FD 95
Eff. 4-80

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

KATHLEEN MATTINGLY
PLAINTIFF

VS

George Mattingly Jr
DEFENDANT

Case No. FD 89-02666

JUDGE: _____

ORDER OF COURT

AND NOW, to-wit, this 15TH day of MARCH, 1989

AFTER CONSULTATION WITH CLIENTS AND upon the advice of counsel the PFA petition filed by PLAINTIFF is withdrawn AND IT IS ORDERED AND DIRECTED: (1) DUE TO AN ON going INVESTIGATION by CYS INTO Allegations of Abuse by the DEFENDANT AGAINST the two MINOR CHILDREN, THE MINOR CHILDREN ARE Ordered to REMAIN IN the CUSTODY OF THE PLAINTIFF (2) The DEFENDANT is to have SUPERVISED VISITATION WITH THE MINOR CHILDREN EVERY SATURDAY AS ARRANGED THROUGH THE Support VISITATION PROGRAM. (3) AT THE CONCLUSION OF THE CYS INVESTIGATION, IF IT IS DETERMINED AS UNFOUNDED, THEN CUSTODY/VISITATION SHALL REVERT TO THE PRIOR NOVEMBER 26, 1986 ORDER.

THE NOVEMBER 26, 1986 ORDER REMAINING TO CUSTODY/VISITATION IS STAYED PENDING THE CYS INVESTIGATION ABOVE.

BY THE COURT:

_____ J.

David M Lane ATTY FOR PLTF

Kathleen Mattingly

George Mattingly

Lawrence M. Paden Atty for Dft

COMMONWEALTH OF PENNSYLVANIA

vs

GEORGE MATTINGLEY

AKA

3 M1 B

6-5-89 Date Filed

7-14-89 Pre-trial Date

12-2-89 180th Day

8-8-89 F.A.

Judge H. Terrence O'Brien

A.D.A. Jane Orie

Deft. Lawrence O'Toole

Reporter Susan Lloyd

Minute Clerk Judy Karg

CC No. 8907019

SS # 178-54-9899 D.O.B. 7-1-59

Actor's Race WHITE Sex MALE

O.T.N. No. C1423844

B.C.I. No. 205602

RECEIVED
89 JUL 19 PM 12:04
CLERK OF COURTS
ALLEGHENY COUNTY

Count 1: INDECENT ASSAULT (Section 3126)

Count 2: CORRUPTION OF MINORS (Section 6301)

Count 3: ENDANGERING WELFARE OF CHILDREN (Section 4304)

And now: JAN 24 1990, in open Court, Child Competency Hearing held to determine competency of the victim: Nicole Mattingley, to testify in this matter. Ordered: After hearing in this matter, child victim: Nicole Mattingley adjudged Competent to testify as a Witness.

By the court

W.T.O'B.J.

JAN 24 1990

In Open Court Defendant(s) with counsel pleads Not Guilty. Issue joined by District Attorney.

Jury Sworn: 11:30AM - 1/24/9

Testimony continued to January 25, 1990.

By the court

W.T.O'B.J.

COUNTY
APPEAL None
POST

JAN 25 1990

At Counts 1, 2, and 3:

Not Guilty - See Verdict Filed

And now Jan. 25, 19 90

in open court, Defendant(s) present with Counsel when verdict(s) recorded.

W.T.O'B.J.

Trial Judge

FROM THE RECORDS
ATTEST FEB 26 1990

John C. Tyler

CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

C

KATHLEEN MATTINGLEY
835 BLACKBERRY ST
WEST MIFFLIN, PA 15122

VS.

GEORGE MATTINGLEY JR
385 EDGEWOOD AVENUE
WEST MIFFLIN, PA 15122

CASE NO. 86-06622
FILE NO.
I.V.D NO.

ORDER OF COURT

AND NOW, to-wit this November 26, 1986, in acknowledgement of the agreement of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED that:

MOTHER shall have custody of the child(ren). NICOLE L MATTINGLEY
JOSHUA G MATTINGLEY.

FATHER shall have the right to partial custody/visitation with respect to the child(ren) to the following extent:

ON ALTERNATE WEEKENDS, FATHER IS TO HAVE VISITATION ON SATURDAY AND SUNDAY FROM 10:30 A.M. TO 8:30 P.M. ON OTHER WEEKENDS, FATHER IS TO HAVE VISITATION WITH THE CHILDREN ON SUNDAY FROM 10:30 A.M. TO 8:30 P.M. PARTIES WILL ALTERNATE HOLIDAYS BEGINNING WITH THANKSGIVING. FATHER IS TO GIVE MOTHER 24 HOUR NOTICE WHEN HE CANNOT KEEP THE ARRANGED SCHEDULE. FOR TWO MONTHS, FATHER IS TO ARRANGE TO HAVE ONE OF HIS PARENTS ACCOMPANY HIM WHEN HE PICKS UP THE CHILDREN. FATHER IS TO CALL THE CHILDREN ON WEDNESDAY EVENINGS.

BY THE COURT:

Standish J.

(PLAINTIFF) Kathleen A. Y Mattingley (ATTORNEY)
(DEFENDANT) (ATTORNEY)

CLERK OF COURTS
ALLEGHENY CO.
86 DEC 9 P 1:09
CIVIL AND FAMILY DIV.

DISTRIBUTION OF COPIES:

1. Prothonotary 2. Plaintiff 3. Defendant 4. Folder

Exhibit "A"

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

vs.

GEORGE MATTINGLEY,

Defendant.

CRIMINAL DIVISION

No: CC 8907019

PETITION FOR EXPUNGEMENT

Code:

Filed on Behalf of:

George Mattingley

Counsel of Record for This Party:

William C. Kaczynski, Esq.
PA I.D. No. 23564

1208 Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 562-9465

FORM NO. 310

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs.

GEORGE MATTINGLEY

CC. NO. 8907019

CHARGE Indct Ast, Corrup Minor

DATE OF ARREST:

DISPOSITION: Not Guilty (Jury)

DATE OF BIRTH: 7/1/59

SOCIAL SECURITY NO. 178-54-9899

EXPUNGEMENT ORDER OF COURT

AND NOW, to-wit, this 13th day of Sept, 91, the within petition having been presented in open Court, upon consideration thereof, and on motion of _____ Attorney for petitioner, the same is ordered filed, the prayer thereof is granted: and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Clerk of Courts shall serve a certified copy of this Order upon the following persons, keeper's of records, pertaining to the above-captioned criminal proceedings:

1. Bob Colville, District Attorney
2. John C. Kyle, Jr., Clerk of Courts
3. David Brandon, Bail Agency
4. OLASZ, W MIFFLIN (DISTRICT MAGISTRATE)
5. WEST MIFFLIN ALICE (ARRESTING AGENCY)
6. James J. Cioppa, Chief Minute Clerk
7. Susan E. Lloyd (COURT REPORTER)
8. Bureau of Criminal Identification
9. Administrative Office of Pennsylvania Courts

IT IS ORDERED, ADJUDGED AND DECREED that the aforementioned keepers of criminal records shall expunge and destroy the official and unofficial arrest and other documents pertaining to the arrest, or prosecution, or both, of the within defendant in the above-captioned, and that each shall request the return of such records which its agency made available to State or Federal agencies and immediately upon receipt there of shall destroy such records, with the exception of District Attorney's records concerning ARD.

IT IS FURTHER ORDERED that said keepers of such criminal records shall file with the Court an Affidavit stating that the mandates of this Order have been fulfilled.

The Clerk of Courts, upon receipt of an Affidavit, shall seal and impound such Affidavit together with the Indictment, the Complaint and the original and all copies of this Order, and no person or agency shall be permitted to examine such documents.

BY THE COURT:

_____
JUDGE

AFFIDAVIT OF EXPUNCTION

This is to certify that the official arrest and other criminal records, filed and other documents, pertaining to the particular arrest or prosecution or both of the above-captioned defendant, which are in custody of and in control of this office have been expunged and destroyed.

FROM THE RECORDS
ATTEST
SEP. 19 1991

John C. Kyle
CLERK OF COURTS

_____
CERTIFYING OFFICER

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

GEORGE J. MATTINGLEY AND
ELIZABETH L. MATTINGLEY,

PLAINTIFF(S)

V.

GEORGE MATTINGLEY AND,
KATHLEEN MATTINGLEY

DEFENDANT

FAMILY DIVISION

CASE NO: FD90-12622

CODE: _____

ORDER OF COURT

BY:
HONORABLE CYNTHIA A. BALDWIN
820 City-County Building
Pittsburgh, PA 15219

COPIES TO:
Counsel for Plaintiff:
William C. Kaczynski, Esquire
1208 Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Lawrence N. Paper, Esquire
1400 Law & Finance Building
Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

George J. Mattingley and, Elizabeth L. Mattingley Plaintiff,	)	
v.	)	CASE NO: FD90-12622
George Mattingley and Kathleen Mattingley Defendant,	)	

ORDER OF COURT

AND NOW, to-wit, this 10th day of April, 1991, it is hereby ORDERED, ADJUDGED and DECREED after hearing on Petitioner's Complaint for Partial Custody that the Petitioner/Grandparents are granted visitation/partial custody as follows: Supervised visitation with Nicole and Joshua at the YWCA in McKeesport for one (1) hour every other week. Arrangements shall be made by counsel. Said visitation to be supervised by Christine Moninger or her appointee. Mother shall transport children both ways. Grandparents shall pay any costs involved.

Grandparents only shall also meet with the children's therapist at least three times within the next sixty (60) days with or without the children at the therapist's discretion.

Under no circumstances and at no time shall the grandparents bring the children's father to the supervised visitation or any other partial custody with the children.

This order is subject to review in ninety (90) days.

BY THE COURT:

C. A. Baldwin J.

1989 March 4th + 5th - Last visit with grandchildren.
March 8th - Petition for P.F.A. against Son.
March 15th - Sons hearing before Judge Strassburger.
March 18th - Started visitation at Support - Grandfather Son + 2nd wife.
March 25th - Son + wife only.
April 1st - Son only. No further visits. Mother was in contempt from then on.

Son booked for Child Molesting on June 5th
June 15th - Hearing before Magistrate Olasz.
July 10th - Hearing before Judge Kaplan on Ex-wifes contempt. Nothing done.
July 18th - Visitation back at Support with his son. Grandson brought for last visit Aug. 22nd Mother in contempt again. Nothing done.
Nov. 13th - Contempt hearing - Nothing done again before Judge Kaplan.

1990 Jan. 24th + 25th - Criminal Trial by Jury. Found Not Guilty of all Charges!

March 12th - Hearing with Judge Baldwin. Was to see Dr. Rosenblum - Visitation was set up with his son.
March 20th - Visits started at Y.W.C.A. in McKeesport.
Aug 14th - Last Visit. Mother in contempt again

1991 April 8th - Grandparents had Hearing before Judge Baldwin, Court order 1 hr. every two wks.
Sept 10th - First visit at Y.W.C.A. in McKeesport;

at $50.00 an hour. Court order was signed April 10th mother refused to start visits, through legal advice with her attorney & universe ingress of the Y.W.C.A. to accept visitations.

Children & Youth Services - John Bollie Caseworker - never sent information on expungement of their investigation.

August 27, 1997

To the Honorable Members of the Judiciary Committee:

I'm a Mental Health Professional who has counseled hundreds of dysfunctional families. I just learned that you're considering current Senate Bill 431: The Grandparent Visitation Act. Before giving it your approval for passage as is to the House for first consideration, please carefully consider my views.

For over 5 years, I've counseled many families who were being sued for grandparent visitation. Since I've witnessed first hand how suing effects children and their families psychologically; I consider myself qualified to represent a "Psychological" view regarding this issue.

I am 100% Pro-family. I had a wonderful relationship with all my grandparents. My fondest memories of my childhood are filled with them. Know also, that prior to counseling these families, I was entirely in favor of this law because I thought it was "Pro-family. Only after counseling them, did I come to realize that it wasn't "Pro-family" legislation at all. Let me explain why I feel this way.

First of all, if a grandparent has to go so far as to sue their own children for visitation, then that's admittance of serious dysfunction (problem) between family members. Legislating a law that forces custodial parents to let their children visit with their grandparents is not the solution to the problem, because dysfunction can't be legislated away. It just doesn't work. I have found that awarding visitation against the parent's will accomplishes 5 things:

1. It literally tosses the child in the center ring of familial discord. This proves to only create more discord to which the child is exposed.

2. Parents are financially ruined after being forced to pay costly court-ordered psychological evaluations and counseling fees, in addition to paying numerous legal fees for representation in court The debt can range between $ 2,000.00 - $ 7,500.00, without exaggeration. Because of the debt incurred, their quality of life PLUMMETS, until the debt is paid off. The families being sued and going into debt for years into the future are the most powerless,-single-parent families and those recently divorced or widowed. Instead of helping these unfortunate families recover from the painful life trauma that they have had to endure (divorce, death of a spouse, or being a single-parent raising a child on their own), we enact a law which subjects them to more pain, debt and feelings of powerlessness. Instead of offering them greater opportunities to become autonomous and more socially, psychologically, and financially "FIT", we add to their violation by passing a law which allows custodial grandparents the right to sue their own children for visitation/partial custody. Allowing this type of suit will undoubtedly serve to permanently sever familial relationships; and no amount of counseling, court proceedings, or court orders can change the destructive, negative impact it will have on these fragile families; especially it's impact on the most precious commodities--the children!

3. Suing creates much anger in parents as they feel that their "right to privacy" is being tampered with because they are court-ordered to undergo psychological evaluations and counseling against their will. This anger is often transferred to the children because they are the object of the court action. This anger substantially effects the Parent/Child relationship. How could it not?

4. Parents report that they are not being heard in court because most Judges are grandparents themselves, and are therefore sympathetic with grandparents. Judges are ruling as if all grandparent visitation is always in the "Best Interest" of the child, often ignoring the tests for Best Interest & Parent/Child relationship. Parents are frustrated because many Judges assume the conflicts between the parent/grandparent is the parent's fault, so the Judge justifies awarding visitation to the grandparents despite the parent's testimony.

5. Lastly, and most importantly, suing causes such resentment, that it often destroys any future chance of a positive relationship developing between parent/child/grandparent. I believe that children exposed to this type of family discord over a number of years, learn to relate in same dysfunctional manner as the people they're exposed to. Passing on this type of dysfunctional could never be considered in the "Best Interest" of any child!

If you find yourself saying "So what?" to the points just listed, then you must admit that you consider grandparents visiting their grand children as taking precedence over how this law is negatively effecting children and their families. How could any one of these effects be in the "Best Interest" of the child?, the Parent/Child relationship? or the Child/Parent/Grandparent relationship? I asked myself, "What's so "Pro-family about this law when in the majority of the visitation cases I've handled, suing is causing as much, if not more, emotional trauma to a child and their family, than a PARENTAL DIVORCE. The bottom line is that it really doesn't matter why the discord exists, or even who's to blame for the dysfunction; just the fact that it exists, and the children are being hurt because of it, is enough reason not to award visitation. Believe me, I've patched up the wounded families--children are getting hurt. You cannot legislate a family to heal or to relate better; it's just not the solution!

Another important point to consider is that in today's world, children must learn a host of different coping skills to survive the storm of mounting social problems, like saying no to drugs and alcohol, saying no to premarital sex, practicing safe sex so they won't contract AIDS, parental divorce, single-parent homes, latch-key syndrome, trying to escape the influence of gangs and satanic cults, teenage suicide; not to mention the likelihood of being sexually, mentally or emotionally abused by a babysitter, sibling or mom's boyfriend. To make it worse, this law has only compounded the problem. Because of the stress families endure while being sued for visitation, children and their families must adopt yet another set of coping skills, as if they already don't have enough to handle with the divorce rate at about 50%.

This law looks great on paper,- it's "FEEL GOOD" legislation; it's protecting the rights of grandparents afterall; but please believe me, it's not what it appears to be. If legislators do not consider what the psychological impact this law is having on children and their families, then families, especially children, will continue to get hurt.

For the sake of the children and their families in PA, please consider the psychological impact this law is having on the home life in PA. Please address these points to the members of the House Judiciary Committee before passing it to the House for first consideration. Since the Commonwealth of PA is to protect the welfare of the family, I feel it's important that our legislators understand just how this law is effecting PA children and their families.

Thank your for allowing me to express my opinion,

A "Pro-family" advocate who loves children.

We've compiled a list of the concerns parents have regarding the lastest proposed Senate Bill 431. Also, note how our Senators are chipping away ever so swiftly at Parental Rights. In this latest proposal, it seems grandparents rights are superceding the rights of parents; and the State justifies continued, unconstitutional interference into family life; even unto requesting parents be prosecuted for not cooperating with grandparent visitation. If legislators do not amend Senate Bill 431 as parents propose, they'll be many more Nancy DiVeccho's to contend with in the near future, notwithstanding the ill effects it will have on the children and families of PA. Here are Parent's concerns:

1) The proposed Senate Bill 431 will not allow the custodial parent's parents the right to sue (in other words, Nancy's mother wouldn't be permitted to sue her own daughter for visitation). **That inclusion is GREAT!— except** for the addendum attached to it, which states "unless the Court finds, after a hearing, that the child's best interest will be served by granting visitation rights, or partial custody to the grandparents or great-grandparents" If legislators were intelligent enough to realize that the act of a grandparent suing their own child for visitation is admittance that serious dysfunction exists between grandparent and parent; and that subjecting a child to such dysfunction would not be in the best interest of the child, nor the Parent/Child relationship, than why would they provide such an exception (the addendum)? Providing this exception will give those Court officials the **"continued open door"** to justify custodial grandparents suing their own children for visitation even when it's not in the Best Interest of the child. It's already happening in other grandparents suits across PA. If this addendum to the exception is passed as proposed, it will still permit Grandparent-Sympathetic Judges in PA to justify custodial Grandparents suing their own children for visitation/partial custody just like they did in Nancy's case, because those types of Judges typically unlawfully ignore the tests for the Best Interest & Parent/Child Interference Standards anyway (e.g. Nancy's case). The addendum, in our opinion, is nothing more than back door doubletalk because it **gives** custodial grandparents the right to sue their own children, and legitimizes a legal opening for Grandparent-Sympathetic Judges to justify a custodial grandparents suit for visitation. **Nancy's case is a perfect example of why this addendum needs to be omitted.** In her case, (like the addendum), even after a hearing in front of a Judge (who admitted was Grandparent Sympathetic) awarded visitation, even after proof that it was not in the "Best Interest" of the child, or the Parent/Child relationship. Omitting the addendum, will accomplish 4 things. It will:

a) **PRESERVE FAMILY-LIFE**, by guaranteeing the protection of the emotional welfare of the child, and the precious Parent/Child relationship,

b) **GIVE CUSTODIAL SINGLE-PARENTS THE SAME CONSTITUTIONAL RIGHT** to say with whom their child shall visit, like intact, nuclear families. Otherwise, this law will continue to discriminate against single, divorced parents by not affording them the same protection as intact, nuclear families or even widows/widowers

c) **ELIMINATE THE REVERSE DISCRIMINATION, JUDICIAL BIAS & ABUSE OF POWER AGAINST PARENTS**, by ensuring that all Judges (esp. Grandparent-sympathetic Judge's) **lawfully apply and uphold** the "Best Interest & Parent/Child Interference" standards prescribed by law,

d) **PREVENT CUSTODIAL GRANDPARENTS FROM USING COURT-ACTION AS A LEGAL MANEUVER OR TOOL TO CONTROL THE LIVES OF THEIR SINGLE-PARENT ADULT CHILDREN.** The family will be forced to use the most logical, natural means of reconciliation--**OLD-FASHION COMMUNICATION.** Legislating families to heal is wrong. Time heals wounds, **not force!** Let Nature take it's course to heal families!

Unless the addendum (exception) listed above be omitted; families, like Nancy's will continue to get hurt; especially the children, because it will not prevent Grandparent-Sympathetic Judges unlawfully justifying custodial grandparents suits. Omitting the addendum will stop Judge's abuse of power and Judicial bias against custodial parents. Therefore, we're begging you to sponsor the specific omission of,... "unless the Court finds, after a hearing, that the child's best interest will be served by granting visitation rights or partial custody to the grandparents or great-grandparents" (See Pg. 5, lines 18-23)

2) **Interference Prohibited:** What are they trying to say here? The court will prosecute parents like criminals if they interfer with grandparent visitation? Does that mean that legislators give Judges card blanc power to throw parents in jail? Or perhaps justify taking the kids away from the parent if they don't comply with the said visitation? Allowing such an inclusion would be condoning the felony charge trumped-up against Nancy. What are the consequences of this inclusion--putting mommies & daddies in jail for taking a stand on who their child shall associate. It's ludicrous! If prosecuted and found guilty, Nancy could face up to 5 years in prison. Is this what the legislators intended? Don't allow them to do this to Nancy, or any other parent. This is America, not Hitler's Germany. What will children think of grandparents who caused their parents to go to jail? What would this do to the emotional life of our children? (See Pg 4, lnes 11-13)

3) The proposed Bill allows Non-custodial parents to join the petition with the custodial grandparents. This type of triad will certainly destroy what little hope for the child's parents to reconcile, or re-marry. It will prove to cause such anger and resentment between the parents of the child, that any chance for reconcilation or future cooperation between them will be close to non-existent. Know that an ex-spouse joining the in-laws petition will only foster greater animosity between ex-spouses and the child will suffer the greatest. This inclusion is destructive because it will serve to destroy any sanctity left in that family. The child will suffer the discord, unless this inclusion is omitted as proposed in Senate Bill 431. It's an Anti-Family clause. Non-custodial parents shouldn't have the right to join in on the custodial grandparents petition; only their own parent's petition, otherwise a spiteful ex-spouse can use this current proposed clause as a means of retaliation against the custodial spouse, like in Nancy's case. Her ex-spouse was very angry with her because she had his wages attached because he failed to pay support for several years. Out of retailation, even though he **knew** visitation with the custodial grandparents wasn't in his son's best interest, out of revenge, he wrote a letter condoning such visitation and visitation was awarded. It's unfair. (See Pg 4, lines 1-2)

4) Grandparents and Great-grandparents will have the right to sue for visitation/partial custody. This addition is very violating because by social, psychological, political and legal definition, grand- and great-grandparents parents are members of the **Extended Family**; not the **Immediate Family Unit** because they are once and twice removed from the **Immediate Family Unit.** If they're not members of the immediate family, why should they be given the same "legal" right to visitation/partial custody as non-custodial parents? Legislators aware of this rationale, are pushing for passage of this addition because it'll re-define the Family to include Extended Family members If it passes, re-definition is inevitable, and it will legitimize the right of Extended Family members to sue for visitation. It is merely a "back door way" to a "Significant Others" clause. If legislators pass this addition, allowing relatives twice removed to sue, what would prevent passage of

future legislation for other Extended Family members from suing like uncles, aunts and cousins? Children aren't dessert to be divided equally among relatives. For the reasons listed, please omit great-grandparents from the current proposed Bill 431.

5) Essentially, the Act as it stands today, and the proposed Senate Bill 431, admits that unrelated persons have no right to sue for visitation, which should include step-grandparents. If they're not related by blood, or if the step-grandparent had not legally adopted the parent of the child, then they shouldn't be considered a legal grandparent and should not have the right to sue for visitation. Actually even a cousin would have more of a right to sue than an unrelated step-grandparent. Cousins have no rights, why should an unrelated step-grandparent? In Nancy's case, her mother's husband was permitted to join in on the maternal grandmother's petition, when he's not related by blood, nor did he legally adopt Nancy. He's unrelated, and as the law stands, he has no legal right to her child; yet [redacted] Court allowed him these rights because he's deemed a "Significant Other" by the Judge-and thus deemed to have rights to visitation. This law doesn't allow "Significant Others" to sue, yet the Judge unlawfully awarded him visitation. Again, this law is being misapplied. In her case, the Judge is legislating her own laws from the bench. Even though the law doesn't include him as having the right, this [redacted] Co. gave him the right. When Nancy's Attorney argued this point of misapplication in court, the Judge said the step-grandfather had rights--period! His argument was ignored! This is happening all over PA. Judges are legislating from the bench--misapplying the law. It's unfair. The Judge in Nancy's hearing enforced a non-existent "Significant Others" clause. It's illegal to do so. Please put an end to this misapplication, by sponsoring a specific clause which prohibits unrelated step-grandparents (either by blood or legal adoption of the child's parent) the right to visitation/partial custody of said child. Unless it's spelled out that specifically in the proposed Bill 431, Judges will continue to legislate from the bench, and the legislators will be indirectly supporting an OVERT "Significant Others" clause, giving "unrelated" persons, like step-grandparents the right to sue.

Since the public policy of the Commonwealth is to preserve and maintain the family life in PA, we're asking PA legislators to support our proposed changes listed above in Senate Bill 431. We are not against grandparents, we are PRO-FAMILY! Won't you please help us defend our families right to privacy and legislative fairness? Please don't allow what happened to Ms. DiVeccho and her son happen to other families; especially those most defenseless--our single parent homes. Please take this up in the House Judiciary Committee before the Bill is passed onto the members of the House, as is, for first consideration.

Re: Senate Bill 431: Grandparents Visitation Act August 21, 1991

Dear Mr. Chairman and Mr. Krantz:

PARENTS FOR PENNSYLVANIA are gravely concerned about the plight of Nancy DiVeccho and her 6 year old son Anthony. We just learned a short time ago of her very sad story; and felt it necessary to contact you immediately on her behalf, and for the many other parents subjected to the same unfortunate circumstances,--**being sued by their own parents via The Grandparents Visitation Act.**

The following is what we were told about Ms. DiVeccho's case. She is being sued by her own mother out of revenge for visitation/partial custody since 1989.

Because the Custody Counselor ordered partial custody to the "custodial grandparents" despite the court-ordered psychologist's recommendation of **NO VISITATION**; and because the same court official failed to apply the Best Interest and Parent/Child Interference Standards required by law, Ms. DiVeccho was forced to file an appeal before a Family Court Judge, so as to protect her son from what the court-ordered psychologist described as her mother's obsessive behaviors. The Family Court hearing was February 20, 1991. The outcome of the February hearing completely devastated Ms. DiVeccho. What happened prior to, and during that hearing is just another example of how The Grandparents Visitation Act is being unlaw fully applied in PA.

Before the Feb 20, 1991 hearing, Ms. DiVeccho had to file a Stay of Supersedes because the Custody Counselor ignored the court-ordered Psychologist's recommendation of no unsupervised visits. He ordered unsupervised visits anyway; telling both Attorney's that the custodial grandmother is rich, and is including the child in her will, so he feels that she should have a relationship with her grandson. For this reason, he ordered immediate unsupervised visitation. He totally ignored any evidence from the court-ordered psychologist and Ms. DiVeccho that visitation did, and would continue to hurt the child and the Parent/Child Relationship. After the Supersedes, the Judge gave the grandparents 4 hours of visitation per month, to be supervised by the Judge's sheriff since Ms. DiVeccho was unfairly no longer permitted to supervise her own son's visits because the Judge (without proof) believed the grandmother's Attorney's lies about the child's mother interfering with visitation. At the Feb. hearing, the same Judge gave the grandparents partial custody, a whopping 64 hrs. of unsupervised in their home per month, even though the child was still experiencing difficulty when the sheriff supervised visits and Ms. DiVeccho and her son's relationship continued to deterioate. This was ignored by the Judge, and she ordered such visitation despite the court-ordered Psychologist's warnings that ANY unsupervised visitation could result in the irrepriable damage to the child. The child was assessed as being at "high-risk" and the psychologist strongly recommended that the court release the child and the mother from further court action; and that future visitation should be determined by the child's mother. The psychologist's recommendations were absolutely ignored, and partial custody was awarded to the grandparents anyway. The Best Interest and Parent/Child Interference Standards were not applied in Ms. DiVeccho's case. We're told Ms. DiVeccho was mortified the court's decision because:

1. Anthony was already experiencing numerous adverse effects from just 4 hrs. of supervised visitation a month. In addition, the visitation was seriously interfering their Parent/Child relationship. When the court was given evidence of this, it was ignored.

2. The Psychologist's report advised that court-ordered visitation wasn't in the child's best interest; saying that future visitation should be determined by the mother, or the family should return to counseling until the child could adjust to visitation with his grandmother. He clearly stated that no unsupervised visits should take place because the child was at high-risk of being irreparably damaged by such visitation.

3. She had very little time to spend with her son since she worked a 6 day week. The 4 days a month she had off, 2 of them her son was ordered to spend with the grandparents.

How could the Judge justify 64 hrs. per month of unsupervised visits if the Psychologist reported NO UNSUPERVISED VISITATION? Because the Judge never read the Psychologist's report either prior to or during the hearing. In fact, she did not allow them to be entered as evidence in court. The law was grossly MISAPPLIED in her case because:

1) the court improperly applied the "Best Interest of the Child" standard; no evidence was produced at trial by the Grandparents to prove it was in the minor child's best interest to visit them other than to assert that they were loving grandparents. (PA Officials are misapplying the law. Many are ignoring the Best Interest and Parent/Child Interference Standards altogether; and it's happening over and over in PA courtrooms everyday.

2) the court refused to allow Ms. DiVeccho's attorney to address the constitutional issues raised by her, the court told Nancy's Atty. that if he persisted in addressing the constitutional issues, he be deemed to have waived his closing argument; the court refused to address said issues other than to state that the statute was constitutional;

3) despite Ms. DiVeccho's testimony of her having to work 6 days a week and only had limited time to spend with her son, the court nevertheless awarded the Grandparents partial custody of Anthony every other weekend from Saturdays at 10 a.m. until Sundays at 6 p.m. This decision abused its discretion in making such an award, effectively prohibiting her from being able to spend any of her free time with her child.

4) the Judge wrote her closing statement while Ms. DiVeccho gave her testimony; essentially the testimony was ignored. She was falsely accused by the Judge of selfishly withholding Anthony from his custodial grandparents. Prior to the hearing, we were told that the Judge called Nancy unreasonable and ignorant, when she didn't even know Ms. DiVeccho prior to the Feb. 20th hearing to form such an opinion.

Her story is very sad. Parents are upset. They were very angry to learn how this Act destroyed this poor woman's once happy home. They shook their heads in disbelief, knowing that PA Legislators passed a law which obviously violates their constitutional rights as parents by saying with whom their children should associate. It's difficult to believe that our own legislators enacted such an intrusive law! It's ruining so many people's lives that it's being called the Home-Wrecking Act. As you read on, you will see how this term certainly holds true in Ms. DiVeccho's case.

Ms. DiVeccho is financially ruined, having spent well over $8,500 in less than 20 months on a court-ordered Psychologist and Court and At-

torney fees. In order to protect her son, she filed for an appeal before PA Superior State, which will cost her an additional $3,500.00 in legal fees. As a single parent, how is she going to recover from such overwhelming debt? This woman and her little boy have gone through a living hell. She had to quit college because of this suit. Their lives have been turned upside down--courtesy of this Grandparents Act.

We want you to be aware that the current Grandparents Act contains a overbroadly written and discriminating statute (23 Pa. C.S. 5312), allowing Ms. DiVeccho's own mother to sue her for visitation--her only grounds for suit was that her daughter got divorced. IF her ex-husband had been deceased, her mother wouldn't not have had grounds to sue her own daughter. The statute is unfair because:

1) the statute was unconstitutionally overbroad insofar that it grants the parents of the custodial divorced parent the right to sue for visitation/partial custody;

2) the statute violates the 14th Amendment's protection of parental rights to the care, custody and management of the children; it intrudes into the protected area of the family without a showing of a "compelling state interest";

3) the statute discriminates against single divorced parents by not affording them the same protection as intact, nuclear families, or even widows/widowers;

4) the statute fails to apply the "best interest of the child" standard with-constitutional confines;

5) the statute unconstitutionally shifts the burden of proof to the parent.

Since the February 20th ruling, Nancy failed to show for visitation and cannot be found. Because she failed to show, her own mother filed contempt charges against her, and there's a warrant for her arrest. Because she didn't comply with the court order, the same Judge who awarded visitation, and the D.A.'s office, charged Ms. DiVeccho with 1 count of criminal felony for interfering with an order for Grandparent visitation If prosecuted and found guilty, she'll face up to 5 years in prison. Was this the legislative intent? It's a very extreme situation--all courtesy of this Act, and its unlawful application by PA Judges. People are furious. This poor woman and her son could be living on the street for all we know. This law has made this poor woman a criminal for exercising her parental right. As a mother, she was trying to protect her son from being what the psychologist referred to as "irreparble damaged" by the animosity of forced visitation. Now she's a criminal! When the public hears what this law (and the extent of the Judical Abuse) has done to this poor woman--they'll hold someone acountable for the blatant injustice imposed on this woman and her child.

Please help this family. We're pleading for your support. Won't you open your heart and rally whatever support you can muster, to amend proposed Senate Bill 431 to not allow custodial grandparents the right to sue their own children, as well as addressing our additional concerns following this letter. She desperately needs support--NOW! Please make the necessary legislative changes ASAP, so the misery of this intrusive Act ends with Ms. DiVeccho. If there's anything at all that you can do to assist, please contact her Atty. ASAP: Victor Vouge (412) 283-2333.

We've compiled a list of the concerns parents have regarding the lastest proposed Senate Bill 431. Also, note how our Senators are chipping away ever so swiftly at Parental Rights. In this latest proposal, it seems grandparents rights are superceding the rights of parents; and the State justifies continued, unconstitutional interference into family life; even unto requesting parents be prosecuted for not cooperating with grandparent visitation. If legislators do not amend Senate Bill 431 as parents propose, they'll be many more Nancy DiVeccho's to contend with in the near future, notwithstanding the ill effects it will have on the children and families of PA. Here are Parent's concerns:

1) The proposed Senate Bill 431 will not allow the custodial parent's parents the right to sue (in other words, Nancy's mother wouldn't be permitted to sue her own daughter for visitation). **That inclusion is GREAT!—— except** for the addendum attached to it, which states "unless the Court finds, after a hearing, that the child's best interest will be served by granting visitation rights, or partial custody to the grandparents or great-grandparents" If legislators were intelligent enough to realize that the act of a grandparent suing their own child for visitation is admittance that serious dysfunction exists between grandparent and parent; and that subjecting a child to such dysfunction would not be in the best interest of the child, nor the Parent/Child relationship, than why would they provide such an exception (the addendum)? Providing this exception will give those Court officials the **"continued open door"** to justify custodial grandparents suing their own children for visitation even when it's not in the Best Interest of the child. It's already happening in other grandparents suits across PA. If this addendum to the exception is passed as proposed, it will still permit Grandparent-Sympathetic Judges in PA to justify custodial Grandparents suing their own children for visitation/partial custody just like they did in Nancy's case, because those types of Judges typically unlawfully ignore the tests for the Best Interest & Parent/Child Interference Standards anyway (e.g. Nancy's case). The addendum, in our opinion, is nothing more than back door doubletalk because it **gives** custodial grandparents the right to sue their own children, and legitimizes a legal opening for Grandparent-Sympathetic Judges to justify a custodial grandparents suit for visitation. **Nancy's case is a perfect example of why this addendum needs to be omitted.** In her case, (like the addendum), even after a hearing in front of a Judge (who admitted was Grandparent Sympathetic) awarded visitation, even after proof that it was not in the "Best Interest" of the child, or the Parent/Child relationship. Omitting the addendum, will accomplish 4 things. It will:

a) **PRESERVE FAMILY-LIFE**, by guaranteeing the protection of the emotional welfare of the child, and the precious Parent/Child relationship,

b) **GIVE CUSTODIAL SINGLE-PARENTS THE SAME CONSTITUTIONAL RIGHT** to say with whom their child shall visit, like intact, nuclear families. Otherwise, this law will continue to discriminate against single, divorced parents by not affording them the same protection as intact, nuclear families or even widows/widowers

c) **ELIMINATE THE REVERSE DISCRIMINATION, JUDICIAL BIAS & ABUSE OF POWER AGAINST PARENTS**, by ensuring that all Judges (esp. Grandparent-sympathetic Judge's) **lawfully apply and uphold** the "Best Interest & Parent/Child Interference" standards prescribed by law,

d) **PREVENT CUSTODIAL GRANDPARENTS FROM USING COURT-ACTION AS A LEGAL MANEUVER OR TOOL TO CONTROL THE LIVES OF THEIR SINGLE-PARENT ADULT CHILDREN.** The family will be forced to use the most logical, natural means of reconciliation--**OLD-FASHION COMMUNICATION.** Legislating families to heal is wrong.

Unless the addendum (exception) listed above be omitted; families, like Nancy's will continue to get hurt; especially the children, because it will not prevent Grandparent-Sympathetic Judges unlawfully justifying custodial grandparents suits. Omitting the addendum will stop Judge's abuse of power and Judicial bias against custodial parents. Therefore, we're begging you to sponsor the specific omission of,... "unless the Court finds, after a hearing, that the child's best interest will be served by granting visitation rights or partial custody to the grandparents or great-grandparents" (See Pg. 5, lines 18-23)

2) **Interference Prohibited:** What are they trying to say here? The court will prosecute parents like criminals if they interfer with grandparent visitation? Does that mean that legislators give Judges card blanc power to throw parents in jail? Or perhaps justify taking the kids away from the parent if they don't comply with the said visitation? Allowing such an inclusion would be condoning the felony charge trumped-up against Nancy. What are the consequences of this inclusion--putting mommies & daddies in jail for taking a stand on who their child shall associate. It's ludicrous! If prosecuted and found guilty, Nancy could face up to 5 years in prison. Is this what the legislators intended? Don't allow them to do this to Nancy, or any other parent. This is America, not Hitler's Germany. What will children think of grandparents who caused their parents to go to jail? What would this do to the emotional life of our children? (See Pg 4, lnes 11-13)

3) The proposed Bill allows Non-custodial parents to join the petition with the custodial grandparents. This type of triad will certainly destroy what little hope for the child's parents to reconcile, or re-marry. It will prove to cause such anger and resentment between the parents of the child, that any chance for reconcilation or future cooperation between them will be close to non-existent. Know that an ex-spouse joining the in-laws petition will only foster greater animosity between ex-spouses and the child will suffer the greatest. This inclusion is destructive because it will serve to destroy any sanctity left in that family. The child will suffer the discord, unless this inclusion is omitted as proposed in Senate Bill 431. It's an Anti-Family clause. Non-custodial parents shouldn't have the right to join in on the custodial grandparents petition; only their own parent's petition, otherwise a spiteful ex-spouse can use this current proposed clause as a means of retaliation against the custodial spouse, like in Nancy's case. Her ex-spouse was very angry with her because she had his wages attached because he failed to pay support for several years. Out of retailation, even though he **knew** visitation with the custodial grandparents wasn't in his son's best interest, out of revenge, he wrote a letter condoning such visitation and visitation was awarded. It's unfair. (See Pg 4, lines 1-2)

4) Grandparents and Great-grandparents will have the right to sue for visitation/partial custody. This addition is very violating because by social, psychological, political and legal definition, grand- and great-grandparents parents are members of the **Extended Family**; not the **Immediate Family Unit** because they are once and twice removed from the **Immediate Family Unit.** If they're not members of the immediate family, why should they be given the same "legal" right to visitation/partial custody as non-custodial parents? Legislators aware of this rationale, are pushing for passage of this addition because it'll re-define the Family to include Extended Family members If it passes, re-definition is inevitable, and it will legitimize the right of Extended Family members to sue for visitation. It is merely a "back door way" to a "Significant Others" clause. If legislators pass this addition, allowing relatives twice removed to sue, what would prevent passage of

future legislation for other Extended Family members from suing like uncles, aunts and cousins? Children aren't dessert to be divided equally among relatives. For the reasons listed, please omit great-grandparents from the current proposed Bill 431.

5) Essentially, the Act as it stands today, and the proposed Senate Bill 431, admits that unrelated persons have no right to sue for visitation, which should include step-grandparents. If they're not related by blood, or if the step-grandparent had not legally adopted the parent of the child, then they shouldn't be considered a legal grandparent and should not have the right to sue for visitation. Actually even a cousin would have more of a right to sue than an unrelated step-grandparent. Cousins have no rights, why should an unrelated step-grandparent? In Nancy's case, her mother's husband was permitted to join in on the maternal grandmother's petition, when he's not related by blood, nor did he legally adopt Nancy. He's unrelated, and as the law stands, he has no legal right to her child; yet [redacted] Court allowed him these rights because he's deemed a "Significant Other" by the Judge-and thus deemed to have rights to visitation. This law doesn't allow "Significant Others" to sue, yet the Judge unlawfully awarded him visitation. Again, this law is being misapplied. In her case, the Judge is legislating her own laws from the bench. Even though the law doesn't include him as having the right, this [redacted] Co. gave him the right. When Nancy's Attorney argued this point of misapplication in court, the Judge said the step-grandfather had rights--period! His argument was ignored! This is happening all over PA. Judges are legislating from the bench--misapplying the law. It's unfair. The Judge in Nancy's hearing enforced a non-existent "Significant Others" clause. It's illegal to do so. Please put an end to this misapplication, by sponsoring a specific clause which prohibits unrelated step-grandparents (either by blood or legal adoption of the child's parent) the right to visitation/partial custody of said child. Unless it's spelled out that specifically in the proposed Bill 431, Judges will continue to legislate from the bench, and the legislators will be indirectly supporting an OVERT "Significant Others" clause, giving "unrelated" persons, like step-grandparents the right to sue.

Since the public policy of the Commonwealth is to preserve and maintain the family life in PA, we're asking PA legislators to support our proposed changes listed above in Senate Bill 431. We are not against grandparents, we are PRO-FAMILY! Won't you please help us defend our families right to privacy and legislative fairness? Please don't allow what happened to Ms. DiVeccho and her son happen to other families; especially those most defenseless--our single parent homes. Please take this up in the House Judiciary Committee before the Bill is passed onto the members of the House, as is, for first consideration.

Bean, Kathleen S.
GRANDPARENT VISITATION: CAN THE PARENT REFUSE?
24 *Journal of Family Law* 393 (1986)

This article explores issues concerning the authority of the state to order grandparent visitation in contravention to decisions made by the child's parents. Although nearly every state legislature has promulgated statutory provisions addressing grandparent or third party visitation, the author contends that judicial decisions are inconsistent and demonstrate a failure to address various doctrinal, constitutional, or policy considerations related to visitation. She identifies three major questions presented by state court determinations regarding grandparent visitation: (1) Most courts have not adequately considered the basis for the authority of the state to intervene in matters of "family government." (2) Most courts have not addressed the constitutional issues implicit in their analyses of the best interests of the child standard. (3) The interest of courts in maintaining the grandparent-grandchild relationship frequently overshadows explicit consideration of the needs of the particular child involved. It is Bean's position that courts should not order grandparent visitation without a showing of harm to the child absent such visits.

The author begins her analysis by briefly reviewing factual and legal issues generated in judicial determinations of grandparent visitation disputes. She notes that a significant number of courts ordering grandparent visitation base their determinations on whether the child has been demonstrably harmed as a result of past visits. In addressing this issue, the author indicates that judges either implicitly or explicitly presume that the child will benefit from grandparent contact, and that this presumption becomes particularly compelling if the grandparent's child is unable to exercise visitation rights or is deceased.

Two cases are cited as being particularly illustrative of the judicial presumption that grandparent visitation is beneficial: *Commonwealth ex rel. Goodman v. Dratch*, 192 Pa. Super. 1, 159 A.2d 70 (1960), and *Commonwealth ex rel. Miller v. Miller*, 329 Pa. Super. 248, 478 A.2d 451 (1984). In *Goodman*, the child lived with his maternal grandparents following the death of his mother, but a year later his father remarried and the child went to live with his father and stepmother. The grandparents were subsequently denied permission by the father to visit their grandchild. The judge in *Goodman* presumed that the child's relationship with his grandparents should be maintained despite expert psychological testimony that visita-

tion might conflict with the child's best interests. The *Goodman* court failure to weigh the issue of visitation in terms of the possible harm or benefit accruing to this child by terminating or ordering the continuation of the child's relationship with his grandparents under these particular circumstances was particularly significant and typical in other courts.

In *Miller*, considerable conflict arose between the mother and the paternal grandparents following the death of the grandparent's son. The mother eventually refused to give the grandparents permission to visit their granddaughter. Pennsylvania statutes required the court to find that visitation would be in the best interests of the child and would not interfere with the parent-child relationship. The burden of proof was on the grandparents to overcome the mother's prima facie right to have uninterrupted custody of the child. The *Miller* court concluded, however, that visitation could be denied only if visitation was counterproductive. But the court did not directly address that particular grandparent-grandchild relationship. The court, as have other courts, placed the real burden on the parent opposing visitation by presuming that grandparent visitation is beneficial to children. The court's reasoning was that the benefit of visitation to the grandparent-grandchild relationship outweighed any possible detrimental impact on this child from the friction between grandparents and parent.

In addition to placing the burden on parents or custodians to demonstrate under the best interests standard that visitation is harmful, the author identifies a second issue generated by omission of any consideration of the court's authority to decide whether the visitation is in the best interests of the child. If such authority is addressed, it is frequently outcome-oriented and characterized by assumptions that any court-ordered visitation is a minimal government intrusion rather than considering whether any visitation is justified. *In re Robert D.*, 151 Cal. App. 3d 391, 198 Cal. Rptr. 801 (1984), is cited as illustrating this particular facet of grandparent visitation.

This section concludes with a summary of judicial decision-making trends reflected in *Goodman*, *Miller*, and *Robert D.* The author argues that the rejection by courts of claims concerning the incontestability of parental rights against all forms of state intrusion is a progressive theme. However, the theoretical and generally unexamined presumptions concerning the benefits of grandparent visitation are questionable, as is the belief that court-ordered visitation is only a minimal intrusion. Bean also contends that the intervention threshold should be developed from the perspective of the child's needs, not the grandparents'. It follows that the exercise of the state's parens patriae power infringes on family autonomy and, therefore, it must meet a threshold standard before intervention can occur.

The article next addresses the question of determining, under grandparent or third-party visitation considerations, the constitutional threshold of state intervention. The countervailing pressures to protect family autonomy are examined in light of the state's interest under the parens patriae power. This is done through a review of significant United States Supreme Court decisions which delineate this constitutional threshold.

Supreme Court cases addressing the tension between family autonomy and state parens patriae interests initially focused on religious or first amendment claims. For example, in *Meyer v. Nebraska*, 262 U.S. 390 (1923), the court concluded that the liberty interest guaranteed by the fourteenth amendment included the right to establish a home and raise children. To justify state intervention, the court indicated that "some clearly identifiable harm must exist from which the state seeks to protect the child through its intervention and subsequent action." Since *Meyer*, the Supreme Court has consistently ruled that the parens patriae power, when interfering with fundamental or natural family rights, can be exercised only if necessary to prevent harm to the child. The only significant deviation from this doctrine has been in a redefinition by the Supreme Court of what it takes to achieve or maintain the status of parent. Professor Bean adds that the Supreme Court recognized the constitutional protection of parental and family autonomy in more recent cases including *Prince v. Massachusetts*, 321 U.S. 158 (1944), *Ginsberg v. New York*, 390 U.S. 629 (1968), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

The author notes that the United States Supreme Court has also shifted its analytical focus in addressing issues which balance parental authority and state power by redefining the concept of family and the types of relationships that are entitled to constitutional protections. In *Stanley v. Illinois*, 405 U.S. 645 (1972), and *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), the court extended traditional nuclear family constitutional protections to living arrangements with family-like relationships. In *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816 (1977), the Court recognized, but did not resolve, the conflict between traditional "parental rights" based on biological, legal, or adoptive parent-child relationships and family rights accruing from other types of relationships that are accorded family status. And in *Quilloin v. Walcott*, 434 U.S. 246 (1978), which involved a dispute between a biological parent and a psychological parent over custody of a child, the Court recognized that the family "is not merely, or even necessarily, a biological relationship."

According to the author, these Supreme Court cases demonstrate that the constitutional rights of parents have been, in effect, transferred to the family. These cases are significant on the issue of grandparent visitation

because if parental rights and family rights conflict concerning the welfare of the child, the appropriate and constitutionally valid compromise would be the best interests of the child. In the context of Supreme Court cases limiting governmental intrusions into family decision-making, it is necessary "to define what kind of harm is sufficient to constitute authority for state intervention."

To determine the threshold of harm necessary to justify invoking state parens patriae power, the author draws upon child-custody and termination-of-parental-rights cases in which the issues of demonstrable harm requiring intervention and the degree of state intervention warranted have been distinguished. The cases cited are: *Bennett v. Jeffreys*, 40 N.Y.2d 543, 356 N.E.2d 277, 387 N.Y.S.2d 821 (1976); *Santosky v. Kramer*, 455 U.S. 745 (1982); and *Painter v. Bannister*, 258 Iowa 1390, 140 N.W.2d 152, *cert. denied*, 385 U.S. 949 (1966).

These cases illustrate that state intervention into a family unit cannot be justified solely on the ground that the state's action is in the best interests of the child. The author argues that intervention must be justified initially by a demonstration of harm to the child through the exercise of parental rights. Although the threshold of harm for intervention is less than the unfitness of parents, the threshold of harm becomes especially problematic if grandparent visitation is concerned. If courts or legislatures presume that prohibition of contact is harmful, the threshold of harm requirement is met. The confusion of equating grandparent visitation with the best interests of the child then serves as an invitation to accentuate the interests of the grandparents over the interests of the child and shifts the burden to parents to justify their parental authority to prevent grandparent visitation.

The author further contends that this use of the best interests standard to justify grandparent visitation in the absence of harm to the child "has policy implications which are contrary to our constitutional preference of nongovernmental interference in raising children."

The author then reviews the constitutional and public policy issues generated by the application of the best interests standard to visitation disputes. She begins by maintaining that "court-ordered visitation with any third party is an invasion of family autonomy." To raise the issue of intervention, "there must be a family or a protected parent-child relationship." She states that court-ordered visitation infringes on the parental prerogative to determine with whom their children should associate and is the critical entry point for judicial evaluation for ordering grandparent visitation. If the state intrudes on a constitutionally protected right, the intervention and degree of intrusion must be clearly justified.

The author asserts that the primary rule in any litigation involving the custody and care of children requires that intervention justifications and the level of intrusion focus on their effect on the child. Limiting the focus of proof to the alleged harm and the best interests of the child would eliminate the introduction of any presumptions regarding "a per se harm resulting to the child from the denial of the grandparent-child relationship." This would also result in the preservation of constitutional protections provided parental decision-making with respect to the child's development.

Inquiry directed toward determining the effect of visitation on the child when weighing the intervention threshold of harm minimizes the possibility that sentimental feelings regarding "the goodness of grandparents" would control visitation disputes and evidentiary burdens. *In re La Russo*, 9 Fam. L. Rep. (BNA) 2646 (N.Y. Fam. Ct. 1983), is cited as a situation in which the court did not limit its assessment to the effect of intervention on the interests of the child.

In addition to narrowing the focus of intervention to harm affecting the child, the author also maintains that concentrating on the child in grandparent and third-party visitation cases is crucial when considering the best interests of the child. The need for visitation depends on whether visitation meets the child's needs, not the needs of a third party. Bean recommends that courts weigh the factors generally considered in custody cases to determine whether there is harm and a basis for intervention. If both harm and a basis are established, the courts should assess the grandparents' physical and emotional status as well as how visitation will meet the child's needs. The court should also consider the dynamics of that particular grandparent-grandchild relationship, the preferences of the child, and the effect of the court-ordered visitation on the family.

The article then examines public policy considerations. The author argues that grandparent visitation requests based on only an allegation that it is in the best interests of the child should be rejected by the courts. She states that judicial determinations that the welfare of a child will be improved through grandparent visitation gives courts the authority to direct child development by giving to the state authority best reserved for parents. The extent of such judicial intrusion into parental decision-making priorities is illustrated by the *La Russo* and *Robert D.* cases. Bean also contends that judicial intrusion interferes with family autonomy. The courts are inappropriate forums for making decisions concerning the best interests of the child and are incapable of supervising or making decisions concerning such interpersonal relationships.

The article concludes by examining the legal and normative issues raised by what the author considers an indiscriminate judicial valuation of

grandparent visitation. She argues first that private decision-making should not be evaluated in the context of a legal forum. Requests by grandparents and other third parties should be subjected to close scrutiny and proved necessary to the best interests of the child.

In addition to the inherent difficulty of measuring the benefits of visitation for the child, courts should also balance the benefits of visitation against the almost inevitable repercussions of ordering visitation against the wishes of the parents. Finally, the difficulty of enforcing judicial determinations that visitation is in the child's best interests justifies establishing a standard of a threshold of harm that must be proved by a thorough examination of the child's mental, physical, emotional, and moral health.

Blakesley, Christopher L.
CHILD CUSTODY— JURISDICTION AND PROCEDURE
35 *Emory Law Journal* 291 (1986)

This article addresses the difficulties associated with the lack of clear jurisdictional guidelines for resolving custody disputes and contends that the states need to develop procedures emphasizing restraint and comity to minimize the potential for custody conflicts harmful to children. In an era of considerable personal mobility, the need to protect the welfare of children and the rapidly increasing incidents of child-snatching by parents create a pressing need to develop uniformity and standards for jurisdiction in custody cases. The Uniform Child Custody Jurisdiction Act [UCCJA] and the Parental Kidnapping Prevention Act [PKPA] are examples of recent legislative responses to these problems.

The author begins by examining the issue of initial jurisdiction. He identifies four classes of proceedings affecting child custody: (1) divorce and dissolution of a marriage relationship, (2) guardianship law, (3) juvenile court and neglect laws, and (4) laws relating to termination of parental authority for adoption. The UCCJA applies to all types of legal intervention and comparable actions under varying state laws.

Initial jurisdiction concerning custody of children in marriage dissolution proceedings is determined by state versions of the UCCJA in forty-nine states and the District of Columbia, and under federal law through the PKPA. The UCCJA also provides a system of concurrent jurisdiction based on statutory provisions designed to guide states asserting jurisdiction. These jurisdictional bases relating to child custody determinations include a home-state provision, a requirement for a significant connection, and a requirement for the physical presence of the child if abandonment or an emergency situation is alleged and if another state declines to exercise jurisdiction over the child.

The author continues his review of the UCCJA, outlining provisions that provide for the resolution of concurrent jurisdictional disputes and that facilitate communication among state courts to minimize problems associated with forum shopping. He then briefly examines jurisdictional issues related to guardianship law and termination of custody on grounds of abuse, neglect, abandonment, or adoption. The author notes that jurisdictional disputes are more likely if a change or modification of guardianship is sought and that the UCCJA provisions may be constitutionally inadequate in cases involving adoption or other termination of parental rights.