STEWART, CHRISTINE DURHAM, MICHAEL ZIMMERMAN, LEONARD H. RUSSON, Justices of the Utah Supreme Court; MICHAEL J. WILKINS, Presiding Judge of the Utah Court of Appeals; JAMES Z. DAVIS, RUSSELL W. BENCH, JUDITH M. BILLINGS, PAMELA T. GREENWOOD, NORMAN H. JACKSON, GREGORY K. ORME, Judges of the Utah Court of Appeals,

Defendants

PROPOSED CLASS ACTION COMPLAINT

I

INTRODUCTORY STATEMENT

1. This civil rights class action is brought on behalf of all Utah families, parents, children, and citizens who are, have been, or will be victims of the practices of the Utah Department of Human Services (DHS), the Utah Division of Child and Family Services (DCFS), the Utah Juvenile Court System, and the Utah Appellate Court System to the extent it reviews (or declines to review) the activities of the Utah Juvenile Court System.

2. Defendants are obligated under the Utah Constitution and the United States Constitution to insure that no families, parents, children, or citizens residing in the State of Utah are deprived of their life, liberty or property without due process of law. The Supreme Court of the United States has repeatedly and clearly held that parents have a liberty interest in raising their own children, that the right to raise one's own children without undue government interference is a fundamental right, and that any attempt to interfere with this right is subject to strict judicial scrutiny.

3. It is self-evident that parents can love their own children as no one else can, and that, absent truly egregious circumstances, they are the best qualified to raise their own children. The right to raise one's own child is a fundamental right, and if this fundamental right is to be denied upon a showing of unfitness or incompetence, the burden must be upon the State to prove this, allowing the accused parent due process protection at least as great as that offered in a criminal trial. If the State alleges that too many innocent children are suffering thereby, the burden is upon the State to improve its preparation for trial, not upon society to sacrifice its constitutional protections.

4. Notwithstanding these self-evident truths, the Defendants have engaged in a systematic process by which the families, parents, children and citizens of the State of Utah have been terrorized, traumatized, and torn asunder, as well as deprived of their fundamental rights without due process of law.

5. The motivation behind this system of State oppression is federal funding. The State of Utah receives over one-fourth of its annual budget from the federal government. In the fiscal year ending in 1998, the State of Utah received nearly $1.4 Billion from the federal government, of which the lion's share, $907 Million, went to "Human Services". This is four and half times as much as was provided for education, and six times what was provided for transportation.

6. To receive federal money, the State must comply with federal laws establishing unprecedented control over every aspect of family life. The right to pass laws pertaining to child welfare was never delegated to Congress by the founding fathers. It is reserved to the States under the Tenth Amendment. Nevertheless, presuming to act under its spending powers, Congress buys from the States those powers it could never exercise directly.

7. Utah's child welfare laws, as written, and as applied by the defendants, have been enacted specifically for the purpose of qualifying for federal funding. In accordance with the federal statutes, funding is increased in proportion to the number of children who can be brought within the juvenile court, foster care, and compulsory adoption system. The laws explicitly call this "freeing children" from their parents for adoption.

8. The motivation to qualify for such enormous amounts of money, under the guise of "protecting the best interest of the child," directly contradicts the defendants' obligation to protect the integrity, privacy, and constitutional rights of the families, parents, children and citizens of the State of Utah. It is apparent from the actions of the defendants that the profit motive has prevailed.

9. The child welfare laws of the State of Utah, as written in accordance with federal legislation, and as zealously applied by the defendants, deny all but a thin facade of due process. Among the most blatant examples:

a. Once children are removed from a home, parental rights are automatically terminated in twelve months unless parents either expend all of their financial and emotional resources in a legal "battle to the death," or waive all their due process rights and their human dignity as well. The State is never required to actually prove that parents are unfit, and in practice rarely even has such proof to offer.

b. Under current federal and state law, parents are not permitted to know who has reported them to the State for alleged violations of child welfare laws. Once parents are so accused, they are presumed guilty, and the burden is placed upon them to prove their innocence.

c. The juvenile courts of Utah are closed to the public. Since they are a secret chamber, due process can be abused with impunity. The justification given for this secrecy is to "protect the best interests of the child." In practice, however, the only parties actually protected are the defendants. Indeed, secrecy is the hallmark of the child welfare system.

10. The named plaintiffs in this class action are families -- parents and children together -- as well as other citizens who have suffered and are suffering egregious abuse at the hands of Utah's child welfare system. In all of these cases, families have been severely traumatized if not destroyed, while parents and others have been threatened with termination of their parental rights, denied due process, and subjected to arbitrary, capricious, and malicious actions by DCFS personnel.

11. The Rodriguez family, the first named plaintiffs, came to Utah in August, 1990. Throughout the 1992-93 school year, Jetaime, who was then in second grade, was molested by the principal of her elementary school, Steven Harding. The Rodriguez's did not learn about this molestation until some time later, but upon seeing that their two oldest children were not progressing in public school, they began home schooling. In 1996, Mrs. Rodriguez learned that the molestation had occurred. When she reported the abuse to the proper authorities, however, DCFS promptly attempted to take away the four Rodriguez children, alleging that they were "educationally neglected." To date, no action whatsoever has been taken against Harding. The Rodriguez's were coerced into pleading guilty to charges of which they were innocent, but were allowed to keep their own children and to temporarily leave the State of Utah to find a new home. Although they moved into a new home in Arizona, close to their relatives, the Juvenile Court ordered the children returned to Utah. In March, 1998, police in Bullhead City, Arizona, surrounded the Rodriguez home, arrested the Rodriguez children, and placed them in foster care in Salt Lake County. Even though relatives in Arizona were more than willing to take the children into their care, Utah law prevented them from even being considered. While in foster care, the Rodriguez children have endured all kinds of neglect and abuse, none of which they ever suffered prior to being taken from their parents. The children have also been forced to

receive psychotropic medications, contrary to every belief of their parents. Jetaime has been raped while in foster care, and Christopher, who is 8, has been beaten by DCFS caseworkers. At no time has the State ever alleged that the Rodriguez's have in any way abused, physically neglected, or endangered their children. Nevertheless, in March, 1999, apparently at the personal direction of Defendant Jan Graham, the State of Utah will attempt to terminate the Rodriguez's parental rights and put the Rodriguez children up for adoption. Ironically, the defendants allege that it is the Rodriguez's who were seeking federal funding.

12. The Allison family, the second named plaintiffs, came under DCFS surveillance when they sought help to remove an abusive relative from their home. The relative was removed, but the DCFS caseworker then launched a reign of terror and entrapment, threatening for four months to take the children away and place them for adoption if the Allison's did not clean their home. On Friday the 13th of December, 1996, he carried out this threat, justifying his actions on the basis of conditions that he himself had helped to create. Providentially, the children were soon returned. However, notwithstanding ample evidence of the caseworker's misconduct, the juvenile court lauded his behavior and authorized him to carry out further inspections. The caseworker then began working in concert with the abusive relative, who was communicating death threats to the Allison's. Seeing that the court would give them no relief, the Allison's returned to their native Oregon. The Utah juvenile court then issued warrants for the arrest of the Allison children in Oregon. Although states rarely question one another's child custody orders, the Oregon courts found the case so questionable that the State of Oregon assumed temporary custody. When the Utah court realized that the matter had been publicized in Oregon, it promptly surrendered jurisdiction. Oregon subsequently dismissed the matter, finding not only that the children were not neglected, they were in fact exceptionally bright and well-behaved.

13. The Griffis-Banash family, the third family named as plaintiffs, reside in Duchesne County, Utah. Shamala Banash and Brent Griffis admittedly had a substance abuse problem, and voluntarily placed their children with relatives while they got their lives in order. This was done as a family matter, without any State involvement. Ms. Banash's aunt, however, asked DCFS to intervene, which it gladly did. Notwithstanding her voluntary effort, Ms. Banash was now ordered to change her life within 12 months or lose her children. Ms. Banash did so, but her and Mr. Griffis' parental rights are to be terminated in March, 1999, anyway. At no time have Ms. Banash or Mr. Griffis actually been alleged to be unfit parents. Since the Griffis' children are all placed with Ms. Banash's relatives, Ms. Banash is forbidden to attend extended family functions because she might have contact with her own children in violation of the court's order.

14. Plaintiffs Richard and Gina Foster are father and daughter. When Mr. Foster's brother made sexual advances on Gina, Mr. Foster did everything reasonably within his power to protect her. The brother is being criminally charged in the district court, and nobody has alleged that Mr. Foster has in any way abused, neglected, or endangered Gina. Nevertheless, Mr. Foster is only allowed to have supervised visitation with his daughter, and will automatically have his parental rights terminated in 12 months unless he complies with court orders entirely unrelated to the circumstances of the case. Although several relatives out of state are ready, willing, able, and imminently qualified to have Gina stay in their home, the State refuses to let her leave Utah.

15. Plaintiff James Lough stands accused of child abuse with no means to establish his innocence. Though never charged as

a criminal, a finding of child abuse has allegedly been "substantiated" against him, and entered on the various databases restricting future employment opportunities. The matter was filed with the juvenile court and a trial date set, but Mr. Lough was never notified that a complaint had been filed, never notified of the trial date, and never provided with any evidence in order to prepare for trial. When Mr. Lough requested this information, he was informed that he had no standing to request it, because he was not named as a party in the action.

16. The Utah child welfare system operates in blatant violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, and the named defendants and their agents have acted in concert in depriving the families, parents, children and citizens of Utah of their rights under color of law.

17. Plaintiffs, on behalf of themselves and on behalf of the class, seek declaratory and injunctive relief to enforce their rights under the United States Constitution.

II
JURISDICTION

18. This is an action pursuant to 42 U.S.C. §§1983 and 1985(3) and for injunctive and declaratory relief pursuant to 28 U.S. C. §§2201 and 2202, to redress the deprivation under color of state law of rights, privileges, and immunities guaranteed by the United States Constitution. Jurisdiction is thus conferred by 28 U.S.C. §1343(a). Jurisdiction is also conferred by 28 U.S. C. §1331, as this is an action arising under the Constitution and laws of the United States.

III
CLASS ACTION

19. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a), (b)(1), and (b)(2). The Rodriguez Family plaintiffs bring this related action against Defendant Steven Harding in accordance with Fed. R. Civ. P. 23(c)(4).

20. The Plaintiff class includes all parents and other persons against whom a claim of child abuse or neglect has or will be alleged by, or through the instrumentality of, the defendants, all parents who have or will have their parental rights terminated pursuant to State law, and all families who have been or will be brought within the jurisdiction of the Utah juvenile court system or against whom a claim may be brought in a Utah district court pursuant to Utah's child welfare laws. This includes but is not limited to all children who are now, or who will be in the custody of DHS in a shelter care facility, foster family home, group home, or institutional care, as well as all children who are or will be reported to defendants as the alleged victims of abuse or neglect. It also includes the natural-born parents of all such children.

21. The class is so numerous that joinder of all members is impracticable. As more and more activities are classified as

offenses and as DHS, DCFS, the attorney general and the guardians ad litem assume broader and broader discretionary powers, no family in Utah is protected from abuse under the child welfare system.

22. There are questions of law and fact common to the class, all of which bear upon whether the defendants' actions and inactions violate: (a) the plaintiffs' liberty interest in the legal and emotional integrity of their families; (b) the right to privacy; and most importantly, (c) the rights conferred upon the plaintiffs by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. These questions predominate over any question affecting individual members of the class. The defendants have acted on grounds generally applicable to the class, and prosecution of separate actions would create a risk of inconsistent or varying adjudications.

23. The claims of the named plaintiffs are entirely typical of the claims of the class.

24. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are represented by Michael L. Humiston. Counsel has extensive training and experience in matters related to Utah's child welfare laws, the Utah court system, and constitutional rights. Counsel for the Plaintiffs knows of no conflicts among members of the class.

IV

DEMAND FOR JURY TRIAL

25. Pursuant to Fed. R. Civ. P. 38(b), and in accordance with the Seventh Amendment to the United States Constitution, the plaintiffs hereby demand a trial by jury in the above-entitled matter.

V

PARTIES

Plaintiffs

26. Plaintiffs Erick, Jetaime, Jessica, and Christopher Rodriguez are siblings who were forcibly removed from their home in Bullhead City, Arizona, on March 7, 1998, and have been in various foster homes in Salt Lake County ever since. Erick is now 16, Jetaime is 14, Jessica is 10, and Christopher is 8, almost 9. The Rodriguez children appear in this action by their parents and next friends, David and Teresa Rodriguez.

27. Plaintiffs David and Teresa Rodriguez are the natural birth parents of Erick, Jetaime, Jessica, and Christopher. They are Cuban citizens, refugees from Communism, and legal residents of the United States. They currently reside near their relatives in Bullhead City, Arizona.

28. Plaintiffs Oscar P. and Dalia Rodriguez are the parents of Teresa Rodriguez and the grandparents of Erick, Jetaime, Jessica, and Christopher Rodriguez. Like David and Teresa Rodriguez, they are refugees from Communism. They reside in Bullhead City, Arizona.

29. Plaintiffs John and Susan Allison are the natural birth parents of John Jr., Jason, Jacob, Joshua, Jared, and Jasmine Allison. As a result of the injuries committed by the Defendants, the Allison's now reside in Sweet Home, Oregon.

30. Plaintiff John Allison, Jr., is the oldest son of John and Susan Allison. He is 18 years old and appears in this action in his own right.

31. Plaintiffs Jason, Jacob, Joshua, Jared, and Jasmine Allison are the children of John and Susan Allison. The boys range in age from 4 to 14. Jasmine is 2. The Allison children appear in this action by their parents and next friends, John and Susan Allison.

32. Plaintiffs Shamala Banash and Brent J. Griffis are the natural parents of Chinell, Justine, Jentri, and Brandon Griffis. Ms. Banash resides in Myton, Utah. Mr. Griffis is currently incarcerated in the Duchesne County Jail.

33. Plaintiffs Chinell, Justine, Jentri, and Brandon Griffis are the children of Shamala Banash and Brent J. Griffis. They are currently residing with various relatives of Shamala Banash and Brent J. Griffis in and around Duchesne County, Utah. Chinell is 6, Justine and Jentri, twins, are 3, and Brandon is 4, almost 5. The Griffis children appear in this action by their parents and next friends, Shamala Banash and Brent J. Griffis.

34. Plaintiff Richard Foster is the natural father of Plaintiff Gina Foster. Mr. Foster and Gina's mother are divorced, and Gina has little if any contact with her mother. Mr. Foster now resides in Grand Junction, Colorado, with his current wife and her three children.

35. Plaintiff Gina Foster is the daughter of Richard Foster. Gina is 13, almost 14, years of age. She is currently residing in a foster (not Foster) home somewhere in Duchesne County.

36. Plaintiff James Lough is a resident of Roosevelt, Utah.

Defendants

37. Defendant Jan Graham is sued both individually, and in her official capacity as the Attorney General of the State of Utah. As Attorney General, she has not only personally seen that the child welfare laws of Utah are zealously enforced, she has actively campaigned for the passage of such laws and adamantly defends those laws, notwithstanding their profound constitutional defects. She has demanded that her assistant attorneys general likewise zealously enforce the child welfare laws, particularly those pertaining to termination of parental rights. She has also promoted efforts to expand the powers of

the guardians ad litem to collect information on families, parents, children, and other citizens in contravention of those persons' rights to privacy and due process. She is sued in her individual capacity to the extent that she has acted contrary to her official duty to uphold and defend the Constitution of the United States.

38. Defendant Steven Harding is the former principal of Edison Elementary School in Salt Lake City. In that position of trust and as an employee of the State of Utah he committed acts of sexual abuse against Jetaime Rodriguez. He is brought into this action in accordance with Fed. R. Civ. P. 23(c)(4).

39. Defendants Perry Ann Babalis and Lisa Olpin are assistant attorneys general of the State of Utah. In this capacity they are representative of the many as yet unnamed assistant attorneys general who have actively engaged in enforcing Utah's child welfare laws.

40. Defendant Robin Arnold-Williams is the Executive Director of the Utah Department of Human Services. As Director of the Department of Human Services, she has responsibility for the administration and supervision of Utah's social services programs, including the child welfare system.

41. Defendant Ken Patterson is the Director of the Utah Division of Child and Family Services. As Director of the Division of Child and Family Services, he has responsibility for the actual implementation of Utah's child welfare system by the division's numerous caseworkers. (He also has actual, rather than constructive, knowledge of the facts and circumstances surrounding the Rodriguez family.)

42. Defendants Lee Robinson, Kelly Kendall, Stephanie McNeil, and Merilee Bowcutt are caseworkers with the Division of Child and Family Servies. As such, they are representative of the many as yet unnamed DCFS caseworkers who daily exercise authority over the families, parents, children and other citizens falling within their control.

43. Defendants Sterling M. Sainsbury and Charles Behrens are judges of the Utah Juvenile Court system. As such they are representative of the many as yet unnamed juvenile court judges who routinely permit, encourage, and sanction the abuses committed within the Utah child welfare system.

44. Defendant Utah Board of Juvenile Court Judges is a body of juvenile court judges created under §78-3a-201, Utah Code (1953, as amended) for the purpose of administering federal funds received by the Utah Juvenile Court system.

45. Defendant Kristin Brewer is the Utah Office of Guardian ad Litem Director, as set forth under §78-3a-911, Utah Code (1953, as amended). She is appointed by and answerable to the Judicial Council of the State of Utah, and is responsible for the administration and supervision of the guardian ad litem program throughout the State of Utah.

46. Defendants Kristin Fadel and Ron Wilkinson are Guardians ad Litem employed by the State of Utah. As such they are representative of the many as yet unnamed guardians ad litem who have been specifically trained to represent children

against their own parents, in accordance with federal training guidelines.

47. Defendants Richard C. Howe, I. Daniel Stewart, Christine Durham, Michael Zimmerman, and Leonard H. Russon are the justices of the Utah Supreme Court. As the Supreme Court of Utah, they have a duty to uphold and defend the Constitution of the United States and the Constitution of Utah, and to protect the rights of the people of Utah under those Constitutions.

48. Defendants Michael J. Wilkins, James Z. Davis, Russell W. Bench, Judith M. Billings, Pamela T. Greenwood, Norman H. Jackson, and Gregory K. Orme are the judges of the Utah Court of Appeals. As the Utah Court of Appeals, they have exclusive jurisdiction over all appeals arising out of the Utah juvenile court system. They also have a duty to uphold and defend the Constitution of the United States and the Constitution of Utah, and to protect the rights of the people of Utah under those Constitutions.

VI
CONSTITUTIONAL STANDARDS OF DUE PROCESS

49. The Fifth Amendment to the United States Constitution states: "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

50. The Fourteenth Amendment to the United States Constitution, Section 1, states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

51. The Fifth Amendment obligates the federal government to provide due process to the citizens of the United States, and the Fourteenth Amendment, both by its own terms and by incorporating the rights set forth in the Bill of Rights, makes that obligation binding upon the states, including the State of Utah.

52. The elements of due process are well established in criminal law, inasmuch as the rights of the people are most at risk in criminal proceedings. Many of these elements are derived directly from the Bill of Rights. These include:

a. The right to be free from unreasonable searches and seizures (Fourth Amendment);

b. The right against self-incrimination (Better known as the right to remain silent, or "pleading the Fifth") (Fifth Amendment);

c. The right not to be tried twice for the same crime (Double Jeopardy) (Fifth Amendment);

d. The right to notice of the accusations against oneself (Sixth Amendment;

e. The right to a PUBLIC trial (Sixth Amendment);

f. The right to confront the witnesses against oneself (Sixth Amendment);

g. The right to be assisted by counsel (Sixth Amendment);

h. The right to an impartial jury, both criminal (Sixth Amendment) and civil (Seventh Amendment); and

i. The right against cruel and unusual punishment (Eighth Amendment).

53. The relationship between the state and accused persons is clearly and admittedly adversarial. The ethical obligations of attorneys recognize that adversarial nature. Prosecuting attorneys are obligated to respect the rights of the accused, and defending attorneys are obligated to protect those rights. It is well established that agents of the state, be they attorneys, police, investigators, or any other potential witnesses are not to communicate with an accused party once that person has invoked his or her right to remain silent, and particularly after that person has retained counsel.

54. The grounds for remaining silent are clearly set forth in the famous "Miranda Warning:" "If you choose not to remain silent, anything you say CAN and WILL be used against you in a court of law."

55. The law also recognizes that some relationships are the opposite of adversarial, instead constituting relationships of trust. These relationships depend for their very existence and efficacy on the assurance that information so communicated will NEVER be used against either of the parties to the communication. Foremost among these privileges is that between attorney and client. Similar recognition is given to the relationship of priest-penitent, husband-wife (in Utah), doctor-patient, and therapist-patient.

56. Privileged interpersonal communications are an essential aspect of the privilege against self-incrimination. Without the existence of these privileges, marriage, medicine, counseling, and indeed, the legal profession itself would be crippled virtually out of existence. No meaningful communication could be given out of fear that something, anything, one says might be used against him or her in a court of law. One cannot simultaneously hold a position of trust and privilege with an accused and at the same time be a prosecution witness.

57. The right against self-incrimination, including the protection of privileged communications, is a right personal to all accused persons. In contrast, the state does not possess rights. It possesses only delegated powers. Thus, whereas the protection of privacy must be assumed for individuals as a matter of right, governmental functions must be assumed to be

public as a matter of obligation.

58. A public trial is closely connected with the rights to freedom of speech, freedom of the press, and the right to peaceably redress set forth in the First Amendment, inasmuch as public scrutiny and discourse is essential to maintaining the fairness and integrity of all institutions of government, including the judiciary. An organ of government that is closed to public scrutiny is an organ of government guaranteed to abuse its power. A court so operating is known as a "Star Chamber."

59. Unfortunately, there are clearly times in which the power of the state must be used to save children from truly dangerous circumstances. Some parents do molest, starve, or even kill their own children. However, because the stakes are so very high, and the consequences of a false accusation are so very tragic, it is essential that any person so accused be afforded every possible protection of due process. Our society provides no less to murderers, even convicted murderers.

60. Criminal law is distinguished from civil law in that it consists of those circumstances in which the state endeavors to deprive a person of their life or liberty as a penalty for that person having violated an established code of conduct legislated by the state, whether denominated civil or criminal.

61. In contrast, civil law consists of those circumstances in which one party endeavors to legally obtain from another a property interest (including money), and is generally understood to apply primarily to private, non-governmental parties as between themselves.

62. The right to bear and raise one's own children without government interference is a fundamental right, indeed, one of the most fundamental rights. It has been specifically recognized as a "liberty interest," not a property interest.

63. Before a state can deprive a person of his life or liberty, it must ensure that ALL of those rights of due process established under the Constitution have been protected. This is basic criminal law. Most any human being would gladly surrender both their life and their liberty before they would surrender their children. The right to raise one's own children is at least as fundamental as life or any other liberty interest, and is entitled to at least as great of protection from governmental interference.

64. The power to pass laws regarding child welfare is a power reserved to the States under the Tenth Amendment. The powers delegated to the federal government are set forth in Article I, Section 8, of the United States Constitution. Nowhere in the Constitution is there a provision permitting the Congress to legislate in regard to child welfare.

65. Article I, Section 8, Clause 1, of the Constitution states: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States."

66. Notwithstanding the otherwise clear limitations on powers delegated to Congress, the first clause of Article I, Section 8

has been interpreted to mean that the federal government can provide funding for almost any purpose whatsoever, even outside its delegated authority, inasmuch as almost any subject Congress wishes to address can be designated as "general Welfare".

67. Funds provided by Congress under the "general Welfare" clause are conditioned upon the States passing certain legislation. If they do not pass the legislation, they do not get the funds. Thus, what the federal government cannot accomplish by direct legislation over the States, it can purchase with vast amounts of money.

68. Notwithstanding the vast power assumed by Congress under the heading of "general Welfare," Congress may not demand that the States pass legislation which itself violates the Constitution. Nor may Congress require the States to pass legislation which does not bear a reasonable relation to a legitimate government interest. Nor may Congress pass legislation which seriously compromises the separation and balance of powers between the State and Federal governments.

69. 42 U.S.C. §1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

70. 42 U.S.C. §1985(3) states:

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

VII
STATEMENT OF FACTS FOR NAMED PLAINTIFFS

The Rodriguez's

71. David and Teresa Rodriguez are Cuban nationals, but have lived in the United States since childhood as refugees from

Communism. Their four children, Erick, 16, Jetaime, 14, Jessica, 10, and Christopher, 8, are all native-born U.S. citizens. The Rodriguez's first came to Utah in August, 1990, from Southern California seeking to provide a better life for their four children. They purchased and moved into a home, but the sale turned out to be fraudulent, and they lost all their money.

72. Beginning in 1992, the Rodriguez's began to realize that the public schools were not meeting their children's needs. Their oldest child, Erick, was terrified of his teacher, and their daughter, Jetaime, who was then in second grade, began to exhibit unusual changes in behavior. Mrs. Rodriguez reported these changes to the school psychologist, but no action was taken. She also requested help for the children's special developmental needs, but was likewise ignored. Finding that the public schools were not meeting their children's needs, the Rodriguez's began to home school their children. They did so from 1993 until early 1998.

73. In the summer of 1995, Mrs. Rodriguez again attempted to get help for her children's special needs, this time for Christopher, who was diagnosed as autistic. In 1996, Mrs. Rodriguez learned that the reason Jetaime's behavior had changed so abruptly during the second grade was that Jetaime had been molested almost daily by Steven Harding, the principal of Edison Elementary School in Salt Lake City. Upon realizing this, Mrs. Rodriguez promptly reported the molestation over the telephone to a police dispatcher. Hearing that Mr. Harding was the abuser, the dispatcher said, "Are you sure you want to do this?"

74. Mr. Harding was apparently a person of some standing in the community, and officials refused to investigate. Ironically, in a most profound case of "the pot calling the kettle black," DCFS accused the Rodriguez's of deliberately neglecting their children in order to qualify for federal subsidies. Shortly before Christmas, 1996, at the direction of DCFS caseworker Stephanie McNeil, police surrounded the Rodriguez's apartment in Salt Lake City and forcibly removed the children from the Rodriguez home. The children were not in any immediate danger requiring such removal, and none was ever proved or even seriously alleged.

75. Three days after the children were removed, a sympathetic judge ordered the children returned home immediately. McNeil, the DCFS caseworker, attempted to get another judge to overrule Judge Christean's order, but was unsuccessful.

76. Soon thereafter the State of Utah filed a petition charging the Rodriguez's with educational and medical neglect. The alleged educational neglect was that the children were not functioning at the grade level appropriate to their age. This was notwithstanding the fact that the children had made more progress in home school than they had ever made in public school. The alleged medical neglect consisted of the Rodriguez's refusal to participate in therapy recommended by the caseworker but which Mrs. Rodriguez knew was not appropriate to the children's needs.

77. The Rodriguez's were tried in April, 1997. They were appointed a public defender, and had ample evidence and witnesses available for their defense on both counts. However, their defense counsel at the time refused to call any of the witnesses and stated that the case had nothing to do with home schooling. Their attorney then joined with the assistant attorney general, the guardian ad litem, and the DCFS caseworker in insisting that if the Rodriguez's did not admit to the charges that day, they would never see their children again.

78. Under extraordinary duress, the Rodriguez's admitted to the charges of educational and medical neglect without requiring the State to present any evidence, and without calling a single defense witness. The court graciously allowed them to keep their own children in their own home.

79. In July, 1997, after considerable effort, the court granted the Rodriguez's "permission to travel" outside the State of Utah for 30 days in order to establish a home in another state. They did so in Bullhead City, Arizona, where Mrs. Rodriguez' parents and sisters reside. In contrast, the Rodriguez's have no relatives or other connections with the State of Utah. Soon after this, Judge Christean retired from the bench.

80. In October, 1997, Judge Charles Behrens determined that the Rodriguez's had violated the terms of their 30-day "permission to travel" and ordered the Rodriguez children arrested. On February 12, 1998, the Rodriguez's presented evidence to the court that the children were enrolled in school in Bullhead City, but the court refused to recall the warrant, stating that the services provided in Arizona were not comparable to those offered in Utah.

81. At 2:00 A.M. on the morning of Saturday, March 7, 1998, Arizona police surrounded the Rodriguez home and took all four children into custody. Mrs. Rodriguez and her parents attempted to see the children while they were being held in Arizona and to provide them with clothing, but were refused all access.

82. Oscar and Dalia Rodriguez, Mrs. Rodriguez's parents and residents of Bullhead City, Arizona, have at all times been ready, willing, and able to have the Rodriguez children live in their home. However, it has been apparent from the disposition of the State from the outset that this would never be considered seriously. Utah law provides that children placed in foster care be placed with relatives if at all possible. However, Utah law also demands that the relatives apply within 30 days of the commencement of the case. Oscar and Dalia did not apply within the 30 days because for the first year of the case the children were with their own parents, and placement was not an issue. In addition, out-of-state placements are generally performed through the Interstate Compact for the Placement of Children (ICPC). Since commencement of the Rodriguez matter, the court has twice ordered an ICPC study for David and Teresa Rodriguez themselves. Neither the Utah nor the Arizona ICPC administrators have taken any action whatsoever.

83. Since the children have been taken into custody, Mr. and Mrs. Rodriguez have only been allowed strictly supervised visitation two hours per week. To do so, they must come from Arizona at great expense. Mr. and Mrs. Rodriguez have been ordered to comply with a massive "treatment plan", which mandates numerous "services" bearing no relation to the original charges. This treatment includes:

a. Anger Management Counseling when no angry or abusive conduct was ever alleged.

b. Random inspections of their home when no claims of unsanitary or dangerous conditions were ever alleged.

c. Regular family therapy when no evidence of psychological or family disorder was ever presented. (Therapy is ordered in virtually all DCFS cases, regardless of need. All observations of the therapist are then reportable to the juvenile court.)

d. Full time employment in Arizona. At the same time, they must maintain regular visitation with their children, which DCFS will only permit on weekdays.

84. Most DCFS "treatment plans" consist of three to five pages. Because the Rodriguez's had actively and publicly resisted the efforts of DCFS, the State submitted a punitive treatment plan 17 pages long.

85. Under the Rodriguez's "treatment plan," they are ordered to provide information, including confidential information, to DCFS caseworkers and therapists. These persons are adverse parties in juvenile court, and all information provided to them has consistently been used against the Rodriguez's.

86. In May of 1998 the Rodriguez's appeared before the "Foster Care Citizen Review Board." At the commencement of the meeting they were asked to sign an "Oath of Confidentiality." They refused to do so, as it would have constituted a waiver of their right to a public trial, and of free speech. The review board declared that it was not a judicial forum. Nevertheless, all of the questions asked by the board were evidentiary in nature. The board had access to all parties and records involved in the Rodriguez case, including parties and records that Mr. and Mrs. Rodriguez could not see, such as their own children. All of the review board's findings are accessible to the court, ex parte, and without regard to any of the rules of evidence.

87. In June of 1998 the State alleged that Jetaime had attempted suicide. The State called an emergency hearing for the purpose of ordering that she be put on medication. Counsel for Mr. and Mrs. Rodriguez was given approximately 5 hours notice of the hearing. Notwithstanding the short notice, counsel was able to arrange for Dr. Peter Breggin, MD, a national expert on the medication of children, to testify on the issue of coerced medication. Judge Behrens refused to allow presentation of the evidence. Indeed, the court refused to accept any medical evidence at all, but instead authorized medication of Jetaime as a per se determination.

88. Since the children have been in State custody, and at no time previously, Jetaime is alleged to have attempted suicide at least three times. She can clearly recollect and describe the abuse suffered at the hands of principal Harding, but the State refuses to acknowledge these reports. While in State custody Jetaime has also been raped and taken up smoking.

89. Merilee Bowcutt, the DCFS caseworker attending to the Rodriguez children since March, 1998, has attempted to obtain information directly from Mr. and Mrs. Rodriguez, even though they are represented by counsel. She has also attempted to influence psychologists preparing reports on Mr. and Mrs. Rodriguez, and has regularly told Jetaime that her parents have a bad attorney. Ms. Bowcutt has failed to take any action regarding either Mr. Harding's molestation of Jetaime, nor regarding any abuse occurring while Jetaime has been in foster care.

90. The Rodriguez's youngest child, Christopher, is autistic. Prior to being held by the State, he had made substantial progress under his parents' loving care. Upon being placed in foster care, however, he began wetting himself, and began to rapidly regress in his behavior. To control his behavior, Ms. Bowcutt has, upon information and belief, used such sophisticated techniques as sitting on him, causing him substantial injuries. For undisclosed reasons, the Rodriguez's have been permitted no contact with either Jessica or Christopher since early January, 1999.

91. At no time has it ever been alleged that the Rodriguez's are unfit parents, and at no time has it ever been alleged that they have abused or physically neglected their children in any way. No drug use. No sexual abuse. The Rodriguez's have never allowed tobacco or alcohol in their home.

92. Notwithstanding the lack of any evidence of unfitness, and notwithstanding the known misconduct of the State, on March 8, 1999, the defendants will commence a hearing for the purpose of terminating the Rodriguez's parental rights and placing the children for adoption. At no time has any relationship between the demands of the treatment plan and the Rodriguez's fitness as parents been even alleged.

93. Upon information and belief, Jan Graham herself has personally directed that the State spare no efforts in terminating the Rodriguez's parental rights.

94. Pursuant to federal guidelines, and upon information and belief, the State of Utah has qualified for approximately $200,000.00 in federal funding as a direct result of incarcerating the Rodriguez children. Upon successfully terminating the Rodriguez's parental rights, the State will qualify for an additional $200,000.00 to $400,000.00 in federal adoption and long-term foster care subsidies.

95. All of the defendants connected with the Rodriguez's have, under color of law, individually and in concert, acted willfully, deliberately, maliciously, and/or with deliberate indifference to deprive each member of the family of the rights and immunities guaranteed to them under the Constitution of the United States.

The Allison's

96. In 1995 John and Susan Allison and their five sons came to Wasatch County from their native Oregon in order to live in a predominantly L.D.S. community, inasmuch as they were members of the L.D.S. church. Since it was in the summer, they stayed in a campground above Midway until they could obtain suitable housing. Although they had limited income, the family was adequately dressed and fed.

97. Shortly after their arrival, the Allison's were visited by Lee Robinson, the local DCFS caseworker, who apparently came with the intention of looking for reasons to remove the children. He warned the Allison's that he would be "watching them."

98. The Allison's eventually found a house in Wallsburg, in Wasatch County. Soon afterward, Mrs. Allison's father, Robert

Bray, came to live with the family. He helped pay the bills, and in the spring of 1996 he helped the family buy a home in Heber City. However, he became abusive to the children, and kept loaded firearms within their reach. When Mrs. Allison demanded that her father cease his abusive behavior or leave, he responded that she didn't have the guts to call the police.

99. In August, 1996, Mrs. Allison did indeed have the guts to call the police, who removed Mr. Bray from the house, and a protective order was issued against him. He then returned to his native Nevada. Presumably, the matter would have been concluded. However, because the Allison children had been the victims of their grandfather's abuse, Robinson assumed the authority to enter the family's home and direct affairs. Over the next four months he routinely came into the house, without permission and without a search warrant. Each time he would inform the Allison's that if they did not clean up the home he would take the children away. The younger children, four very energetic boys, became so terrified that they would hide behind chairs whenever any stranger entered the home, fearing that it was Robinson.

100. During this time, Mrs. Allison was pregnant with her sixth child, a girl. Mrs. Allison is also diabetic, and had various other health problems. As a result she was ordered by her physician to bed rest 23 hours per day. As Mrs. Allison became less able to attend to any kind of housekeeping, Robinson became more insistent that the house be kept spotless. Mr. Allison had obtained employment as a long-haul truck driver, and was caught between providing for his family and trying to meet the demands of DCFS. Pursuant to standard DCFS practice, Robinson had also insisted that the children enter into counseling. The Counselor had suggested the boys be given a puppy. Thus, in addition to the other housekeeping demands, Mrs. Allison was expected to clean up fresh puppy messes and supervise five frantic boys while 8 months pregnant and confined to her bed.

101. On Friday the 13th of December, 1996, pursuant to standard DCFS practice, Robinson removed the two youngest Allison boys from their daycare and two others from the local elementary school on the accusation that the boys were neglected. The oldest boy, John Jr., was left in school, inasmuch as he was nearly 16 years old, approximately 6'3", weighed 280 pounds, and had no kind feelings for the rather diminutive Robinson. That afternoon, Robinson, together with his supervisor, Kelly Kendall, and the police, entered the Allison home, without permission and without warrant, and took numerous photographs.

102. On Tuesday, December 17, 1996, after recovering somewhat from the initial shock of losing her children, Susan Allison contacted the DCFS office in Heber City and asked if she were not entitled to some sort of hearing. She was told that there would be a shelter hearing the following morning in Provo, but that it was a routine matter and she needn't worry too much about it. When she asked if she was entitled to counsel, she was informed by Linda Moon of DCFS that she didn't need an attorney. When Mrs. Allison insisted that she wanted an attorney, Ms. Moon laughed and said words to the effect of "Good luck finding an attorney before tomorrow!" Mrs. Allison nevertheless persisted, and was given the number for the juvenile court in Provo. The juvenile court informed her as to the public defender for Wasatch County, and she contacted counsel.

103. With the assistance of counsel, Mr. and Mrs. Allison were able to present evidence at the shelter hearing the following day that every single allegation of unsanitary conditions contained in the State's petition either had been corrected or had

never existed. Among other things, the puppy had been removed from the home. In response, the guardian ad litem argued that the children would be traumatized if returned home because they would no longer have their puppy.

104. The court determined that its primary consideration was children, not puppies, and the children were ordered returned to the physical custody of the Allison's the following day. Nevertheless, the court assumed jurisdiction and legal custody of the children, and, although no evidence of psychological disorder had been presented or even suggested, ordered psychological counseling for the entire family. Notwithstanding ample evidence of Robinson's misconduct and heartfelt requests by the Allison's that another caseworker be assigned, the court found that Robinson had acted properly, and refused the family's request.

105. On Friday, December 27, 1996, Susan Allison gave birth to her daughter Jasmine in Heber City. On that same day, Mrs. Allison's father, Mr. Bray, communicated the threat that if Mrs. Allison did not sign her interest in the house over to him by January 2, 1997, he would appear at some unexpected time, kill all the children, and then kill himself. On the following Monday, the Allison's counsel contacted all appropriate law enforcement personnel to apprize them of the threat. He also contacted DCFS to request, in light of the crisis presented by Mr. Bray, that they ease up on their demands, including the demands for immediate psychological examinations. Robinson not only would not allow the Allison's any extra time, he insisted that the crisis was fabricated, and proceeded to initiate direct contact with Mr. Bray. Upon information and belief, Lisa Olpin, the assistant attorney general, also contacted with Mr. Bray directly.

106. Seeing that DCFS would not assist them, and that even with the assistance of counsel the court would not relieve them of Robinson's oppression, Mr. Allison took the five boys and returned them to their native Oregon. Mrs. Allison could not yet travel, and therefore went directly from the hospital to a safe house for battered women in Park City, presumably to be protected from her father. While in the safe house, shelter workers assisted in caring for the baby. However, she left the safe house on Sunday, January 5, 1997, when she learned that Robinson intended to come the next morning and take Jasmine into State custody. Robinson did in fact come on Monday, January 6, 1997, but Mrs. Allison was gone.

107. On Tuesday, January 7, 1997, Robinson attempted, with the assistance of two Heber City police officers, to forcibly take the baby away from Mrs. Allison when she went to her regularly scheduled appointment with her physician. However, the physician intervened and informed Robinson that the doctor, and not Robinson, would determine whether the baby had been neglected during the three days she was cared for by shelter workers. Both baby and mother were fine. Mr. and Mrs. Allison then returned with their baby to their family in Oregon. They took unpaved back roads across Nevada and Oregon as they were terrified that Robinson would somehow attempt to have them arrested.

108. At a pretrial hearing on January 22, 1997, the matter was set to be tried on January 24, 1997, 48 hours later. Although the Allison's had returned to their native Oregon, and notwithstanding that the court had determined at the shelter hearing on December 18, 1996, that all of the allegations in the State's petition had either been corrected or never existed, the court denied counsel's motions to dismiss or continue.

109. Notwithstanding the difficulty entailed by the extremely short lead-time between the pretrial hearing and the trial, the

Allison's did comply with the court's order that they obtain psychological evaluations, and they were present at the trial by telephone.

110. At the trial, Lisa Olpin, the assistant attorney general representing DCFS, was heard to snarl at the guardian ad litem under her breath, "And don't say a word about PUPPIES!"

111. At the conclusion of the "trial" in the Fourth District Juvenile Court, Judge Sterling M. Sainsbury found the Allison's guilty of child abuse and neglect, and ruled that Mr. Allison should have quit his full time job and stayed home on welfare so he could keep the house clean. The court issued warrants so the children could be forcibly returned to foster care in Utah.

112. The children were arrested in Oregon on February 5, 1997. However, Oregon's Services for Children and Families (SCF), the Oregon counterpart to DCFS, determined that there were serious questions about Robinson's and DCFS's conduct. SCF requested a hearing in Oregon District Court on February 6, 1997, and the State of Oregon took temporary custody of the Allison children under the Uniform Child Custody Jurisdiction Act (UCCJA), pending a final hearing seven days later. Prior to the final hearing, SCF released the children back to their parents, having found that not only were the children not neglected, they were exceptionally well-behaved and intelligent.

113. Upon learning the that the case had become public knowledge, Judge Sainsbury promptly released jurisdiction, and on February 13, 1997, the case was formally transferred from Utah to Oregon under the UCCJA. Four months later the State of Oregon dismissed the case entirely.

114. John and Susan Allison are still listed on national databases as having been convicted in Utah of child abuse or neglect. As a result, they are ineligible for certain employment and other opportunities. When the Allison's attempted to appeal their conviction, the Oregon appellate court could not hear the case as the conviction did not arise in Oregon or under Oregon law. The Utah Court of Appeals peremptorily dismissed the case, asserting that it was now moot. The Utah Supreme Court refused to grant certiorari.

115. All of the defendants connected with the Allison's have, under color of law, individually and in concert, acted willfully, deliberately, maliciously, and/or with deliberate indifference to deprive each member of the family of the rights and immunities guaranteed to them under the Constitution of the United States.

The Griffis-Banash Family

116. Shamala Banash, Brent Griffis, and their children reside in Duchesne County, Utah. Both Ms. Banash and Mr. Griffis admittedly had a substance abuse problem, and Mr. Griffis has been convicted of various petty offenses, for which he is currently incarcerated in the Duchesne County Jail. To protect their own children, and on their own initiative, Ms. Banash and Mr. Griffis voluntarily placed the children with relatives in the December of 1996 so that Ms. Banash and Mr. Griffis could get their lives in order. There was no involvement by the State of Utah at this time, and none was necessary.

117. In May, 1997, Ms. Banash's aunt contacted DCFS and requested that DCFS petition the court for custody. As a result Ms. Banash was informed that she had 12 months to get her life in order or she would lose the children. She and Mr. Griffis were presented with a treatment plan and informed that if they did not sign it, they would not be allowed to get their children back. They signed therefore, not because they agreed with the plan's terms, but through duress.

118. Through an enormous effort, Ms. Banash managed over the next several months to completely stop using controlled substances. She has obtained full-time employment, and has a home in which she can provide for her four children. Under State law, Mr. Griffis cannot be held accountable for portions of any treatment plan that he cannot comply with due to incarceration. To the best of his ability, he has complied. Although Ms. Banash and Mr. Griffis have ended their relationship, they are entirely in harmony in their desire to retain and provide for their children.

119. Notwithstanding Ms. Banash's success and her substantial compliance with the treatment plan, in August, 1998, the Eighth District Juvenile Court refused to accept any evidence regarding the changes in Ms. Banash's life and determined that "reunification services" between Ms. Banash and her children would be terminated. However, DCFS continued to provide peer parenting classes and regular visitation until September, 1998. At that time she was informed that, because "reunification services" had been terminated, she could have no further contact with her children. No order was ever issued by the court forbidding contact. However, "termination of reunification services" was presumed to mean no contact.

120. Since the Griffis children are living with Ms. Banash's own relatives, she is not allowed to visit those relatives when her children are present. Ms. Banash has been forbidden to attend extended family functions, including Thanksgiving and Christmas.

121. At no time has any party presented any evidence or even alleged that Ms. Banash is an actual danger to her own children, or to her relatives, and she has free access to the relatives when the children are not present. Nor has any evidence been presented or even alleged that either Ms. Banash or Mr. Griffis is an unfit parent, notwithstanding their admitted difficulties.

122. The entire decision to terminate the Banash's parental rights is based on §78-3a-407, Utah Code (1953, as amended), which states that parental rights may be terminated for "failure of parental adjustment," and §78-3a-312, Utah Code (1953, as amended), which requires termination after 12 months, all facts, circumstances, or considerations of due process notwithstanding.

123. All of the defendants connected with the Griffis-Banash family have, under color of law, individually and in concert, acted willfully, deliberately, maliciously, and/or with deliberate indifference to deprive each member of the family of the rights and immunities guaranteed to them under the Constitution of the United States.

The Foster's

124. Plaintiffs Richard and Gina Foster are father and daughter. They have numerous extended family in Utah and elsewhere. In September, 1998, Gina was residing with her grandmother while Mr. Foster was seeking employment in Colorado. During Mr. Foster's absence, his brother is alleged to have made sexual advances on Gina. The allegations consist of suggestive language and inappropriate touching outside of her clothing. Upon learning of the incidents, Mr. Foster immediately had Gina removed from his mother's home and placed in a home where the brother had no access to Gina. Mr. Foster saw that the police were contacted, and on at least two occasions physically confronted the brother and warned him to stay away from her.

125. When the authorities were notified, DCFS removed Gina from the home and placed her in foster care. The brother's case is pending as a criminal matter in the district court. However, notwithstanding his efforts to protect Gina, Mr. Foster was charged and convicted in juvenile court of failing to protect his daughter. His alleged failure consisted of failing to report his brother to DCFS upon first learning that the brother had spoken inappropriately to Gina. As a result, Mr. Foster is permitted only supervised visitation with Gina and may not return her to his home until he has completed a "treatment plan" subject to the arbitrary determination of DCFS.

126. The alleged sexual advance by Mr. Foster's brother was truly unfortunate. However, it was mostly verbal in nature. The incident might have been forgotten by Gina had not DCFS made it the defining incident of her life. She has been required to describe the incident over and over for DCFS caseworkers, who, consistent with longstanding DCFS practice, have conveniently "forgotten" to put a tape in the recorder, necessitating repeat interviews. She has been placed in a foster home, and required to undergo therapy, without any indication that any therapy was necessary. Needless to say, such therapy can only serve to reinforce the significance and memory of the incident.

127. At no time is Mr. Foster himself ever alleged to have abused, neglected, mistreated, or endangered his daughter. Another brother of Mr. Foster's residing in Oregon, as well as a sister, have both offered to let Gina stay with them. Pursuant to Utah statute, the brother in Oregon petitioned the court within the required 30 days. This brother previously had custody of Gina by order of the Oregon District Court in and for Multnomah County. However, under the ICPC, the brother is presumed to be ineligible until approved by Oregon's SCF.

128. Mr. Foster has been deprived, without due process of law, of access to his daughter and of the opportunity to place his daughter with a near relative.

129. All of the defendants connected with the Foster's have, under color of law, individually and in concert, acted willfully, deliberately, maliciously, and/or with deliberate indifference to deprive Mr. Foster, Gina, and their extended family of the rights and immunities guaranteed to them under the United States Constitution.

James Lough

130. In August, 1998, an anonymous informant accused Plaintiff James Lough of physically abusing his girlfriend's two-year-old daughter. DCFS caseworkers came to the home to investigate. At no time did they inform Mr. Lough that he had a

right to remain silent. Mr. Lough and the child's mother explained that he had in fact spanked the child, with her mother's permission, in order to discipline her. Notwithstanding the propriety of the discipline, the accusation was listed as "substantiated."

131. Mr. Lough's name was entered on State databases listing him as a "substantiated" child abuser, and a petition was filed in the juvenile court alleging that the child was an abused or neglected child, pursuant to statutory definition.

132. Soon afterward, Mr. Lough received a letter from DCFS stating that he had been "substantiated" as a child abuser. The letter further informed him that he had been so entered on a State database, and that this information would be available to persons doing background checks on him. It also stated that he would be disqualified from certain employment positions with state and child welfare agencies.

133. Mr. Lough requested an administrative review of the agency's determination, but was informed that the matter would be adjudicated on the State's petition already filed in the juvenile court.

134. When counsel informed the assistant attorney general who was prosecuting the juvenile court petition that Mr. Lough's case was part of the juvenile court case, the assistant attorney general was surprised. Even though Mr. Lough's guilt or innocence was to be the central aspect of the trial, the assistant attorney general did not consider Mr. Lough to be a party to the action, and did not feel that Mr. Lough had an interest in it. A trial was set on the State's petition, but Mr. Lough was not notified.

135. By denominating the action against Mr. Lough as "civil" rather than criminal, and by failing to notify Mr. Lough of his interest in the action, those defendants acting in regard to Mr. Lough have deprived him of his rights to due process guaranteed under the United States Constitution.

VIII
GENERAL FACTUAL ALLEGATIONS

Introduction

136. The Utah Child Welfare System is characterized by fantastic abuses of the rights of parents, children, families and other citizens. These abusive practices constitute a category of factual allegations set forth below. Some of these abuses are actual policies of DCFS, but many are merely unwritten practices that can nevertheless be verified by numerous witnesses. These abuses arise out of and are interconnected with the next two categories of factual allegations.

137. The second category of factual allegations consists of unconstitutional statutes. Many of the abusive practices of the Utah child welfare system are based on these statutes, which caseworkers zealously follow. Most of the statutes in this category deny due process to families in that they firmly rely on subtle assumptions, presumptions of fact and law, that in

fact are unconstitutional, but are not directly stated.

138. The abuses and the unconstitutional statutes of the first two categories are made possible through the fundamental structural violations of the third category. It is this third category that is thus the most significant. While many of these violations are based on statutes, they are statutes and practices that go to the very heart of due process, in some cases explicitly. Ironically, they do so in a State with a stated abhorrence to secret proceedings.

139. Finally, the ultimate justification generally given for most of the abuses practiced in the Utah child welfare system is that they are necessary to qualify for federal funding. The abuses are practiced to bring in the funding, and the funding is used to perpetuate the abuses. The last category of factual allegations pertains to the federal mandates with which the defendants are so eager to comply.

CATEGORY I, ABUSIVE PRACTICES

A. Sinister Policies

140. The word "Gestapo" derives from the German words "Geheime Staats Polizei." This translates literally as "Secret State Police." The essential difference between that infamous institution and the Utah child welfare system is that the latter does not direct its practices solely against Jews.

1. Picking on the Poor

141. In accordance with federal statutes, federal funding for Utah's child welfare system is increased in accordance with the number of children who can be placed within its jurisdiction. Most people coming within the power of the child welfare system do not do so willingly. Therefore, as a matter of practice, children are most often removed from the homes of those least able to resist the State's practices.

142. Where genuine child abuse and neglect does exist, it cuts across all strata of society. DCFS activities do not reflect this, however, as most cases in which children are removed from a home, and virtually all cases of parental termination, are perpetrated against those who are poor, uneducated, and or have no local connections.

143. Those who are poor cannot afford counsel. Those who are poor and uneducated are not aware of their rights that are being violated. Those who are poor, uneducated, and who have no local connections do not have access to a network of support. This support can include relatives who know their rights, have the resources to provide counsel, can take the children for temporary placement, and who have the ability to marshal resources and publicize abuses of the system.

2. Unlimited Access to Children

144. DCFS caseworkers routinely interview children in daycare and public schools without the knowledge or consent of the children's parent. Indeed, State personnel specifically instruct children as to how to report on their parents, similar to the techniques described in the novel "1984."

145. Pursuant to State law, the defendants also have virtually unlimited access to all records regarding children. The system of surveillance is virtually complete.

146. If a child is attending school or daycare, caseworkers will invariably remove the child from the school or daycare rather than from the home. There are no legal protections to prevent this, and all school officials will promptly assist State officials.

3. Always on Fridays

147. While one might presume that emergency removal of a child is a spontaneous event that could occur any day of the week, or weekend, in fact most removals occur on Friday. Oddly, if genuine cause exists to remove a child so suddenly and surreptitiously, permitting no time to observe due process, why is there nevertheless always time to wait until he or she is in school on Friday?

148. Pursuant to §78-3a-306 Utah Code (1953, as amended), a shelter hearing must be held within 72 hours after a child is removed from its home, excluding weekends and holidays. The vast majority of shelter hearings are held on Tuesdays or Wednesdays. In some parts of the State this pattern is so consistent that caseworkers and the courts routinely plan their schedule around it. Removing children on Fridays provides DCFS with an extra two days to prepare a case against the parents.

4. Warrantless Searches

149. When DCFS caseworkers receive a referral, they routinely enter the home of the person being investigated. Sometimes they ask to come in. Often they do not. In most cases, however, once the door is open, the caseworkers simply walk in, without invitation. Everything the person being investigated says can and will be used against him or her in juvenile court. However, the accused is never informed of this.

150. In many cases, when parents specifically ask whether the caseworkers have a warrant or have a right to enter, the caseworkers explicitly respond that they do not need a warrant and are entitled to come in.

5. "Mistakenly" Repeated Interviews and Excessive Therapy

151. Allegations of child abuse are routinely investigated by DCFS. There is a legitimate concern that having a child repeatedly describe incidents of alleged child abuse is more harmful to a child than the abuse itself. In an effort to avoid

such harm, interviews with alleged victims are often videotaped or recorded. Ironically, this practice intended to protect children is routinely twisted into its opposite.

152. In an alarming percentage of cases, DCFS workers "accidentally" forget to insert or rewind the video or audio tape, or the equipment "malfunctions," necessitating repeat interviews.

153. Coupled with the problem of repeat interviews, all of the defendants routinely order or endorse per se therapy upon the mere allegation that abuse has occurred. Some of the drawbacks of this policy are:

a. Where there has been no actual abuse, the therapy serves only to confuse the parties, and promote the State's position that they are in "denial."

b. Where there has been abuse, it becomes the pivotal life event of the alleged victim, making it difficult, if not impossible to deal with the event and move on. The effect is the same as the "mistakenly" repeated interviews.

6. Forced Medication

154. Among the more sinister practices of the defendants is the forced medication of children in foster care. This is routinely done without more than a mere suggestion of medical necessity, and often over the strenuous objections of the parents.

7. Denial of Right to Counsel

155. §78-3a-306 of the Utah Code does state that parents are entitled to have counsel present at a shelter hearing. Because juvenile court proceedings are denominated as "civil," the right to counsel is considered solely statutory, not constitutional.

156. Regardless of its source, in practice, a number of parents are not informed of this right, or more commonly, aren't informed until long after they have made admissions and signed papers waiving most of their rights. Generally, parents are told that the shelter hearing is "just routine", and "you won't need an attorney."

157. In fact, most of the defendants, to the various extent that they are involved with the plaintiffs, regularly tell plaintiffs that the abusive practices of the child welfare system are "just routine," and "nothing to worry about."

158. Generally, even though the presence of counsel at a shelter hearing is essential to protect the rights of accused parents, they are not allowed to request counsel until the shelter hearing, and the hearing proceeds without counsel, even if counsel is requested.

159. By all known ethical standards, defendants who are represented by counsel are not and cannot be required to speak to

opposing counsel or witnesses without the consent of the defendant's counsel, and an attorney who attempts to speak with a represented party without such consent is himself subject to discipline.

160. Notwithstanding this well-established principle of the American legal system, attorneys general and guardians ad litem, who are clearly counsel opposed to the parents in juvenile court cases, routinely speak with represented parents without so much as even notifying the parents' counsel, let alone seeking permission. The guardians ad litem are encouraged and trained to get as much information from parents as possible.

161. The abusive practices set forth in paragraphs 141 through 160, above, are not all constitutional violations per se, but serve to illustrate the nature of abuses that occur as a result of the constitutional deficiencies in the Utah child welfare system. The practices are consistent in deliberately denying the plaintiffs their basic rights to due process.

B. Presumptions on Standard Forms

162. The practices of the defendants are characterized by mountains of forms designed to give a superficial appearance of due process. When DCFS receives an anonymous referral, investigating caseworkers fill out a form on which they assess various predetermined criteria. The forms are arranged so that after each question a box may be checked indicating the degree of seriousness of the observation. Boxes furthest to the right indicate a grave situation. Boxes furthest to the left indicate as good a situation as the forms will allow. If the answers to all questions are checked in the furthest left hand box, the party investigated has received the best possible rating, and the caseworker will report that the referral was "unsubstantiated."

163. Notwithstanding a "perfect" score on the standard forms, the leftmost column of the forms still refer to the investigated party as "perpetrator."

164. The routine investigative practices of DCFS create a presumption that all persons investigated are "perpetrators." This presumption attaches the moment a referral is made, and is not easily refuted. This reversal of the presumption of innocence is in violation of the plaintiffs rights to due process.

C. Supervised Visitation

165. Most actions against the plaintiffs are based on alleged "neglect or abuse" of children. At one end of the spectrum, failing to change a dirty diaper is routinely charged as "neglect." At the opposite end, murdering children in Satanic sexual rituals certainly constitutes "abuse".

166. Despite the obvious disparity between these two extremes, "neglect or abuse" are always classified together. Not surprisingly, although there are far more cases of questionable "neglect" than there are of genuine "abuse," all persons accused (conviction is not necessary) of "neglect or abuse" are treated as proven abusers at the bloody end of the spectrum.

167. Nowhere is this more apparent than in the defendants' policies regarding supervised visitation. In most cases, supervised visitation is not based on any alleged danger to the child, but on the parents resistance to DCFS encroachments.

168. Supervised visitation is a humiliating practice, under which parents may only see their children in the presence of a DCFS caseworker, usually at a secure DCFS facility. This puts parents in an impossible situation: If they visit with their children in the presence of State witnesses, they waive their rights against self-incrimination under the Fourth and Fifth Amendments. If they decline to visit, they are accused of abandoning their children.

169. Ironically, there are cases in which DCFS has reported signs of abuse in children who have been in foster care for several months, and has attempted to blame the alleged abuse on parents who had only one or two hours of supervised visitation per week.

170. Defendants policies of supervised visitation routinely deny plaintiffs of their basic human rights without any due process of law, and are used as a means of punishing non-submissive parents, in violation of their rights under the Constitution.

D. Extortion

171. Once a family is entangled in the juvenile court system, they are routinely presented with a "treatment plan." These treatment plans contain numerous provisions with which the parents must comply or have their parental rights terminated. The defendants thus have custody of the children, and the parents are at their mercy. The treatment plan therefore is not a contract negotiated at arms length between two parties of equal bargaining power, but rather a court-endorsed ransom demand. By their terms, all treatment plans are signed under duress.

172. Parents who object to "treatment plans" are informed in no uncertain terms that if they resist the power of the defendants, they will lose their children forever. This bears no relationship to either the fitness of the parents, nor to the best interests of the child. It does bear a direct relationship, however, to the defendants' power over parents, as well as the defendants qualification for federal funding.

173. The terms included in a treatment plan are standardized. They routinely include the following:

a. Anger-management classes, regardless of whether abusive conduct has ever been alleged;

b. Random inspections of the home, regardless of whether the home was ever alleged to be dangerous or unsanitary;

c. Parenting classes, regardless of whether any evidence has been ever presented of improper parenting;

d. Random drug testing, regardless of whether any drug use has ever been alleged;

e. Psychological evaluations and therapy, with the evaluations freely accessible to adverse parties and the therapy ordered regardless of whether or not recommended by the evaluations.

174. Even though these "agreements" are obtained under duress, they are thereafter given absolute legal validity by the courts. Their foremost value to the defendants is as an admission of accusations against the parents and a waiver of objections.

175. By signing these "agreements", parents waive the standard of due process to which they are entitled. Before signing, they stand as accused criminals (though never denominated as such), with full constitutional protections. Upon signing, they are reduced to the status of contracting parties, against whom the defendants need only prove breach of contract by a preponderance of evidence.

176. The compulsory use of "treatment plans" denies the plaintiffs their rights to due process as guaranteed under the Constitution. The plaintiffs' are denied their rights both by the contents of the plans, and by the process in which the plans are imposed and the plaintiffs are held accountable thereto.

E. Abuse of the Contempt Process

177. Traditionally, if a party to an action fails to comply with a procedure or order of the court, the court has the power to punish that person for contempt. In a criminal proceeding, contempt of court may limit the accused's defenses, but rarely if ever results in forfeiture of the accused's right to a final verdict on the merits.

178. In a civil action, contempt of court can and more routinely does result in forfeiture of the action. However, even in such cases, an action for contempt is clearly denominated as such.

179. Throughout the juvenile court process, parents are threatened with the termination of their parental rights if they do not comply with the procedures of the court or DCFS, including practices that are blatantly unconstitutional.

180. By threatening to terminate parental rights, the defendants are in fact punishing the plaintiffs for contempt without actually charging contempt.

181. Contempt of court has nothing to do with the fitness of parents. The right to raise one's own children is a fundamental right, and like all other rights protected under the constitution, cannot be deprived without due process. It is not a property right or a right of procedure that can be deprived as a punishment for mere contempt of court.

182. The Eighth Amendment to the United States Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

183. Depriving a parent of his or her child without due process of law in any case, but particularly as a punishment for contempt, is undoubtedly a "cruel and unusual punishment."

184. By threatening parents with the loss of their children, defendants have twisted the meaning of the contempt process and could not act more directly under color of law to deprive the plaintiffs of their rights under the Constitution.

F. Paying for the "Privilege"

185. The mandatory requirements set forth under the "voluntary" treatment plans are ironically called "services." Any concept of "service" as a benefit to be voluntarily accepted by those in need is sorely misplaced as that term is used in the Utah child welfare system. If a parent does not accept "services" in accordance with federal guidelines, they do not get their children back.

186. As a final insult, and notwithstanding the defendants' successful efforts to obtain federal funding, parents ordered to accept "services" from the child welfare system are also ordered to pay for those services. This includes paying for the privilege of having one's child in foster care. Thus, if they cannot accept "services" because they are unable to pay, parents may lose their children.

187. Programs administered by the State to assist low-income persons ordered to pay for court-ordered "services" are largely token efforts, and do not address the larger injustice of forcing parents to pay for the defendants' violation of their civil rights.

188. Income and ability to pay have nothing to do with a person's fitness as a parent. By making parents subject to termination of their parental rights for failure to accept "services", and by requiring parents to pay for those "services", the defendants have deprived the plaintiffs of their rights as guaranteed under the United States Constitution.

CATEGORY II, UNCONSTITUTIONAL STATE STATUTES

A. Mandatory 12-month Termination

189. Under Utah Code, §78-3a-311, reunification of families is entirely optional with the court. §78-3a-311(2)(b), Utah Code (1953, as amended) states:

> If the court determines that reunification services are appropriate, it shall order that the division make

> reasonable efforts to provide services to the minor and his parent for the purpose of facilitating reunification of the family, for a specified period of time. In providing those services, the child's health, safety, and welfare shall be the division's paramount concern, and the court shall so order. The time period for reunification services may not exceed 12 months from the date the child was initially removed from his home. Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services. If reunification services have been ordered, the court may terminate those services at any time. If, at any time, continuation of reasonable efforts to reunify the child is determined to be inconsistent with the permanency plan for the child, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child. (emphasis added)

190. This is perhaps the most onerous provision in the Utah child welfare laws. In not so subtle terms, instead of placing the burden of proof upon the State to prove that a parent is unfit within 12 months (or less) or return the child to its parents, it places the burden squarely upon the parents to prove that they have complied with DCFS mandates that may or may not have anything to do with parental fitness or competence.

191. The statute presumes that the original grounds for removal of a child from its parents are valid. Yet from the outset, the burden is always upon the parents to prove that it wasn't. In effect, once a child is removed from its home, for whatever reason, the legal grounds have already been established for termination of the parent's rights, before the shelter hearing is ever held.

192. Reunification is a fundamental right, not an administrative option. A 'permanency plan" that does not presume reunification has denied this fundamental right without any process at all. Although dressed up in arcane procedures, "Termination of Reunification Services" is a de facto termination of parental rights. Once "Reunification Services" are terminated, they are never restored. The sole options remaining are formal termination of parental rights ("freeing" children for adoption) or long-term foster care (for which parents retain only the right to pay for this "service"). Both are mere formalities, as the fundamental right to raise one's own child has already been eliminated without the State ever having to prove the parents unfit.

193. The statute further presumes that terminating parental rights after a maximum of 12 months is always in the best interests of a child, all facts and circumstances notwithstanding. Automatic termination after 12-months is comparable to an automatic prison sentence for failing to prove one's innocence of a crime.

194. The decision that reunification is "inconsistent with the permanency plan" is a decision to terminate a fundamental right without due process of law.

195. §78-3a-311 of the Utah Code is blatantly unconstitutional. By enforcing and sustaining its terms, defendants have , both individually and in concert, wilfully, deliberately, maliciously, and with wilful disregard for the rights of the plaintiffs deprived the plaintiffs of their fundamental rights without due process of law.

B. Termination of Parental Rights Without Due Process

196. §78-3a-407, Utah Code (1953, as amended) provides the grounds upon which parental rights may be terminated:

> The court may terminate all parental rights with respect to one or both parents if it finds any one of the following: (1) that the parent or parents have abandoned the child; (2) that the parent or parents have neglected or abused the child; (3) the parent or parents are unfit or incompetent; (4) that the child is being cared for in an out-of-home placement under the supervision of the court or the division, that the division or other responsible agency has made a diligent effort to provide appropriate services and the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future; (5) failure of parental adjustment, as defined in this chapter; (6) that only token efforts have been made by the parent or parents:
>
> > (a) to support or communicate with the child; (b) to prevent neglect of the child; (c) to eliminate the risk of serious physical, mental, emotional abuse of the child; or (d) to avoid being an unfit parent;
>
> (7) the parent or parents have voluntarily relinquished their parental rights to the child, and the court finds that termination is in the child's best interest; or (8) the parent or parents, after a period of trial during which the child was returned to live in his own home, substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection.

197. Subparagraphs (1), (3), and (7), abandonment, unfitness or incompetence, and voluntary termination, have long been recognized as legitimate grounds for termination of parental rights. They are concrete, recognizable grounds, and if provable at all, can usually be proven beyond a reasonable doubt. They do not present any serious due process questions.

198. Subparagraph (2), as written, permits the State to terminate parental rights after only one incidence of abuse or neglect. As written, this part is unconstitutionally overbroad, as it allows the State to ignore any efforts at rehabilitation. It is more dangerous, however, in that the standard of proof is so low and the statutory presumptions by which abuse or neglect is adjudicated in Utah's juvenile courts are so biased that all pretense of due process is virtually eliminated.

199. Subparagraph (4) denies due process entirely. Several presumptions are implicit in its wording. The first is that any out-of-home placement is based on actual abuse or neglect in the home. As is set forth in a separate section of this complaint, children can be and regularly are removed from homes and placed in out-of-home care on the flimsiest of grounds, and the State is held to a very low standard of evidence.

200. A second presumption is that the "appropriate services" are in fact appropriate. In the vast majority of cases in which

the court orders "services," these services have little if any relation to the original allegation on which the children were removed from the home, and no relation to the parent's fitness or competence as a parent. In addition, most parents are coerced into "voluntary" treatment plans, by which they waive any objections, under threat of losing their children outright.

201. A third presumption is that either neglecting or wilfully refusing to remedy the circumstance alleged by the State constitutes unfitness per se. Under the criteria set forth in the statutes authorizing removal and under the regular practice of the defendants, the original circumstances precipitating removal often have no bearing on a parent's fitness. In addition, because of the lack of procedural safeguards, any parent who lawfully and rightfully refuses to comply with arbitrary demands of the State risks being accused of wilful refusal.

202. A fourth presumption is that because a parent is unable to remedy the circumstance, he or she is unfit. There are many circumstances entirely unrelated to parental fitness under which a parent may be unable to improve the circumstances in the home. This law, however, makes no distinction, and the defendants, by their consistent conduct, have indicated that they make no distinction either.

203. The final improper presumption in this paragraph is that a parent who cannot remedy an alleged violation in the near future is per se unfit. The term "near future" in itself is ambiguous, but combined with the other short-fuse portions of the statutes, the implied meaning is "very fast." This bears no legitimate relation to a determination of parental fitness and the deprivation of a fundamental right.

204. The term "token" in subparagraph (6) is vague. It gives extraordinary discretion to DCFS. The remainder of the paragraph amplifies this problem. A fundamental right is placed at jeopardy without any showing beyond a reasonable doubt of unfitness. In its place, the statute implies a tort standard, but unlike tort law, the duty of care, proximate cause, and damage are already presumed. The state need only allege breach, and that only by a preponderance of evidence. In addition, part (d) is circular, and presumes that a parent is already unfit.

205. The fatal flaw in subparagraph (8) is that "proper parental care and protection" as interpreted by the State is impermissibly vague and thus cannot by adequately addressed by an accused parent, especially given the reversal of presumptions and extraordinarily low standard of proof to which the State is held.

206. Subparagraph (5) of §78-3a-407 is the most egregious of all. As defined in §78-3a-403(2):

> "'Failure of parental adjustment' means that a parent or parents are unable or unwilling within a reasonable time to substantially correct the circumstances, conduct, or conditions that led to placement of their child out of their home, notwithstanding reasonable and appropriate efforts made by the Division of Child and Family Services to return the child to the home."

207. Subparagraph (5) is the section most often cited in parental termination cases, and since its enactment, the number of

cases in which the State has terminated or attempted to terminate parental rights has expanded exponentially.

208. As applied, Subparagraph (5) is universally understood by the State to mean failure to comply with a DCFS treatment plan within 12 months.

209. Like subparagraph (4), subparagraph (5) presumes that any out-of-home placement is based on actual abuse or neglect in the home. As is set forth in a separate section of this complaint, children can be and regularly are removed from homes and placed in out-of-home care on the flimsiest of grounds, and the State is held to a very low standard of evidence.

210. Most significantly, subparagraph (5) presumes that a parent who fails to comply with a DCFS treatment plan is per se unfit or incompetent. It also presumes that 12 months (maximum) is a reasonable time in which to comply, and that the treatment plan is actually reasonable.

211. In practice, DCFS treatment plans routinely bear only an attenuated relationship, if any, to either the circumstances under which a child was removed from its home or to the fitness of the parent. The terms are set arbitrarily by the agency, and due to the lack of procedural due process, cannot effectively be challenged by the parent.

212. DCFS caseworkers have enormous discretion in determining the contents of treatment plans, and whether or not they have been complied with. This discretion is arbitrary and capricious, and easily influenced by the enormous financial incentive to terminate parental rights provided by federal funding. Parents have virtually no recourse, as the court's proceedings are secret and the caseworkers are accepted as experts per se.

213. By permitting termination of parental rights for failure to comply with DCFS treatment plans, the defendants have created and enforced a per se presumption that failure to comply with a treatment plan constitutes unfitness as a parent.

214. §§78-3a-403(2), 407(2), (4), (6), (8), and especially §78-3a-407(5) of the Utah Code, as written and as applied by the defendants, are unconstitutional, in that they deny plaintiffs a fundamental right without due process of law.

C. Elimination of Presumption of Innocence

215. Utah Code §78-3a-301 sets forth the grounds upon which a DCFS caseworker may remove a child from the custody of its parents. Most of the grounds stated seem reasonable enough. What the statute fails to recognize is that each of the grounds for removal constitutes a de facto allegation against the parents.

216. As accused parties in a criminal proceeding, the parents would be entitled to a presumption of innocence unless the State could show beyond a reasonable doubt that they are guilty.

217. Notwithstanding the profound liberty interest at stake in shelter hearings, pursuant to Utah Code, §78-3a-306(8), the

State is only required to justify its actions by a "preponderance of evidence."

218. The "preponderance of evidence" standard is further watered down by the minimal standards necessary to "substantiate" an accusation, as set forth in Utah Code §62A-4a-116(4)(b). "Substantiation" is little more than a statement that the caseworker believes the allegation is true. It nevertheless gives DCFS the basis on which to commence a record, which by its very existence, in practice, is generally found sufficient to constitute a "preponderance of evidence."

219. In actual practice, all presumptions in shelter hearings are in favor of the State. The burden is placed upon the parents to show, by far more than a "preponderance of evidence," that removal is not warranted.

220. The findings of the court at the shelter hearing create the presumption upon which all future hearings are based, and the standard against which the parents must establish their innocence. The shelter hearing in effect validates the original taking, thus creating the basis for mandatory termination of parental rights after 12 months.

221. The findings of the shelter hearing become the presumption that parents must overcome at "trial." Once a verdict has been rendered at trial (or a plea coerced), the State imposes a treatment plan entirely unrelated to the issues adjudicated at trial. The parents must then prove their compliance, rather than the State proving their non-compliance.

222. If the State alleges parents have not complied, reunification is terminated. The court then administers mandatory termination of parental rights or long-term foster care, but there are no more presumptions to rebut, as reunification is forbidden.

223. At no point is the State ever required to prove that parents are actually unfit or incompetent.

224. The defendants have, individually and in concert, wilfully, deliberately, maliciously, and with reckless disregard for the rights of the plaintiffs, deprived plaintiffs of the presumption of innocence at all stages of juvenile court proceedings, in violation of their right to due process as guaranteed under the United States Constitution.

D. Presumption of Superiority of Experts

225. Utah Code §62A-4a-205 requires that various experts participate in determining the "best interest of a child" once the child has been removed from its parent. The experts proceed upon the presumption that the original removal of the child was valid, and work together to validate that presumption.

226. The fundamental liberty interest in raising one's own child consists not only of possessing physical custody of the child, but also of determining how that child shall be educated, disciplined, fed, clothed, sheltered, and generally raised.

227. When DCFS removes a child from its parents, it deprives the parent not only of physical custody, but of all the other

rights of parenthood as well. Doctors, therapists, and social workers have no greater right to usurp those rights than do caseworkers and police have the right to take physical custody. And just as the process by which children are physically removed is virtually devoid of due process, so likewise do the defendants cause credentialed professionals to usurp the functions of parenthood without due process of law.

228. When the assistance of a health-care professional truly is necessary, the burden must be upon the State to positively show the specific matters in which the judgment of the professional must usurp that of the parent to prevent actual harm to the child. It is not sufficient to merely presume that the expert's idea is better than the parent's, as this denies a fundamental right without due process of law.

229. The fundamental right of a parent to raise his or her own child has never been premised upon any kind of training or expertise. Professionals can assist in various aspects, but the right to raise one's own child as one sees fit is no more subject to special credentials than is the right to freedom of speech, freedom to print or publish what one wishes, or freedom of religion. "Freedom" that is subject to review by credentialed experts is not freedom at all.

230. Under Utah's child welfare laws, children are summarily removed from their parents and examined by various "experts" without the parents' consent and often without their knowledge. These experts are usually called upon, not to examine whether or not a child has been abused or neglected, but to find proof to confirm what the caseworker has already determined.

231. These same experts serve as prosecution witnesses, then are called upon to dictate the terms of the "treatment plan," exercising authority over the parents in realms far removed from the original allegations against the parent.

232. The manner in which experts are relied upon by the Utah child welfare system usurps the authority of parents without due process of law and compromises the integrity of those experts by placing them in the irreconcilable positions of both trusted professionals and prosecution witnesses.

233. By subjecting plaintiffs to the authority of professionals in an improper manner, the defendants have, individually and in concert, while acting under color of law, deprived the plaintiffs of fundamental rights without due process of law, in violation of plaintiffs rights under the Fourteenth Amendment to the U.S. Constitution.

E. Elimination of Privilege as Denial of Due Process

234. A court of law by its nature is adversarial. Once opposing sides have been staked out, the object is to win. In contrast, family relations, and especially the healing of damaged families, is a process requiring trust. This trust is virtually impossible to preserve in an adversarial environment.

235. The adversarial nature of the legal profession is applied to the juvenile court system with ruthless efficiency. Once a

child is removed from its parents, the legal posture assumed by the State is entirely one of defense and justification. A parent must of necessity assume an opposing position, and the harder a parent stands up for his rights, the harder the State opposes him or her. This promotes the legal ethic of "zealous representation" at the expense of all others, and is about as far from "the best interests of a child" as matters could get.

236. The relation between physician or therapist and patient is traditionally one of trust. This is particularly important for those who are attempting to overcome drug addiction. One cannot effectively get help if by that same process one will be prosecuted.

237. There is also a profound privacy interest in communications to a medical or mental health care provider. Obtaining this information without the permission of the patient constitutes a violation of a patient's Fifth Amendment right against self-incrimination and the Fourth Amendment right against unreasonable search and seizure.

238. It is clearly understood that an accused criminal cannot be compelled to give information to any person, law enforcement or otherwise, that might be a prosecution witness. Yet in juvenile court actions, prosecutors have virtually unlimited access to the most personal information, and the accused have had all their defenses eliminated by state statute, such as Utah Code §62A-4a-412(4). Accused parents are compelled to give information to doctors, therapists, and caseworkers, persons presuming to hold a position of trust, and those same persons are then called as prosecution witnesses.

239. One cannot simultaneously hold a position of trust and privilege with an accused and at the same time be a prosecution witness. Child welfare laws compelling parents to speak to caseworkers, and those eliminating physician-patient and therapist-patient privileges, including Utah Code §62A-4a-412(4) are in violation of the Fifth Amendment right against self-incrimination.

F. Fraudulent Use of Apparent Professional Status

240. Together with eliminating the traditional privilege existing between patients and professionals, DCFS caseworkers ride in on the coattails of the counselor-patient privilege. They present themselves as caring, specially trained professionals, and indeed, they apparently consider themselves to be such. They go to great lengths to obtain the trust of all family members.

241. Notwithstanding the image presented by the defendants, there is a profound difference between caseworkers and doctors. The authority of a physician derives from his medical expertise. To properly gain advantage of that authority, the patient consents to divulge certain information. The authority of the caseworkers, in contrast, is that of the police. They are first and foremost extensions of law enforcement.

242. One does not generally recognize health care professionals as police, nor does one recognize police as health care professionals. The defendants deliberately, knowingly, and fraudulently take advantage of this perception, in that DCFS caseworkers present themselves as professionals when acting as police.

243. By their practices of misrepresentation the defendants have and do willfully, maliciously, and deliberately deprive the plaintiffs of their rights, including their rights to due process guaranteed under the United States Constitution.

CATEGORY III, FUNDAMENTAL STRUCTURAL VIOLATIONS

A. Fraudulent Use of Civil Status

244. Legal proceedings are denominated as either criminal or civil. Criminal proceedings are those in which the State seeks to penalize an individual for violating a rule of conduct prescribed by the legislature. Except for minor misdemeanors, "penalty" means the possible deprivation of life or liberty. Life and liberty are unique to each individual. They are "non-transferable." In other words, depriving one party of life or liberty does not, and cannot, thereby increase the life or liberty of the prevailing party.

245. In contrast, civil proceedings generally consist of actions between two private parties seeking to correct a private injustice, for which the remedy is the transfer of a property interest, be it money damages or actual property, from the injuring party to the prevailing party.

246. The rules of procedure in criminal proceedings are significantly different from those in civil proceedings. Because of the importance of law enforcement to society, the state wields the greatest power in regard to criminal law. The powers of arrest, search and seizure, imprisonment, and court-ordered rehabilitation are all powers granted to the state in the interest of protecting society.

247. The rules of criminal procedure recognize that the resources of the State are vastly superior to those of the individual, and that the defendant stands in jeopardy of a fundamental life or liberty interest. Thus, the guarantees of due process are best defined in criminal procedure, which recognizes the following distinct rights, among others:

a. The accused is specifically informed of the charges against him and what the elements of those charges are;

b. The accused is informed of his right to remain silent, pursuant to Arizona v. Miranda;

c. The accused is presumed innocent until proven guilty beyond a reasonable doubt;

d. Upon request, the prosecution is required to provide all evidence to the accused in advance of trial;

e. The accused is not required to provide any evidence to the prosecution;

f. Evidence that is obtained in violation of the accused's rights can be excluded from trial.

g. Proceedings are open to the public unless a party requests that they be closed. A prosecution request to close proceedings is generally subjected to higher scrutiny;

h. Contempt of court for failure to comply with an order of the court may result in fines, the exclusion of certain evidence, or even incarceration, but is always considered separately from the ultimate merits of the action.

248. In contrast, the rules of civil procedure are far more lax. Civil procedure presumes a theoretical equality between the parties. Since the remedy usually involves the transfer of a property interest between the parties, it is likewise presumed that the opposing parties each have a colorable claim to that property. It includes the following characteristics, in contrast to criminal procedure:

a. There is no obligation to inform the accused of his or her right to remain silent.

b. There is no constitutional right to counsel.

c. The property in dispute, rather than the offending party, can be named as the subject of the action;

d. The standards of evidence are far lower. An accusing party need only prove his case by a "preponderance of evidence" (sometimes referred to as "51%"), or at most by "clear and convincing evidence," but never need prove beyond a reasonable doubt.

e. Both the accuser and the accused must provide evidence to each other. An accused party who refuses to provide evidence to the prosecution, including incriminating evidence, can be held in contempt of court.

f. Either party can readily close all proceedings to the public, if they are not closed already.

g. Contempt of court for failure to comply with an order of the court may result in forfeiture of the entire action in favor of the non-offending party.

249. The right to raise one's own children is a fundamental personal right, not a transferable property right. Destroying the bond between a parent and child in the name of the law does not create a corresponding bond to the prevailing party.

250. By denominating juvenile proceedings as "civil," accused parents can be, and routinely are, compelled to testify against themselves. Because the child, rather than the accused, is the only one named in a juvenile court action, a party accused of child abuse may never be informed that he's been accused, and may be forbidden to appear and defend himself.

Even if subsequently acquitted in a criminal trial, the prior civil ruling cannot be overturned on that basis.

251. Most of the grounds for removing a child from the custody of its parents, as set forth in Utah Code, §78-3a-301, constitute de facto allegations against the parents. They constitute violations of specific legislative standards for which a specific penalty is prescribed -- deprivation of one's children.

252. The acts set forth in Utah Code §78-3a-301 subject accused persons to criminal consequences, but deny them all criminal due process. DCFS caseworkers enforcing those provisions are in fact acting in a law enforcement capacity, but are not acknowledged as such, and are not trained as such.

253. Denominating certain acts as crimes and giving caseworkers police powers would not deprive the plaintiffs of due process. It would, in fact, restore due process into much of the child welfare system.

254. Juvenile court proceedings are apparently denominated "civil" under the misplaced perception that a "civil" matter is not as serious, or does not endanger the same fundamental rights, as a criminal proceeding. In fact, there is no right more fundamental than the right to bear and raise one's own children.

255. Utah Code §§78-3a-304.5 and 406(1), as well as Rule 2(a) of the Utah Rules of Juvenile Procedure, are very specific that all proceedings in juvenile court in neglect and dependency and in termination proceedings are civil in nature. At the same time §§78-3a-106 and 317 of the Utah Code supply the State with all the heightened powers incident to criminal investigations.

256. The simple consequence of denominating juvenile court proceedings as civil is that the state has the full powers of criminal enforcement, the full powers and protections of civil discovery, and a far lower standard of evidence against accused parties, while the accused have none of the protections of due process. As with the secrecy of the child welfare system, the only parties benefited by denominating juvenile proceedings as "civil" are the defendants.

257. §§78-3a-304.5 and 406(1), Utah Code (1953, as amended) are unconstitutional in that they deceitfully denominate proceedings that are in fact criminal in nature as "civil," thus depriving the plaintiffs of their fundamental rights under the Constitution, including the right to due process of law.

B. Secret Chamber

258. The most fundamental aspect of the child welfare system is secrecy. This secrecy is common to all the defendants, all of whom are public employees. Ironically, those aspects of individual liberty that have traditionally been subject to the greatest protections -- privacy, family life, privileged communications -- are made entirely accessible to the defendants, while those aspects of legal process that have been traditionally kept public to protect the plaintiffs -- public trial by jury, public records, and the right to confront accusers -- are eliminated.

259. The right to a public trial and public review of government records is a fundamental right of due process. The purpose of public access is to prevent the abuse of government authority. A fundamental due process right cannot be categorically denied without first being itself subject to due process. A legislative policy categorically denying a fundamental right cannot be sustained.

260. The common justification for the secrecy of the child welfare system is "to protect the best interests of the child." This is a per se presumption that directly deprives the plaintiffs of a fundamental right. It doesn't even shift the burden of proof to the parents to show that secrecy isn't in the best interest of the child. It simply denies a fundamental right without recourse.

261. Sealing juvenile records is also based upon and reinforces the policy of the defendants that any party accused in a child welfare matter is guilty until proven innocent.

262. In practice, the only parties benefited by the secrecy of the child welfare system are the defendants. Most of the abuses perpetrated by the defendants are possible because they are done in secret. Opposition to this class action is based not on protecting the best interests of children, but on protecting the abuses of the defendants.

263. In those cases where secrecy truly is in the best interests of the child (and there are some), the burden must be on a party to the action, be it the defendants, the parents, or any other party, to prove to the court that there is an appropriate reason to restrict the fundamental right of public access to government records and processes.

264. By maintaining the child welfare system as a secret chamber, defendants have committed the primary violation of the plaintiffs' rights to due process, the violation whereby all other abuses of the plaintiffs' rights cited in this action are made possible.

1. Denial of Right to Public Trial

265. The most secret chamber in the Utah child welfare system is the Juvenile Court itself.

266. Pursuant to Utah Code §78-3a-104, the Utah Juvenile Courts have exclusive jurisdiction over all matters arising under the child welfare laws, as set forth in Utah Code §§78-3a-301 et seq. and 78-3a-401 et seq. Pursuant to Utah Code, §78-3a-115 and the Utah Rules of Juvenile Procedure, the general public and spectators are excluded from all juvenile court proceedings.

267. All matters arising under Utah's child welfare laws must be tried in a closed courtroom. As a result, there is no obligation on the part of the court to adhere to any of the rules of due process. The rules of evidence have no meaning, as evidence is routinely proffered rather than proven, hearsay is readily admitted, and all witnesses for the prosecution are presumed to be experts in their field. The court can, and routinely does, ignore all law and evidence favorable to parents, no

matter how persuasive. If parents threaten to publicize these outrages, the court threatens them with contempt.

268. Nowhere could the intent of the founding fathers in providing for public trials be more clear. The right to a public trial is a fundamental aspect of due process, embodied in the Sixth and Seventh Amendments. This fundamental right cannot be categorically denied. If a trial is to be closed at all, it must be upon motion of a party, for good cause shown.

269. By denying the right to a public trial, defendants have denied plaintiffs a fundamental right, in violation of the very essence of due process, as guaranteed under the United States Constitution.

2. Denial of Right to Confront Witnesses

270. A vast proportion of alleged cases of abuse or neglect are initiated on the basis of anonymous referrals. Utah Code §62A-4a-412(2) prohibits the defendants from revealing who, if anyone, accused a parent of abuse or neglect. It is entirely possible for DCFS to initiate an investigation out of thin air, or against persons whose political or religious views are unpopular, and the accused has no recourse.

271. It is not sufficient to allege that witnesses must be protected against possible recrimination. Witnesses against any other crime are not afforded such protection, not even capital crimes. The severity of the accusation has never been a basis for protecting witnesses. Under Utah's child welfare laws, parents and others can suffer the loss of the most fundamental rights, as well as their reputation, and are categorically denied the right to confront their accusers, if any exist other than DCFS.

272. Like any other fundamental right, if grounds exist to curtail that right, it must be on a case-by-case basis, after good cause shown and a chance for the accused to be heard.

273. By categorically denying the right to confront witnesses, defendants have, individually and in concert, under color of law, denied plaintiffs a fundamental due process right and sustained the juvenile court as a secret chamber, in violation of all known concepts of due process as guaranteed under the United States Constitution.

3. Denial of Right to Jury

274. The Sixth and Seventh Amendments to the United States Constitution guarantee the right to trial by jury in both criminal and civil actions. The right to a jury trial is a fundamental right closely tied to the right to a public trial, preventing the abuse of government authority by allowing an impartial judgment by a jury of one's peers rather than by a member of the judiciary.

275. Pursuant to Utah Code §78-2-115, parties to juvenile court proceedings are denied any and all right to a trial by jury. This statute was specifically enacted at the insistence of the defendants after parties attempted to assert their right to trial by

jury. The Defendants have not and cannot show a compelling government interest that would justify categorically denying this fundamental right to the Plaintiffs.

276. As set forth above, notwithstanding attempts to classify them otherwise, juvenile court proceedings are in fact criminal in nature. Allegations are brought against parents, and the accused are placed in jeopardy of a fundamental liberty interest. The right to a jury trial in such actions is secured under the Sixth Amendment. The right to waive this right belongs to the accused on a case-by-case basis, not to the legislature to eliminate categorically.

277. By denying plaintiffs the right to a jury trial, defendants have established the juvenile court as a secret chamber, and have denied the plaintiffs their rights to due process of law, as guaranteed under the United States Constitution.

4. Foster Care Citizen Review Board

278. To create the illusion that some sort of independent oversight exists to prevent abuses in the foster care system, a "Foster Care Citizen Review Board" has been created to meet federal funding guidelines.

279. Under traditional jurisprudence, no party to a legal action is permitted to present evidence to the court ex parte, or without the knowledge and consent of all other parties. The rules of evidence guarantee the right of a party to cross-examine witnesses before any adjudicating forum. This aspect of the Sixth Amendment right to confront witnesses extends to both criminal and civil actions.

280. The rules regulating the presentation of evidence, including cross-examination of witnesses, are designed to protect fundamental due process and basic fairness. In contrast, the Foster Care Citizen Review Board has complete access to all records and parties. Parties are not permitted to cross-examine witnesses, and the Board can submit reports directly to the judge, thereby nullifying any concept of due process.

281. Parties appearing before the Review Board are fraudulently told that it is not a judicial forum. Nevertheless, persons appearing before the Board are subjected to intense cross-examination by the Board, and the Board prepares a report for the purpose of informing the court.

282. Most significantly, all the proceedings of the Foster Care Citizen Review Board are secret. While waiting to appear before the board, parents are asked, without explanation, to sign a registration sheet. The form is in fact an "Oath of Confidentiality." Persons appearing before the Board are told that they may not participate in its proceedings unless they have signed this "Oath."

283. The text of this oath states:

> I solemnly swear/affirm that I shall protect the confidentiality of all information disclosed during this review

and any information related to the case I may learn outside the review. I understand that such information may only be disclosed when authorized by law, and that by breaching this oath of confidentiality I may be subject to administrative or legal action.

284. What is presented here is an oath, a covenant, and a penalty in support of secret proceedings. Nowhere in American jurisprudence is an accused person required to waive his right to free speech and public trial to protect the secrecy of his or her own accusers!

285. Rather than providing an independent oversight of the foster care system, the Foster Care Citizen Review Board embodies and promotes all the violations of due process characteristic of the rest of the Utah child welfare system. The secrecy works entirely for the benefit of the defendants and entirely to the detriment of the plaintiffs, in violation of the plaintiffs' first amendment right to freedom of speech, fifth amendment right against self-incrimination, and sixth amendment right to confront witnesses in a public trial.

286. By bypassing what few vestiges of due process exist in the juvenile court system, the Foster Care Citizen Review Board deprives the plaintiffs of their rights to due process as guaranteed under the Fourteenth Amendment to the Constitution.

C. Conspiracy to Deny Due Process

1. The Utah Court of Appeals

287. Pursuant to §78-2a-3, Utah Code Annotated (1953, as amended), the Utah Court of Appeals has exclusive jurisdiction of all appeals arising out of Utah's juvenile courts.

288. Even if Utah's child welfare laws were entirely appropriate and constitutional, errors of law occur from time to time in all trial courts. Statistical probability would demand that at least a healthy minority of cases brought by parents to the Court of Appeals would be ruled in the parents' favor.

289. In fact, notwithstanding the substantial constitutional defects in Utah's child welfare laws, all or virtually all appeals from the juvenile courts are ruled in favor of either DCFS, the guardian ad litem, or both, but almost never in favor of parents. In some cases, lower court rulings in favor of parents have been overturned in favor of the State.

290. The constitutionality of the child welfare laws is uniformly sustained by the Court of Appeals.

291. The consistency with which the Utah Court of Appeals sustains the conduct of the State and avoids any ruling that might endanger federal funding, either for the Department of Human Services, the Board of Juvenile Court Judges, the State office of the Guardian ad Litem, or the Court of Appeals itself, manifests a deliberate and coordinated effort to deprive the

Plaintiffs of their rights and privileges under the Constitution, in violation of 42 U.S.C. §§1983 and 1985(3).

2. The Utah Supreme Court

292. Pursuant to Article VIII, Section 2, of the Utah Constitution, the Utah Supreme Court is the highest court of the State of Utah. In accordance with §78-2-2(5), Utah Code (1953, as amended), the Utah "Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication."

293. Even if Utah's child welfare laws were entirely appropriate and constitutional, errors of law occur from time to time in all appellate courts. With the vast proportion of Court of Appeals cases ruling squarely against parents on such important constitutional issues and questions of State policy, statistical probability would demand that at least a healthy minority of those cases petitioned to the Supreme Court would at least present issues for which the Court would grant certiorari.

294. Upon information and belief, the Utah Supreme Court has not granted certiorari to any petitions brought by aggrieved parents since enactment of the Utah Child Welfare Reform Act of 1994, with its scrupulous concern for federal funding guidelines.

295. The consistency with which the Utah Supreme Court refuses to hear any appeals originally arising out of the juvenile courts or which might endanger federal funding, either for the Department of Human Services, the Board of Juvenile Court Judges, the State office of the Guardian ad Litem, or the Court of Appeals, manifests a deliberate and coordinated effort to deprive the Plaintiffs of their rights and privileges under the Constitution, in violation of 42 U.S.C. §§1983 and 1985(3).

CATEGORY IV, FEDERAL VIOLATIONS

A. Federal Mandates Denying Due Process

296. For better or worse, the principle has been accepted since 1936 that Congress' power to place restrictions on spending exceeds its other delegated powers under Article I, Section 8, of the Constitution. However, those restrictions cannot make demands on the States which are in themselves unconstitutional.

297. To the extent that the laws of the State of Utah set forth in this action as unconstitutional have been enacted to comply with federal funding mandates, the federal mandates are in themselves unconstitutional, inasmuch as they require the States to enact laws which deny due process to the citizens of those States, including the plaintiffs.

298. The State laws set forth in this action have been enacted in large part to comply with 42 U.S.C. §§280 et seq., 601 et seq., 620 et seq., 670 et seq., and 5101 et seq., specifically §§280d(b)(6), 290ff-2, 604, 622(b), 623, 627, 629, 671, 674, 5111, 5112, and especially 675.

299. The named portions of the United States code are unconstitutional, in that they embody presumptions which deny the plaintiffs due process of law, and mandate that states enact statutes embodying those presumptions, in violation of their rights as guaranteed under the Fourteenth Amendment to the United States Constitution.

B. Legislation in Excess of Constitutionally Delegated Powers

300. Although Congress exercises broader power under the spending power than is otherwise delegated to it, there are limits. Even under this broad power, the legislation must bear a reasonable relationship to a legitimate Congressional purpose.

301. The extraordinary detail contained in 42 U.S.C. §§280b-1, 280c-1, 280d, 290ff-2, 602, 603, 604, 607, 622(b), 623, 627, 629, 671, 673a, 673b, 674, 675, 679, 679a, 1397, 5106a, 5106c, 5111, 5112, and 5113, as well as numerous related statutes, in effect amounts to a Congressional effort to micromanage State affairs.

302. In addition, regardless of whatever the declared policies of the federal child welfare laws may be , their practical effect has been to create a system of national intelligence gathering, surveillance, and control. This system of control is well beyond the scope of Congress' powers, both as an invasion into the police powers of the States, and as a very real departure from the stated purpose of the legislation.

303. The mandates contained in 42 U.S.C. §§280 et seq., 601 et seq., 620 et seq., 670 et seq., 1397 et seq., and 5101 et seq. are not reasonably related to a legitimate exercise of Congressional power, and are therefore unconstitutional as being in excess of Congress' delegated powers under Article I, Section 8, of the United States Constitution.

C. Semi-Autonomous State Bodies Answerable to Federal Agencies

304. Even if the principle is accepted that Congress can establish conditions on funding that are as intrusive as those contained in the child welfare funding enactments, the enactments contain a further condition that pushes beyond the bounds of Congress' legitimate powers.

305. 42 U.S.C. §§603(a)(5)(A)(ii), 622(a) & (b), 671(a), 5116a, and numerous related statutes direct States receiving funds under these chapters to designate a distinct agency within the State government for the sole purpose of receiving and administering federal funds. Rather than simply mandating that certain funds be used for certain purposes, the named provisions actually mandate the conduct of affairs as between branches of government within the States. In many cases, the State actually creates an agency to meet the federal requirement.

306. In actual practice, these agencies function as semi-autonomous bodies within State governments, funded and regulated by the federal government. Such agencies in effect become extensions of the federal government, a separate sovereignty from the States for which they are supposedly constituted.

307. The existence of federal agencies within State governments is an impermissible intrusion upon the sovereignty of the States, entirely contrary to the balance of powers upon which the system of checks and balances between the States and federal government depends. It extends Congress' power under the spending clause far beyond anything the founding fathers could have ever imagined, and even further than those powers have been extended since 1936.

308. By mandating the creation of semi-autonomous bodies within State governments that are bound by federal law, regulations, and funding, Congress has impermissibly violated the balance of powers between separate sovereignties, in violation of the principals of federalism and of the Tenth Amendment to the United States Constitution.

D. Federal Obligations of Guardians ad Litem

309. Among the agencies constituted within the State but operating under federal law is the Office of the Guardian ad Litem.

310. Utah Code, §§78-3a-911 & 912 sets forth the duties of the guardian ad litem, in accordance with federal regulations. The two essential aspects of the guardian ad litem are 1) unlimited access to information, and 2) a presumption that the best interests of the child are separate and independent from the best interests of the family.

311. The guardians ad litem abide by the legal fiction that they are separate and independent from the attorney general and from the court. Historically, this may have been true. Pursuant to the current statute, however, the guardians ad litem are constituted as an extension of the court, and are equally bound to abide by federal funding guidelines. It is no coincidence that when child welfare matters are dealt with in court, the assistant attorney general and the guardian ad litem often sit at the same table. The impartiality of the guardians ad litem is compromised on the one hand by their being answerable to the court, and on the other hand by their standard practice of working in tandem with the attorneys general. The only parties to whom they consistently show no favoritism are the accused parents.

312. The presumption of the best interest of the child as separate from the best interest of the family fits neatly into the adversarial system, where each party feels compelled to defend its assigned position regardless of any natural family bonds.

313. The unity of purpose and financial support between the guardian ad litem, the attorney general, and the court, where that financial support is statutorily dependent on the number of children placed in foster care, is directly contrary to and in conflict with any semblance of impartiality in regard to the child. This conflict denies the plaintiffs of their rights to due process under the Constitution.

E. Unconstitutional Enactment

314. Article X of the Interstate Compact on Placement of Children (ICPC), which has been enacted by all 50 states, and which is included in the laws of Utah as §62A-4a-701, states as follows:

> The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (emphasis added).

315. The emphasized portion of Article X of the ICPC is contrary to all known principals of Constitutional law. A statute that has been ruled unconstitutional cannot continue to apply in any respect whatsoever.

IX
CAUSES OF ACTION

(Federal Constitutional Violation)

316. As set forth in the description of defendants' actions and inactions outlined above, defendants while acting under color of law, have deprived plaintiffs of their rights to due process as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution, and the equal protection of the laws as guaranteed under the Fourteenth Amendment, in violation of 42 U.S.C. §1983.

(Federal Constitutional Violation)

317. As set forth in the description of defendants' actions and inactions outlined above, defendants having knowingly, willingly, and deliberately agreed to act and have acted together in concert to deprive plaintiffs of their rights to due process as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution, and of the equal protection of the laws as guaranteed under the Fourteenth Amendment, in violation of 42 U.S.C. §1985(3).

(Federal Constitutional Violation)

318. Sections 62A-4a-116, 201, 202.1, 202.3, 203, 205, and 412(2) as well as Sections 78-3a-109(7), 115, 116, 117, 118, 301, 304.5, 305.1, 306(8), 307, 308, 310, 311, 312, 313, 313.5, 314, 403, 406, 407, 408, 409, and 78-3g-101 et seq. of the Utah Code (1953, as amended) are unconstitutional in that they deny the plaintiffs due process of law as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution, deny the equal protection of the laws as guaranteed under the Fourteenth Amendment, and constitute enactments by a state which abridge the privileges and immunities of citizens of the United States, in violation of the Fourteenth Amendment.

(Federal Constitutional Violation)

319. Those portions of sections 280 et.seq., 601 et.seq., 620 et.seq., 670 et.seq., 1397 et.seq., 3796 et.seq., 5101 et.seq., 10401 et.seq., and 13001 et.seq. of Title 42 of the United States Code, as set forth in this action, are unconstitutional in that they mandate conduct which is in violation of the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

(Federal Constitutional Violation)

320. Those portions of sections 280 et.seq., 601 et.seq., 620 et.seq., 670 et.seq., 1397 et.seq., 3796 et.seq., 5101 et.seq., 10401 et.seq., and 13001 et.seq. of Title 42 of the United States Code, as set forth in this action, are unconstitutional in that they exceed the powers delegated to Congress under Article I, Section 8, of the United States Constitution.

(Federal Constitutional Violation)

321. Article X of the Interstate Compact on Placement of Children is unconstitutional on its face.

X
PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, in their own right and on behalf of the class on whose behalf they appear, pray that this Court:

A. Assume jurisdiction of this action;

B. Declare this a class action under Fed. R. Civ. P. 23(b)(2) as soon as practical as set out in Fed. R. Civ. P. 23(c)(1);

C. Enter a declaratory judgment, pursuant to 28 U.S.C. §§2201 and 2202, that Defendants' policies and practices have denied Plaintiffs and members of their class due process of law as guaranteed by the Constitution of the United States;

D. Enter a declaratory judgment, pursuant to 28 U.S.C. §§2201 and 2202, that the selected policies and practices mandated under Sections 62A-4a-116, 201, 202.1, 202.3, 203, 205, and 412(2) as well as Sections 78-3a-109(7), 115, 116, 117, 118, 301, 304.5, 305.1, 306(8), 307, 308, 310, 311, 312, 313, 313.5, 314, 403, 406, 407, 408, 409, and 78-3g-101 et seq. of the Utah Code (1953, as amended) are unconstitutional in that they violate the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, deny citizens of the equal protection of the laws, in violation of the Fourteenth Amendment, and abridge the privileges and immunities of citizens of the United States, in violation of the Fourteenth Amendment;

E. Enter a declaratory judgment, pursuant to 28 U.S.C. §§2201 and 2202, that the selected policies and practices mandated

under 42 U.S.C. §§280 et.seq., 601 et.seq., 620 et.seq., 670 et.seq., 1397 et.seq., 3796 et.seq., 5101 et.seq., 10401 et.seq., and 13001 et.seq., are in violation of the United States Constitution inasmuch as they require States to enact policies in violation of the rights of citizens to due process of law as guaranteed by the Constitution;

F. Enter a declaratory judgment, pursuant to 28 U.S.C. §§2201 and 2202, that the selected policies and practices mandated under 42 U.S.C. §§280 et.seq., 601 et.seq., 620 et.seq., 670 et.seq., 1397 et.seq., 3796 et.seq., 5101 et.seq., 10401 et.seq., and 13001 et.seq., are in violation of the United States Constitution inasmuch as they exceed the powers delegated to the Congress by the Constitution;

G. Enter a declaratory judgment, pursuant to 28 U.S.C. §§2201 and 2202, that Article X of the Interstate Compact on Placement of Children is Unconstitutional;

H. Grant preliminary and permanent injunctions pursuant to Fed. R. Civ. P. 65 necessary and appropriate to remedy the Defendants, their successors in office, agents, employees, and all other persons in concert or participation with them from continuing to violate plaintiffs' rights under the United States Constitution;

I. Award to Plaintiffs damages in the amount of Five Hundred Million Dollars ($500,000,000.00), being the approximate amount of federal money given to the Utah Department of Human Services and the Board of Juvenile Court Judges as a reward for removing enough children from homes and disrupting enough families to comply with federal policy since enactment of the Utah Child Welfare Reform Act of 1994;

J. Award to the plaintiffs the reasonable costs and expenses incurred in the prosecution of this action, including but not limited to reasonable attorney's fees pursuant to 42 U.S.C. §1988;

K. Retain jurisdiction of this matter;

L. Award to plaintiffs such other relief as the court may deem just and proper.

DATED this 5th day of March, 1999.

_____

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PROXIMITY

- ○ line
- ○ sentence
- ○ paragraph
- ◉ page

WORD FORMS

- ◉ Exact match
- ○ Plural and posessives
- ○ Any word forms

RANKING FACTORS

Rank Factor	Importance
Word ordering	medium
Word proximity	medium
Database Frequency	medium
Document Frequency	medium
Position in text	medium

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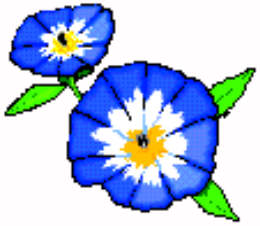

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