

1985

Karla Kishpaugh (Kornmayer) v. Richard Bruce Kishpaugh : Brief of Respondent

Utah Supreme Court

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SET NO. 20423

IN THE SUPREME COURT

STATE OF UTAH

KARLA KISHPAUGH (KORNMEYER),	:	
	:	
Plaintiff-Respondent,	:	
	:	
vs.	:	
	:	
RICHARD BRUCE KISHPAUGH,	:	No. 20423
	:	
Defendant-Appellant.	:	

RESPONDENTS' BRIEF

Appeal from Judgment

of the Third Judicial District Court of Salt Lake County

Dated December 7, 1984

The Honorable Dean E. Conder, District Judge

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Clerk, Supreme Court, Utah

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	:	
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THE PARTIES

William A. Kornmayer, Petitioner-Respondent

Kathryn Kornmayer, Petitioner-Respondent

Karla K. Kishpaugh (Kornmayer), Plaintiff-Respondent

Richard Bruce Kishpauagh, Defendant-Appellant

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4. There is love between the Defendant and his son,. 4
5. There is a stronger bond between the minor child and the Petitioners than with the Defendant.5

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUES

A. Is there sufficient evidence in the record to support the trial court's finding that:

1. The Defendant has failed to sacrifice his own interest and welfare for the child's interest and welfare;
2. The Defendant lacks the sympathy for and understanding of the child that is characteristic of parents generally;
3. A deep bond of love exists between the minor child and his grandparents;
4. There is love between the Defendant and his son;
5. There is a stronger bond between the minor child and the Petitioners than with the Defendant.

B. Are the findings of fact in this case in substantial compliance with the requirements of the three pronged test set forth in Hutchison vs. Hutchison, 649 P2d 38 (Utah 1982) so that the Petitioners have rebutted the parental presumption.

C. Once the parties compete on equal footing, is it in the best interests of Brian that custody be granted to the Petitioners.

D. The trial court did not err in failing to provide Defendant with a standard of improvement by which he might later obtain custody of Brian.

E. Must the Defendant show that the trial court abused its discretion in order to have the Supreme Court overturn this decision?

STATEMENT OF THE CASE

A. Nature of the Case.

This is an appeal by the defendant Richard B. Kishpaugh from an order awarding custody of the minor child, Brian, to Brian's maternal grandparents who are the petitioners herein, William and Kathryn Kornmayer.

B. Course of the proceedings.

The plaintiff/respondent Karla Kishpaugh (hereinafter "Plaintiff") was awarded custody of Brian (born February 18, 1976) subject to defendant/appellant Richard Kishpaugh's (hereinafter "Defendant") reasonable rights of visitation, under the decree of divorce entered June 25, 1981. The Plaintiff and her parents petitioners/respondents William and Kathryn Kornmayer (hereinafter "Petitioners") moved the trial court for a temporary restraining order and order to show cause on April 25th, 1984 to secure the return of Brian from the possession of the Defendant who had refused to return the child on April 22, 1984, following Easter vacation of that year. The Plaintiff/Petitioners' temporary restraining order was granted and extended for the pendency of the Defendant's action, and Brian returned to the home of the Petitioners in Chico, California. The Defendant petitioned the court on April 27, 1984 to modify the decree of divorce so that he might obtain custody of Brian. The Petitioners also filed a petition for guardianship of Brian after it was determined that Plaintiff would be unable to assume

custody of Brian due to a chronic illness. The hearing on both petitions came on before the Honorable Dean E. Conder of the Third Judicial District Court on November 22, 1984.

C. Disposition in the District Court.

On December 7, 1984, the District Court entered an order awarding custody to Petitioners, after finding that the presumption in favor of awarding custody to a parent over a nonparent was rebutted, and that it was in Brian's best interest that petitioners be awarded custody.

D. Statement of Material Facts.

Brian was born February 18, 1976 and is the only child of the marriage of the Plaintiff and the Defendant (F.F. 1) Although the Plaintiff was awarded custody by stipulation in the original decree of divorce on June 25, 1981, Brian has resided continuously with the Petitioners and his maternal great grandmother, Ona Landrum since April of 1981 (T. 31).

The Petitioners and Ona Landrum have assumed full responsibility for the daily care and raising of Brian since April of 1981. The Defendant has known since that time that Brian was living with the Petitioners. (T. 83) The Defendant has made all arrangements for visitation through the Petitioners and Ona Landrum and has stayed at Ona Landrum's home during visitation. (T. 69). The Petitioners have never interfered with the Defendant's rights of visitation (T 102) and in fact have driven halfway to Reno to meet him to facilitate visitation (T 34) although the Defendant has never offered to pay for the expenses

incurred by the Petitioners in doing so.(T 103) .

Since February of 1984 the Defendant has paid no child support to any party. As of the time of the trial in this matter the Defendant had bought Brian one pair of shoes since June of 1981 (T 103).

The Defendant has visited Brian only three times a year since June of 1981 (T 86), even though it is only a three and one-half hour drive from Defendant's home to Petitioners' home. Although Brian can read and write, (T 70) the Defendant sent Brian only five letters in 1983 (less than one every two months) and ten letters in 1984 (less than one per month)(T 94). Brian is handicapped with cerebral palsy and hearing loss and cannot talk to his father on the telephone but he is not mentally handicapped. The longest period of continuous visitation ever requested or had by the Defendant prior to the commencement of this action was three weeks in 1983 (F.F.3).

The Defendant moved to Reno in February of 1981 (T 12) which was prior to Brian moving to California. The Defendant has never taken a class in American Sign Language, and he has only obtained books on the subject (T 87). Petitioner William Kornmayer has taken a class in American Sign Language so that he can better communicate with Brian (T 37). The Defendant had made no plans for Brian's education when he refused to return him to the Petitioners in April of 1984, and had contacted Brian's principal for the first time regarding the type of program and

which school books were being used on approximately April 23, 1984 (T 47, 105). In April of 1984, the time the Defendant refused to return Brian to his home, Brian had sent a letter to Ona Landrum (Plaintiff's Exhibit 1) in which he was counting the days until he got to go home (T 72).

The Petitioners and Ona Landrum have, at their own expense, hired additional tutors for Brian and sent him to summer school and camp for handicapped children (T 68, 32). At least one of the Petitioners is home when Brian comes home from school on a typical day (T 40). He has a very ordered and structured environment in the home of the Petitioners where great care is taken to help him do as much for himself as possible. (T 38-50) Brian's handicap requires great patience and that he not be hurried (T 38, 61). Brian has indicated in the letter written to Ona Landrum (Plaintiff's Exhibit 1) that his father does hurry (T 72). Since April of 1981 the Defendant has visited Brian's school twice (T 87). Petitioner William Kornmayer has visited Brian's school at least three times per semester (T 44).

Brian has a deep bond of love with the Petitioners (F.F. 10) and has a stronger bond with them than with the Defendant (F.F. 12). The trial court found that there was only "love" between the Defendant and Brian (F.F. 11). Brian calls the Petitioners "Pappa" and "Nandy" and thinks of them as his parents (T 32). Brian told the trial court that he wanted to live with the Petitioners (F.F. 9) and indicated to Petitioner William Kornmayer that he was happy to be home after his six

weeks in Reno in 1984 (T. 50).

The Defendant has not remarried since he and the Plaintiff were divorced in 1981. He works for the University of Nevada Police in Reno, which is the same type of job he had during the marriage of the parties (T 82). Brian's principal caretakers and living situation is essentially unchanged since April of 1981. Brian came to the Petitioners unable to communicate and very unhappy, but his ability to communicate and behavior have improved dramatically since he came to live with the Petitioners (T 17, 31, 32, 66,). The trial court found that the Petitioners have done a fantastic job of caring for this child (F.F. 13).

The Plaintiff is presently unable to assume any custodial role, but may be able to do so within the next year (T 17). Prior to his petition the Defendant has made no effort to obtain custody of Brian or to modify any other portion of the divorce decree. The Petitioners had no knowledge of his desire to obtain custody of Brian until April 24th 1984 when he refused to return Brian to them after visitation (T 47). Essentially, Brian has been reared by the Petitioners and Ona Landrum (F.F. 8)

After a trial in which all parties were present, the Court found that the Petitioners' petition for Guardianship of Brian should be granted, and that the Defendant's should be denied. The Court found that the presumption favoring the natural parent had been rebutted and that awarding custody to

Petitioners was in the best interests of Brian.

SUMMARY OF ARGUMENT

A. There is sufficient evidence to support the trial court's finding that the Defendant had failed to sacrifice his own interests and welfare for the interests and welfare of the child, in that the Defendant has failed to support Brian, he has rarely visited him or written letters to him. These failings also support the conclusion that the Defendant and Brian share only "love" and do not share as strong a mutual bond as that between Brian and the Petitioners. It would be difficult for a child to have a strong mutual bond with a parent that he saw only three times a year. The weakness of the bond is most strongly indicated by the finding that Brian does not want to live with his father (F.F.9).

That the Defendant lacks the sympathy and understanding of the child that is characteristic of parents generally, once again one needs to look at the small amount of personal time the Defendant has invested with Brian.

This, along with his actions in refusing to return Brian from visitation, and the Defendant's inability to understand the psychological harm it would cause the child to be uprooted from the environment that he considered to be his home, indicates that the Defendant does not have the sympathy and understanding of Brian that the Supreme Court assumed natural parents to possess when it set forth the parental presumption as set forth in Hutchison v. Hutchison, 649 P.2d 38 (Utah 1982).

B. The findings of fact in this case are in substantial compliance with the test set forth in Hutchison. The trial court found, verbatim, two of the three prongs of the test. The trial court did not find that there is no mutual bond of love and affection between the Defendant and Brian, but the trial court did find that there is a deep bond of love between Brian and the Petitioners, deeper than that between him and his father, and that the Defendant and Brian share only "love" between them. These three findings (F.F. 10, 11, 12) are tantamount to a finding that there is no strong mutual bond between the Defendant and Brian.

C. It is in the best interests of Brian that custody be granted to the Petitioners. There is ample evidence that supports this conclusion, ranging from the Petitioners uncomplaining monetary support of Brian, to their great personal investment of time and energy to his care, their obvious love for him, and most important, his love for them and his desire to live with them.

D. The trial court did not err in failing to provide the Defendant with a standard of improvement by which he might later obtain custody of Brian. All of the statutes cited by the Defendant's counsel relate to termination of all parental rights. In this case, the Defendant has lost no right he did not possess on the date of the decree of divorce. In fact, he now has greater rights, as the trial court granted him liberal rights of

visitation as part of the decision in this case. Nothing done by the Defendant to "redeem" himself in the eyes of the Court should allow him to obtain custody of Brian at a later date unless those acts substantially change Brian's circumstances.

E. The Defendant must show abuse of discretion by the trial court in order to have the Supreme Court overturn this decision. Great deference is given to the decision of the trier of fact and assessments of the applicability and relative weight of the various factors in a particular case lie within the discretion of the trial court. "Only where trial court action is so flagrantly unjust as to constitute an abuse of discretion should the appellate forum impose its own judgment "Jorgensen v. Jorgensen, Utah, 599 P.2d 510, 512 (1979). The Defendant has not carried the burden of showing that there was an abuse of discretion by the trial court, as there is ample evidence in the record to support the findings of the trial court judge.

ARGUMENT

A. THERE IS AMPLE EVIDENCE IN THE RECORD TO SUPPORT THE TRIAL COURT'S FINDINGS THAT:

1. The Defendant has failed to sacrifice his own interest and welfare of the child's interest and welfare.
(F.F.17)

The trial court found the above fact after hearing evidence that the Defendant visited Brian three times per year since April of 1981 even though it is at most a four hour drive to the Petitioners' home in Chico, California from Defendant's home in Reno, Nevada (T 86). The Defendant also has written to Brian only five times in 1983 and ten times in 1984 (T 94). This is important as Brian is handicapped with cerebral palsy and hearing loss and cannot communicate by telephone. The trial court apparently did not concur with the Defendant's characterization of five letters per year as "often".

The Defendant admitted that he has failed to support Brian (T 106, 107), and claimed that he and the Plaintiff had an agreement that he could pay a smaller amount of child support. However, there is no written stipulation to that effect and the Defendant never instituted court action to modify the decree of divorce to reflect that fact (T 107). There was also no evidence to show that the Defendant's income had changed since the divorce. What more glaring indication of a parent not sacrificing his own interests for his child than one who allows other people to support his child, despite a court order

requiring him to do so.

The Defendant claims that he terminated a "close personal relationship" with his girlfriend because she was not in favor of his obtaining custody of Brian. This was intended to show that the Defendant had sacrificed for Brian. However, one must question the Defendant's judgment when he continued a long-term relationship with a person who did not like his child enough to have custody of him on a full-time basis. It also means that the Defendant is not near remarrying, and will be attempting to meet and date women at the same time he is caring for Brian as a single parent. Accordingly, the Defendant's purported reasons for ending the relationship do not overcome the other problems created by its termination.

2. The Defendant does not have the sympathy for and understanding of the child that is characteristic of parents generally.

Again, the Defendant's rare appearances for visitation with Brian show that he has invested little personal time with him. The Defendant admitted that he did not write Brian often enough (T 94). The result of this is that little or no contact has been maintained by the Defendant with Brian between visits. More importantly, it shows a lack of understanding of how slowly time passes for children. Evidence was presented that the Defendant is not patient with Brian (T 61, 62). This is more important in this case than it might usually be in light of Brian's handicaps.

The most telling incident of the Defendant's failure to understand Brian and his feelings occurred when the Defendant refused to return Brian to the Petitioners following visitation in April of 1984. At that time Brian had lived continuously with the Petitioners for three years and during that time the longest period of continuous visitation had been three weeks during the summer of 1983. There were no plans made for the change and, the Defendant did not discuss it with the Petitioners. He did not pick up Brian's possessions from the Petitioners or consider that Brian might want to finish the school year. He did not contact Brian's school principal regarding Brian's classes and type of instruction until approximately April 23, 1984, when he already had Brian with him (T 47, 105). The Defendant appeared to have no knowledge of Brian's need to be in on the plans, to know what was going to happen as any child would. Instead, he just didn't take him home following the Easter visit. The Defendant appears to have no concept that this might upset a child, that he might miss his "Pappa" and "Nandy" (the Petitioners), his toys or friends. Instead, the Defendant did what he wanted, which was to keep Brian with him, but he appeared to make no effort to take Brian's needs into consideration.

3. A deep bond of love exists between the minor child and his grandparents. (F.F.10)

Brian has lived with the Petitioners for three and one-half of his eight years of life. He has lived with them during

the time he learned to communicate with others (T 17, 31, 32, 66). The Petitioners are his daily caretakers and they see to all of Brian's needs. They have gone to great lengths to provide a proper home for Brian at great personal and emotional cost. They spend a great deal of time with Brian. This is ample evidence that there is a deep bond of love between Brian and the Petitioners.

4. There is love between the Defendant and his son. (F.F. 11).

The trial court found enough evidence to conclude that the Defendant and Brian share love for each other. However, the trial court could not conclude, in light of Brian's desire to live with the Petitioners, that this love rose to the level of a "deep mutual bond of love and affection."

5. There is a stronger bond between the minor child and the Petitioners than with the Defendant. (F.F. 12).

Brian's declaration that he wants to live with the Petitioners rather than with the Defendant is more than ample evidence that the bond between the Defendant is weaker than the bond between Brian and the Petitioners.

It is clear that there is ample evidence on the record for the trier of fact to conclude that the Defendant has failed sacrifice his own interests and welfare for those of Brian, that he lacks the sympathy and understanding of Brian that is characteristic of parents generally, and that a deep bond exists between the Petitioners and Brian, a bond which is deeper than

that between the Defendant and Brian.

B. THE FINDINGS OF FACT IN THIS CASE ARE IN SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF THE THREE PRONGED TEST SET FORTH IN HUTCHISON V. HUTCHISON, 649 P.2d 38 (Utah 1982)

The findings of fact in this case are, when taken as a whole, in compliance with the requirements of Hutchison. The trial court found, verbatim, two of the three prongs of the test, in Findings of Fact 17 and 18.

The trial court did not find that there is no mutual bond of love and affection between the Defendant and Brian, but when Findings of Fact 10, 11, and 12 are taken together it would appear that no strong mutual bond exists. The court's finding that Brian was bonded deeply to the Petitioners, more deeply than to the Defendant, and that only "love" existed between Brian and the Defendant and not a strong bond, is tantamount to a finding that the bond is not mutual, especially in light of Finding of Fact 9, which states that Brian wishes to live with the Petitioners.

C. IT IS IN BRIAN'S BEST INTERESTS THAT HE RESIDE WITH THE PETITIONERS AND THE EVIDENCE PRESENTED SUPPORTS THIS CONCLUSION.

Counsel for the Defendant lists the factors considered determinative of the child's best interests as promulgated in the Hutchison case on pages 10-13 of his brief, and the Petitioners respond as follows:

1. Preference of the child. The evidence was presented along with Brian's testimony which indicated that Brian

wants to live with the Petitioners (F.F. 9).

2. Siblings Brian is an only child, but he has many close friends at his school and in his neighborhood, one of whom knows American Sign Language. (T 55)

3. Bond. The trial court also concluded that there is a stronger bond between the Petitioners than with the Defendant. Brian wants to live with the Petitioners (F.F. 9)

4. Continuing previous custody. There is also a general interest in continuing previously existing custody arrangements where the child is happy and well adjusted, and in this case Brian has lived with the Petitioners for almost one-half of his life, and there is ample evidence that he is happy and well adjusted while in their care.(See Appendix F) The Petitioners also are able to provide personal rather than surrogate care, as the Defendant would do if he had custody (T 92). The Petitioners as a married couple also present a much more stable home, with a "father" and "mother" present at all times. The Defendant is a single parent, and has no immediate prospects of remarriage. Also, the Petitioners as grandparents are close blood relatives of Brian, and have demonstrated that they have and will continue to sacrifice their interests for Brian's interests, that they have the sympathy and understanding of him that a parent would have, and that there is a strong mutual bond between Brian and the Petitioners.

5. Natural parent's moral character and emotional stability. These were not at issue in this matter.

6. Duration and depth of Defendant's desire for custody The Defendant claims that he wanted custody for a long time prior to filing his petition, yet he provides is no good reason for waiting, other than his "intimidation" by the Plaintiff. The Defendant was not unemployed during this period, has not changed his marital status or type of job, and has been living near his parents so there has been no recent change which would account for his petition, except that he just decided that he wanted custody of Brian (T 102).

7. Ability to provide personal care. When Brian comes home from school one of the Petitioners is always there to meet him (T 40). They personally care for him from that time on, helping him with homework. The Defendant would take Brian to his parent's house in the morning before school, and would pick him up there in the afternoon, and during the time Brian was not in school, Defendant's mother would care for him. (T 92) This is not personal care, and requires a great deal of shuttling around for Brian.

8. Impairment through drugs, alcohol. None of the parties drinks heavily or uses drugs.

9. Natural parent's reasons for relinquishing custody The Plaintiff was awarded custody of Brian by agreement, but the Plaintiff's grounds for divorce in the findings of fact appurtenant thereto in paragraph 20 states that "the Defendant has treated the Plaintiff cruelly in that he has been physically and mentally abusive to Plaintiff. That he has struck Plaintiff

with a glass requiring substantial stitching and has been abusive to the minor child of the parties." The Petitioners admit that all of these incidents are too distant in time to have any direct bearing on this matter, but they may explain why the Defendant made no effort to obtain custody of Brian at the time of his divorce.

10. Religious compatibility. The Plaintiff herein is presently not a practicing member of the L.D.S. church and Petitioners herein are Episopalian. The Defendant has expressed his desire to raise Brian in the L.D.S. faith, but has made no effort to aid the Petitioners in sending him to that church, nor has he offered to pay the \$40.00 per hour required for a deaf interpreter for Brian should he attend church in Chico, California where the Petitioners reside (T56).

11. Kinship The Petitioners are Brian's maternal grand parents, and the Defendant is his natural father.

12. Financial condition The financial condition of the parties was not at issue in this matter.

As the Court can see, these factors have a different impact when viewed from the perspective of the Petitioners, and the Petitioners' version of the impact of these factors further supports the trial court's conclusion that it is in Brian's best interests to remain with the Petitioners.

D. THE TRIAL COURT DID NOT ERR IN FAILING TO PROVIDE THE DEFENDANT WITH A STANDARD OF IMPROVEMENT BY WHICH HE MIGHT LATER OBTAIN CUSTODY OF BRIAN.

Defendant's counsel claims that the trial court's decision in this case is the same as the termination of his parental rights. But the Defendant has lost no right he did not possess on the date of the decree of divorce. In fact, he now has greater rights, as the trial court granted him liberal rights of visitation as part of the decision in this case.

It would be a great hardship for Brian if custody was to be changed at a later date because the Defendant had somehow "redeemed" himself, for example, by visiting and writing more often, and by paying his child support. None of those things change the fact that the longer Brian stays with the Petitioners, the more bonded he will become, and the more difficult it would be for him to leave his home and friends. The trial court is correct in letting this matter stand as a straightforward child custody matter which can be modified only upon a showing of a substantial change in the circumstances of the parties. Any other standard could cause great hardship to Brian, who has a right to a stable, long term home where he is happy and well adjusted for as long as living in that home is in his best interests.

E. THE DEFENDANT MUST SHOW AN ABUSE OF DISCRETION BY THE TRIAL COURT IN ORDER TO HAVE THE SUPREME COURT OVERTURN THIS DECISION.

Great deference is given by the appellate forum to the decisions made by the trier of fact. Assessments of the applicability and relative weight of the various factors in a particular case lie within the discretion of the trial court.

"Only where trial court action is so flagrantly unjust as to constitute an abuse of discretion should the appellate forum impose its own judgment." Jorgensen v. Jorgensen, 599 P.2d 510, 512 (Utah, 1979). In order for there to be an abuse of discretion there must be no credible evidence upon which the trial court could base its decision. The record in this case shows that there is ample evidence in support of the findings of fact and conclusions of law of the trial court.

Defendant's counsel cites the case of Cooper v. DeLand 652 P2d 902 (Utah 1982) which was decided by the Honorable Dean E. Conder. Opposing counsel then attempts to wilfully mislead the Court as the disposition of that case by stating that the trial court granted custody in Cooper to the child's step-father. This is an effort to cause the Supreme Court to believe that Judge Conder awards custody to non-parents on a regular basis. In fact, in Cooper, custody was awarded to the natural father, and was remanded because the trial court had required too strict a standard of proof on the part of the step-father in that case. As a result the decision in Cooper does not support Opposing Counsel's assertion that Judge Conder has made the same mistake twice. Accordingly, there has been no abuse of discretion and the decision of the trial court should not be disturbed.

CONCLUSION

There is sufficient, credible evidence to support all of the findings of fact and conclusions of law reached by the

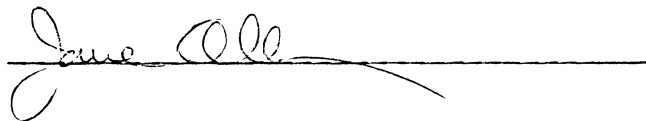
trial court. When taken as a whole, the findings of fact are sufficient to rebut the parental presumption as required in Hutchison v. Hutchison. When the parties compete on equal ground, the evidence which supports the conclusion that it is in Brian's best interest to live with the Petitioners is overwhelming. Few people would fight so hard for the privelege to care for a handicapped child, and the Petitioners plainly have set up an environment for Brian at great personal and emotional expense which has Brian's best interests as the only goal.

The trial court did not err in failing to set a standard by which the Defendant could later gain custody, as his parental rights have not been terminated and have been, in fact, expanded. Brian's custody can be changed only on a showing of a substantial change of circumstances which would warrant such a change.

There has been no abuse of discretion by the trial court in this matter, as there is sufficient if not ample evidence to support its findings and conclusions as to which of the parties should have custody of Brian.

Respectfully submitted this 5th day of May, 1985.

JANE ALLEN
Attorney for Respondents

A handwritten signature in cursive script, appearing to read "Jane Allen", is written over a horizontal line.

JAl0/Korn/brf

until a contributor fails to pay. The Commission members' salaries are not affected by their judicial decisions and they have no pecuniary reason to penalize delinquent contributors. Although, pursuant to § 35-4-15, the Commission is responsible for the administration of the Special Administrative Expense Fund where all interest and penalties are deposited, this interest is too remote to establish any reasonable likelihood of bias.

Affirmed. No costs.

HALL, C. J., and OAKS, HOWE and DURHAM, JJ., concur.



Rosemary HUTCHISON, Plaintiff
and Appellant,

v.

Dale Harry HUTCHISON, Defendant
and Respondent.

No. 17439.

Supreme Court of Utah.

June 14, 1982.

In a dispute between former spouses over the custody of a child born to the wife before the marriage, the Fourth District Court, Utah County, George E. Ballif, J., awarded custody to the former husband of a child born to the wife before the parties' marriage. Former wife appealed. The Supreme Court, Oaks, J., held that the district court improperly awarded custody to the former husband without a determination of whether the former wife was entitled to the parental presumption.

Vacated and remanded.

1. Divorce ⇔298(1)

Standard governing actions for involuntary and permanent termination of all parental rights to child, which requires showing of parental unfitness, abandonment or substantial neglect, is not applicable to disputes between parent and nonparent over custody after parent and nonparent divorce. U.C.A.1953, 78-3a-48(a).

2. Parent and Child ⇔2(10)

Parent may be deprived of custody on less compelling showing than is required for termination of all parental rights. U.C.A. 1953, 78-3a-2(10), 78-3a-48(a).

3. Divorce ⇔298(1)

When controversy over custody arises in divorce proceeding, paramount consideration is best interest of child, but where one party to controversy is nonparent, there is presumption in favor of natural parent. U.C.A.1953, 78-3a-2(10), 78-3a-48(a).

4. Parent and Child ⇔2(2, 8)

It is rooted in common experience of mankind, which teaches that parent and child normally share strong attachment or bond for each other, that natural parent will normally sacrifice personal interest and welfare for child's benefit, and that natural parent is normally more sympathetic and understanding and better able to win confidence and love of child than anyone else; therefore, in custody disputes between parent and nonparent, presumption arises in favor of natural parent.

5. Parent and Child ⇔2(8)

In custody disputes between parent and nonparent, presumption in favor of natural parent is not conclusive, but it cannot be rebutted merely by demonstrating that opposing party possesses superior qualifications, has established deeper bond with child or is able to provide more desirable circumstances.

6. Parent and Child ⇔2(8)

In custody disputes between parent and nonparent, if presumption in favor of natural parent could be rebutted merely by evidence that nonparent would be superior custodian, parent's natural right to custody

would be rendered illusory and with it child's natural right to be reared, where possible, by his or her natural parent.

7. Parent and Child \S 2(8)

In custody disputes between parent and nonparent, parental presumption can be rebutted only by evidence establishing that particular parent at particular time generally lacks all three characteristics that give rise to presumption: that no strong mutual bond exists, that parent has not demonstrated willingness to sacrifice his or her own interest and welfare for child's and that parent lacks sympathy for and understanding of child that is characteristic of parents generally.

8. Parent and Child \S 2(8)

In custody dispute between parent and nonparent, presumption in favor of natural parent does not apply to parent who would be subject to termination of all parental rights due to unfitness, abandonment or substantial neglect, since such parent is a fortiori not entitled to custody.

9. Parent and Child \S 2(3.1)

In custody disputes between parent and nonparent, if presumption in favor of natural parent is rebutted, contestants for custody compete on equal footing, and custody award should be determined solely by reference to best interests of child.

10. Parent and Child \S 2(3.1, 3.3, 3.4, 3.6)

In custody dispute between parent and nonparent, after presumption in favor of natural parent has been rebutted, some factors court may consider in determining child's best interests related primarily to child's feelings or special needs: preference of child; keeping siblings together; relative strength of child's bond with one or more of prospective custodians; and, in appropriate cases, general interest in continuing previously determined custody arrangements where child is happy and well adjusted; other factors to be considered relate primarily to prospective custodians' character or status or ability or willingness to function as parents.

11. Parent and Child \S 2(15)

In custody dispute between parent and nonparent, assessments of applicability and relative weight of various factors in particular case lie within discretion of trial court.

12. Parent and Child \S 2(14)

In custody dispute between parent and nonparent, trial court must enter specific findings on factors relied upon in awarding custody.

13. Divorce \S 301

In dispute between former spouses over custody of child born to wife before marriage, district court improperly awarded custody of child born to wife before marriage to former husband without first determining whether former wife was entitled to benefit of parental presumption.

Richard B Johnson, Provo, for plaintiff and appellant.

Wayne B. Watson, Orem, for defendant and respondent.

OAKS, Justice:

This controversy between former spouses over the custody of a child born to the wife before their marriage requires us to clarify the legal standard governing a child-custody dispute between a parent and a nonparent.

Appellant, Rosemary, gave birth to Lacey Hutchison in February, 1975. In September, 1975, Rosemary married respondent, Dale Hutchison. Two more children were born during the course of their marriage. In February, 1980, the parties were divorced. Trial evidence showed that Dale had damaged property, struck Rosemary, and harshly disciplined the children. Other evidence showed that Rosemary was a heavy drinker, had left home for days at a time without explanation, and had neglected the children. Dale was granted temporary custody of all three children, but the resolution of permanent custody was deferred pending a blood test on Lacey's paternity and home evaluations by the Department of Family Services (DFS). The blood test excluded Dale as Lacey's father.

Thereafter, on November 12, 1980, the district court granted Dale permanent custody of all three children, subject to reasonable visitation rights in Rosemary. The order was not accompanied by formal findings of fact and conclusions of law. In a memorandum decision, the district court stated that Dale's name appears on Lacey's birth certificate; that he has "in every way" treated the child as his own; and that, although the blood test excluded him as Lacey's natural father, she considers him her father both psychologically and biologically.¹ Based on trial testimony and on reports of a psychiatrist and a DFS social worker, the court determined "that the best interests of the minor children would be served by their placement with the defendant [Dale] and that all three children should remain together for their mutual benefit and well-being." The memorandum decision further stated:

[I]n weighing the interests of the minor children in this situation the welfare of the three is paramount over any superior right the plaintiff [Rosemary] may have to the custody of the child where it is determined that the defendant [Dale] is the better custodial parent for his two natural children by the plaintiff, as well as the child in question [Lacey].

Rosemary challenges only that portion of the order granting Lacey's custody to Dale. Specifically, she contends that the mother of an illegitimate child cannot be deprived of custody of her child absent a showing of unfitness or abandonment.

[1] We cannot agree with either the district court's or Rosemary's characterization of the standard governing custody disputes between a parent and a nonparent. The court's standard was solely the best interests of the child. The standard Rosemary advocates is, in effect, the standard govern-

ing actions for involuntary and permanent termination of all parental rights to a child, which requires a showing of parental unfitness, abandonment, or substantial neglect U.C.A., 1953, § 78-3a-48(a) (1965); *In re J. P.*, 648 P.2d 1364 (Utah 1982).

[2] Loss of custody is less drastic than the permanent termination of parental rights. The custody determination is not permanent, since it expires automatically when the child comes of age, and it is reversible prior to that time. Most importantly, loss of custody does not deprive the noncustodial parent of all rights in relation to the child. See U.C.A., 1953, § 78-3a-2(10); *In re J. P.*, *supra*, n. 1. For these reasons, a parent may be deprived of custody on a less compelling showing than is required for termination of all parental rights.

[3, 4] In a controversy over custody, the paramount consideration is the best interest of the child, but where one party to the controversy is a nonparent, there is a presumption in favor of the natural parent. *Walton v. Coffman*, 110 Utah 1, 169 P.2d 97 (1946).² This presumption recognizes "the natural right and authority of the parent to the child's custody . . ." *State in re Jennings*, 20 Utah 2d 50, 52, 432 P.2d 879, 880 (1967). It is rooted in the common experience of mankind, which teaches that parent and child normally share a strong attachment or bond for each other, that a natural parent will normally sacrifice personal interest and welfare for the child's benefit, and that a natural parent is normally more sympathetic and understanding and better able to win the confidence and love of the child than anyone else. *Walton v. Coffman*, 110 Utah at 13, 169 P.2d at 103.

1. However, Dale states in his brief that he "does not here seek custody as one who has allegedly adopted the child by acknowledgment" but rather "as a third party with whom the child should be placed in the best interest of the child."

2. This statement of the standard is typical of many American jurisdictions. For a survey of jurisdictions, see Comment, "Psychological Parents vs. Biological Parents: The Courts' Response to New Directions in Child Custody Dispute Resolution," 17 J. of Fam. L. 545, 552-74 (1979). See also Annot., 31 A.L.R.3d 1187 (1970).

Cite as, Utah, 649 P.2d 38

[5, 6] The parental presumption is not conclusive, *State in re R_____ L_____*, 17 Utah 2d 349, 411 P.2d 839 (1966), but it cannot be rebutted merely by demonstrating that the opposing party possesses superior qualifications, has established a deeper bond with the child, or is able to provide more desirable circumstances. If the presumption could be rebutted merely by evidence that a nonparent would be a superior custodian, the parent's natural right to custody could be rendered illusory and with it the child's natural right to be reared, where possible, by his or her natural parent.

[7, 8] Consistent with its rationale, the parental presumption can be rebutted only by evidence establishing that a particular parent at a particular time generally lacks all three of the characteristics that give rise to the presumption: that no strong mutual bond exists, that the parent has not demonstrated a willingness to sacrifice his or her own interest and welfare for the child's, and that the parent lacks the sympathy for and understanding of the child that is characteristic of parents generally. The presumption does not apply to a parent who would be subject to the termination of all parental rights due to unfitness, abandonment, or substantial neglect, since such a parent is *a fortiori* not entitled to custody.

[9] If the presumption in favor of the natural parent is rebutted, the contestants for custody compete on equal footing, and the custody award should be determined

solely by reference to the best interests of the child.

[10] Some factors the court may consider in determining the child's best interests relate primarily to the child's ~~feelings or special needs; the preference of the child;~~³ keeping siblings together;⁴ ~~the relative strength of the child's bond with one or both of the prospective custodians;~~⁵ and, in appropriate cases, ~~the general interest in continuing previously determined custody arrangements where the child is happy and well-adjusted.~~⁶ Other factors relate primarily to the prospective custodians' character or status or to their capacity or willingness to function as parents: ~~moral character and emotional stability;~~⁷ duration and depth of desire for custody;⁸ ~~ability to provide personal rather than surrogate care;~~⁹ significant impairment of ability to function as a parent through drug abuse, excessive drinking, or other cause;¹⁰ ~~reasons for having relinquished custody in the past;~~¹¹ religious compatibility with the child;¹² kinship;¹³ including, in extraordinary circumstances, stepparent status;¹⁴ and financial condition.¹⁵ (These factors are not necessarily listed in order of importance.)

[11] Assessments of the applicability and relative weight of the various factors in a particular case lie within the discretion of the trial court. "Only where trial court action is so flagrantly unjust as to constitute an abuse of discretion should the appellate forum interpose its own judgment."

3. *Henderson v. Henderson*, Utah, 576 P.2d 1289 (1978).

4. *Jorgensen v. Jorgensen*, Utah, 599 P.2d 510 (1979) (Crockett, C. J., concurring); *Walton v. Coffman*, 110 Utah 1, 169 P.2d 97 (1946).

5. *Walton v. Coffman*, note 4, *supra*.

6. *Nielsen v. Nielsen*, Utah, 620 P.2d 511, 512 (1980); *In re Cooper*, 17 Utah 2d 296, 410 P.2d 475 (1966); *Application of Conde*, 10 Utah 2d 25, 347 P.2d 859 (1959).

7. *Kallas v. Kallas*, Utah, 614 P.2d 641 (1980); *Knapp v. Knapp*, 73 Utah 268, 273 P. 512 (1928); *Jorgensen v. Jorgensen*, note 4, *supra*.

8. *State in re R_____ L_____*, 17 Utah 2d 349, 411 P.2d 839 (1966); *Walton v. Coffman*, note 4, *supra*.

9. *Lembach v. Cox*, Utah, 639 P.2d 197 (1981).

10. *Kallas v. Kallas*, note 7, *supra*; *Walton v. Coffman*, note 4, *supra*.

11. *Application of Conde*, note 6, *supra*; *Baldwin v. Nielson*, 110 Utah 172, 170 P.2d 179 (1946).

12. See U.C.A., 1953, § 78-3a-39(12).

13. *In re Cooper*, note 6, *supra*.

14. *Gribble v. Gribble*, Utah, 583 P.2d 64 (1978).

15. *Walton v. Coffman*, note 4, *supra*.

Jorgensen v. Jorgensen, Utah, 599 P.2d 510, 512 (1979).

[12] The trial court must enter specific findings on the factors relied upon in awarding custody. In *Chandler v. West*, Utah, 610 P.2d 1299, 1301 (1980), we set aside an order that refused to modify a property settlement provision in a divorce decree but did not enter written findings. In remanding, we stated: "For this Court to be in a position to review the propriety of the trial court's order, it is necessary that proper findings of fact and conclusions of law be made pursuant to Rule 52(a), Utah Rules of Civil Procedure." In *Stoddard v. Stoddard*, Utah, 642 P.2d 743 (1982), we required written findings to accompany an order modifying a child support provision in a divorce decree. This requirement of written findings applies with even greater force to orders awarding or modifying the custody of a child.

[13] In this case, the district court addressed the question of the best interests of the child without first determining whether the presumption in favor of the natural parent had been rebutted. On the present record—especially in the absence of findings of fact—we are unable to determine whether, under the standard discussed in this opinion, Rosemary is entitled to the benefit of the parental presumption. We therefore vacate the court's order and remand for further proceedings (including the taking of additional evidence, if necessary) consistent with this opinion. No costs awarded.

HALL, C. J., and STEWART, HOWE and DURHAM, JJ., concur.

Harry J. CHRISTIANSEN, Plaintiff
and Appellant,

v.

UTAH TRANSIT AUTHORITY and John
G. Miller, Defendants and
Respondents.

No. 17250.

Supreme Court of Utah.

June 15, 1982.

Action was filed arising from traffic accident. Upon jury finding that plaintiff was 70 percent negligent and the defendants 30 percent negligent, the Third District Court, Salt Lake County, G. Hal Taylor, J., entered judgment of "no cause of action" in favor of the defendants, and the plaintiff appealed. The Supreme Court, Howe, J., held that: (1) trial court did not err in refusing to give plaintiff a default judgment against one defendant when that defendant failed to appear at trial; (2) giving of sudden peril instruction was proper; and (3) trial court did not abuse its discretion in refusing to amend complaint to allow plaintiff to plead willful and wanton negligence on part of one defendant and to seek punitive damages.

Affirmed.

1. Appeal and Error ⇌ 1001(1)

Jury finding in suit arising from traffic accident that plaintiff was 70 percent negligent and defendants were 30 percent negligent, thereby precluding recovery of damages by the plaintiff, was supported by competent evidence, and thus jury verdict would not be disturbed by the Supreme Court. Const.Art. 8, § 9.

2. Negligence ⇌ 142

Jury verdict in suit arising from traffic accident that plaintiff was 70 percent negligent and defendants were 30 percent negligent, thereby precluding recovery of damages by the plaintiff, was not the result of sympathy, bias, passion and prejudice.



APPENDIX B

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

KARLA KISHPAUGH,	:	
	:	
Plaintiff,	:	MEMORANDUM DECISION
	:	
vs.	:	CIVIL NO. D 80-1577
	:	
RICHARD BRUCE KISHPAUGH,	:	
	:	
Defendant.	:	
	:	

This case presents one of the most difficult decisions this court has had to make. Not that the facts are that difficult nor is the law that complicated, but the emotional concern for the subject of this case presents the gravest of concern.

Plaintiff and defendant were divorced on June 25, 1981. The plaintiff was awarded custody of their minor child Brian Kishpaugh (Brian). Brian was a handicapped child being afflicted with cerebral palsy. Immediately after the divorce the plaintiff placed Brian with her parents who have cared and raised him since the divorce. His maternal great-grandmother has also been involved in his care and rearage.

The defendant lives in Reno Nevada, and the maternal grandparents live in Chico, California. The defendant has enjoyed a good relationship with Brian during the past three and one-half years by taking him during Thanksgiving holidays and for a week or two in the summer of each year. However,


it is also true that the defendant has failed to pay his support payments for Brian's care. Essentially, Brian has been reared by his maternal grandparents and great-grandmother. His mother (plaintiff) is a medical doctor but has suffered serious health problems which she admits make it impossible for her to assume the custodial role.

This court had the pleasure of interviewing Brian in chambers. Brian is mute but has mastered the sign language and is able to communicate by this means. An interpreter was present and assisted the court in communicating with Brian. Brian expressed his love for his father (defendant) and for his grandparents. He told me about his school and friends and what he does during his visits with the defendant as well as what he does in his spare time which he has with the grandparents. At the conclusion of the interview I asked Brian where he preferred to live and he responded that he preferred to live with Papa and Mummie (his grandparents). Obviously, a deep bond of love exists between Brian and his grandparents. He also has a love for his father.

The real issue in this case is what is for the best interest of Brian (see Cooper v. DeLand, 652 P2d 907 and Hutchinson v. Hutchison, 649 P2d 38). After much consideration, this court concludes that it is for the best interest of Brian

that Mr. and Mrs. William Kornmayer be granted the custody of Brian for the present time. Defendant is to have liberal visitation with Brian and the court urges him to create an even greater bond between himself and Brian.

Dated this 26 day of November, 1984.



DEAN E. CONDER
DISTRICT JUDGE

APPENDIX C

JANE ALLEN (Bar #45)
Attorney for Plaintiff
261 East 300 South, Suite 150
Salt Lake City, Utah 84111
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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

KARLA KISHPAUGH (KORNMEYER),	:	
	:	AMENDED
Plaintiff,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
vs.	:	(Judge Dean E. Conder)
	:	
RICHARD BRUCE KISHPAUGH,	:	Civil No. D80-1577
	:	
Defendant.	:	

This matter came on for trial the 22nd day of November, 1984, before the Honorable Dean E. Conder. The natural mother, above-named Plaintiff, was present, along with her parents, Mr. and Mrs. William Kornmayer, who are the Petitioners for guardianship of the minor child, in Case No. P84-1046 which has been joined with this action, as was their counsel, Jane Allen, Esq. The Defendant was present with his attorney, Michael Z. Hayes, Esq.

William Kornmayer, Karla Kornmayer, Ona Landrum, Richard Kishpaugh, and Mr. and Mrs. Dean Kishpaugh were called as witnesses. Mrs. Kornmayer's testimony was accepted by proffer, as was part of Mrs. Kishpaugh's testimony. The minor child, Brian Kishpaugh, was interviewed by the Court in chambers along with an interpreter for the minor child who is hearing impaired.

After hearing testimony of the witnesses and arguments of counsel at the trial in this matter, and after a hearing regarding Defendant's Objections to Proposed Findings of Fact and Conclusions of Law was held on the 18th day of December, 1984 at which counsel for both parties was present, with the Court's changes in the Proposed Findings of Fact and Conclusions of Law included herein, the Court now makes the following:

FINDINGS OF FACT

1. The minor child was born February 18, 1976 and is handicapped with cerebral palsy and a hearing impairment.

2. The minor child has resided with Petitioners, Mr. and Mrs. Kornmayer, and his maternal great-grandmother, Ona Landrum since June of 1981, which was when the Plaintiff and Defendant were divorced.

3. The minor child and the Defendant have a good relationship one with another which has been enhanced by the Defendant taking the child for visits during the Thanksgiving and Easter recesses, together with several other weekend visits during the year and extended summer visitation, which included six weeks in 1984 and approximately three weeks during the summer of 1983.

4. The child support payments made by Defendant to Plaintiff were not forwarded by Plaintiff to either her grandmother or her parents.

5. The child's behavior and ability to communicate have improved greatly since he went to live with Petitioners.

6. Petitioners and the child's great-grandmother have hired tutors and arranged for the child to attend summer school and camp.

7. The child's maternal great-grandmother has been involved with Brian's care and rearage since June of 1981.

8. The child has been reared by his maternal grandparents and great-grandmother, and they have provided a fit and proper home for the child.

9. The minor child wishes to live with Petitioners, Mr. and Mrs. Kornmayer.

10. A deep bond of love exists between the minor child and his grandparents.

11. There is love between the Defendant and his son.

12. There is a stronger bond between the minor child and the Petitioners than with the defendant.

13. The Petitioners have done a fantastic job of caring for this child.

14. The Defendant has had a good relationship with the minor child and has taken the child for visits during Thanksgiving and a week or two in the summer of each year.

15. Defendant has failed to make all of his support payments for Brian's care and has paid a total of approximately \$9,837.00 to the Plaintiff for child support and alimony, \$6,430.00 of which should be allocated to child support.

16. The Plaintiff has health problems which make it

impossible for her to assume a custodial role at this time.

17. Defendant has failed to sacrifice his own interest and welfare for the child's interest and welfare.

18. Defendant lacks the sympathy for and understanding of the child that is characteristic of parents generally.

Having made the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. Petitioners have overcome the presumption in favor of the natural parent.

2. It is in the best interests of the minor child that Petitioners be granted custody of the minor child at the present time.

3. Defendant is granted liberal visitation with the minor child.

DATED this 28th day of December, 1984.

BY THE COURT:


HON. DEAN E. CONDER
DISTRICT COURT JUDGE

APPENDIX D

1 A HE MOVED OUT APPROXIMATELY FEBRUARY OF 1981
2 PRIOR TO THE DIVORCE; AND ACTUALLY MOVED BACK TO RENO
3 TO LIVE WITH HIS PARENTS, REFUSING TO TAKE ANY FURTHER
4 CARE OF THE CHILD AT THAT TIME.

5 MR. HAYES: YOUR HONOR, OBJECTION.

6 THE COURT: SUSTAINED.

7 Q (BY MS. ALLEN) SINCE THE TIME OF THE DIVORCE,
8 HAS HE PAID CHILD SUPPORT TO YOU?

9 A YES. HE DID. ORIGINALLY, DURING THE FIRST
10 YEAR OF THE DIVORCE, HOWEVER, NOT AS TO THE FULL AMOUNT
11 AS ORDERED BY THE COURT. HE HAS PAID NONE FOR THE PAST
12 TWO AND ONE-HALF YEARS.

13 MR. HAYES: YOUR HONOR, OBJECT TO--

14 THE COURT: OVERRULED. I'M INTERESTED IN
15 WHAT INTEREST HE HAS IN THE CHILD.

16 Q (BY MS. ALLEN) WHY DID YOU SEND BRIAN TO LIVE
17 WITH YOUR PARENTS?

18 A THIS BASICALLY WILL BE A LENGTHY ANSWER.
19 SHOULD I RESPOND? I WAS IN MEDICAL SCHOOL AT THE TIME;
20 I AM NOW AN M.D. I WAS A THIRD-YEAR MEDICAL STUDENT
21 FINISHING UP MY THIRD YEAR OF MEDICAL SCHOOL. HAD ONE
22 YEAR LEFT. I HAD A GREAT FINANCIAL INVESTMENT IN MEDICAL
23 SCHOOL AND BRIAN AT THE TIME WAS EXTREMELY EMOTIONALLY
24 AND HAD BEEN PHYSICALLY OFTEN ABUSED BY HIS FATHER.
25 HE WAS WITHDRAWN, HE WAS NON-TALKATIVE, HE COULD BARELY

1 A HE WAS VERY BELLIGERENT AND A FRUSTRATED
2 LITTLE BOY.

3 THE COURT: THIS AFTER THE DIVORCE?

4 MS. ALLEN: UH-HUH.

5 THE WITNESS: THIS WAS JUST PRIOR TO THE
6 DIVORCE. THIS WAS IN APRIL OF '81.

7 Q (CBY MS. ALLEN) COULD HE SPEAK WHEN HE CAME TO
8 LIVE WITH YOU?

9 A NOT TO UNDERSTAND, NO. HE GAVE SYLLABLES.
10 HE GAVE SOUND VOWELS AND SO FORTH. BUT VERY HARD TO
11 UNDERSTAND. USUALLY THE WAY WE UNDERSTOOD WHAT HE WANTED
12 AND WHAT THE WORD MEANT WAS BY POINTING TO THE OBJECT.

13 Q DID HE HAVE TROUBLE IN SCHOOL WHEN YOU ENROLLED
14 HIM THERE?

15 A YES.

16 Q AT THAT TIME, WHAT DID YOU DO TO HELP HIM
17 LEARN TO SPEAK. DID YOU DO ANYTHING EXTRA AS FAR AS
18 SPEECH THERAPY OR THINGS LIKE THAT?

19 A THE FIRST SUMMER THAT WE HAD HIM--THE SECOND
20 SUMMER--THE FIRST SUMMER THAT WE HAD HIM WE ENTERED
21 HIM IN PRE-SPEECH THERAPY CLASS AT THE CHICO STATE
22 UNIVERSITY DURING THE SUMMER COURSE, WHICH WAS A SEVEN
23 OR EIGHT WEEK PERIOD. AND THEY FOLLOWED THROUGH ALONG
24 WITH WHAT THE SPEECH THERAPIST AT THE SCHOOL, THE SAME
25 SYSTEM THAT THEY TEACH. THE SECOND SUMMER WE HAD HIRED

1 A TUTOR WHO HAPPENED TO BE HIS SCHOOL TEACHER. AND
2 WE HAD HIM TUTORED IN, WE WERE CALLING IT READING BECAUSE
3 WE WANTED HIM TO BE ABLE TO READ AS SOON AS POSSIBLE
4 SO THAT HE COULD ADVANCE FASTER AND SEE WHAT HE WAS
5 GOOD IN AND THEY CALLED IT MORE OR LESS LANGUAGE NOW
6 WHERE THEY ARE BEGINNING GRAMMAR, ENGLISH, SPELLING,
7 WRITING, AND COMPREHENSIVE. SO THAT AFTER THEY DO THEIR
8 READING, WITH THE TEACHER WANTING TO UNDERSTAND WHETHER
9 THEY UNDERSTAND THE WORDS OR WHAT THE WORDS MEAN. SO
10 IT'S AN OVERALL THING THAT THEY TEACH THE HANDICAPPED
11 FROM THE WAY I WAS TAUGHT READING MYSELF. BUT THIS
12 DID HELP ON HIS FRUSTRATIONS AND IT ADVANCED HIM WHERE
13 AT THIS POINT NOW HE IS A YEAR AHEAD OF HIMSELF IN READING.

14 Q WHAT DOES BRIAN CALL YOU?

15 A PAPPA.

16 Q HE HAD A NAME FOR YOU? IS THAT WHAT HE CALLS
17 YOU?

18 A CALLS ME PAPPA.

19 Q WHEN YOU TELL HIM THAT YOU'RE HIS GRANDFATHER,
20 WHAT DOES HE SAY?

21 A HE GETS VERY BELLIGERENT. HE SAYS YOU'RE
22 NOT MY GRANDFATHER. AND I SAYS YES, I AM YOUR GRANDFATHER
23 AND YOU CALL ME PAPPA. HE SAID NO, YOU'RE MY FATHER
24 AND I SHOULD KNOW. YOUR FATHER IS IN RENO., THAT IS
25 YOUR FATHER. I'M YOUR GRANDFATHER. HE SAYS I HAVE TWO

1 Q DID YOU MAKE AN EFFORT TO MAKE VISITATION
2 EASIER FOR HIM? DID YOU EVER MEET HIM HALFWAY OR LET
3 HIM STAY AT YOUR HOUSE?

4 A WELL, HE WOULD STAY WITH MY MOTHER-IN-LAW
5 WHEN HE CAME DOWN AND OVERNIGHT, IF HE HAD OVERNIGHT
6 VISITS. AND ON ONE THANKSGIVING TRIP, WE HAD A REAL
7 SEVERE STORM IN THE SIERRAS. AND WE LIVE IN SACRAMENTO
8 VALLEY JUST WEST OF THE SIERRAS, AND RICH IS ON THE
9 EAST SIDE OF THE SIERRAS. AND A BAD STORM. SO I CALLED
10 RICH AND ASKED HIM IF HE WOULD LIKE ME TO MEET HIM HALFWAY,
11 WHICH WOULD BE IN NEVADA CITY THAT WOULD BE FINE BECAUSE
12 OF THE WEATHER. THAT WAY, HE DIDN'T HAVE TO COME ALL
13 THE WAY DOWN AND ALL THE WAY BACK TO RENO. SO IF I
14 MET HIM HALFWAY, THEN BY THE TIME HE GOT BACK TO RENO,
15 WOULD HAVE BEEN THE TIME THAT HE HAD GOTTEN TO CHICO
16 WITHOUT HAVING TO MAKE THE FULL ROUND TRIP. I DID.
17 WE MADE ARRANGEMENTS TO MEET AT 5:00 O'CLOCK AT THE
18 HOTEL IN NEVADA CITY. AND AS I SAY, IT WAS A TERRIFIC
19 STORM, A REAL, REAL BAD RAINSTORM ON OUR SIDE OF THE
20 HILL. SO I KNEW IT WAS ROUGH UP IN THE MOUNTAINS WITH
21 SNOW. AND I ARRIVED AT THE HOTEL AND THERE WAS NO RICH.
22 SO I WAITED AND WAITED. AND I WENT OVER TO THE SHERIFF'S
23 OFFICE TO INQUIRE HOW THE ROADS WERE COMING OVER THE
24 PASS AND DOWN THROUGH THE BEAR VALLEY. THEY GAVE ME
25 WHAT INFORMATION THEY HAD AND PEOPLE WERE STILL COMING

1 THROUGH. FINALLY ABOUT 7:00 O'CLOCK I WAS GETTING SHOOK
2 UP. SO I STARTED CALLING RENO. I CALLED RICHARD'S
3 FATHER'S RESIDENCE AND NO ONE WAS HOME. I FINALLY REACHED
4 ONE OF HIS SISTER-IN-LAWS AND SHE SAID THAT SHE WOULD
5 TRY AND GET THE INFORMATION FOR ME AS TO, YOU KNOW,
6 WHAT HAPPENED IN RENO. OR YOU KNOW WHETHER THEY LEFT
7 OR WHAT. AND I CALLED WHERE RICH WORKED AT THE UNIVERSITY
8 OF NEVADA AT THE CAMPUS POLICE. AND THE LADY THAT ANSWERED
9 THE PHONE--I INQUIRED ABOUT WHEN RICH LEFT. WELL, SHE
10 KNEW. SHE SAID OH, WELL, HE DIDN'T LEAVE UNTIL 5:30.
11 AND I SAID WELL HE WAS SUPPOSED TO MEET ME AT 5:00 AND
12 HERE IT'S--YOU KNOW, A TWO AND A HALF HOUR DRIVE IN
13 GOOD WEATHER, LET ALONE BAD WEATHER. HE FINALLY ARRIVED
14 AT 9:00 O'CLOCK. THE CHILD HADN'T BEEN FED EXCEPT A
15 CANDY BAR FROM THE TIME HE LEFT RENO UNTIL HE GOT THERE
16 WHICH THE THREE OF US WENT AND WE HAD DINNER. AT THAT
17 POINT, AFTER WE ATE, BRIAN AND I WERE GETTING READY
18 TO GO BACK AND RICH SAYS WELL, IT'S SO BAD OVER THE
19 HILL I THINK I'LL JUST GO ACROSS TO THE MOTEL AND STAY
20 THERE. WELL, THAT'S WHAT I WOULD LIKE TO HAVE DONE
21 TOO BECAUSE I HAD A BAD TRIP GETTING HOME WHICH WAS
22 AFTER MIDNIGHT WITH THIS CHILD.

23 Q DID BRIAN HAVE SCHOOL THE NEXT DAY?

24 A YES.

25 Q HAS MR. KISHPAUGH BEEN LATE TO PICK UP THE

1 A NOW I DON'T THINK THERE WERE ALWAYS BIRTHDAY
2 PRESENTS BUT THERE WERE FROM HIS GRANDPARENTS.

3 Q WHAT KIND OF GOVERNMENT AID ARE YOU PRESENTLY
4 RECEIVING TO HELP CARE FOR BRIAN?

5 A UNDER S.S.I.

6 Q AND DOES HE HAVE ANY HEALTH INSURANCE? IS
7 THAT AMOUNT TO HEALTH INSURANCE?

8 A HE HAS MEDICARE ALONG WITH IT AND WE'VE GOT
9 A SCHOOL HEALTH 24-HOUR FOR ACCIDENTS ON HIM, WHICH
10 IS ON A YEARLY BASIS INSTEAD OF JUST DURING THE SCHOOL
11 YEAR. SO IT COVERS 12 MONTHS.

12 Q HAVE YOU LEARNED HOW TO COMMUNICATE WITH
13 BRIAN WITH THE AMERICAN SIGN LANGUAGE?

14 A I TOOK A CLASS IN THE WINTER OF '82 THAT
15 WAS GIVEN BY THE COLLEGE DOWN IN THE CHICO AREA AND
16 I TOOK BEGINNING SIGNS. AND I AM ABLE TO FLIP SOME
17 SIGNS TO BRIAN. I'M NOT PROFICIENT AT IT SO THAT I
18 WOULD BE ABLE TO TALK TO THE INTERPRETER AND FLIP SIGNS
19 LIKE THEY DO, NO. BUT MY WIFE AND I HAVE ENOUGH KNOWLEDGE
20 OF THE SIGNS, PLUS ORAL COMMUNICATION WITH HIM THAT
21 WE CAN COMMUNICATE. HE SEEMS TO BE ABLE TO PICK UP
22 MY VOICE WHEN I TALK TO HIM. HE HAS LOST THE HIGH TONES
23 WHERE HE RECEIVES THE LOW TONES. SO HE DOESN'T USUALLY
24 HAVE TOO MUCH PROBLEM COMMUNICATING. AND ALSO HE HAS
25 TAUGHT HIMSELF LIP READING AND HAS BEEN TAUGHT THROUGH

1 HIS SPEECH THERAPY WHERE THEY'RE TEACHING HIM TO SOUND.
2 HOW TO OLD THEIR LIPS, HOW TO HOLD THEIR TONGUE FOR
3 DIFFERENT LETTERS OR COMBINATION LETTERS.

4 Q WHAT IS YOUR CURRENT ARRANGEMENT IN CARING
5 FOR BRIAN? WHAT DOES BRIAN DO WHEN SCHOOL IS ON?

6 A WELL, WE START THE DAY OFF--WE LET HIM SLEEP
7 UNTIL HE TRIES TO WAKE UP BY HIMSELF BECAUSE WE LIKE
8 FOR HIM TO GET A MINIMUM OF 10 HOURS OF REST A NIGHT.
9 WE'VE FOUND THROUGH EXPERIENCE THAT HE DOES BETTER WITH
10 ENOUGH SLEEP. SO IF HE CAN GET 10 HOURS WE'RE VERY
11 HAPPY, OR MORE. SO IN THE MORNINGS, WE LET HIM SLEEP
12 UNTIL HE WAKES UP HIMSELF. IF HE'S NOT AWAKE BY 20
13 MINUTES TO 7:00, THEN WE'LL OPEN THE DOOR SO THAT THE
14 LIGHT COMES IN AND IT WILL START DISTURBING HIM BECAUSE
15 HE DOESN'T HEAR THE SOUNDS THAT WE MAKE. AND IF HE
16 DOESN'T WAKE UP ON HIS OWN, IF HE DOESN'T, WE GO IN
17 AND WE WAKE HIM. IF HE'S LATE, LIKE ON A MORNING IF
18 HE DOESN'T GET UP UNTIL QUARTER OF 7:00, WE HELP HIM
19 DRESS SO HE'S NOT BEING RUSHED. IF HE IS UP EARLY,
20 WHICH SOMETIMES HE'LL GET UP AT QUARTER AFTER 6:00 OR
21 6:00, THEN HE DRESSES HIMSELF, BECAUSE THERE'S PLENTY
22 OF TIME TO DRESS HIMSELF WITHOUT GETTING FRUSTRATED.
23 WHILE I AM HELPING HIM GET DRESSED, I GET HIM ORGANIZED
24 BECAUSE IN FIXING HIS BREAKFAST, WE TRY TO ASK HIM THE
25 NIGHT BEFORE WHAT HE WANTS FOR BREAKFAST SO THAT WE'RE

1 GIVING HIM WHAT HE WANTS. BECAUSE WE WANT HIM TO MAKE
2 SURE HE HAS GOT A FULL TUMMY. SO HE WILL SPECIFY WHAT
3 HE LIKES TO EAT FOR THE NEXT MORNING AND WE LAY OUT
4 HIS CLOTHES THE NIGHT BEFORE SO THAT HE KNOWS WHAT HE'S
5 GOING TO PUT ON; BECAUSE IF WE PICK 'EM OUT HE'S UNHAPPY
6 WITH IT. THAT ISN'T THE SHIRT I WANT, IT DOESN'T MATCH,
7 OR SOMETHING ELSE. SO IN ORDER TO CUT DOWN ON HIS FRUS-
8 TRATIONS, WE TRY TO DO THINGS AHEAD OF TIME. AFTER
9 HE'S DRESSED, HE USUALLY ROCKS WITH ME OR IN MY ARMS
10 FOR FIVE MINUTES OR SO FOR THE SECURITY. HE WANTS SECURITY.
11 SO WHILE KAY IS FINISHING OFF BREAKFAST, I'LL ROCK HIM
12 AND HE LOVES TO HAVE HIS BACK RUBBED AND NOT ALL THE
13 TIME TALKED TO. HE WANTS TO BE TALKED TO AND SOMETIMES
14 HE DOESN'T. AFTER BREAKFAST HE HAS HIS VITAMINS AND
15 SO FORTH. AND WE GET HIS AID IN HIS EAR. MAKE SURE
16 THAT HE'S GOT HIS WATCH ON. THE THINGS THAT HAVE TO
17 GO TO SCHOOL ARE SET ASIDE USUALLY THE NIGHT BEFORE
18 SO THERE IS NO LAST MINUTE RUSH. AND IF HE IS TAKING
19 SOMETHING EXTRA TO SCHOOL, WHICH OCCASIONALLY HE'S GOT
20 SOMETHING NEW HE WANTS TO TALK IT AND SHOW THE TEACHER,
21 SHOW HIS FRIENDS THERE AND SO FORTH. SO WE TRY TO DO
22 THOSE THINGS AHEAD OF TIME SO WHEN THE BUS ARRIVES HE'S
23 ALREADY OUT THE DOOR AND WE'RE WAITING FOR THE BUS.
24 BUT WE TRY TO DO THINGS SMOOTHLY WITHOUT RUSHING HIM.
25 BRIAN DOES NOT LIKE TO BE RUSHED AND HE DOESN'T WANT

1 TO WAIT UNTIL THE LAST MINUTE TO BE TOLD THAT WE'RE
2 GOING TO DO SOMETHING. HE LIKES TO BE IN ON THE PLANS,
3 WHICH IS UNDERSTANDABLE. HE CAN'T HEAR US MAKE THE
4 PLANS SO THEN WE HAVE TO TELL HIM WHAT THE PLANS ARE
5 IF WE'RE GOING TO GO ON WITH THE REST OF THE DAY. THE
6 BUS USUALLY ARRIVES AT 20 TO 25 MINUTES AFTER 7:00 EVERY
7 MORNING. HE'S OFF AT SCHOOL AND TAKES A LUNCH WITH
8 HIM. HE DOESN'T LIKE TO EAT SCHOOL LUNCH. HE WANTS
9 TO EAT LUNCH WITH HIS FRIENDS SO THAT'S FINE. SCHOOL
10 IS OUT APPROXIMATELY 2:00 O'CLOCK AND HE GETS HOME ABOUT
11 20 TO QUARTER OF 3:00. NOW OCCASIONALLY, IF THEY HAVE
12 A SUBSTITUTE, IF THE SUBSTITUTE DRIVES IT MIGHT BE UP
13 TO 3:00 O'CLOCK WHEN HE ARRIVES HOME. WHEN HE ARRIVES
14 HOME, EITHER KAY OR MYSELF ARE THERE TO MEET HIM. AND
15 IF HE WANTS SOMETHING TO EAT, WHICH A LOT OF TIMES HE
16 COMES HOME HUNGRY AS MOST KIDS DO, WE LET HIM HAVE SOMETHING
17 TO EAT. THEN WE GET HIM STARTED ON HIS HOMEWORK IF
18 HE HAS HOMEWORK THAT EVENING. HE DOESN'T HAVE HOMEWORK
19 EVERY NIGHT, BUT HE DOES THAT HOMEWORK. WE FOUND THAT
20 IT'S BETTER TO GET IT OVER EARLY THEN LETTING HIM GO
21 PLAY AND THEN COME BACK FOR THE HOMEWORK; BECAUSE IF
22 HE PLAYS FIRST, THEN HE'S OUT OF THE MOOD. SO WE'VE
23 CHANGED THE ROUTINE ON THAT AND IT HAS WORKED VERY WELL.
24 HE'LL GET IN AND DO HIS HOMEWORK AND I ASSUME IF HE
25 NEEDS SOME HELP ON IT HE'LL ASK US OR RAISE HIS HAND

1 LIKE AT SCHOOL AND HE WANTS SOME HELP. AND WE'LL GIVE
2 HIM SOME HELP OF WHATEVER HE NEEDS AND SO TO GET THE
3 HOMEWORK OUT OF THE WAY. AT THAT POINT HE CAN WATCH
4 HIS T.V.: PINK PANTHER, INSPECTOR GADGET, OR GO OUT
5 AND PLAY, WHICH A LOT OF TIMES WE'LL GO OUT AND WE'LL
6 BICYCLE TOGETHER BEFORE DINNER TIME OR IF HE'S NOT INTERESTED
7 IN THE T.V., OR HE MIGHT WANT TO PLAY WITH SOME OF ONE
8 OF THE OTHER CHILDREN IN THE PARK. AT DINNER TIME IT'S
9 USUALLY IN THE AREA OF 6:00 TO 6:30. NOW, IF HE EATS
10 QUITE A BIT WHEN HE COMES HOME, IT'S BECAUSE HE DIDN'T
11 EAT A GOOD LUNCH WHICH WE ALWAYS INSPECT THE LUNCH BOX
12 TO SEE WHAT IS COMING BACK. WE CAN'T REALLY TELL BECAUSE
13 THESE KIDS ARE PRETTY SMART. AND THEY PASS LUNCH TO
14 EACH OTHER. THEY SWAP. AND SO WE'RE NOT SURE THAT
15 HE EATS WHAT WE GAVE HIM AT ALL TIMES. BUT IF WE ASK
16 HIM, HE'LL TELL US. HE'S VERY TRUTHFUL AND SO DEPENDING
17 ON HOW MUCH HE EATS AFTER HE GETS HOME AND WHAT THE
18 ITEM IS. IF IT'S SOMETHING THAT IS SWEET AND WOULD
19 KILL HIS APPETITE, WE'LL HOLD OFF DINNER A LITTLE BIT.
20 SO IT'S USUALLY IN THAT AREA OF 6:00-6:30, AND THEN
21 IF THERE'S A PROGRAM ON THAT HE ENJOYS, WHICH ARE TWO
22 OR THREE THAT HE LIKES IN PARTICULAR: MR. A TEAM, BLACK
23 KNIGHT RIDER, AND THE WHEEL OF FORTUNE, ARE THE MAIN
24 ONES. OCCASIONALLY THERE'S A DISNEY ON; SO IT DEPENDS
25 UPON WHAT TIME THAT PROGRAM IS OVER AS TO HIS BEDTIME.

1 HIS ORDINARY BEDTIME IS, WE START AS SOON AS THE PROGRAM
2 IS OVER AT 8:00. HE USUALLY HAS HIS NIGHTIES ON AT
3 THAT POINT AND HAS TO BRUSH HIS TEETH. AND THEN HE'S
4 READY TO GET IN BED ABOUT 8:15. WE TRY TO GET HIM INTO
5 BED AT 8:15 SO HE IS ASLEEP BY 8:30. IF IT'S A 9:00
6 O'CLOCK PROGRAM, AND HE'S USUALLY ASLEEP AS SOON AS
7 HE HITS THAT PILLOW BECAUSE HE'S TIRED. SO HE'LL GO
8 TO SLEEP FASTER WHEN HE STAYS UP UNTIL 9:00. SO USUALLY
9 AT 10 MINUTES AFTER 9:00 HE'S KONKED OUT.

10 Q WHAT KIND OF SCHOOL DOES HE GO TO. IS IT
11 A REGULAR SCHOOL WITH HANDICAPPED CLASSES OR A HANDICAPPED
12 SCHOOL?

13 A A SPECIAL SCHOOL FOR THE HANDICAPPED CHILDREN.
14 AND THEY'VE GOT AN EXCELLENT PROGRAM IN BUTTE COUNTY
15 WHERE HE ATTENDS SCHOOL FROM NURSERY ON UP. IT'S A
16 TOTAL COMMUNICATION WHERE THEY GIVE ORAL INSTRUCTION
17 AS WELL AS SIGNS. THEY'RE NOT JUST SIGNING OR THEY'RE
18 NOT JUST ORAL WHICH A LOT OF SCHOOLS ARE. THEY WILL
19 GIVE ONLY ONE OR THE OTHER. AND WHEN HE STARTED LEARNING
20 SIGNS, IT HELPED WITH COMMUNICATION TERRIFICALLY BECAUSE
21 HE COULD EXPRESS HIMSELF. HE CAN EXPRESS HIS EMOTIONS
22 AND HE COULD EXPRESS HIS WANTS OR HIS DISLIKES, WHATEVER,
23 JUST LIKE EVERYBODY ELSE. SO IT HELPED ON HIS FRUSTRATIONS
24 TERRIFICALLY AND HE LOVES SIGNS. WE GOT HIM VARIOUS
25 SIGNING BOOKS THAT WERE RECOMMENDED BY THE SCHOOL FOR

1 US SO WE WOULD HAVE COPIES AT HOME. AND WHEN HE FIRST
2 STARTED OFF, HE'D GO TO BED AT NIGHT, HE WOULD PRACTICE
3 HIS SIGNS IN THE DARK. HE WOULD BE THERE STARTING OFF
4 ON THE ALPHABET ALL BY HIMSELF. WELL, HE HAS GOT REAL
5 GOOD EYESIGHT AND HE CAN SEE GOOD IN THE DARK. BUT
6 HE KNEW WHERE THOSE FINGERS WERE GOING WHEN HE WAS FLIPPING
7 SIGNS AND WOULD PRACTICE. HE FIRST STARTED OFF DOING
8 THAT WITH THE ALPHABET AND THEN STARTED OFF WITH THE
9 WORDS.

10 Q DOES THE SCHOOL HAVE SPECIAL PEOPLE, SPEECH
11 THERAPISTS AND DO THEY HAVE PEOPLE TO HELP HIM WITH
12 HIS VERBAL PROBLEMS ALSO?

13 A YES. THEY'VE GOT SPEECH THERAPISTS THAT
14 COME IN TWO TO THREE TIMES A WEEK AND WORK INDIVIDUALLY
15 WITH EACH CHILD. AND HE HAS HAD THAT EVER SINCE HE
16 HAS BEEN UNDER THIS SCHOOL.

17 THE COURT: HOW LONG HAS HE BEEN IN THIS
18 SCHOOL, SIR?

19 THE WITNESS: THREE YEARS. WE STARTED HIM--

20 THE COURT: AS SOON AS YOU GOT THERE?

21 THE WITNESS: APRIL OF '81. AND AS SOON
22 AS THE NEXT WEEK, NO, WE LOST A WEEK I BELIEVE. WE
23 LOST THREE OR FOUR DAYS AND HE STARTED WITHIN A WEEK
24 AFTER WE HAD HIM. SO HE HAS BEEN THERE CONSTANTLY AND
25 AT SUMMER SCHOOL EACH SUMMER WITH THEM. THE CLASSES

1 ARE APPROXIMATELY SIX TO EIGHT STUDENTS IN EACH CLASS
2 WITH SIMILAR DIFFICULTIES. THEY DID HAVE SOME ONE CLASS
3 THAT THEY COULD HAVE GOTTEN. WE COULD HAVE GOTTEN HIM
4 INTO IN CHICO. BUT THERE WERE MANY VERY, VERY BAD HANDICAPPED
5 CHILDREN IN THERE. AND WE THOUGHT IT WAS BEST IF BRIAN
6 WOULDN'T BE AROUND THEM BECAUSE HE IMITATES. AND WE
7 DIDN'T WANT HIM IMITATING THESE SEVERELY HANDICAPPED
8 CHILDREN THAT WEREN'T ABLE TO WALK AS WELL AS HE CAN.
9 AND THE PROGRAM THAT HE STARTED WITH IS OVER IN OROVILLE
10 WHICH IS 20 MILES FROM CHICO. BUT THE SPECIAL BUSES
11 PICK HIM UP IN CHICO AND CART HIM BACK AND FORTH. BUT
12 THE INSTRUCTIONS, THERE'S A REGULAR ACCREDITED TEACHER
13 THAT KNOWS SIGNS AND HAS LOTS OF EXPERIENCE IN SIGNING
14 AS WELL AS SIGN ORAL AND VOCAL, PLUS A MINIMUM OF ONE
15 OR MORE AIDS THAT HELP. AND THE AIDS ARE--THEY SIGN.
16 THEY DO THE ORAL AND THEY'RE JUST LIKE ANOTHER TEACHER.
17 SOMETIMES THEY WOULD HAVE TWO AIDS AND SOMETIMES THE
18 PARENTS GO IN AND DO EXTRA WORK, AND HELP, DEPENDING
19 ON HOW MANY STUDENTS WERE IN THE CLASS I SUPPOSE.

20 THE COURT: LET ME `ASK YOU, 'SIR. HOW MANY
21 TIMES HAVE YOU VISITED THAT SCHOOL YOURSELF?

22 THE WITNESS: MYSELF? WELL, I WOULD SAY
23 THAT I HAVE BEEN OVER THERE A MINIMUM OF THREE TIMES
24 EACH SEMESTER. SO IT WOULD BE SIX TO SEVEN TIMES OR
25 EIGHT TIMES A YEAR OBSERVING AND ALSO PICKING HIM UP,

1 OR TALKING TO THE TEACHERS OR THE SCHOOL THERAPIST.
2 I MEAN THE SPEECH THERAPIST AND THE SCHOOL PSYCHOLOGIST
3 AND SO FORTH.

4 THE COURT: LET'S TAKE A FIVE MINUTE RECESS.

5 (WHEREUPON, DURING THE RECESS THE COUNSEL
6 AND THE JUDGE MET IN THE JUDGE'S CHAMBERS AT THE COURT'S
7 REQUEST.)

8 THE COURT: YOU MAY PROCEED.

9 Q (BY MS. ALLEN) OKAY. I WANT YOU TO DESCRIBE
10 WHAT HAPPENED FROM YOUR POINT OF VIEW, WITH THE EASTER
11 VISIT; THIS MOST RECENT ONE; HOW IT WAS ARRANGED AND
12 WHAT HAPPENED AFTER THAT?

13 A JUST PRIOR TO EASTER, ABOUT 10 DAYS-TWO
14 WEEKS--A COUPLE OF WEEKS, RICH HAD CALLED MY MOTHER-IN-LAW
15 AND WANTED TO COME DOWN AND BE WITH BRIAN. AND WE TALKED
16 IT OVER AFTERWARD. THEY HAD SAID YES I BELIEVE. AND
17 WE TALKED IT OVER AND MY WIFE WAS SICK AT THE TIME;
18 SHE HAD PNEUMONIA. MY MOTHER-IN-LAW WASN'T FEELING
19 THE GREATEST AND IT WAS JUST A SHORT TIME TILL EASTER
20 VACATION. AND WE WERE ASSUMING THAT RICH WOULD WANT
21 BRIAN FOR EASTER VACATION AS HE HAD IN THE PAST. SO
22 I CALLED RICH AND ASKED HIM OR TOLD HIM IT WOULD BE
23 MORE CONVENIENT FOR US IF HE COULD WAIT UNTIL EASTER
24 TIME TO HAVE BRIAN INSTEAD OF COMING THEN.

25 THE COURT: EXCUSE ME, I LOST SOMETHING.

1 WHEN WAS IT?

2 THE WITNESS: THIS WAS JUST A COUPLE OF WEEKS
3 PRIOR TO THIS PAST EASTER.

4 THE COURT: ALL RIGHT.

5 THE WITNESS: AND THERE WAS ALSO THE
6 POSSIBILITY THAT THE WEEKEND THAT HE WANTED TO COME,
7 KARLA WAS PLANNING ON COMING HOME. AND WE DIDN'T WANT
8 KARLA IN CHICO WHILE RICH WAS THERE VISITING ALSO, BECAUSE
9 IT JUST WOULDN'T HAVE WORKED OUT GOOD. WOULDN'T HAVE
10 WORKED OUT GOOD FOR BRIAN. NOBODY WOULD HAVE BEEN ABLE
11 TO SEE HIM. I DIDN'T GO INTO DETAIL ON THE TIME. I
12 JUST SAID IT WOULD BE MORE CONVENIENT. AND HE SAID
13 YES, YES. THAT, YOU KNOW, HE WOULD SEE IF IT WOULD
14 WORK OUT AND IF HE HAD THE TIME OFF. SO MADE ARRANGEMENTS
15 FOR HIM TO PICK HIM UP FOR EASTER VACATION, WHICH HE
16 DID. THEN WHILE HE WAS IN RENO WITH HIS DAD, HIS DAD
17 CALLED MY MOTHER-IN-LAW. HE WAS SUPPOSED TO HAVE BEEN
18 BACK ON SATURDAY BECAUSE BRIAN WANTS TO BE HOME FOR
19 EASTER DAY. AND HE CALLED AND HE HAD SAID SOMETHING
20 TO THE EFFECT THAT THEY WERE GOING TO GO TO FALLON TO
21 SEE HIS BROTHER OR SOMETHING TO THAT EFFECT. AND SO
22 THAT THEY WOULD BE THERE SUNDAY. AND THEN SHE GOT A
23 CALL SUNDAY SAYING THAT HE WASN'T--

24 MR. HAYES: YOUR HONOR, OBJECT TO THIS. THIS
25 IS HEARSAY. HE'S TALKING ABOUT A CALL THAT SOMEONE

ELSE RECEIVED.

THE COURT: SUSTAINED.

MR. HAYES: HE CAN'T TESTIFY AS TO THAT.

THE COURT: ONE THING ABOUT THE RULES OF LAW, YOU CAN'T TELL US WHAT SOMEBODY ELSE TOLD YOU BECAUSE THAT BECOMES HEARSAY.

THE WITNESS: I CAN TELL ABOUT WHAT--

Q (BY MS. ALLEN) TELL US WHAT YOU DID.

A MY WIFE AND I WERE IN SAN ANTONIO ON VACATION AT THE TIME. OUR OTHER DAUGHTER HAD SENT US TICKETS FOR OUR 30TH ANNIVERSARY TO COME AND VISIT HER, WHICH WE WENT DOWN. AND WE WERE THERE OVER APPROXIMATELY 30 DAYS. THE NIGHT BEFORE WE WERE LEAVING, WHICH WE WERE LEAVING ON A TUESDAY MORNING. AND THE NIGHT BEFORE WE GOT A TELEPHONE CALL FROM MY MOTHER-IN-LAW STATING THAT RICH HAD CALLED AND SAID THAT HE WAS NOT BRINGING BRIAN HOME. NOT BRINGING HIM BACK TO CHICO. THAT THE PRINCIPAL OF THE SCHOOL HAD CALLED AND SOMEONE HAD CALLED THERE TO FIND OUT WHAT KIND OF BOOKS HE WAS IN AND THE LESSONS AND SO FORTH AND AS TO WHAT SYSTEM THEY WERE DOING ON TEACHING. AND OF COURSE WE WERE LEAVING THE NEXT MORNING. SO WE LEFT ON OUR SCHEDULED TIME, BUT I CAME TO SALT LAKE FROM SAN ANTONIO. MY WIFE WENT ON HOME TO CHICO. AND I CAME TO SALT LAKE AND WE GOT PAPERS AND HAD THINGS TAKEN CARE OF. AND WE CAME INTO

1 THIS COURT AND ASKED THAT THE CHILD BE RETURNED TO US.

2 Q DID YOU GO TO RENO WITH THE DOCUMENTS?

3 A I TOOK THE DOCUMENTS TO RENO AND MY ATTORNEY
4 THERE. I GAVE THEM TO HIM TO HAVE HIM SERVE 'EM; AND
5 HE CALLED THE UNIVERSITY, I GUESS THEY CALL THEM--THE
6 CHIEF OF THE CAMPUS POLICE AND HAD TALKED TO HIM. THAT
7 HE HAD THESE PAPERS AND WANTED TO SERVE RICH WITH THEM.
8 AND HE TOLD THEM THAT--THE CHIEF TOLD HIM RICH WILL
9 BE IN YOUR OFFICE AT 2:00 O'CLOCK. AND SO ANYWAY, HE
10 DIDN'T SHOW UP AT THE ATTORNEY'S OFFICE AT 2:00.

11 MR. HAYES: YOUR HONOR, AGAIN I OBJECT. THIS
12 IS TOTALLY HEARSAY.

13 MS. ALLEN: HE WAS PRESENT.

14 THE WITNESS: I WAS THERE. I WAS IN RENO.

15 THE COURT: OVERRULED. THIS IS A STATEMENT
16 HE'S MAKING ABOUT WHAT HAPPENED AT 2:00 O'CLOCK.

17 MR. HAYES: WELL, HE SAID HE TALKED AND THAT
18 HIS ATTORNEY CALLED THE PERSON. AND THE PERSON SAYS
19 SOMETHING TO HIS ATTORNEY. I THINK THAT'S HEARSAY.

20 THE WITNESS: YEAH. I DID SAY THAT.

21 THE COURT: THAT PART WILL BE STRICKEN.

22 THE WITNESS: RICH DIDN'T SHOW UP AT 2:00
23 O'CLOCK AS HE WAS SUPPOSED TO DO. MY ATTORNEY WAS OUT
24 OF THE OFFICE WHEN I ARRIVED. I ARRIVED VERY SHORTLY
25 AND MY ATTORNEY GOT ON A PARTY TELEPHONE AND CALLED

1 MS. ALLEN AND THEY CONFERRED. AND MY ATTORNEY IN RENO
2 ALSO CALLED RICH'S ATTORNEY--FORMER ATTORNEY THAT HE
3 HAD, MR. RHEINHARDT IN SALT LAKE. AND THIS IS GETTING'
4 UP TO AROUND 4:00 O'CLOCK. AND IT WAS FINALLY SET THAT
5 THEY WOULD BRING BRIAN TO THE ATTORNEY'S OFFICE AND
6 MAKE A TRANSFER AT 4:00 O'CLOCK. SO THEY GOT THERE
7 AND MY ATTORNEY IN RENO WAS ON THE PHONE ALREADY TALKING.
8 AND WE WERE TALKING TO HIS MR. RHEINHARDT. MR. RHEINHARDT
9 SAID WE WERE NOT RETURNING THE CHILD. MY RENO ATTORNEY
10 SAID THAT'S FINE, IT'S UP TO YOU. IF YOU DON'T WANT
11 TO RETURN THE CHILD AND DON'T WANT TO DO WHAT YOUR COURT
12 TELLS YOU TO DO.

13 THE COURT: WELL EXCUSE ME, RATHER THAN TELL
14 US WHAT THEY SAID THAT GETS INTO SOME COMPLICATIONS.
15 TELL US WHAT YOU DID.

16 Q (BY MS. ALLEN) IS THIS A SPEAKER OR A REGULAR
17 PHONE?

18 A SPEAKER PHONE. SO AT THAT POINT, RICH CAME
19 IN AND HE TALKED TO HIS ATTORNEY. HE SAID OKAY. AT
20 THIS POINT TURN HIM OVER. SO RICH TALKED TO THE ATTORNEY
21 AND EVERYTHING WAS FINE. HE SAID OKAY. THAT'S FINE.
22 SO HE MADE A TELEPHONE CALL AND HIS MOTHER BROUGHT BRIAN.
23 AND THEN THEY HAD TO GO BACK AND GET HIS CLOTHES, AND
24 TOYS, AND ALL OF HIS STUFF THAT HE HAD CARTED TO RENO.
25 AND WE MADE THE TRANSFER AT THAT TIME; SO AT THAT POINT,

1 I HAD POSSESSION OF BRIAN AFTER THIS COURT'S ORDER.

2 Q AT THAT TIME, DID YOU KNOW WHERE MR. KISHPAUGH
3 LIVED AT THAT TIME THAT THAT OCCURRED?

4 A YES.

5 Q DO YOU KNOW OF YOUR OWN KNOWLEDGE?

6 A YES.

7 Q DO YOU KNOW WHAT KIND OF APARTMENT IT WAS?
8 WHETHER IT WAS A ONE BEDROOM OR TWO BEDROOM?

9 A I WAS NEVER IN THE APARTMENT.

10 Q THE ONLY OTHER THING I WOULD LIKE TO ASK
11 ABOUT IS, WHAT HAPPENED WHEN BRIAN WAS RETURNED FROM
12 VISITING HIS FATHER THIS TIME; AND SPECIFICALLY, THERE
13 IS A COUPLE OF THINGS THAT I HAVE IN MIND. ONE OF THEM
14 IS HOW HE BEHAVED WHEN HE RETURNED?

15 A NOW, ARE YOU TALKING THIS PAST SUMMER?

16 Q YES. THIS MOST RECENT ONE WHEN HE HASN'T
17 VISITED HIS FATHER FOR A LONG TIME.

18 A HE WAS VERY HAPPY TO BE HOME. AND HE REPEATEDLY
19 HAS TOLD ME EVER SINCE HE HAS RETURNED, I'M SURE HAPPY
20 TO BE HOME PAPPA. THAT EVENING KAY HAD ONE OF BRIAN'S
21 FAVORITE DINNERS READY FOR HIM, WHICH WAS STEWED CHICKEN,
22 MASHED POTATOES AND SO FORTH THAT HE REALLY LIKES. THE
23 LITTLE KID WAS STARVED. HE DIDN'T STOP TO USE A FORK
24 OR A SPOON. HE SHOVELED IT IN. JUST ABSOLUTELY SHOVELED
25 HIS FOOD IN AND HAD MORE AND MORE, WHICH WE UNDERSTOOD,

1 STAY AND WE RUN BACK AND FORTH ALL THE TIME. I WILL
2 GO OVER THERE AND HE'LL COME OVER HERE. HE CALLS ME
3 GRAND BOB. AND HE SAYS YOU COME TO ME. AND I'LL GO
4 OVER AND HAVE DINNER AND WE'LL PLAY, AND CONVERSE. AND
5 WE HAVE A WONDERFUL RAPPORT, REALLY.

6 Q (BY MS. ALLEN) DID YOU HIRE A TUTOR OR ANYTHING
7 FOR HIM WHEN HE FIRST CAME?

8 A YES. ALL LAST YEAR I HAD A TUTOR THAT CAME
9 IN TWO HOURS EVERY EVENING TO TEACH HIM TO READ, AND
10 WITH HIS SPELLING, AND HIS HOMEWORK, AND WHATEVER HE
11 NEEDED TO HAVE DONE AT SCHOOL, BECAUSE HE COULDN'T READ.
12 HE HAD QUITE A TIME LEARNING TO READ. HE HAD TROUBLE
13 WITH MATH BUT HIS READING IS, HE HAD TROUBLE WITH THAT.

14 THE COURT: COUNSEL, AS I INDICATED TO COUNSEL
15 IN CHAMBERS, I HAVE A LUNCHEON APPOINTMENT WITH MY WIFE.
16 THAT SORT OF TAKES PRECEDENT OVER ALL THESE OTHER THINGS.
17 I REALIZE YOUR'S IS AN IMPORTANT CASE TOO. I DON'T
18 WANT AN ADVERSE SITUATION IN MY FAMILY SO WE'LL TAKE
19 OUR NOON RECESS AT THIS TIME AND RECONVENE--I'LL SEE
20 BRIAN AT QUARTER OF TWO. THE COURT WILL BE IN RECESS.

21 (WHEREUPON, THE NOON RECESS WAS TAKEN.)

22 * * *

23 THE COURT: BACK TO THE MATTER OF KISHPAUGH
24 VERSUS KISHPAUGH. I'M GOING TO SAY TO ALL PRESENT,
25 THAT I HAD THE EXPERIENCE OF TALKING TO BRIAN AND FOUND

1 Q IS THERE A REASON WHY?

2 A NO. NOT PARTICULARLY.

3 Q DID HE USED TO WRITE TO THE CHILD?

4 A HE HAS WRITTEN MORE THIS YEAR. BEFORE THAT,
5 BETWEEN VISITS HE WOULD WRITE VERY SELDOM OR CALL.

6 Q WHAT SUPPORT HAVE YOU RECEIVED FROM HIM FOR
7 THE CHILD, IF ANY?

8 A NONE EXCEPT THIS YEAR. I THINK IT WAS JANUARY
9 HE SENT ME A CHECK FOR \$75.00.

10 THE COURT: LET ME INQUIRE, MRS. LANDRUM
11 BECAUSE I FORGOT TO ASK BRIAN. CAN HE WRITE?

12 THE WITNESS: OH, YES.

13 THE COURT: HE READS AND WRITES?

14 THE WITNESS: OH, YES. YES.

15 THE COURT: OKAY.

16 Q (BY MS. ALLEN) AND WHAT DID YOU RECEIVE IN
17 FEBRUARY?

18 A \$75.00.

19 Q AND WHAT DID YOU RECEIVE IN MARCH?

20 A \$100.00.

21 Q AND DID YOU HAVE A DISCUSSION WITH HIM ABOUT
22 THESE PAYMENTS AT ANY POINT?

23 A WELL, HE SENT--I TOLD HIM THE CHILD HAD HAD
24 HIS FOUR FIRST MOLARS CAME IN AND THEY HAD CAVITIES.
25 AND I HAD THOSE REPAIRED FOR \$156.00. I HAD SORT OF

EX-WIFE?

A YES. UPON OUR SEPARATION, SHORTLY BEFORE OUR DIVORCE, MY EX-WIFE, KARLA, HAD TALKED TO ME AND SAID SHE WANTED TO SEND BRIAN TO CHICO, CALIFORNIA TO STAY, SO THAT WE COULD SORT THINGS OUT AND EXPEDITE THE DIVORCE WITH AS LITTLE EMOTION AS POSSIBLE. I AGREED OF COURSE. THE DIVORCE BECAME FINAL AND THE WEEKS TURNED INTO A FEW MONTHS. I ASKED HER WHEN SHE WOULD BE BRINGING HIM BACK. SHE SAID SHE WOULD LIKE TO FINISH SCHOOL FIRST AND THEN SHE HAD A GREAT INVESTMENT IN SCHOOL AND FELT THAT WAS MORE IMPORTANT. I THEN, IN THE SUMMER OF '81, FELT THAT IT WOULD BE GOOD FOR ME TO MOVE. I MOVED FROM SALT LAKE, QUIT MY JOB AND MOVED TO RENO, NEVADA, WHICH IS A LOT CLOSER THAN SALT LAKE TO CALIFORNIA. I THEN ASKED HER MANY TIMES AGAIN, VIA TELEPHONE AND LETTER, WHEN IS SHE GOING TO TAKE BRIAN AND CARE FOR HER SON. SHE STATED TO ME EVERY TIME I ASKED HER THAT HE WAS FINE WHERE HE IS. I SAID YES, HE'S FINE. BUT IT'S NOT THE BEST SITUATION. HE NEEDS HIS PARENTS. IF YOU WON'T RAISE HIM, THEN I WILL. AND I FEEL I AM CAPABLE AND I WOULD LIKE TO RAISE HIM. YOU'VE BEEN GIVEN CUSTODY OF HIM AND YOU'RE NOT FULFILLING YOUR RESPONSIBILITY. SHE SAID WELL, IF YOU TRY TO GET HIM, I WILL FLY OVER, PICK HIM UP AND HAVE TO FINISH WORK, PUT HIM WITH A BABYSITTER AND HE WON'T BE RAISED RIGHT,

1 A WAS THE END OF APRIL. I CAN'T REMEMBER THE
2 EXACT DATE. END OF APRIL IN '84.

3 Q IN '84? CONCERNING THE VISITATION THAT YOU'VE
4 HAD WITH BRIAN SINCE THE DIVORCE IN 1981; HOW MANY TIMES
5 WOULD YOU SAY YOU'VE VISITED BRIAN IN CHICO, CALIFORNIA,
6 AND THAT YOU WERE GONE TO CHICO IN THE LAST THREE YEARS?

7 A I HAVE EITHER GONE AND STAYED OR PICKED HIM
8 UP AND BROUGHT HIM TO RENO. AND I WOULD SAY AT LEAST
9 10-11-12 TIMES.

10 Q DURING THOSE TIMES, HAVE YOU HAD OCCASION
11 MORE THAN ONCE TO VISIT HIS SCHOOL IN RENO?

12 A YES. I HAVE OR IN CHICO.

13 Q EXCUSE ME, IN CHICO.

14 A IN CHICO, YES.

15 Q CAN YOU DESCRIBE ON THE VISITS THAT YOU'VE
16 HAD WITH BRIAN IN CHICO, WHAT YOU WOULD NORMALLY DO
17 WITH HIM DURING THOSE VISITS?

18 A I WOULD DRIVE TO CHICO AND PICK HIM UP FROM
19 HIS SCHOOL AND SPEAK WITH THE TEACHERS BRIEFLY. AND
20 SAY HELLO TO THE PRINCIPAL. AND HIS PRINCIPAL INSTRUCTOR.
21 AND THEN TAKE HIM TO CHICO TO ONA LANDRUM'S HOME WHERE
22 HE WAS STAYING. I PLAYED WITH HIM AND BEEN WITH HIM
23 THE REST OF THE AFTERNOON. SPEND THE NIGHT; AND THEN
24 THE NEXT MORNING, I WOULD EITHER STAY THE NEXT DAY AGAIN,
25 OR IF IT WAS DURING THE MIDDLE OF THE WEEK WHICH I HAD

1 DONE MORE THAN ONCE, VISITING DURING THE MIDDLE OF THE
2 WEEK, I WOULD TAKE HIM BACK TO SCHOOL THE NEXT DAY INSTEAD
3 OF HAVING HIM GO ON THE BUS AND WE WOULD RIDE TOGETHER
4 TO HIS SCHOOL, WHEN I WOULD DROP HIM OFF AT SCHOOL.
5 AND I WOULD STAY AT THE SCHOOL FOR THE MORNING AND VISIT
6 THE TEACHERS, SIT IN ON THE CLASSROOMS, AND EAT LUNCH
7 WITH HIM, AND THEN PLAY IN THE PLAYGROUND WITH HIM.
8 AND THEN LEAVE TO GO BACK TO RENO.

9 Q SINCE YOUR CHILD WAS BORN, AND WHEN IT WAS
10 DISCOVERED THAT HE DID HAVE THE HEARING IMPAIRMENT THAT
11 HE HAS; HAVE YOU DONE ANYTHING TO HELP YOURSELF
12 COMMUNICATE WITH HIM BETTER? YOU PICKED UP SIGN LANGUAGE?

13 A YES. I HAVE. I TRIED TO FIND A COURSE IN
14 THE RENO AREA. I HAVEN'T BEEN ABLE TO FIND ONE AS OF
15 YET. THE COMMUNITY COLLEGE SAYS THEY'RE GOING TO OFFER
16 ONE, BUT I HAVE PICKED UP A LOT OF SIGN LANGUAGE THROUGH
17 LITERATURE. I HAVE SEVERAL BOOKS ON THE SUBJECT. AND
18 IN SPEAKING WITH BRIAN AND WITH HIS TEACHERS IN SCHOOL,
19 THEY'VE SUGGESTED SEVERAL BOOKS AND PUBLICATIONS THAT
20 I OBTAINED. AND I OBTAINED THOSE AND HAVE BEEN ATTEMPTING
21 AND I FEEL I COMMUNICATE REASONABLY WELL WITH BRIAN.

22 Q GETTING BACK TO YOUR VISIT WITH BRIAN IN
23 CHICO. DID YOU EVER OR WERE YOU EVER TOLD TO TAKE BRIAN
24 TO BILL KORNMEYER'S HOUSE, OR DID YOU EVER PICK HIM
25 UP AT BILL KORNMEYER'S HOUSE?

1 YOU'RE VISITING WITH HIM EASTER AND THANKSGIVING PARTICULARLY,
2 DO YOU WRITE LETTERS TO HIM?

3 THE WITNESS: I DON'T WRITE AS MUCH AS I
4 SHOULD. I ADMIT TO THAT.

5 THE COURT: FOR INSTANCE, IN 1984, HOW MANY
6 LETTERS HAVE YOU SENT TO HIM?

7 THE WITNESS: OH, MAYBE 10.

8 THE COURT: WHAT ABOUT 1983?

9 THE WITNESS: '83? FIVE OR SIX. I VISITED
10 HIM MORE OFTEN IN THAT YEAR SO . . .

11 THE COURT: WHAT GIFTS DID YOU FURNISH HIM
12 IN 1983?

13 THE WITNESS: WHEN HE WOULD COME TO VISIT,
14 I WOULD BUY HIM A LOT OF LITTLE THINGS THAT HE WOULD
15 EITHER TAKE BACK. LITTLE TOYS, OR A LITTLE STUFFED
16 ANIMAL. I'VE GOTTEN HIM A LOT OF STUFFED ANIMALS. HE
17 WOULD LEAVE THEM IN RENO QUITE OFTEN AND HE WANTED THEM
18 THERE WHEN HE CAME BACK. I BOUGHT HIM TWO BICYCLES,
19 TWO TWO-WHEELERS AND SPENT A LOT OF TIME WITH HIM THIS
20 SUMMER TRYING TO HELP HIM LEARN TO RIDE AND OVERCOME
21 HIS BALANCE PROBLEMS. I BOUGHT HIM SHOES AND SOCKS,
22 AND YOU KNOW. THE MUNDANE THINGS THAT KIDS DON'T LIKE
23 TO GET. BUT I FELT HE HAS NEEDED THEM. I DON'T WANT
24 TO GET INTO EXTRAVAGANCE. I DON'T TRY TO BUY HIS LOVE.
25 I TRY TO SHOW IT TO HIM AND MOST OF MY ATTENTION FOR

1 A I MOVED FROM SALT LAKE TO RENO AND THERE
2 WAS MAYBE A WEEK.

3 Q YOUR WHOLE FAMILY LIVES IN RENO?

4 A YES.

5 Q SO WOULD YOU AGREE THAT MAYBE PART OF THE
6 REASON YOU MOVED TO RENO IS BECAUSE YOUR FAMILY IS THERE,
7 AND NOT JUST BECAUSE IT'S CLOSER TO BRIAN?

8 A PART OF THE REASON, YES.

9 Q WERE YOU EVER DENIED VISITATION OR HAD A
0 PROBLEM WITH THE PEOPLE THAT HAD HIM EXCEPT THE ONE
1 TIME THAT YOU'VE DESCRIBED?

2 A ONLY ON TIMING. AND THE TIME WHEN TO COME
3 AND IT WAS INCONVENIENT BUT GENERALLY, NO.

4 Q YOU DON'T FEEL LIKE THEY WERE TRYING TO KEEP
5 YOU FROM SEEING HIM?

6 A OH, NO, NO.

7 Q YOU THINK THAT THEY WENT OUT OF THEIR WAY
8 TO MAKE IT EASIER FOR YOU TO SEE HIM CONSIDERING THE
9 DISTANCE?

0 A THERE WERE TIMES I FELT, WELL, I'LL SAY GENERALLY,
1 YES. HOWEVER, THERE WERE TIMES I FELT THAT MAYBE BECAUSE
2 OF MY OWN OFFERING THAT WE COULD HAVE MET HALFWAY MORE
3 TIMES THAN THAT. BUT GENERALLY I FELT THERE WAS COOPERATION,
4 YES.

5 Q MEETING HALFWAY MEANT THEY WOULD HAVE TO

1 DRIVE HALFWAY?

2 A RIGHT.

3 Q INSTEAD OF YOU DRIVING ALL THE WAY.

4 A ALL THE WAY THERE AND ALL THE WAY BACK.

5 Q UNDER THOSE CIRCUMSTANCES, THAT WOULD BE
6 WORK ON THEIR PART?

7 A CORRECT.

8 Q YOU EVER PAY FOR THEIR GAS FOR THE TIMES
9 THAT THEY DID MEET YOU HALF WAY?

10 A NO.

11 Q HAVE YOU BOUGHT ONE PAIR OF SHOES FOR BRIAN
12 OR MANY PAIRS OF SHOES FOR BRIAN OVER THE YEARS?

13 A WELL, I BELIEVE ONLY ONE.

14 Q AND WHEN DID YOU BUY THE PANTS, AND THE SHIRTS,
15 AND THE SOCKS THAT YOU DISCUSSED?

16 A I BOUGHT THOSE MANY TIMES. MOST RECENTLY
17 WAS THIS LAST SUMMER.

18 Q HAVE YOU PAID CHILD SUPPORT FOR THE LAST
19 YEAR?

20 A NO.

21 Q DO YOU HAVE ANY IDEA OF HOW MUCH SUPPORT
22 YOU'VE PAID SINCE THE TIME OF YOUR DIVORCE?

23 A YES.

24 Q HOW MUCH HAVE YOU PAID?

25 A APPROXIMATELY \$10,000. I HAVE RECEIPTS.

APPENDIX E

Earl S. Nielsen, Ph.D.
1325 Airmotive Way
Suite 175-Y
Reno, Nevada 89502

EVALUATION

Name: Brian Kishpaugh. Richard Kishpaugh, father
Address: 1850 Idlewild Drive, Reno, Nevada
Age: 8
Dates of Evaluation: 8/8/84; 8/9/84; 8/21/84

Brian Kishpaugh is an eight year old boy who was handicapped at birth. Brian has a moderate to severe hearing loss which has delayed and limited his language development. He has learned to sign, however, and can communicate well with appropriately trained people. Brian also suffers from moderate motor development problems, resulting in an awkward gait and some difficulty with gross motor and fine motor tasks. Overall, he appears to cope well with the handicaps.

Brian's parents are divorced. Brian was visiting his father in Reno at the time of the evaluation. Brian's mother lives in Salt Lake City, but due to illness has been unable to provide direct care for Brian. Brian has lived with his maternal grandparents in Chico, California, for some time, where he has also received care from his great-grandmother. Brian's father, Richard, is currently seeking to obtain custody of Brian.

On August 8, 1984, I made a home visit to evaluate the residence of Richard Kishpaugh. I made a one hour visit to the home, where I observed the environment as well as the interaction between Richard and his son, Brian.

The following day, August 9, 1984, I met with the extended Kishpaugh family in my office as a means of evaluating the resources used for Brian's care while his father is working.

In addition to the interviews, I asked Richard to complete an extensive personality test (Clinical Analysis Questionnaire) and I asked that Brian be reevaluated by a clinical psychologist with the training necessary for assessing a child with Brian's degree of hearing handicap. I referred Brian to Dr. Samantha Payne for that evaluation (her letter is enclosed).

The methods outlined were the basis for the following report:

Brian Kishpugh
August 29, 1984
Page 2

1. The Home visit.

The home visit was conducted in the early evening. Brian and his father were home. The physical structure was part of an apartment complex on the west side of Reno. The area is residential with restricted traffic, and is directly across the street from Idlewild Park, one of Reno's major municipal parks. Several children were playing on the grass of the apartment complex when I arrived, and the complex was obviously a home for many children.

Inside, the apartment was simple (approximately 75-800 square feet of living space) with typical fixtures and amenities. Brian has his own bedroom which was furnished appropriately and decorated with Brian's belongings and interests. Richard's bedroom was larger but sparsely decorated. The apartment was comfortable and clean, and obvious care had been taken to clean it. I was impressed by the order and neatness. Even the canisters had been wiped clean, a test most bachelor parents overlook. The kitchen was small but functional. Brian is not permitted use of the gas stove, although he is permitted supervised use of the microwave oven and he does help in meal preparation and clean up routines. The refrigerator door was decorated in Brian's artwork and accomplishments.

The living room was comfortable, but again sparsely furnished. A video tape game and television were available, however, and Brian showed me his skills at operating the device. He was attentive and informed, familiar with the operation of the machine, and showed no lack of concentration or deficits in attention span.

Brian remained with his father throughout most of the session, displaying affection and attachment the entire time. Brian responded well to direction, followed instructions, and did not present any child management difficulties. Toward the end of the session, Brian became bored and asked permission to go outside. His father allowed it, and Brian was quickly engaged in a game with several other children. Frankly, I was surprised that Brian's peer interactions were so well developed. His handicaps in hearing, speech and gait are obvious. Most children with Brian's handicaps would have been sidelined quickly by other children in their age range and ignored.

In summary, the home's physical environment is one which is simple but adequate. It appears to be clean and safe from hazards, and does reflect the presence of a child. The psychological environment seems warm and affectionate. Richard

Brian Kishpaugh
August 28, 1984
Page 3

is quite dedicated to Brian, and Brian is openly responsive to his father. Brian displays a remarkable adaptation to his handicaps, and in general appears to be well adjusted and stable.

2. The Extended Family.

Nine family members arrived for the appointment. Richard's parents, two brothers and a sister-in-law, and assorted children attended the session. Brian also attended, but Richard was absent. The adults are obviously unified in their presentation of a strong and caring support network for Richard and for Brian. Brian was responsive and interacted well with several family members. Richard works full time as a police officer for the University of Nevada, Reno. His hours are eight a.m. to 5 p.m., Monday through Friday. As a result, various family members are asked to provide care for Brian during the week.

The family ties were obvious throughout the session, as was the leadership role assumed by Brian's grandfather. The strength and commitment of this family to provide a nurturing and loving environment for Brian was quite impressive. There was no apparent weakness or obvious deficiency in the support network provided for Brian.

3. Richard Kishpaugh

Richard willingly completed the psychological test which I requested. The particular test was selected as a means of identifying personality strengths and weaknesses in individual adults within the normal population. Test results indicated a very strong and stable character. Sixteen of twenty-eight traits measured vary somewhat from the norm, but all sixteen provide evidence of personality strengths. Richard is very intelligent, he responds in a relaxed and cheerful manner toward others, and he shows emotional stability and maturity. His values are somewhat conservative and he is oriented toward contributing support to social networks, but at the same time he displays an uninhibited and socially bold responsiveness. Richard is likely to remain calm, and gentle. This profile is that of a natural, responsible man who has the capacity to be warm and gentle, and the willingness to be self sacrificing.

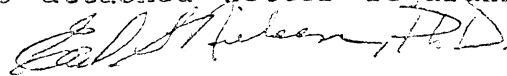
4. Brian's Evaluation (Please see attached report)

I hope that the report answers the necessary questions as I have presented it. If not, please feel free to contact me regarding questions at any time. Although I have not seen the other adults in this case, I can state my unequivocal opinion

Brian Kishpaugh
August 29, 1984
Page 4

that Richard Kishpaugh is a fine parent who provides a secure, safe and nurturing environment for his son.

Please see Dr. Payne's attached letter regarding her evaluation of Brian.



Earl S. Nielsen, Ph.D.
Nevada Certified Psychologist #99

Encl: 1

DAVIN, HOEM & PAYNE
504 NORTH DIVISION STREET
CARSON CITY, NEVADA 89701

(702) 885-9020

PATTI DAVIN, M.A., M.F.C.
ELA NE HOEM, M.A., M.F.C.
SAMANTHA PAYNE, Ph.D.

August 25, 1984

1325 Airmotive Way
Suite #175
Reno, Nevada 89502

Dear Dr. Nielsen:

As per your request, I conducted an evaluation of Brian Kishbaugh. The interview, which took place on August 16, 1984, stretched over a two hour period and was conducted in sign language. I talked with Brian both alone and in the presence of his father.

Action and word repeatedly revealed Brian's deep love for his father. Brian was originally seated across the room from his father; part way through our joint meeting, Brian walked over to Rick, sat beside him, snuggled up to him, touched him frequently and at one point took his father's free arm (one was already around Brian) and wrapped both arms around him. Brian appeared to revel in physical contact with his dad. When Brian and I discussed his father, Brian's comments were positive, not only in answer to my questions but spontaneous comments as well. Father and son are natural together; there is no apparent discomfort or pretense; interaction is best characterized as warm and caring.

I was impressed with the extent of Mr. Kishbaugh's signing ability. This is rare in my experience, even when parent and child have lived together continually. Although Brian's lip reading skills are fairly adequate, he is highly dependent on sign language for total understanding. Sharing a common language can only bring father and son closer.

In my opinion, I feel Brian should live on a permanent basis with his father. There seems little reason for them to be apart. Brian, would miss his maternal great grandmother tremendously; of this there is no doubt. She has seen his mother for all intents and purposes. Brian seems to know little of his natural mother although they do write. While Brian talks willingly of his great grandmother, he appears hesitant and reluctant to talk of his maternal grandparents. I was unable to come to any understanding of this situation during the time available. Brian displayed no such hesitancy to discuss his paternal grandparents or any other member of the extended family on his father's side. He seems to enjoy each or them.

While the trauma of separation from his maternal great grandmother should not be ignored, rather should the fact of her age be overlooked. At age 77 she has almost reached her life expectancy.

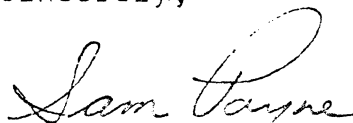
Brian Kishpaugh
August 25, 1984
Page 2

I believe Brian could face her ultimate death more easily if separation precedes death. Mr. Kishpaugh has told me he has no objection to frequent visits with the great grandmother, and I would encourage these. Transfer of residence could be accomplished gradually with Brian attending school in Nevada, going to great grandmother's home for vacation until these visits are gradually phased downward.

Brian did voice some resistance to the idea of moving to Reno permanently. Brian said such a move was impossible since Reno winters are cold and it snows; the cold and snow would make him sick. Since these announcements were totally out of character with what I had seen heretofore, I can only surmise these ideas were planted by someone who opposes the move.

Again, I believe Mr. Kishpaugh truly wants his son, that Brian loves his father deeply and that this relationship should be fostered. I cannot think of a better environment for Brian.

Sincerely,

A handwritten signature in cursive script that reads "Sam Payne".

Samantha Payne, Ph.D.
Nevada Certified Psychologist #108

STEWART BEDFORD, PH.D.



ROUTE 4, BOX 525-Z KATHY LANE OFF GARNER CHICO, CALIFORNIA 95926

TELEPHONE (916) 343-1493

CONFIDENTIALPSYCHOLOGICAL REPORT
9-18-84

NAME: KISHPAUGH, Brian

EVALUATION STARTED: 6-13-84

BIRTHDAY: 2-18-76

AGE: 8 years 6 months

has continued to date of report

PSYCHOLOGICAL PROCEDURES:

Interview with Bill Kornmayer, Brian's maternal grandfather; home visit with Bill and Kay Kornmayer; psychological evaluation on Brian (psychological tests Wechsler Intelligence Scale For Children-Revised, Wide Range Achievement Test, Bender-Gestalt, and Draw A Person); interview with Shirley Jarman, interpreter for the hearing impaired (she was present and served as an interpreter on the two occasions that I evaluated Brian); school visit at Mesa Vista School in Oroville, California; interview with John Brockman, Butte County School Psychologist; interview with Lionel Cornes, Principal of Special Education at Brian's school; home visit to Ona Landrum, Brian's maternal great grandmother; interview with Scott Larsen, Director of Special Education for Butte County; brief interview with Richard Kishpaugh, Brian's natural father; clinical interview with Brian following his return from his summer visit with his father; school visit and interview with Mike Davis, Brian's current school and teacher; interview with Myra Lerch, Speech Therapist for Brian in the summer of 1981; communication with James Wood, M.D., Brian's pediatrician; communication with Sutherland Simpson, M.D., Brian's orthopedic surgeon; and review of previous reports.

REASON FOR EVALUATION:

Brian was referred to me for psychological evaluation, home, and school evaluation to obtain information to assist the court in a custody dispute involving Brian.

PREVIOUS REPORTS:

Prior to preparing this report I read: a psychoeducational report of a study done by John Brockman, School Psychologist, dated April

LICENSES:

STATE OF CALIFORNIA
PSYCHOLOGIST NO 0024MARRIAGE FAMILY AND
CHILD COUNSELOR NO 154

CERTIFICATIONS:

BIOFEEDBACK SOCIETY
OF CALIFORNIA NO 017AASECT SEX THERAPIST
AND EDUCATORNATIONAL REGISTER OF
HEALTH SERVICE PROVIDERS
IN PSYCHOLOGY NO 13837CALIFORNIA STATE
PSYCHOLOGICAL ASSOCIATION
CONTINUING EDUCATION NO 0021

BIOFEEDBACK SOCIETY OF AMERICA

of 1983; court reports from Salt Lake City, Utah, dated 4-25-84; an intensive speech and language therapy report, signed by Barbara Snedeker, language, speech, and hearing specialist, dated May 1984; school records that extend from May 1981 to May 1984 (and include projected plans for the school year 1984/1985).

BACKGROUND INFORMATION:

Brian has been living with his maternal grandparents, Bill and Kay Kornmayer, since April of 1981. At that time his mother was in medical school and having health problems. She was awarded custody of Brian in divorce proceedings and she placed Brian with her parents in Chico, California where he started in Butte County Schools for the handicapped. At that time he was living with his great grandmother, Ona Landrum during the week and spending week-ends with his grandparents who manage a mobile home park in the north part of Chico, California.

Mr. Kornmayer reported that Brian was born prematurely and that he weighed just a little over three pounds. It was discovered very early that he had cerebral palsy which involved the paralysis of both legs and his right arm. When he was about six months of age it was discovered that he had a bilateral hearing loss.

Brian's natural mother, Karla Kishpaugh Kornmayer had problems from the time of her birth and had reconstructive surgery at approximately age five. She has had three recent surgeries and is still under her doctor's care.

The Kornmayers report that when Brian first came to live with them he had severe emotional and behavior problems and very little communication. They started him in the school program in Butte County and had him take special training at Chico State University Speech and Hearing Clinic in the summer of 1981. They engaged Dr. James Wood as Brian's pediatrician and also consulted with Dr. Simpson, an orthopedic surgeon in relation to Brian's cerebral palsy problems. Bill Kornmayer has attended some classes for signing and both grandparents and great grandmother have learned some signing procedures which they use with Brian. They state that they have been active in trying to arrange visits with his natural father, Richard Kishpaugh. They said that at the Easter vacation time in 1984 Brian visited his father in Reno and that at the end of this visit, Mr. Kishpaugh refused to bring Brian back to Chico so that Brian was disrupted from his educational program at that time. It is my understanding that at that time the legal proceedings involving this custody were initiated.

Mr. Kornmayer is sixty-one years old (birthday 2-11-23) and Mrs. Kornmayer is fifty-five (birthday 8-29-29). They manage the property for the firm of Hignell and Hignell in Chico and live in a very comfortable home in the mobile park they manage. Brian has a room of his own there with easy access to his own bathroom. The home is very well kept and Brian's room is pleasant and appropriate for his age. Brian has many keepsakes and appears to be very proud of his home and his possessions. The Kornmayers have lived in Chico for eight years and have managed this property for six years.

FIRST CLASSROOM VISIT (7-5-84):

I observed Brian in his classroom situation at the Mesa Vista School in Oroville, California where Brian was attending summer school. Brian was in a small class for the hearing impaired. During my observations I was in the classroom part of the time, behind a one-way screen part of the time, in the locker room observing the boys changing from school clothes to swimming suits, and at the swimming pool observing Brian interact with a larger group of students.

In the classroom situation, Brian appeared to be attentive and motivated. His interaction with the teacher and other students appeared to me to be appropriate and similar to the other students. In the locker room Brian had some difficulty taking his clothes off and putting his swimming suit on. This appeared to me to be due to the motor coordination problems that he has as a result of the cerebral palsy. He was good natured about this and he participated actively and in a friendly manner in the kinds of things that go on in locker rooms with eight year old boys. The communication system he was using at that time involved signing and pantomime, which was consistent with the other boys. In the swimming pool he played actively with the other children and seemed to be relating in an appropriate manner.

PSYCHOLOGICAL EVALUATION ON BRIAN (7-6-84):

Brian was seen at my office in Chico, California for psychological evaluation. Shirley Jarman, a licensed interpreter for the deaf assisted me in this evaluation. The evaluation included some questions on my part and some observation of Brian in play with nerf equipment (sponge-like balls and objects). Brian's movements were sometimes awkward but in spite of this he was able to throw and catch a ball with reasonable accuracy. He also demonstrated an ability to relate and a delightful sense of humor. I felt that he was motivated to do the things that we were doing and that he was able to focus his attention and concentrate.

WECHSLER INTELLIGENCE SCALE FOR CHILDREN-REVISED:

Performance Scale I. Q.

111

This I. Q. compares Brian with normal children and is therefore invalid as a measure of his capacity but it does represent a comparison of him with the normal child. The subtests ranged from a scaled score of 10 to a scaled score of 16 (10 is average).

This test is consistent with the Wechsler for Children that was administered by John Brockman in April of 1983 where Brian received an I. Q. of 108 (based on norms for hearing impaired children). Brian did have some hand coordination problems on this test but he was able to think through the problem situations so that the brain damage he has does not appear to interfere drastically with his thinking and reasoning. It is my opinion that the test indicates that Brian has higher than average intellectual potential.

WIDE RANGE ACHIEVEMENT TEST:

Reading Grade	= 4.0	Standard Score = 107	Percentile = 68
Spelling Grade	= 2.9	Standard Score = 95	Percentile = 37
Arithmetic Grade	= 2.6	Standard Score = 88	Percentile = 21

It is difficult to evaluate these scores accurately in view Brian's hearing loss problems. The reading is above the scores that were obtained on the evaluation done on Brian by the school in May of 1984. The test results do indicate that Brian is able to comprehend academic subjects and to work on them with persistence. He is functioning below average for his chronological age, but in view of the multiple handicaps that he has, I feel that he is doing remarkably well.

BENDER-GESTALT:

Brian completed the drawings on this test with some difficulties due to his cerebral palsy problems. However, using the Elizabeth Koppitz' Scoring Method, he was close to his chronological age in development. This would indicate again that the problems that he has are primarily motor and that they do not drastically interfere with perception.

DRAW A PERSON:

Brian was very active as he drew a picture of a man which he labeled "my dad". He drew the man as a policeman, carrying a gun, a club, handcuffs, and ammunition. The man is saying, "Where is the bad man?"

Brian's projective talk in relation to this (as near as I could determine) demonstrated what I would consider to be ambivalence. It appeared to me that Brian had a need to identify with his father but at the same time he had some fear associated with his father.

The general findings of the test would be consistent with the intelligent test above and would indicate that Brian is active in his observations.

INTERVIEW WITH LIONEL CORNES (7-20-84):

Mr. Cornes is the principal of Special Education where Brian was attending school. He confirmed the fact that Brian had emotional problems and difficulty in communicating when he first started school in the spring of 1981. He reviewed some of Brian's progress and he completed a Meadow-Kendall Social-Emotional Assessment Inventory of Deaf and Hearing Impaired Students. Mr. Cornes graded Brian currently a little above average in social adjustment, self-image, and emotional adjustment. He reported that Brian had made significant progress in these areas in the time that he had known Brian. Mr. Cornes stated that he felt that Brian will need continued education that involves total communication procedures (both signing and verbal communication). He felt that Brian was an inquisitive student and one that was able to work when he was motivated and not emotionally upset. He reported cooperation from the grandparents and the great grandparent in trying to work out the best program for Brian. He said that he felt that Brian's father was genuinely interested in Brian's welfare but he thought that it had been an error for him to disrupt Brian's education during the Easter holidays of 1984.

HOME VISIT WITH ONA LANDRUM (7-28-84):

Mrs. Landrum is Brian's maternal great grandmother and she has been very active in Brian's care since Brian came over to Chico in April of 1981. Brian has a room in her house, and this too is well kept and appropriate for a boy his age. The room has easy access to a bathroom of his own. Mrs. Landrum reported that Brian had many friends in the neighborhood and she showed me the playhouse and the play equipment that Brian has and has had. She reported that there were six little boys his age in the immediate neighborhood and that they got along well in play, and that they were frequently at her home playing with Brian.

Mrs. Landrum is a seventy-six year old woman who appeared to me to be in very good health and to be very active. In my observations of Brian with her, I felt that very significant bonding exists, and I believe that this bonding has played a very important part in the reduction of Brian's emotional problems and disruptive behavior.

Mrs. Landrum described Brian's tantrums when he first came to live with her and she also talked about his general, unsocialized approach to eating, self-care, and relating to others. She reported that he had very few temper tantrums at this time and he no longer hides food around the house as he did when he first came to live with her. She reported some difficulties with sleep and some nightmares following the Easter visit with his father. She said that Brian now ate regular meals whereas when he first came to live with her he ate on a "catch as catch can basis."

INTERVIEW WITH SCOTT LARSEN (8-31-81):

Dr. Larsen is Director of Special Education for Butte County. Prior to this position, he was the principal of the school where Brian attended. Dr. Larsen also completed a Meadow-Kendall Inventory. He placed Brian slightly above average in social adjustment, above average in self-image, and slightly below average in emotional adjustment. Dr. Larsen described Brian's emotions and behavior when he first came to school and he talked about the difficulties they had in getting Brian started in an educational program. He said that the grandparents and the great grandmother had been very cooperative in working with the school in an effort to get Brian started. Dr. Larsen said that he felt that the schools in Butte County were very good schools and that they included work that went from preschool through high school for hearing impaired children. (Chico State University at Chico also graduated the first person with total hearing loss in the Spring of 1984.) Dr. Larsen said that the classes that Brian had attended had been small classes and that they used a method of total communication in an effort to help children have maximum communication with other people. He said that he felt that a total communication program would be necessary for Brian in view of his total difficulties.

INTERVIEW WITH RICHARD KISHPAUGH(9-1-84):

Prior to this visit I had a call from Mr. Kishpaugh asking me if I would be willing to see him on a Saturday when he brought Brian back to Chico. He said that he wanted to have an interview with me to go over background information and to give me a picture of what the situation was in Reno. I told Mr. Kishpaugh that I did not ordinarily schedule appointments on Saturday but that I would make an exception and schedule time for him to come in. A ten o'clock appointment was set and Mr. Kishpaugh was to call me when he got into town and had delivered Brian to the Kornmayers (Mr. Kishpaugh said that he hoped to be in Chico at 9:00 A.M. to deliver Brian to the Kornmayers.

At 10:40 A.M. I received a call from a woman saying she was calling for Richard Kishpaugh. She said that they were at the south end of

Chico and that they were not able to locate my office. I gave her the instructions of how to find the office and she said that these were not the instructions I had given Mr. Kishpaugh. At about 11:00 A.M. Mr. Kishpaugh came into the office with Brian and a woman. Mr. Kishpaugh told Brian to wait in the reception room and the woman took him by the hand and took him there. In the consultation room with Mr. Kishpaugh I started to obtain preliminary information (address, telephone number, etc.) and Mr. Kishpaugh said that it would not be necessary to obtain that information as all he was going to do was just to say hello and leave. He said that all he had wanted to do was to let me see that he existed. I said that it was my understanding that he wanted to give me background information on himself and Reno but he denied this. He left the office after having been here for approximately eight to ten minutes.

CLINICAL INTERVIEW WITH BRIAN (8-2-84):

This interview was conducted with Shirley Jarman, interpreter for the deaf. Brian appeared to be reasonably happy and he was excited about his new school clothes and some boots that Mr. Kornmayer had purchased for him. He indicated that he would be happy to get back to school and in this discussion he was animated and excited. He indicated that he liked his friends at school. In questioning him about friends in Reno, Brian put his head down and did not respond. (Mrs. Jarman indicated that Brian had understood the question and she felt that he was answering in a negative manner.)

I questioned Brian about the house he had lived in in Reno. Brian said that it was a long way to the bathroom and that there was a little kitten over there. When asked if his father talked to him with signs Brian again put his head down and did not respond.

I asked Brian about eating arrangements in Reno and Brian talked about going shopping with his father at Safeway.

In regard to who cooked and how Brian got along with his father's friend (the woman who had been with him when he came to the office) Brian again put his head down and did not respond.

In discussing activities in Reno Brian was animated and talked about the fact that his father had a 4x4 Ford and that they had driven this all around. He also explained how he and his father had thrown rocks together to see how far they could throw them. In this discussion, Brian seemed animated and pleased.

When questioned about how he felt about returning to Chico, Brian was again animated and excited in discussing his relationship with his grandparents and his great grandmother.

OBSERVATIONS AT BRIAN'S CURRENT SCHOOL AND INTERVIEW WITH MIKE DAVIS (9-7-84):

I interviewed Mike Davis, Brian's current teacher and the teaching assistant, Jan Price prior to the start of school. I then observed Brian in the classroom and in a reading lesson with Ms. Price. Mr. Davis also completed a Meadow-Kendall Inventory. Mr. Davis placed Brian's social adjustment below average and his emotional adjustment very definitely below average. He placed Brian's self-image above average. Mr. Davis described some of the behavior he had seen with Brian at the beginning of his school career. He said that at the start of Brian's school work in Butte County he had had severe temper tantrums that had involved overturning desks and scattering school work of other students. He said that it was difficult to control Brian during these times but that Brian gradually did respond to "time outs". He said that Brian was much improved at this time as to where he was when he had first started school. He said that Brian was reading at the second grade level, doing arithmetic at the upper first grade level, and doing language work in general that was near the fourth grade level.

In my observations of Brian in the classroom I felt that he was participating in the school lesson and that he was attending reasonably well. I was impressed with the total classroom situation and the way that Mike Davis handled all of the students. (There were seven students present and one absent so that it is a small class.) Mr. Davis said that there were times when Brian had difficulty with his behavior and emotional reactions but that he is at this time much more prone to self-correct than he was when he first started school in Butte County. Mr. Davis reported cooperation from the grandparents and the great grandmother. He said that he had had to set down some rules about what Brian was bringing to school in that Brian wanted to bring toys and possessions to school to show the other students. He said that this had created some difficulties and that the grandparents had been very cooperative in correcting this. Mr. Davis also felt that Brian would need a program in education that involved total communication (both signing and verbal communication).

INTERVIEW WITH MYRA LERCH (9-15-84):

Myra Lerch was the speech therapist for Brian during the summer of 1981 when he was attending the speech and hearing clinic at Chico State University. She said that at that time Brian was not able to

concentrate on tasks and that his behavior and emotional reactions were very unpredictable. She said that he had a very short attention span and that there were times when he had outbursts of aggressive behavior that involved the destruction of materials. She said that he had very little in the way of communication skills at that time and that he had no more than one word utterances. She said that she had kept track of Brian through an organization for the parents of hearing impaired children (which the grandparents participate in actively). She said that there had been a radical change in Brian's adjustment and that he was an entirely different child at this time than he was when he first entered the program in the summer of 1981. She said that the grandparents had been active in the organization and in learning signing. She felt that the relationship with Brian and Mrs. Landrum had also been a significant factor in his emotional and behavior improvement. She too felt that Brian would need a program of total communication in the future. She said that Butte County offered a very adequate program for hearing impaired students (as well as other type handicaps including Brian's cerebral palsy). She said that the school program available in Butte County went from preschool through high school, and she too emphasized the fact that Chico State University was now able to work with hearing impaired students at that level.

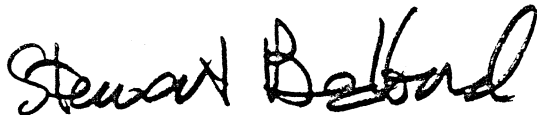
CONTACTS WITH DOCTORS:

In the course of this evaluation I contacted Dr. Wood and Dr. Simpson, both of whom advised me that they were physicians for Brian and that they had worked with him and were available for further work in the future if indicated.

SUMMARY:

Brian Kishpaugh was an eight year six month old Caucasian male who was referred for psychological evaluation to assist the court in resolving a custody dispute between his natural parents. It is my understanding that Brian's natural mother Karla Kishpaugh has custody of Brian and that she placed Brian voluntarily with her parents, Bill and Kay Kornmayer who have had guardianship of him since April of 1981. Brian has been living in Chico since that time and spends a lot of time with his great grandmother, Ona Landrum. He has a room in his great grandmother's home as well as a room in his grandparents home. Background information indicates that Brian had severe emotional and behavior problems when he came to Chico and that at that time he had very little in the way of communication skills. Since that time he has made a reasonably good adjustment in the special school programs in the county and he is currently attending school in Richvale, California where he is in a class for hearing impaired children. Psychological tests would indicate that Brian

has at least average intelligence and may be in the superior range in relation to some intellectual potentials. He was a premature child and has had cerebral palsy problems since birth and apparently has had serious hearing impairment also from birth (although this was not detected until he was six months of age). It is my opinion that Brian has significant bonding with his grandparents, Bill and Kay Kornmayer and with his great grandmother Ona Landrum. I believe that he has a very adequate program for education in Butte County and one that could take him through secondary school and even on into the university. I believe that he has made a significant improvement adjustment since the time he has been in Chico and I believe that if he continues to improve, he could conceivably go on to develop to his potential whatever that might be. I believe that he does have above average in intellectual potential and that he does have the capacity for a better emotional adjustment. I believe that he is at a very critical stage in development and that he is very well established in a support system at home with his grandparents and great grandmother and with friends and schoolmates. If the court decided that Brian should be with his natural father, I think that the transitional planning would need to be done very carefully and on a gradual basis as I believe that it would be tragic if Brian were turned off to education and training which is so vital to his total needs. I would recommend that Brian continue in his educational program in Butte County and that he continue with the living arrangements that have been made for him with his grandparents and great grandmother. I believe that these individuals are genuinely interested in his welfare and that a significant bonding exists between Brian and them (all three of them).



STEWART BEDFORD, Ph.D.

SB/as

Attachments

RECORD FORM

NAME Kishor Singh AGE 85 SEX M

PARENT'S NAME _____

SCHOOL _____ GRADE _____

PLACE OF TESTING _____ TESTED BY John

REFERRED BY Grand Parents

nicians who wish to draw a profile should first transfer the child's scaled scores to the row of boxes low. Then mark an X on the dot corresponding to the scaled score for each test, and draw a line connecting the X's."

PERFORMANCE TESTS

Scaled Score	Information	Similarities	Arithmetic	Vocabulary	Comprehension	Digit Span	Scaled Score	Picture Completion	Picture Arrangement	Block Design	Object Assembly	Coding	Mazes	Scaled Score
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19	19	.	.	.	.	.	.	19
18	18	.	.	.	.	.	.	18
17	17	.	.	.	.	.	.	17
16	16	X	.	.	.	.	.	16
15	15	.	.	.	.	.	.	15
14	14	.	.	.	.	.	.	14
13	13	.	.	.	.	.	.	13
12	12	.	X	.	.	.	.	12
11	11	.	.	.	X	.	.	11
10	10	.	.	X	.	X	.	10
9	9	.	.	.	.	.	.	9
8	8	.	.	.	.	.	.	8
7	7	.	.	.	.	.	.	7
6	6	.	.	.	.	.	.	6
5	5	.	.	.	.	.	.	5
4	4	.	.	.	.	.	.	4
3	3	.	.	.	.	.	.	3
2	2	.	.	.	.	.	.	2
1	1	.	.	.	.	.	.	1

See Chapter 4 in the manual for a discussion of the significance of differences between scores on the tests.

OTES

	Year	Month	Day
Date Tested	84	7	6
Date of Birth	76	2	18
Age	8	4	18

	Raw Score	Scaled Score
VERBAL TESTS		
Information	_____	_____
Similarities	_____	_____
Arithmetic	_____	_____
Vocabulary	_____	_____
Comprehension	_____	_____
(Digit Span)	(_____)	(_____)
Verbal Score		_____
PERFORMANCE TESTS		
Picture Completion	22	16
Picture Arrangement	24	12
Block Design	18	10
Object Assembly	19	11
Coding	30	10
(Mazes)	(_____)	59
Performance Score		59

	Scaled Score	IQ
Verbal Score		
Performance Score	59	111
Full Scale Score		

* Prorated from 4 tests, if necessary.

WIDE RANGE ACHIEVEMENT TEST

Joseph F. Jastak, Sidney W. Bijou, Sarah Jastak

Name Kishpaugh, Brian

Sex: M F

e. 7-6-84 Birth Date: 2-18-76 Age: 8-5

Tool: _____

Grade: _____

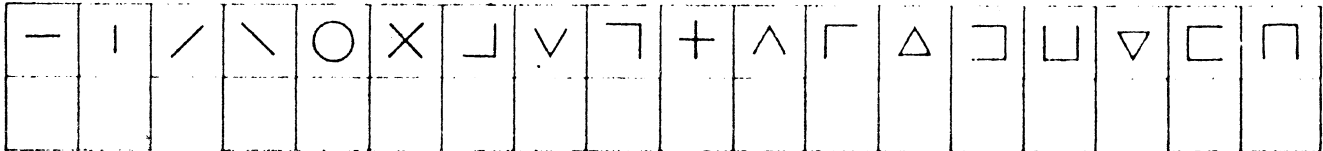
Entered by: _____

Examiner: Bedford

Test Results	Raw Score	Grade Rating	Standard Score	Percentile
Reading	56	4.0	107	68
Spelling	31	2.9	95	37
Arithmetic	23	2.6	88	21

ge 1

Spelling, Level I & Level II



Time Brian
GO
cat ✓
in ✓
boy ✓
will ✓
make ✓
say ✓
cut ✓
cook ✓
Li ✓
my ✓
De ✓

31. _____
32. _____
33. _____
34. _____
35. _____
36. _____
37. _____
38. _____
39. _____
40. _____
41. _____
42. _____
43. _____
44. _____
45. _____
46. _____

Level I, Raw Scores (RS) and Grade Ratings (GR)

Test	Cumul. Score	RS	GR	RS	GR	RS	GR	RS	GR	RS	GR	RS	GR
Copying	1	0	N4	11	P8	22	17	33	33	44	59	55	73
Copying	2	1	N5	12	K0	23	19	34	35	45	62	56	75
Copying	3	2	N6	13	K2	24	21	35	37	46	63	57	77
Copying	4	3	N7	14	K5	25	22	36	39	47	64	58	79
Copying	5	4	N8	15	K7	26	24	37	41	48	65	59	81
Copying	6	5	P1	16	K8	27	25	38	43	49	66	60	83
Copying	7	6	P2	17	10	28	26	39	45	50	67	61	85
Copying	8	7	P3	18	11	29	27	40	48	51	68	62	87
Copying	9	8	P5	19	13	30	28	41	50	52	69	63	89
Copying	10	9	P6	20	14	31	29	42	54	53	70	64	92
Copying	11	10	P7	21	15	32	31	43	57	54	71	65	95

Level II, Raw Scores (RS) and Grade Ratings (GR)

Test	Cumul. Score	RS	GR	RS	GR	RS	GR	RS	GR	RS	GR	RS	GR
Copying	1	0	K3	10	33	20	62	30	89	41	109		
Copying	2	1	K6	11	36	21	64	31	92	42	112		
Copying	3	2	K9	12	39	22	67	32	95	43	114		
Copying	4	3	12	13	41	23	69	33	97	44	117		
Copying	5	4	15	14	45	24	72	34	99	45	119		
Copying	6	5	18	15	48	25	75	35	102	46	121		
Copying	7	6	21	16	52	26	77	36	104	47	123		
Copying	8	7	24	17	54	27	79	37	107	48	125		
Copying	9	8	27	18	57	28	81	38	109	49	127		
Copying	10	9	30	19	60	29	83	39	112	50	129		
Copying	11	10	33	20	63	30	85	40	114	51	131		

BENDER GESTALT TEST SCORE SHEET

NAME: Kishpaugh, Brian AGE: 8.5 DATE: 7.6.84

Jack Haines, Ph.D.
(Scoring for Adults)

Elizabeth Kopitz, Ph. D.
(Scoring for Children)

Points

Perseveration _____

Rotation or Reversal _____

Concretism _____

Points

Unfilled Angles _____

Separation of Lines _____

Overlap _____

Distortion _____

Points

Embellishments _____

Partial Rotation _____

Point

Commission _____

Abbreviation #1 or #2 _____

Separation _____

Absence of Erasure _____

Closure _____

Point of Contact on Figure A _____

TOTAL _____

Figure A.

1. Distortion of Shape
2. Rotation
3. Integration

000

Figure 1.

4. Distortion of Shape
5. Rotation
6. Perseveration

000

Figure 2.

7. Rotation
8. Integration
9. Perseveration

000

Figure 3.

10. Distortion of Shape
11. Rotation
12. Integration

000

Figure 4.

13. Rotation
14. Integration

00

Figure 5.

15. Distortion of Shape
16. Rotation
17. Integration

000

Figure 6.

18. Distortion of Shape
19. Integration
20. Perseveration

000

Figure 7.

21. Distortion of Shape
22. Rotation
23. Integration

000

Figure 8.

24. Distortion of Shape
25. Rotation

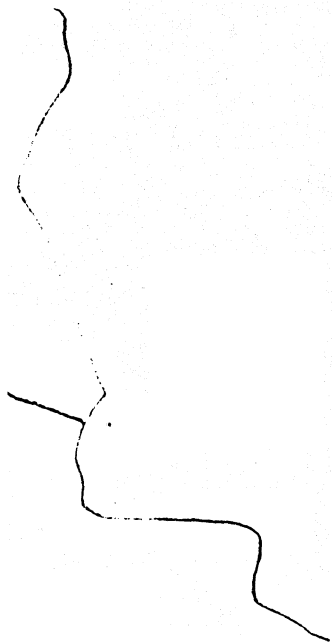
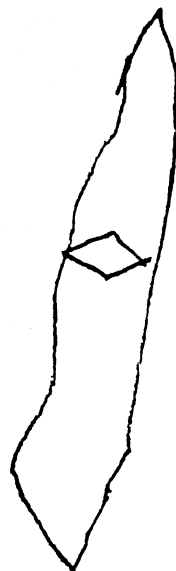
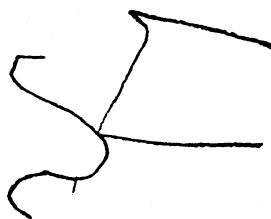
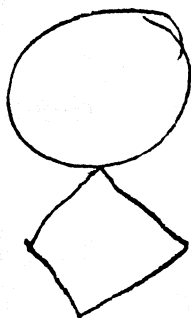
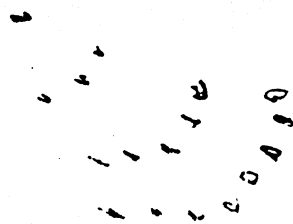
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TOTAL

3

Approx Age
Equiv: 8.0

Brian

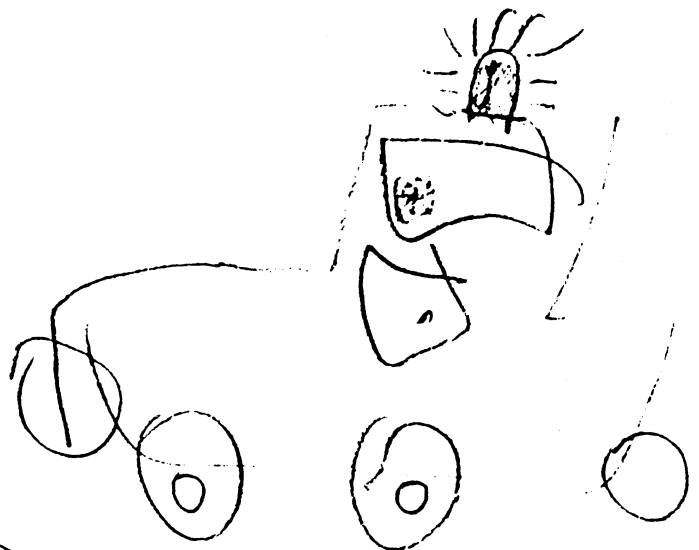
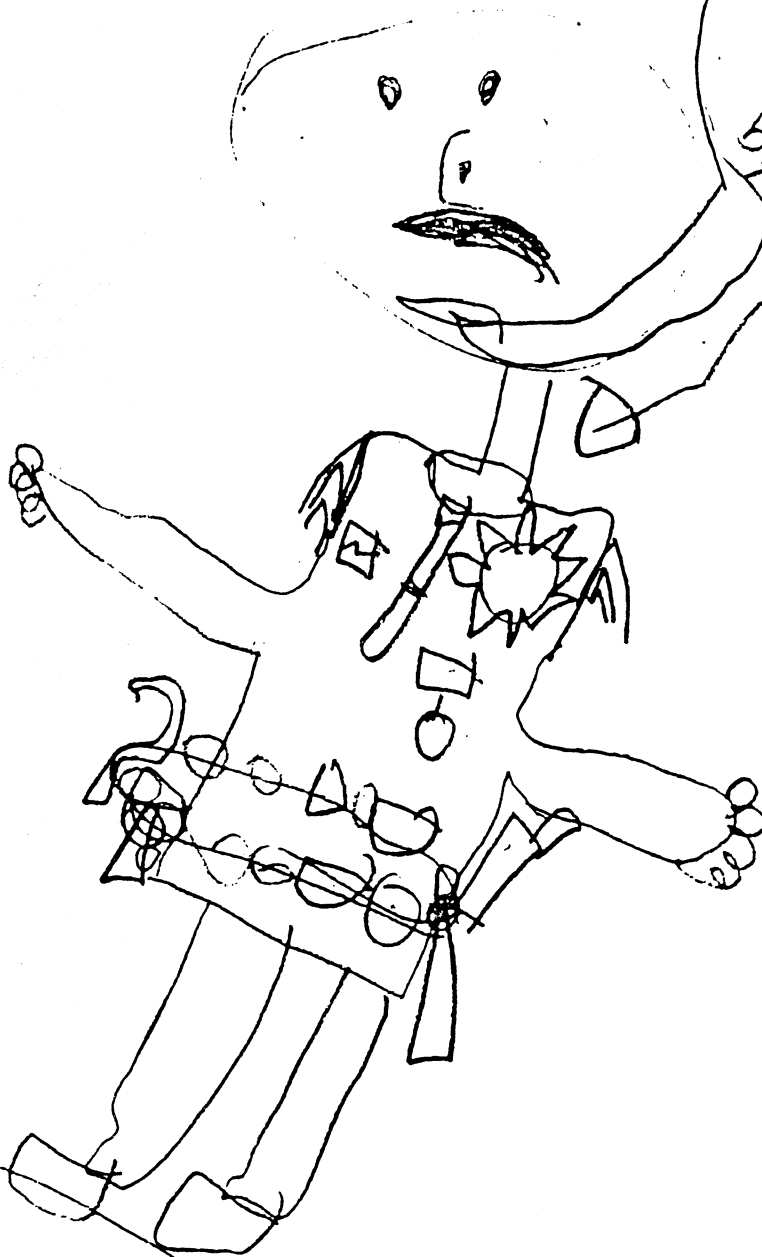


2-1-01

Brian

My Dad

Where
is
bad
man



11/20/02 - Kendall Green

By: Lione N. Corues

(Scored & calculated
by Stewart Bedford, PhD)

Score Summary and Profile
School-Age Inventory

Kishpaugh, Brian

Student

7-20-84

Date Completed

SCALE 1: Social Adjustment

Do not compute if fewer than
18 items are completed.

Total Score from score sheet

70

a. Number of items, Scale 1 23

b. Number of ? answers 0

c. Subtract b. from a. 23

SCALE SCORE: Divide Total Score
by answer on line c.

3.04

SCALE 2: Self Image

Do not compute if fewer than
18 items are completed.

Total Score from score sheet

64

a. Number of items, Scale 2 23

b. Number of ? answers 3

c. Subtract b. from a. 20

SCALE SCORE: Divide Total Score
by answer on line c.

3.20

SCALE 3: Emotional Adjustment

Do not compute if fewer than
10 items are completed.

Total Score from score sheet

33

a. Number of items, Scale 3 13

b. Number of ? answers 3

c. Subtract b. from a. 10

SCALE SCORE: Divide Total Score
by answer on line c.

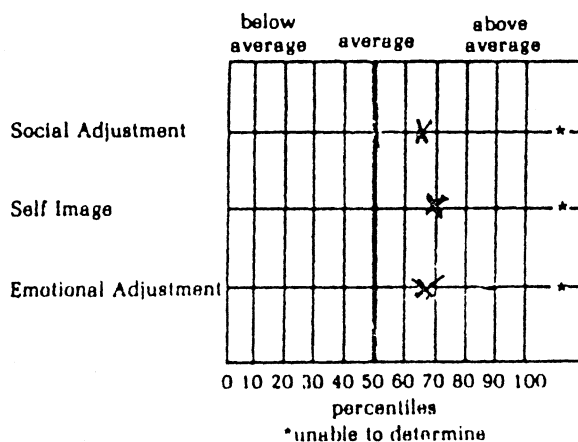
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Kendall Demonstration
Elementary School

Gallaudet College

Kendall Green
Washington, D.C. 20002



Memo Kendall Inventory By 12-01-01 Varsen
(Scored and calculated by Steven Bedford, PhD)

**Score Summary and Profile
 School-Age Inventory**

Kishpaugh, Brian
 Student *8-31-84*
 Date Completed

SCALE 1: Social Adjustment

Do not compute if fewer than
 18 items are completed.

Total Score from score sheet *68*
 a. Number of items, Scale 1 *23*
 b. Number of ? answers *0*
 c. Subtract b. from a. *23*

SCALE SCORE: Divide Total Score
 by answer on line c. *2.96*

SCALE 2: Self Image

Do not compute if fewer than
 18 items are completed.

Total Score from score sheet *60*
 a. Number of items, Scale 2 *23*
 b. Number of ? answers *4*
 c. Subtract b. from a. *19*

SCALE SCORE: Divide Total Score
 by answer on line c. *3.16*

SCALE 3: Emotional Adjustment

Do not compute if fewer than
 10 items are completed.

Total Score from score sheet *35*
 a. Number of items, Scale 3 *13*
 b. Number of ? answers *2*
 c. Subtract b. from a. *11*

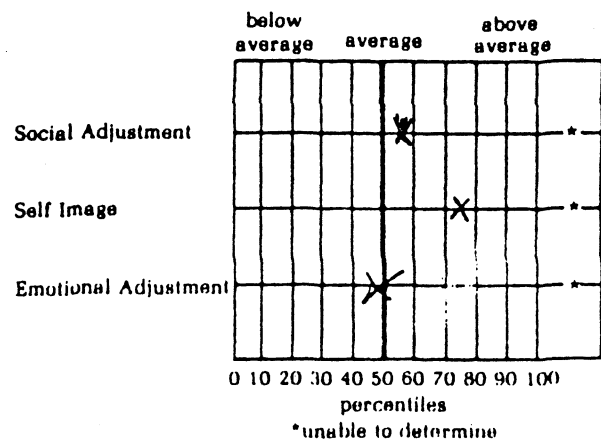
SCALE SCORE: Divide Total Score
 by answer on line c. *3.18*



**Kendall Demonstration
 Elementary School**

Gallaudet College

Kendall Green
 Washington, D.C. 20002



Measures of Student Inventory By: Michael Davis
(scored & calculated by Stewart Bedford, PLD)

Score Summary and Profile
School-Age Inventory

Irishpaugh, Brian
Student
9-7-84
Date Completed

SCALE 1: Social Adjustment

Do not compute if fewer than
18 items are completed.

Total Score from score sheet 58
a. Number of items, Scale 1 23
b. Number of ? answers 0
c. Subtract b. from a. 23

SCALE SCORE: Divide Total Score
by answer on line c. 2.52

SCALE 2: Self Image

Do not compute if fewer than
18 items are completed.

Total Score from score sheet 80
a. Number of items, Scale 2 23
b. Number of ? answers 0
c. Subtract b. from a. 23

SCALE SCORE: Divide Total Score
by answer on line c. 3.48

SCALE 3: Emotional Adjustment

Do not compute if fewer than
10 items are completed.

Total Score from score sheet 33
a. Number of items, Scale 3 13
b. Number of ? answers 0
c. Subtract b. from a. 13

SCALE SCORE: Divide Total Score
by answer on line c. 2.54



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Elementary School

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