

2003

# Wendy Lomsdal v. Keith Cox : Brief of Appellant

Utah Court of Appeals

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Keith Cox; Pro Se; Martha Pierce; Guardian ad Litem.

Dennis Matthews; Attorney for Appellee.

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## Recommended Citation

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## IN THE UTAH COURT OF APPEALS

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WENDY LOMSDAL,

Appellee and Plaintiff,

vs.

KEITH COX,

Appellant and Defendant

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APPELLANT'S OPENING BRIEF

Priority No. 15

200370-CA

App. Ct. No. ~~20000370-CA~~

Trial Ct. No. 974100564

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APPEAL FROM THE FINAL JUDGMENT, DECREE OF CUSTODY, OF THE  
FIRST JUDICIAL DISTRICT COURT IN AND FOR CACHE COUNTY,  
HONORABLE CLINT S. JUDKINS, JUDGE, PRESIDING, AWARDED SOLE  
CUSTODY TO APPELLEE

---

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**FILED**  
Utah Court of Appeals

OCT 10 2000

Paulette Stagg  
Clerk of the Court

## IN THE UTAH COURT OF APPEALS

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# IN THE UTAH COURT OF APPEALS

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|                     |   |                          |
|---------------------|---|--------------------------|
| WENDY LOMSDAL,      | * |                          |
| Plaintiff/Appellee  | * | APPELLANT'S OPENING      |
|                     | * | BRIEF                    |
| vs.                 | * |                          |
| KEITH COX,          | * |                          |
| Defendant/Appellant | * | App. Ct. No. 20000370-CA |
|                     |   | Trial Ct. No. 974100564  |

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## STATEMENT OF JURISDICTION

Appellant, Keith Cox, during a divorce/custody action, had a judgment entered against him, after a trial was held, in the First Judicial District -Logan Department, on February 23, 2000. This appeal originates from the trial court's abuses of discretion, refusal to take judicial notice, denial of due process and equal protection under the law, and issues of res judicata involving multiple jurisdictions. This Court has jurisdiction pursuant to the Utah Code Annotated §78-2a-3, as amended,[1953].

## STATEMENT OF ISSUES

Did the trial court correctly apply the legal standard in entering a judgment against the appellant by way and through the Decree of Custody? More specifically, did those measures that the trial court used constituted a denial of the appellant's constitutional

guarantees as implemented by the First District Court-Logan, State of Utah's: re-litigation of claims that had previously been adjudicated in Missouri, of which the appellee and the appellant stipulated to as equaling a Utah Judgment; the trial court's refusal to take judicial notice; an insufficient explanation of the custody award within the Decree of Custody's Findings of Fact; the voluntary and continual imposition of gender based discrimination in awarding both the initial custody award and the final custody award by trial courts in the State of Utah, in this case and a host of others.

Supplemental to the aforementioned errors, the trial court erred when it accepted the Plaintiff's Affidavit of Impecuniosity, in light of the plaintiff removing \$4,025.66 from her checking account one week prior to filing the same.

An additional abuse occur when the trial judge levied a \$1000.00 charge for attorney's fee against the appellant, for a perceived excessive use of the court's time.

### **STANDARD OF REVIEW**

The issues raised in this appeal present both questions of law and of fact, which are brought forward within the body of this appeal. In consideration of this appeal, resulting from the misapplication of existing law, as it relates to the arbitrary use of the district court's interpretation, that final judgment deserves no deference, and is reviewed

for correction of error, and clarification of law. As to the extent that there are disputed factual issues, the trial court's refusal to take judicial notice, and the ignoring of an existing judgment in another jurisdiction, those facts are included within the record and included for review for clear error.

Therefore the standard would be for either an reversal of the Decree of Custody as issued by the First District Court - Logan against the Appellant, and the imposition of the Missouri Judgment, or the issuance of an Extraordinary Writ, by this Appellate Court, granting permanent, primary custody of the minor child, to the Appellant.

## **DETERMINATIVE CONSTITUTIONAL AND STATUTORY PROVISIONS**

The full text of the following determinative constitutional provisions and rules are reproduced at Appendix III:

- A. The Fourteenth Amendment of the U.S. Constitution;
- B. The Tenth Amendment of the U.S. Constitution;
- C. The Fifth Amendment of the U. S. Constitution;
- D. Article III, Section 2, of the U.S. Constitution;
- E. Title 42 United States Code Section 1983;
- F. Article I, Section 1, of the Constitution of Utah;
- G. Article I, Section 7, of the Constitution of Utah;
- I. Article I, Section 11, of the Constitution of Utah;
- J. Article I, Section 18, of the Constitution of Utah;
- K. Article I, Section 24, of the Constitution of Utah;
- L. Article I, Section 26, of the Constitution of Utah;
- M. Article I, Section 27, of the Constitution of Utah;
- N. Article IV, Section 26, of the Constitution of Utah;
- O. Utah Code Annotated, 78-7-9;
- P. Utah Code Annotated, 62A-4a-412;
- Q. Utah Code Annotated, 30-3-5.2;
- R. Utah Code Annotated, 76-5-301;
- S. Utah Code Annotated 76-5-303;
- T. Utah Code Annotated 78-45c-201;
- U. Utah Code Annotated, 30-3-3,30-3-4;
- V. Utah Code Annotated, 30-3-10,30-3-10.4;
- W. Utah Rules of Evidence, Rule 201,803,902
- X. Utah Code of Judicial Administration, Rule 4-506, Rule 4-903, Rule 4-911;
- Y. Utah Rules of Judicial Conduct, Canon 1, Canon 2, and Canon 3.

## STATEMENT OF THE CASE

### *A. Nature of Case*

This is an appellate action asking the Court to vacate, dismiss, reverse, or issue an extraordinary writ for relief from the First District Court-Logan's Decree of Custody, wherein it awarded custody to the appellee, and granted attorney fees to the appellee.

### *B. Course of Proceeding*

Appellant, Keith Cox, brought this action for relief, contrary to the entry of the Decree for Custody entered against him in the First Judicial District Court, pursuant to the Equal Protection Clause and the of 42 U.S.C. § 1983, U.S. Constitution Amendment XIV. Appellant alleges that he was denied due process and equal protection under the law because the trial court refused to acknowledge a prior judgment entered in Missouri, and initially reduced the appellant's custody rights, which are inherent rights reserved under the IX and X Amendments of the U.S. Constitution, for no reason other than his gender. The appellant further contends that the trial court abused its discretion by refusing to take judicial notice when properly motioned and when the court failed to adequately explain the basis for its decision to award custody to the appellee.

### *C. Disposition in the Court Below*

On February 23, 2000, the First District Court-Logan Department, J. Judkins presiding, concluded a civil bench trial for custody and rendered its decision. That

decision was against the Appellant and in favor of the Appellee, granting custody of the minor child to the Appellee.

In contention were the hearings before Commissioner Garner, on May 7, 1998, and April 29, 1999, as gross injustices visited upon the Appellant by the trial court.

*D. Statement of the Facts*

Appellant had filed an action where the parties at issue resided at that time, the State of Missouri. The Appellee was properly served and failed to file a responsive pleading, or appear on the designated date and time. The Circuit Court of Missouri issued a Judgment, November, 1996, wherein both parties were given joint legal custody of their minor child Anna.

The mother fled from that jurisdiction and began to reside in Utah, where she then filed an action in the First District in 1997. Initially she claimed that the Appellant was not the natural father and had a protective order taken out against him. Subsequent to a trial, the Appellee and Appellant, signed a Stipulation, January 21, 1997, within which she agreed to acknowledge the Missouri Judgment as a Utah Judgment, and a copy of which was filed with the district court.

The protective order, taken out January 26, 1996, Plato, Missouri, was recognized by Commissioner Daniel Garner, but the court at all other times refused, ignored, or disregarded any mentioning of prior orders, judgments, or official documents outside of Utah, as they related to this case.

April 29, 1999, the court recognized that both the appellant and the appellee were “good parents,” based upon Mr. Price’s input and the evaluation reflected the same. The Divorce was granted, under the bifurcation, which was denied, but somehow granted, and the issues of custody, visitation, and the evaluation were reserved until trial.

The trial occurred February 3 and 23, 2000. The Appellant, after having bore the entire economic burden of pretrial legal maneuvering and exploitation by the court and opposition, was forced to represent himself Pro Se.

The Appellant used an estimated one(1) hour, forty-five (45) minutes of the total 7 hours of trial time. The end result was that J. Judkins awarded attorney fee equaling \$1000.00 to the appellee, based upon the appellant’s perceived excessive use of time during the trial. The court affirmed and awarded primary custody to the appellee, subject to the appellant’s right to visitation. Hence, the origination of this claim currently before the Utah Court of Appeals.

The remaining facts that are disputed are readily within the trial court record and within Appellant’s Brief before this Court now.

## SUMMARY OF ARGUMENT

The appellant believes that the First District Court - Logan Department erred in awarding custody to the plaintiff-mother, and against him when the Circuit Court of Missouri had already entered a final judgment of the same facts, involving the same parties. The trial court in Utah also failed to recognize a previous set of facts, all at issue before that court, which established prior adjudication within the jurisdiction of Missouri, and Stipulated to by both of the parties at issue and referenced herein.

Additionally, upon motion before the First District Court-Logan, the appellant asked that the court take judicial notice of several facts of law and circumstance of which both parties were aware, and that information was readily made available to the court, its officers, and the custody evaluators. In that the evaluation was not performed by a psychologist and failed to meet all factors under Utah law.

As the record of this case reflects, the trial court failed to meet the minimum requirements of satisfactorily articulating its rationale for the custody arrangement within the body of the Decree of Custody's Findings of Fact. When initially the court granted the mother temporary primary custody, under the guise of the tender years doctrine, and the natural father was stripped of his primary custody rights, without a trial, and supplanted with mere visitation rights contrary to due process.



The final determination was based without a sufficient showing of evidence and thereby rendered the defendant-father at a disadvantage in his pursuit for primary custody of the child. The trial court required, after leave, a custody evaluation which intentionally overlooked evidence of the plaintiff's lack of parenting skill, involving her past conduct relating to the abuse of her children. Stemming out of this adverse, and biased application of custodial evaluation standards the proceedings would have concluded differently and the custody decree would have reflected such.

Appellant asserts that there are substantial defects and fraudulent measures employed within the custody determination, specifically surrounding the Findings of Fact and within the custody evaluation process. Furthermore, the appellant contends that the Guardian Ad Litem, and counsel for the plaintiff-appellee, were allowed to interview witnesses, without benefit of appellant or appellant's counsel's presence. This was admitted to in open court and can only be either an abuse of discretion by the court allowing the same or due process was denied. The appellant was given approximately 1.75 hours of time during the trial, which lasted two days, totaling 7 hours. The Court, the plaintiff and the Guardian Ad Litem consumed the remaining time, but ironically the court granted \$1000.00 to plaintiff-appellee because of a supposed perception of extensive time taken by appellant to present his case.

It is the appellant's belief that the First District Court-Logan abused its discretion in awarding custody to the plaintiff by 1) the re-litigation of a claims that had previously

been adjudicated in Missouri; 2) the trial court's refusal to take judicial notice, which amounted to a violation of appellant's due process rights; 3) the insufficient explanation of the Findings of Fact; 4) imposing gender based discrimination in awarding the initial custody arrangement; 5) Guardian Ad Litem and counsel for the plaintiff interviewed and corresponded with witnesses outside the court, and outside the presence of the defendant; 6) ignoring the signed stipulation, freely entered into by the parties at issue; 7) levying attorney fees against the appellant arbitrarily; 8) the acceptance of the plaintiff's affidavit of impecuniosity one week after the plaintiff withdrew \$4,025.66 and closed her bank account.

## **ARGUMENT**

### **Point I**

THE TRIAL COURT ABUSED ITS DISCRETION BY RE-LITIGATING THE CLAIMS THAT HAD PREVIOUSLY BEEN ADJUDICATED IN A COURT OF COMPETENT JURISDICTION IN MISSOURI.

The Missouri Circuit Court held session, to hear argument on paternity issues involving Anna Marie, due to the mother's failure to appear default judgment was entered against her, and joint legal custody was awarded to each of the parties at issue before the

court, subject to the limitations included within that Amended Judgment. Ms. Lomsdal was properly served and then failed to file any responsive or statements of defense, and then failed to appear.

**Jacobsen v Jacobsen**, 703 P. 2d 303,305 (Utah 1985), outlines “When there has been an adjudication, it becomes res judicata as to those issues which were either tried and determined, upon all issues which the party had fair opportunity to present and have determined in the other proceedings.”

This principle, res judicata, is fully applicable in this custody determination. Within the esteemed Circuit Court of Missouri, Case No. CV196-154DR, said Judgment awarded Keith Cox, Plaintiff, paternal rights as the natural father with “the birth certificate,” to be “changed to reflect,” that; and joint legal custody with primary physical custody of the minor child remaining with Wendy Lomsdal; filed October 23, 1996, with visitation under the following provisions:

- A. Eight weeks in the summer;
- B. Alternating holidays;
- C. One (1) week in October and March of each year;
- D. Each party to be responsible for one half of any transportation costs involved in transporting the minor child to and from the afore-mentioned visits with Plaintiff.”

*(See Exhibit I, A, pg 1)*

In January 1997, within the jurisdiction of the First Judicial District-Logan, case number 964000353 PA, the appellee entered and signed a stipulation with the appellant agreeing to the following:

1. Plaintiff, Wendy Lomsdal, agrees to dismiss her Utah action for paternity.
2. Plaintiff, agrees to dismiss the Protective Order and incorporate same in this action.
3. Plaintiff, agrees to recognize the Missouri Judgment as a Utah Judgment.

*(See Exhibit I, B)*

A Utah case determined the criteria necessary for preclusion, **Madsen v Borthick**, 769 P. 2d 245, 247 (Utah 1988), wherein the court stated "Claim preclusion bars a cause of action only if the suit in which that cause of action is being asserted and the prior suit satisfies three requirements. First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits." In this case, currently on appeal, all three criteria have been satisfied, the only caveat is that this case involves child custody and that same child's welfare.

From the inception of this case in Missouri, and then again in Logan, it has been the contention of the appellant that both the threat of abuse and that actual abuse have been visited upon the child by either the mother or within her immediate area of control.

Yet, the Utah District Court-Logan, failing to act in accordance with any provision of Utah Law; **Utah Code Annotated §30-3-5.2, §78-7-9, or §62A-4a-412**; omitted any right minded or reasonable person standard, the court granted the mother temporary sole custody in lieu of evidence submitted contrary to that assumption, e.g., photographs of bruising to the minor child. The photograph were enough to warrant the Commissioner to assign the Guardian Ad Litem, but not enough to preserve either the safety of the child or the natural father's rights under due process. (*See Exhibit II*).

Within the body of the case of **State in Interest of J. L. W., 900 P.2d 543, 550** (Utah 1995), J. Bench clearly outlines what ought be preserved "All too frequently, there comes to the state's attention parents whose own conduct has effectively destroyed the parent-child relationship and the state must remove the child from its environment if it determines that removal would be in the best interests of the child. Moreover, when the relationship has been destroyed, "it is usually in the best interests of the child to terminate that relationship and allow the child an opportunity to establish a meaningful relationship with loving, responsible parents." When this right and privilege is to be afforded to the father, who is the loving, responsible parent, and to the minor child, is the question currently before this court. Despite the court's acknowledgment and awareness of a prior decree, the stipulation agreement of the parties, and absent the required showing of a substantial material change of circumstance, this case was allowed to move forward to trial. Utah Court of Appeals has ruled on this beforehand with extreme caution, **Larson v**

**Larson**, 888 P. 2d 719, 722 n.2 (Utah App. 1994), “We have . . . trepidation about the applicability of res judicata to child custody and related proceeding . . . where the welfare of children is at stake.,” but again in this case not even a cautionary remark by the trial court.

The court laid out in **Cummings v Cummings**, 384 Ut. Adv. Rep. 5, (1999), res judicata definitions in related domestic matters. “Res judicata prohibits only a later cause of action based on matter which could have sustained the claim determined on the merits in the former judgment—not a cause of action which might have been determined only if an additional argument, not made in the previous case, had proved persuasive on the separate and distinct claim which formed the basis of the prior judgment.”

“Claim preclusion prevents the re-litigation of claims that have been fully litigated between these parties and also those claims which should have been litigated in the prior action,” **Copper State Thrift & Loan v Bruno**, 735 P. 2d 387, 389 (Utah App. 1987). The appellee was properly served, as the Missouri Amended Judgment indicates, and she failed to appear. A default judgment was entered against her, she again failed to appeal the entry of that judgment, and that judgment stood inasmuch as the parties shared joint legal custody. Within this case there has been an adjudication, thereby it became res judicata as to those issues which were tried and determined. (*See Exhibit I, A*).

Where a prior judgment was entered, Missouri Circuit Court, of which all issues were tried and the parties had an opportunity to present and have determined in those

proceedings, then the First District Court should have been proscribed from entering a judgment on those issues. Neither party displayed or claimed that a substantial and material change of circumstances occurred except for the appellee's absconding with the minor child from the jurisdiction of Missouri, in violation of **Utah Code Annotated, § 76-5-301, §76-5-303, and §78-45c-201**, of which the court completely ignored upon the initial custody award, before J. Harris, November 17, 1997. The First District Court aided the appellee in the commission of a felony. **Utah Code Annotated, §30-3-3**, clearly delineates what constitutes a material change and determines the costs therein. Neither party filed a Motion for Modification of Custody and each party was aware of the existing order in Missouri.

Without such a showing of material change of circumstance, the trial court should have been barred from hearing the parties grievances in this action. As neither party claimed such a change, the trial court was barred from entering a final judgment or even addressing the claims with the Missouri mandate in existence.

**State in Interest of J. J. T., 877 P.2d 161, 164**, (Utah 1994), this court found that "Moreover, non-application –or at least the flexible application – of res judicata in termination of parental rights proceedings does not leave the parents unprotected and subject to vexatious litigation. There are other protections in place that adequately safeguard the parent's rights without compromising the significant concern for the child's welfare."

## Point II

THE TRIAL COURT'S REFUSAL TO TAKE JUDICIAL NOTICE, WHEN PROPERLY MOTIONED, CONSTITUTED A VIOLATION OF THE APPELLANT'S DUE PROCESS RIGHTS.

As each of the parties, and their respective attorneys were aware, all the records and proceedings that the appellant was motioning the trial court to take notice of, and counsel for the opposition and appellee herself had time and place to rebut, the trial court should have granted the Defendant's Motion For Court to Recognize Adjudicative Facts Pursuant to Rules of Evidence (Rule 201). (*See Exhibit I, E*)

Especially when the court did not sua sponte take judicial notice of those prior adjudicated facts, and proper notice to each of the parties already existed, since those adjudicated facts pertained to the plaintiff-mother's prior incidents of child abuse. The appellant insured that each of the respective parties, and/or their counselors, were notified of defendant-father's intent, the motion was arranged and in accordance with **Utah Rules of Evidence, Rule 201**. Under subsection (c) "Court may take judicial notice, whether requested or not." However, under subsection (d) "a court is required to take judicial notice if requested by a party and supplied with the necessary information." Moreover, the rule states in subsection (f) "judicial notice may be taken at any stage of the proceeding." As the record reflects, the court had the information available via the motion, by way of attachments/exhibits, and also through the DCFS investigations and the



investigation report of the Guardian Ad Litem. In the case of **Zions First Nat'l Bank v National Am. Title Ins. Co.**, 749 P.2d 651, 654 (Utah 1988), the rule applies even where the facts are not disputed and the issue raised is one of law.

The facts contained within the appellant's motion were essential to rebutting the custody evaluation, (whereas the evaluator ignored those facts), the techniques employed therein, and to thwart any attempt to decrease the appellant's custodial rights via any determination by the court. During the May 7, 1998, hearing, the trial court stated to the plaintiff "If everything turns out the way you say, then you have custody of this child on a permanent basis, . . ."

*(See Exhibit III, A; pg. 14, Lines 21-23)*

Since the court relied heavily upon a deficient evaluation, and established the criteria surrounding the award and its relationship to the evaluation, then custody should be reverted to the defendant. Both Mr. Price, and Diane Balmain, Guardian Ad Litem, held out before the court that they were privy to knowledge about all items contained within Mr. Cox's motion. Attorney Balmain, during the February 23, 2000, trial date, stated "I received information from the State of Missouri regarding the issues of past abuse against Ms. Lomsdal's other children, as perpetrated by a former partner." *(See Exhibit III, D; pg. 167-168)*

Yet, neither the evaluator nor the Guardian Ad Litem gave any credence to the relevance or importance of that information. In fact the evaluator completely ignored

most of the information, and justifiably excused the plaintiff-mothers actions within the body of the evaluation. Ms. Balmain, failed to follow-up on the information and only gave the information, as provided by DCFS a cursory inspection. DCFS reports, stemming from 1997 through 1999, all claim defects in parenting by the mother, substantiate allegations against her, but claim there are no deficiencies sufficient to change custody. The Guardian Ad Litem, and Mr. Price, in turn passed the information to the trial court, where at trial testimony was given by DCFS about abuse, and all failed to act in good conscience. (*See Exhibits I, M; III, D, pg. 167-168; III, D, pg 170; III, D, pg. 149*)

The court whitewashed over the adjudicated facts from Missouri and the State of Washington, awarded custody to the plaintiff and thereby denied Mr. Cox his Constitutional guarantee of equal protection and due process. The custody decree and the change in the custody award, minus this judicial prejudice, would have bestowed upon the appellant an more favorable result. This is beyond the "reasonable likelihood," standard in use today, **State v Hutchinson**, 655 P.2d 635, 636 (Utah 1982).

The parent-child relationship is accorded Constitutional protection as delineated within the case of **In re K.S., Jr. & B.S.**, 737 P.2d 170, 172 (Utah 1987). Given that the welfare of the child is tantamount to the custody proceedings, those same proceedings may not eliminate the parent's right to Due Process. Appellant claims that the trial court, in this case, erred by not allowing the judicial notice of evidentiary items, supposedly

being relied upon by the custody evaluator, and the Guardian Ad Litem, while those same items were excluded from examination, admission into evidence, and admission into the record. Appellant's custodial rights were seriously eroded without support of clear and convincing evidence and without benefit of a trial.

The error, as committed by the First District Court- Logan, in not taking judicial notice, when properly noticed, resulted in prejudice sufficient to warrant reversal of the custody decree and an Appellate Court Writ of Extraordinary Relief granting the appellant sole custody of the minor child. There exists more than a reasonable likelihood that the outcome would have been more favorable to the defendant-father if said notice were given appropriate weight by the trial court as in **State v Knight**, 734 P. 2d 913, 919 (Utah 1987).

### **Point III**

THE TRIAL COURT ABUSED ITS DISCRETION, IN LIGHT OF THE EVIDENCE OR ABSENT EVIDENCE, AND THAT THE FINDINGS OF FACT ARE INSUFFICIENT TO EXPLAIN THE BASIS IN AWARDING CUSTODY OF THE PARTY'S MINOR CHILD TO THE PLAINTIFF/APPELLEE.

The trial court did not adequately explain the basis for its decision to award custody to the plaintiff/appellee initially, or within the Decree for Custody. Within the Findings of Fact, subheading 5, "The custody evaluation ordered by the court recommended that custody be awarded to the petitioner." There is no express mentioning

of why the custody evaluation conformed to the court's determination. Absent, also, is an explanation of the legal or logical basis for reaching this conclusion. It is not located within the Findings of Fact nor disclosed clearly in any other findings made by the trial court proceedings. Inadequate Findings of Fact constitute error on the part of the trial court, and unless the facts in the record are "clear, uncontroverted, and capable of supporting only a finding in favor of the judgment," **Kinkella v Baugh**, 660 P.2d 233, 236 (Utah 1983), this case should be reversed. In **Sukin v Sukin**, 842 P. 2d 922, 925, (Utah 1992), the court determined that "the court should enter clear findings regarding the decision." Of which is seriously lacking within the trial court's findings in this case. (*See Exhibit I, C, pg.2*)

The only reference that has any resemblance or adherence to statutory factors that would attribute the custody award of the minor child to the appellee is located under subheading three (3) of the Findings of Fact, it reads:

"The minor child has been residing with the Petitioner and her step-brothers and sisters. The respondent has been exercising standard visitation."

Clearly this falls short of a reasonable explanation on the basis of awarding custody to the appellee, in any court elsewhere, and it doesn't qualify as a minimum requirement of respect toward **Utah Code Annotated §30-3-4 (1)(d)**. (*See Exhibit I, C, pg.2*)

Unless there is some merit within Commissioner Daniel Garner's prejudicial statement, on April 29, 1999, "Dr. Price is held in high esteem in this court. That doesn't mean that we rubber stamp custody evaluations, but any evidence contrary to his findings would have to clear a high hurdle," then the trial court, in this matter, was biased at the onset. It seems that bias is the logical deduction, especially when Mr. Price is not a Doctor, but the court, seems ready to hand out a title without benefit of acclimation toward a specific doctorate degree sufficient to persuade a Board of Psychologist or any other school of the sciences. (*See Exhibit III, B, pg. 4*) What this amounts too is an additional barrier that the defendant-father had to satisfactorily summit and it is outside of the trial court's broad based discretion to insist upon. Additionally, the Findings of Fact lack any reflective qualities of this caveat. As the Appellate Court stated in **Rucker v Dalton**, 598 P. 2d 1336, 1338 (Utah 1979): "The importance of a complete, accurate, and consistent findings of fact in a case tried by a judge is essential to the resolution of dispute under the proper rule of law. To that end the findings should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached."

Since the trial court's Findings of Fact are clearly erroneous in that regard, and the appellant has now marshaled evidence to support the premise, a reversal of the final determination is in order. If the appellant has not sufficiently marshaled evidence, it is because he was barred by the trial court, and as the Appeals Court has avoided in the past,

**Cox Rock Products v Walker Pipeline Constr.,** 754 P. 2d 672, 676 (Utah 1988) Note 4, Rule 201, “we would have the power to take judicial notice for the first time and, indeed, might do so in an appropriate case,” or by proscription relating to the trial court’s refusal to take judicial notice, which would have allowed the marshaling of evidence to support such.

#### **Point IV**

THE APPELLANT WAS DENIED HIS DUE PROCESS RIGHTS AND EQUAL PROTECTION UNDER THE LAW WHEN THE TRIAL COURT AND THE STATE OF UTAH IMPOSED, UNDER “COLOR OF LAW,” GENDER BASED AND ECONOMIC DISCRIMINATION IN AWARDING THE INITIAL CUSTODY ARRANGEMENT.

Commissioner Daniel Garner, during a hearing held May 7, 1998, openly remarked, in court to the defendant-father, “So if you want custody, put your money where your mouth is and pay for the custody evaluation so we can get it started.”

*(See Exhibit III, A, pg.13)*

If the court is now claiming that the best interest of the child are secondary to the income and/or the financial positions of the parties, then by 1) openly debating the need for a custody evaluation; and 2) requiring the defendant-father to bear the costs associative, on the court’s recommendation of a custody evaluation; and 3) parleying the exchange of money for the physical possession of a human being, the trial court is

attempting to sell the custody of children to the highest bidder, and thereby selling justice, not dispensing justice within the parameters of the U.S. Constitution, Constitution of Utah, or the Utah Code Annotated.

Furthermore, the appellant asserts that what Commissioner Garner did was make an offer, to which the appellant accepted, by way of payment as instructed, each side was aware of the consideration and thereby an unenforceable, unconscionable contract was formed. The breach occurred in the performance by the court in its awarding the custody to someone other than the defendant-father, who, unwittingly, and successfully completed his portion of the agreement.

During the same hearing, appellant's former counsel, Mr. Larson, was allowed to prejudice the appellant by withdrawing from the case, for the most unscrupulous of reasons, by exclaiming in open court, "I just — I'm not going to do a custody battle for poor people." Mr. Larson wasn't claiming non-payment for legal services, but merely placing the appellant under an adverse light before the court. The court, after making a statement "because looking at what I'm seeing here, I've seen these type of accidents before, these pictures here." Where is the concern for Due Process or Equal Protection if not for the father at least for the child? A withdrawal of counsel under the **Utah Code Of Judicial Administration Rule 4-506**, fails to mention a parol request being sufficient with permission of the court. **Utah Rules of Judicial Conduct, Canon 2 b**, states in part, "A judge shall not lend the prestige of the judicial office to advance the private

interests of others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.” (*See Exhibit III, A, pg.6, and pg 8*)

Also contained in **Canon 3, (B), (8)**, it states that “ A judge should require similar abstention on the part of court personnel subject to judicial direction and control.” As Mr. Larson is an officer of the court, subject to judicial direction and control, the judge improperly allow public comment which definitively affected the outcome, impaired the proceedings fairness and thereafter interfered with the appellant’s chance at having a fair trial.

There is no other reason than the gender of the appellee that allowed her to retain custody of the child. It was not in the child’s best interests, in accordance with **U.C. A. §30-3-10**, and **Hutchinson v Hutchinson**, 649 P.2d 38, 41 (Utah 1982), to remain with the mother who openly displays severe emotional and mental instabilities, or who has abused her own children, abdicated custody of her children, and has continually introduced paramour after paramour into her children’s lives.

Understandably, the trial court is given great latitude and breadth with its discretionary powers, but it is clear at this juncture that the responsibility of children is too vast and weighty for the existing court system to bear. It is indecipherable how, in this case alone, both a little girl and her father could be forced to endure this type of treatment inflicted upon them by a state court system too proud to enlist the aid of the legislature for a familial court breakdown. The appellant has found volumes of case law



wherein countless children have been harmed more by the judiciary than by the divorce/custody action itself, and in a state such as Utah where it is claimed to be family oriented.

The court establish in **Palmore v Sidoti**, 466 U.S. 429, 431-434, (FLA.1984), as it held that “Private biases may be outside the reach of the law, but the law cannot, directly, or indirectly, give them effect, \* \* \* the reality of private biases and the possible injury they might inflict are permissible considerations for the removal of \* child from the custody of its natural (parent).” [Gender neutrality added]

The maternal preference, or tender years doctrine violates the Equal Protection Clause of the United States Constitution. For the State of Utah, or the judiciary within to assume a position of gender profiling is erroneous and the presumption is discriminatory. By arbitrarily applying this presumption, that only mothers can provide the critical nurturing and/or child rearing skills, indicative and relative to a specific age, without looking at individual characteristics and/or circumstances, the court did not evaluate the best interests of Anna Marie Cox. The trial court blindly assumed that the mother, albeit through stereotypical profiling she appears innocent enough, was more capable than the father to continue raising the child until such time as a trial could take place. The goal of granting custody, whether initially or post-trial, is based upon the best interests standard and is indisputable a substantial governmental interest under the Equal Protection Clause. The appellant claims that that is more responsibility than a district court Commissioner

can handle or to take on, and that policy is capricious by nature and ought be proscribed in the future. As laid out in most state statutes, the state is assumed to have a duty to protect the interests of minor children, particularly those of the tender years, not with discriminatory policies or arbitrary application of existing laws. "Public officials sworn to uphold the Constitution may not avoid a constitutional duty by bowing to the hypothetical effects of private \* prejudice that they assume to be both widely and deeply held," **Palmer v Thompson**, 403 U.S. 217, 260-261, (1971).

When a combination of **Article III § 2 of the United States Constitution**, in pertinent part: "The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Law of the United States . . . and between a State, or the Citizens thereof," **Amendment V, of the U.S. Constitution**, "Nor shall any person . . . be deprived of life, liberty, or property, without due process of law," **Amendment X, of the U.S. Constitution**, "The powers not delegated to the United States, \* \* \* nor prohibited by it to the States, are reserved . . . to the people," **Amendment XIV of the United States Constitution**, "All persons born or naturalized in the United States, \* \* \* No State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection under the laws," **and IX Amendment's** "of certain rights, shall not be construed to deny or disparage others retained by the people," **Article I, §24 of the Constitution of Utah**, wherein "All laws of a general nature shall have uniform operation;" **Article IV §1 Utah Constitution**, "The

judicial powers shall be vested . . . in a trial court of general jurisdiction know as the district court, and in such courts as the Legislature by statute may establish;” and with the clear path that Utah’s District Courts, not only in this case but a multitude of custody cases, invokes the tender years doctrine and awards initial custody to mothers, absent an immediate showing of a potential for harm, or immediate harm. **Constitution of Utah**

**Article I, Section 18**, forbids bills of attainder. Yet, in this case Bills of pains have been enacted against the appellant-father. By way of a direction, from the beginning, showing that the defendant-father suffered numerous instances of gender bias, economic bias, and arbitrary applications of the law, would have the case fail under any one of these standards, we, as United States citizens uphold as crucial to our identities before god.

That the appellant was denied his rights to due process under the Fifth and Fourteenth Amendments is undeniable, but so too were the minor child’s. Under the Equal Protection Clause, both the minor child and the father were never afforded such, each of the parties should have been granted the minimum standard under the same, they were not. Whereas the Fourteenth Amendment, as interpreted by the majority in **Yick Wo v Hopkins**, 118 U.S. 356,372 (1886), “undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil right; that all persons should be equally entitled to pursue their happiness . . . that they should have like access to the courts of the country

for the protection of their persons and property, the prevention and redress of wrongs, \* \*

\* Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application," never opened the door for a state or a state court to arbitrarily administer justice with a preference of gender. There is no reason that the First District Court should not have issued a temporary order granting joint legal custody to each of the parties, except for gender discrimination, that has long been entrenched within its rulings. It is unclear how to install within the courts of the State of Utah a gender neutral policy, without the formation of a state family court system, unless through the repeated inundation of appellate briefs such as this one. The mother in this case testified that she wasn't sure of the age of one of her children. (*See Exhibit III, D, pg 76*)

If it is acceptable for the First District Court to impose archaic philosophies, of biased assumptions or gender preference, as reviewed in **Yick Wo**, then we are left with agencies or officers, that implement (quoting J. Matthews), "arbitrary and unregulated discretion and special consent, \* \* \* then it seems to us that there has been a wide departure from the principle that have heretofore been supposed to guard and protect the rights and liberties of the American people. \* \* \* a discrimination against any class can be made in its execution, thereby evading and in effect, nullifying the provisions of the National Constitution, then the insertion of provisions to guard the rights of every class and person in that instrument was a vain and futile act."

Appellant asserts that if the events, as he perceives them to be, were such that the government or an official of the government placed him in a situation of gender-biased discrimination, then an abuse of discretion and a violation of due process occurred. This case is a bona fide denial of his equal protection under the law and discriminatory under **42 U.S.C. §1983, the V, IX, and XIV Amendments of the U.S. Constitution.**

Assuming a defensive posture as an anticipatory reaction, the appellate retorts to what other criteria could the courts have used in making its determination. "Moral character and emotional stability," as expressed, would have conclusively benefitted the defendant-father. He has no moral constraints, is established in the local community, and in fact, the appellant was willing to relocate from Missouri to Utah in order to continue his contact with his child. The appellant was never labeled as having a "long history of maladaptive lifestyle\* \* \* diagnosis AXIS II 301.90 personality disorder NOS (Borderline, Narcissistic , dependant traits)." (*See Exhibit I, D, pg. 11*)

Borderline Personality Disorder shows "extreme affective instability as reflected in drastic mood shifts and impulsive or erratic self-destructive behaviors." (Fine & Sansone, 1990)

Person with such a disorder have transient episodes in which they appear to be out of contact with reality and experience delusions or other psychotic-like symptoms, for a majority these psychotic symptoms lasted 1-12 weeks. (Miller, F.T. 1993)

Narcissistic Personality Disorder shows an exaggerated sense of self importance and a lack of empathy for the feelings of others. (DSM-IV 1998)

Those who do enter treatment may terminate therapy prematurely, particularly if their therapist is confrontational. The narcissist's exploitation would be more for the purpose of demonstrating domination, prestige, and superiority, rather than for the personal, material gain of the antisocial personality. (Widiger, T. & Trull, T. 1993)

Personality disorders do not stem from reactions to stress. They stem from gradual development resulting from persistently maladaptive ways of perceiving, thinking about and relating to the world. These approaches significantly impair functioning and cause subjective stress.

The appellant, acting as Pro Se, at various stages of the proceedings, was never silenced by the court, the court never had to restrain the defendant, and neither the Guardian Ad Litem, opposition, or the custody evaluator introduce any evidence to impact the emotional or psychological stability of the appellant.

Beginning in the Missouri Courts, and then traveling to Utah, reestablishing residency therein, the appellant's actions are reflective of the duration and desire to maintain and continue custodial rights with his daughter. As to the personal care issue, the defendant-father is more than able to provide personal care and not just surrogate care for his daughter, again evidenced by his voluntary displacement from the Midwestern region

of the of the country to the State of Utah. That action by the appellant can only be construed as personal care and untainted love for contact with his daughter.

The appellant doesn't have a history of drug abuse, nor use, does not drink, does not have a history of drinking, and no other cause was introduced that would apply. The defendant-father never relinquished custody of his daughter nor any other of his children, which cannot be said of the plaintiff-mother, who admittedly gave up custody of two of have children, physically abused at least three of her children, with this evidence in hand the trial court should have been strongly cautioned. It did not feel the need for caution, because in the trial court's action there isn't any room for error. Although the appellant is not independently wealthy, he has maintained gainful employment which is directly proportional to the plaintiff-mother's earning capacity.

### **Point V**

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT  
MISINTERPRETED THE LAW IN APPLYING MR. PRICE'S EVALUATION TO  
THE DECREE OF CUSTODY

Appellant claims that the custody evaluation was invalid due to the inability of the preparer to apply the scientific standards, as laid out in **Frye v United States, 293 F. Supp.1013** (D.C. 1923), as it pertains to the testing procedures and the individual(s) administering the test(s), thereby eliminating the credibility and reliability of the evaluation, and the preparer was not qualified to refute determinations of other

professionals. The custody evaluation was performed by Mr. Price, a licensed clinical social worker, who relied upon material accumulated by a nurse, in order to refute the prior findings of two Board Certified Psychologists, a Circuit Court Judge in Missouri, and a thorough investigation by both a Hospital and the Department of Family Services in Missouri. Neither Mr. Price nor the nurse have the credentials to refute or ignore the previous findings by nationally accredited, professionally, trained individuals within the field of child psychology and family law. Mr. Price never mentioned the clinical diagnosis of two other Board Certified Psychologist during the trial. (*See Exhibit I, D*)

To further conflict with the **Frye test**, during the trial Mr. Price states that he was “Unable to use the normal tests and evaluations that I would have used on a child who was five and a half or older.” This was accomplished without providing what test he would normally have used or how the testing was modified for this case. (*See Exhibit III, C, pg. 14*)

The methods that Mr. Price employed are not accepted by his peers. Mr. Price ignored the empirical evidence of child abuse allegations, as they related to Wendy Lomsdal. Mr Price admitted to having knowledge that Ms. Lomsdal has seven children, fathered by four different men, involving six marriages, over a period of 13 years, and yet he stated in his report that Ms Lomsdal possesses better parenting skills than Mr. Cox. Both the trial court and Mr. Price admitted awareness of Ms. Lomsdal’s pluralistic marriage arrangement involving Mr. Cox, and one of her former spouses. Mr. Price



admitted knowing that Ms. Lomsdal previously gave up custody of two of her other children, Sonny Gray and Star Atwood. Mr Price admitted that he was aware of the circumstances surrounding the child abuse allegations of Ms. Lomsdal's minor child, Rachel, in Missouri, and yet he still felt she possessed better parenting skills than Mr. Cox, who has never been charged with Felony child abuse, never assisted in the abuse of children. In fact, the evaluation describes Ms. Lomsdal as being more "flexible than closed-minded," more "solution oriented than adversarial," and more aware than Mr. Cox of the "Child's Needs." Was this in the context of her ability to adequately choose father figures, or mates who are as she describes them "drug addicts," or who she claims had "sexually abused," one of her children as she claims Mr. Atwood had, or who was ill with "coccidioidomycosis, severe allergic reactions, depression," but these were "self diagnosed," by Mr. Jackson, one of appellee's former husbands? (*See Exhibits I, D; I, F; I, G*)

The trial court must have given some credence to the party's relative stabilities within their respective communities or the trial court ignored crucial facts of evidence. During the trial, attorney for the Guardian Ad Litem, Diane Balmain, questioned Mr. Price, as to "How many different addresses Keith had lived at, to which Mr. Price curiously replied, " At least three(3). 619 East 400 North and then he moved shortly after this report." (*See Exhibit III, C, pg. 22*)

This equals two, not three. It is simply disingenuous of Mr. Price to further the injury by pretending that simple arithmetic is outside of his performance level. What is even more preposterous is that the appellant moved to 619 East 400 North before the visit, and Mr. Price was more than aware of this fact. Social workers are simply that, social, they are inherently liberal-minded in their dealings with challenged people and sympathetic to the downtrodden.

In relationship to the appellant's stability, the appellee admitted to moving four times across the same amount of states, then onto Washington, Oregon, then Utah where she has resided in at least two different addresses prior to the time of the trial. What is even more implausible is that fact that two individuals, each with nearly identical familial backgrounds, education levels, and earning potentials, could score in the manner described by Mr. Price. Not in one instance does Mr. Cox outscore Ms. Lomsdal, of which the random ordering of people couldn't produce the same results in a million attempts.

Mr. Price spent 6 hours with appellant, 2 of which were spent with Mr. Cox and his daughter. Appellee only spent 3 hours total, 2 of which were spent with Ms. Lomsdal and her daughter. Odd that a woman with as many recorded problems, involving past abuse, psychological disabilities, child custodial issues, several failed marriages, and as Mr. Price described as "struggling with depression," could warrant, in good

consciousness, 1 hours time to determine her mental health as it pertains to this case. (*See Exhibit III, C, pg. 37*)

Mr. Price, in describing the scoring claims “The following ratings, 1 through 10, 10 being the highest and best score. Under the heading “Honesty,” Mr. Price gives appellee a score of 5, and the appellant a 1 and then states “She was able to respond to the questionnaire in a forthright, knowledgeable manner.” If 10 is the best that a person can score and a 1 is the worst, then a 5 would be average, which is what the appellee received. However, honesty is not a variable, it exists at 100%, anything less would be dishonest, not “forthright.” Therefore, she would have had to have had a score of 1 or lower. There isn’t one mention of what determined the score of 1 being given to the appellant, Mr. Cox, under that category, not his answers, not his informal communication, just a score of 1 that leads any reader of that report to believe he is dishonest. (*See Exhibit I, D, pg. 5*)

Mr. Price describes Mr. Cox as being “very closed minded in his responses. He took every opportunity to look good and put Wendy in the role of the villain.” Whatever bubble world Mr. Price lives in the rest of us do not, If Mr. Price is familiar with custody and divorce proceedings, then the objective is for one party to arrive, at the ending point, in a better position than the other party without maliciousness or deceit. Both are outside of Mr. Price’s comprehension. (*See Exhibit I, D, pg. 5*)

Maybe Mr. Price doesn’t believe in villains, but anyone who takes their 11 month old child to the hospital with, “significant bruising to the right side of Rachel’s head. \* \*

\* Rachel has bruising on left arm, left leg, and right side of her head. Rachel has decreased use of left arm and left leg. \* \* \* Ms. Rainey stated that Rachel has many injuries. These include a right subdural hematoma, which is one to five days old, a right black eye, which is now green: the black eye would be three to five days old. She has bruises on both hands, that probably occurred last night. Rachel also has a fractured right forearm, and probably a left fractured tibia, which is two to three weeks old,” could only be described as a villain in light of the photographic evidence of the child currently at issue. Mr. Price admitted to having all of this information plus the appellee’s statement that “Wendy Lomsdal and an unknown male (later identified as Butch Crandall) said that three days ago Rachel fell out of a chair.” (*See Exhibit I, F; and II*)

What is more peculiar about the present case is that the minor child, currently at issue, was suspected of being abused by her mother, Ms. Lomsdal, after being made aware of the allegations and the photographic evidence, during the May 7, 1998, hearing before Commissioner Garner, stated that the origin of those injuries as simply, “She fell off a chair. “ The appellee, has the most hazardous furniture known to man, and yet Utah’s Department of Family Services failed to make a logical connection, as did the trial court, between past behavior of the appellee and current circumstances. (*See Exhibits I, F; I, M, pg. 2[7-1997], pg 5[1-1997]; and III, A, pg. 8, III, D, pg. 149-150*)

During a court hearing, in Logan, on April 4, 1996, appellee stated that the abuse to another one of her children occurred in “Plato, Missouri. I wasn’t in the room. I only

saw the results.” Never mind that it took her between two weeks and five days to get Rachel to the hospital, of course that child had to quit breathing first

This having been said with Commissioner Garner’s instruction that in determining whether to grant a protective order the court had to determine “whether abuse occurred or the likelihood of abuse occurring,” the end result should have been different. By ignoring appellee’s admission, the judgment of conviction of the court in Missouri, the findings by the Department of Family Services of Missouri, and the photographic evidence provided by the appellant, the trial court awarded a protective order against the appellant and then custody was awarded to the appellee on a temporary basis. This should disgust the common senses of every purveyor of justice anywhere in the world. (*See Exhibit II*)

The custody evaluation states that Wendy “would like to be the custodial parent and for Keith to have standard non-custodial visitation.” During the hearing of April 4, 1996, before Commissioner Garner, on a protective order, Wendy asserted that she didn’t “want any contact,” between Anna and Keith. Then in the stipulation of January 1997, she contradistinguishes her position again, and then during the trial reverts her position again. At one point during the proceedings the appellee claimed that the appellant wasn’t the natural father, and completely ignored the Amended Judgment’s Paternity Clause issued by the State of Missouri. (*See Exhibit I, B; and I, A*)

Within the Investigative Summary, performed by the Texas County Department of Family Services, Missouri, the preparer stated “Initially, Ms. Lomsdal did not want to tell

this worker much information. Periodically, this reoccurred by Ms. Lomsdal's making statements such as "I'm not going to tell you," and "Why do you have to know?" It was later determined that the appellee had a hand in the abuse and she plead guilty, that status held in abeyance, under the condition that she testify against her paramour/co-abuser, Mr. Crandall. (*See Exhibit I, F*)

Utah's First District Court- Logan, and Mr. Price completely disregarded this extreme set of circumstances. The court then awarded custody to the appellee, against the appellant, who never had a conviction for anything other than minor offenses, no arrest or conviction for child abuse, suspected child abuse, nor even an official inquiry on the later. Mr. Price's evaluation is so contradictory of any standard in use today that it should have been dismissed and another evaluator/evaluation mandated.

Mr. Price, within the body of the evaluation, claims that Keith is attempting to manipulate the proceedings, but in every instance there are only quotes from Wendy, or accusations by Wendy where she claims that Keith is accusing her of some act. (*See Exhibit I, D, pg.1,2,3*)

In one bizarre incident, appellee admitted to the evaluator that she "is having visions or communications with God." By itself would be nothing but when coupled with her marital circumstances, i.e. plurality, her patterns of abuse, "Narcissistic," disorders, self diagnosis of severe medical problems, ought to warrant caution at the minimum. Mr. Price states, "If she has some different and strange beliefs, so be it." The appellant can

only wonder if Mr. Price would directly assist in the furtherance of harm upon children, or if he is simply inept as a custody evaluator. (*See Exhibit I, D, ppg. 11,12, and 13*)

Some of the most contradictory information in the evaluation is on page six.

“Keith is able to play with her, to keep her attention. And to let her engage in activities which she enjoyed doing. Anna was able to express her feelings towards her father.”

Then, “Wendy was able to get Anna Marie to give her feedback about the activities.

Mother and daughter seemed to enjoy being with each other.” There isn’t one derogatory remark about either parent within this section, they both actually seem to be equal as the observation lays out, but the scoring shows a clear bias against the appellant. The observation and their respective results, as listed and explained above the scoring section, are never employed or explained in a correlative manner within the summary. (*See Exhibit I, D, pg 6*)

Appellant avows that the purpose of the trial court, in this matter, was to provide appellant with a forum for a redress of grievances, wholly free of arbitrary shackles that would hamper or constrict his life, or liberties within. **Interstate Excavating, Inc. v Agla Development Corporation**, 611 P. 2d 369 (1980), “Speaking generally about such problems, it is to be kept in mind that access to the courts for the protection of rights and the settlement of disputes is one of the most important factors in the maintenance of a peaceable and well-ordered society. \* \* \* The uniformly acknowledged policy of the law

is to accord litigants the opportunity for a hearing on the merits, where that can be done without serious injustice to the other party.”

Appellant claims that an actual bias and/or prejudice existed via Commissioner Daniel Garner’s and Judge Clint Judkins’ refusal to follow and/or apply the **Utah Code of Judicial Conduct, Canon 3 (B) (8)**, “A judge shall dispose of all judicial matters promptly, efficiently, and fairly.”

It was not fair to remove the custodial rights of the appellant and grant them to the appellee given that so much evidence was provided to the court, (the fact that the appellee took substantial steps to give up custody on several occasions), the majority of which was unaccounted for by the court, and the same evidence did not have enough muster a minimal sufficiency test to enter Mr. Price’s evaluation, or minus any apparent disability on the behalf of the appellant. Court made rules, such as the one’s enacted in this case, must give way to the issue of what concerns the best interests of the child, not judicial efficiency or the moral standards of the community. (*See Exhibit I, A; I, F; I, I*)



## **Point VI**

**THE ALLOWANCE OF COUNSEL FOR THE PLAINTIFF AND THE  
GUARDIAN AD LITEM TO INTERVIEW WITNESSES, OUTSIDE THE PRESENCE  
OF THE COURT AND THE APPELLANT, AND TO INVOKE JUDICIAL POWERS  
IS A VIOLATION OF DUE PROCESS**

---

Appellant asserts that through the **United States Constitution, Amendment XIV;** the **Constitution of Utah; Article I, Sections 1,7,11,and 24; Utah Rules of Judicial Administration, Rule 4-903; Utah Rules of Evidence, Rule 201;** confers upon the First Judicial District Court, and Attorney Diane Balmain, granted authority and direction for Bill Burnard, an student intern, to deny the appellant his visitation rights without a court order or hearing.

This occurred on two different occasions in September, 1999, as admitted to during the trial. Neither by motion nor an order of the court was entered, rather the Guardian Ad Litem, without benefit of hearing, determined that their office, via a student intern, would establish Utah law and its applicability. In this the appellant's rights under Utah law, **U.S. Constitution, Amendment IX, X, and XIV, Constitution of Utah, Article I, Section 26, and 27** were circumvented. (*See Exhibit III, C, page 63*)

These events were witnessed by Mr. J. Vincent Eccles, who accompanied the appellant. Mr. Burnard claimed that the appellant had failed to provide a current address.

When it was explained that the appellee refused to accept the letter containing such, Mr. Burnard claimed inadequacy. The Appellant further extended his manners by offering his address in a written form to Mr. Burnard, who promptly refused to accept. Subject to United States law and Utah Law De facto laws are prohibited by both, and clearly this is de facto law. Mr. Burnard was acting as an agent of the Guardian Ad Litem's office when he was not, Diane Balmian never denied, or reproached Mr. Burnard for his actions, and the court failed to condone him either. In essence this is a de facto law enforced by officers of the court, as agents of the State of Utah, violating appellant's rights as barred by **MacLeod v United States**, 229 U.S. 416, and **People v Davis**, 272 N.W. 2d 707, 710, and **Wortham v Walker**, 128 S.W. 2d 1138, 1145. There is no possibility that the statutory "responsible party," had performed the investigation when Attorney Balmain, appointed a student intern, who himself employed terroristic tactics and de facto law. There is a proper avenue for the redress of grievances and it is not held in the street by manipulative student interns. (*See Exhibit I, K; III, C, pg. 60-63*)

**Point VII**

BY THE FRAUDULENT FILING OF PLAINTIFF'S AFFIDAVIT OF  
IMPECUNIOSITY THE COURT SHOULD HAVE AWARDED FEES AND  
REASONABLE COST EQUALLY TO BOTH PARTIES.

The plaintiff-mother had fraudulently filed an Affidavit of Impecuniosity with the court on December 1, 1997. The Defendant filed a Motion for Costs and Fees on February 3, 2000, pursuant to **Utah Rules of Evidence Rule 902 (9) and Rule 803 (8), and Utah Code of Judicial Administration, Rule 4-911 (2) (A)**. Wherein the petitioner had paid \$2000.00, to Dennis Matthews for trial. On November 20, 1997, she withdrew \$4,025.66 and closed her checking account. The plaintiff failed to disclose this to the court and as a result the appellant has been forced to pay for the custody evaluation, his own attorney, and then after the trial the trial court imposed a \$1000.00 fee for the reimbursement of appellee's attorney costs, in addition to the costs incurred for this appeal. (*See Exhibit I, H; and I*)

## CONCLUSION AND PRECISE RELIEF SOUGHT

This Court is entreated with an obligatory stance to make whole and right the Appellant who has been served with continual abuses of discretion, oversights of law and procedure, and misconduct by the adverse party and the trial court itself. It is one of the most important aspects of living in the United States, the existence of a court system, without the prospect of arbitrary application of the laws therein. It is this very court system whose primary and most vital function is to afford litigants an opportunity to be heard and grant justice between the parties contesting. The trial court failed to give sufficient weight to the higher priority: the implementation of justice and an absolute obligation to fairness at all stages of those proceedings within the confines of the law. For those reasons the custody decree should be vacated, that decision by the trial court should be reversed, and this Honorable Court ought to issue an Writ for Extraordinary Relief specifying the Appellant as the primary care giver of the parties minor child, subject to the appellee's right to supervised visitation.

For the abuses of discretion and misconduct by the trial court the case should be reversed, at a minimum, with the return of Appellant's joint legal custody status previously given to him by the State of Missouri, and all costs should be returned to the Appellant.

### **WAIVER OF ORAL ARGUMENT**

Given the straightforwardness of the facts in contention, appellant hereby asserts that this opening brief, should stand sufficient enough in allowing the Court to render its decision, and preclude a reply brief or oral argument from either party hence forth. The appellant also would lodge a stern objection to this court allowing the filing of a brief by the Guardian Ad Litem.

RESECTFULLY SUBMITTED this 10 day of October, 2000.

A handwritten signature in cursive script, reading "Keith Cox", is written over a solid horizontal line.

Keith Cox, Pro Se

Appellant

### CERTIFICATE OF SERVICE

I hereby certify that I hand delivered a true and correct copy of the foregoing Appellant's Opening Brief, this the 10 day of October, 2000, to Dennis Matthews, attorney for the appellee, and the Utah Court of Appeals.

A handwritten signature in black ink, appearing to read "Keith Cox", is written over a horizontal line.

Keith Cox, Pro Se

Appellant

## **EXHIBIT I (A)**

IN THE CIRCUIT COURT OF DOUGLAS COUNTY, MISSOURI

In the Matter of: )  
ANNA MARIE CAROL LOMSDAL )  
a Minor )  
by KEITH WAYNE COX, as Next Friend )  
KEITH WAYNE COX )  
Plaintiff, ) Case No. CV196-154DR  
vs. )  
WENDY ALBERTA LOMSDAL, )  
Defendant. )

AMENDED JUDGMENT

Comes now the Plaintiff, KEITH WAYNE COX, Individually and as Next Friend of Anna Marie Carol Lomsdal, minor child, by and through attorney, Daniel A. Parmele. The Defendant, Wendy Alberta Lomsdal, having failed to file any responsive pleading to the Petition For a Determination of Paternity, pursuant to service on July 15, 1996, is hereby found to be in default. In particular, the Court finds that:

1. Plaintiff, Keith Wayne Cox, is declared to be the father of Anna Marie Carol Lomsdal, born to Defendant, Wendy Alberta Lomsdal, on March 19, 1995. The birth certificate of the child will be changed to reflect Plaintiff as the father of the child.

2. That the parties are awarded joint legal custody; that Defendant is awarded primary physical custody of the minor child and Plaintiff shall have reasonable visitation as set forth below:

- A. Eight (8) weeks in the summer;
- B. Alternating holidays;
- C. One (1) week in October and March of each year;
- D. Each party to be responsible for one-half of any

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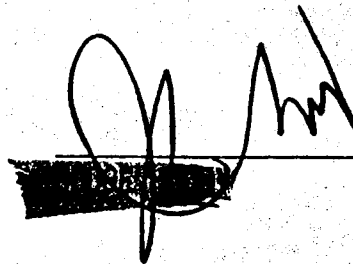


transportation costs involved in transporting the minor child to and from the  
afore-mentioned visits with Plaintiff.

3. That Plaintiff, Keith Wayne Cox, shall pay \$75.00 per month to  
Defendant, Wendy Alberta Lomsdal, as support for the minor child as calculated  
under Rule 88.01, to start on the 1st day of October, 1996, and continue on  
the 1st day of each month thereafter through the Douglas County Circuit Clerk.

4. That Plaintiff be awarded the right to claim the tax deduction for  
the minor child.

~~ORDERED AND 1st day of October 1996~~



CERTIFICATE OF TRUE COPY

State of Missouri }  
County of Douglas } ss.

I, Tom L. Roberts, Clerk of the Circuit Court and Ex-Officio Recorder of Deeds  
and for Douglas County, Missouri, do hereby certify the above and foregoing to be  
a true and complete copy of the original Amended  
Judgment as fully as the same appears on record in the  
case named as is in my office in Book at Page

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
seal at Ava, Missouri this 7<sup>th</sup> day of November, 1996

Tom L. Roberts  
Circuit Clerk and Ex-Officio Recorder

FILED  
OCT 23 1996

## **EXHIBIT I (B)**

LOGAN DISTRICT

JAN 22 4 33 PM '97

Suzanne Marychild - 7082  
HULT & MARYCHILD  
Attorney for Plaintiff  
110 North 100 East  
P.O. Box 543  
Logan, Utah 84323-0543  
Telephone: (801) 753-7400

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

WENDY ALBERTTA LOMSDAL,

Plaintiff,

vs.

KEITH WAYNE COX,

Defendant

\*

\*

\*

\*

\*

STIPULATION

Case No. 964000353 PA

The parties have agreed to the following Agreement, and request that the Court make it an Order, as follows:

1. Plaintiff, Wendy Lomsdal, agrees to dismiss her Utah action for paternity.
2. Plaintiff agrees to dismiss the Protective Order and incorporate same in this action.
3. Plaintiff agrees to recognize the Missouri Judgment as a Utah Judgment.
4. The Utah Judgment shall be modified in the following regards:
  - a. Defendant/Father shall have one week visitation at the time of Father's Day,

and also during the period of the child's birthday, in March. Said visitation shall take place at the home of the Plaintiff/Mother.

Case No. 964-353

#06

JAN 27 1997

b. Defendant/Father shall be entitled to take the minor child to his home in Missouri, for the period of October 1, 1997 through the Thanksgiving Holiday.

c. Defendant/Father shall have the right to visit the minor child on the first and third weekend of every month at the Plaintiff/Mother's residence.

d. Due to the expenses of visitation transportation, a made-up visit is to be allowed in the year that it is missed, and thereafter is waived.

e. The schedule for 1998, and subsequent years, shall be by mutual agreement of the parties. If no agreement can be reached, visitation shall be as set forth in the Missouri, Douglas County, decision.

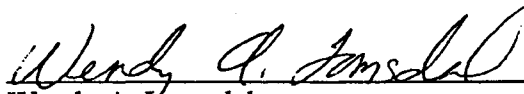
f. After the child is four and one-half (4½) years old, the parties shall split physical custody of the minor child as follows: From the first of January for the first six months of the year, the minor child shall be in the father's home, and for the second six months of the year, the minor child shall be in the mother's home.

g. Other visitation shall occur as the parties shall agree.

5. The parties agree that child support in the amount of \$75 shall be paid monthly through the Office of Recovery Services.

6. Video tapes of the respective families are to be exchanged monthly between the parties, and shown to the minor child.

DATED this 21 day of January, 1997.

  
Wendy A. Lomsdal,  
Plaintiff/Mother

## **EXHIBIT I (C)**

Dennis Mathews (2119)  
55 North Main, Suite 302  
Logan, Utah 84321  
Telephone: (435) 753-7999

FIRST DISTRICT OF UTAH  
CACHE COUNTY

'00 FEB 29 12

Attorney for Petitioner

IN THE FIRST JUDICIAL DISTRICT COURT  
CACHE COUNTY, STATE OF UTAH

WENDY A. COX (LOMSDAL),

Petitioner,

vs.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

KEITH COX,

Respondent.

Civil No. 974100564 DA

This matter came on for trial on the 3rd and 23rd of February, 2000, before the Honorable Clint Judkins, District Court Judge. The Petitioner was present in court represented by her attorney, Dennis Mathews. The Respondent was present in court, pro se. The minor child of the parties was represented by the Guardian ad Litem, Dianne R. Balmain. Witnesses were sworn and evidence was presented, and based upon the evidence, and the Court being fully appraised in the matter, the Court now enters the following:

FINDINGS OF FACT

1. This matter came before the court having been bifurcated for trial. A decree of divorce was entered in this matter on or about the 24th day of September, 1998. The issues reserved for this trial are: child custody, visitation and attorney's fees and costs.

2. That one child has been born to the parties, namely; Anna Marie, born March 19, 1995.

3. The minor child has been residing with the Petitioner and  
Case No. 974-564

MAR 20 2000

3. The minor child has been residing with the Petitioner and her step-brothers and sisters. The Respondent has been exercising standard visitation.

4. Testimony was given, and photographs were admitted into evidence, indicating some bruising on the minor child. While the court is concerned about the bruising, the matter was investigated by the responsible agencies, DCFS and the Police, and no abuse was found to have occurred.

5. The custody evaluation ordered by the court recommended that custody be awarded to the Petitioner.

6. The Custody Evaluator recommended that both parties stay in therapy and attend parenting classes

7. That the care, custody and control of the minor child should be awarded to the Petitioner, subject to the Respondent's right of reasonable visitation. In this matter, reasonable visitation should be defined as such times as the parties may agree, and if they can not agree, then as is set forth in UCA §30-3-35.

The statutory provisions concerning, health and accident insurance, day care costs and uninsured medical expenses should apply.

8. The Court finds that the Respondent caused an inordinate amount of time to be spent getting this matter to trial and in trial. Respondent should be ordered to pay \$1000.00 towards Petitioner's costs and attorney's fees.

From the foregoing Findings of Fact the Court now enters the following:

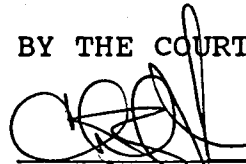
CONCLUSIONS OF LAW

1. A Decree should enter awarding the care, custody and control of the minor child to the Petitioner, subject to the Respondent's right of visitation.

2. A Decree should enter based upon and not inconsistent with the above Finding of Fact.

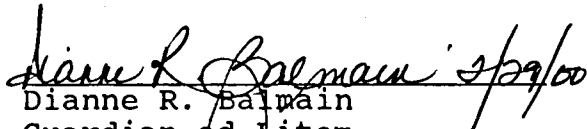
DATED this 20<sup>th</sup> day of MARCH, 2000.

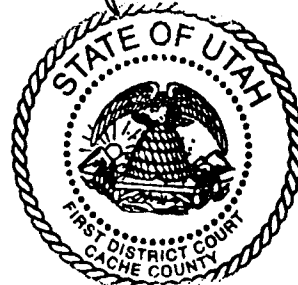
BY THE COURT:



Clint Judkins  
District Court Judge

APPROVED AS TO FORM:

  
Dianne R. Balmain  
Guardian ad Litem





## **EXHIBIT I(D)**

**T. BRENT PRICE, Ph.D.**

CLINICAL SOCIAL WORKER

120 NORTH MAIN  
BRIGHAM CITY, UT 84302  
(435) 723-2881

February 16, 1999

## **CUSTODY EVALUATION**

### **PARTICIPANTS IN THE EVALUATION**

| <u>NAME</u>              | <u>DATE OF BIRTH</u> | <u>AGE</u> |
|--------------------------|----------------------|------------|
| Wendy Lomsdal            | June 9, 1956         | 42         |
| Keith Wayne Cox          | April 18, 1947       | 51         |
| Anna Marie Carol Lomsdal | March 19, 1995       | 3          |

### **DATES OF EVALUATION**

|                   |                                                       |
|-------------------|-------------------------------------------------------|
| July 22, 1998     | One hour - Keith in Dr. Price's office                |
| August 4, 1998    | One hour - Keith in Dr. Price's office                |
| August 25, 1998   | One hour - Wendy in Dr. Price's office                |
| August 26, 1998   | One hour - Keith, Anna Marie in Dr. Price's office    |
| October 26, 1998  | One hour - Wendy and Anna Marie in Dr. Price's office |
| October 30, 1998  | One hour - Keith in Dr. Price's office                |
| November 5, 1998  | One hour - Wendy and Anna Marie at home               |
| November 19, 1998 | One hour - Keith in Dr. Price's office                |
| December 3, 1998  | One hour - Keith and Anna Marie at home               |

### **PRINCIPLES**

**Wendy Lomsdal** is a 42-year-old white, married female. She is living at 156 West 400 North, Logan, Utah. Wendy graduated in 1974 from high school in Beaverton, Oregon. She attended Portland Community College for two semesters. She has been married six different times and has seven children. She is working as a nurse's aid in a private home. She takes care of two ladies in their homes. She graduated in 1996 from a nurse's aid course at Bridgerland. Her children are Sonny Gray, 18, Star Ann Atwood, 14, Alberta Rose Jackson, 11, Sarah Elaine Jackson, age ten, Rachel Ann Jackson, age seven, David Michael Jackson, age five, and Anna Marie Carol Lomsdal, age three.

**Keith Wayne Cox** is a 51-year-old white, married male. He lives at 619 East 400 North, Logan, Utah. Wendy states that he has moved again since the report was completed. He graduated in 1966 from Ava High School, Ava, Missouri. He attended carpentry and home construction training. He married Martha Metcalf. There were six children born to this marriage. He married Wendy Lomsdal on June 27, 1997. Keith reports that he lived with Wendy from May 4, 1994 to November 17, 1994, then again from February 2, 1995 to December 2, 1995.

I, CERTIFY THAT THE FOREGOING  
IS A TRUE AND CORRECT COPY  
OF THE ORIGINAL FILED IN FIRST  
JUDICIAL DISTRICT COURTS.

DATE 9-15-99

Anna Marie is the three-year-old daughter of Keith Cox and Wendy Lomsdal. She lives with her mother at 156 West 400 North, Logan, Utah. She attends Sandra Hundley's daycare program from 7:15 a.m. to 3:30 p.m. five days a week.

### MAIN OBJECTIVE OF EVALUATION

The main objective of this evaluation is to provide information to the court and develop a custody plan of maximum benefit to Anna Marie Carol Lomsdal. This will be done by identifying the strengths of each important adult in her life, and then creating an arrangement that will offer Anna Marie the widest possible exposure to these strengths. Another way of saying this is that the "best" arrangement is the arrangement that matches those things Anna Marie needs most with what each important person in her life has to offer her. A bit later we will explain in more detail what is meant by a parental or adult "strength".

### FACTORS LEADING UP TO THE CURRENT EVALUATION

Wendy met Keith in Missouri. She was married to Michael Jackson at the time. Michael is the father of four of her seven children. At the time Wendy and Keith met they were married to different spouses. Shortly after they met, Keith moved in with Wendy and her husband, Michael Jackson, with Michael's permission. They lived together for eight months. Wendy reports that Michael was very depressed and mentally ill at the time. Keith reports that Wendy and Michael were not having sex, therefore, Michael gave Wendy to Keith. She was married to Michael Jackson when Anna was conceived and was still married to Michael when Anna was born. This is a rather strange situation.

Wendy and Keith are both very angry with each other. Both individuals are strong willed and seem as though they are not willing to negotiate or compromise. Wendy apparently didn't want Keith in her life any more. She left Missouri without telling Keith. She moved to Cache Valley nine months after Anna was born. Wendy reports that Keith was trying to convince her that she had a mental illness and not able to take care of the children. Wendy reports that he has threatened her and would not allow her to get a Social Security number for Anna, or tell Family Services about Anna. She believes that Keith does not trust the government. Wendy is afraid that Keith will skip town with her daughter. She reports that she had a restraining order for Keith in Missouri. Since she has been in Utah she has had to get two restraining orders against Keith.

Wendy and Keith made reconciliation while in Cache Valley. They were married on June 27, 1997, and were then separated on November 17, 1997. Wendy reports that she got a restraining order after Keith became abusive to Rachael, one of her other daughters. Since their separation Wendy states that she has a difficult time keeping track of Keith. He has moved approximately four times. She has no idea where he lives at the present time.

Keith went to court on April 4, 1998, to have regular visitation with Anna. There was a hearing in which Keith was granted visitation with Anna. Keith believes that Wendy has kept and still keeps Anna away from him and tries to deny him visitation. Keith also believes that Wendy is abusing Anna. In June, 1998, Wendy asked Keith to sign Anna over to another man. He refused and asked Wendy to have Anna's name changed to Cox. At the present time it is Anna Lomsdal. Keith and Wendy have a number of conflicts and involvement with the courts and police regarding visitation. This couple has a very difficult time communicating. Six of Wendy's children live with her at the present time. Star lives with her father.

THE FOREGOING  
IS A TRUE AND CORRECT COPY  
OF THE ORIGINAL FILED IN FIRST  
JUDICIAL DISTRICT COURTS.

### PREVAILING LIVING/CUSTODY ARRANGEMENTS

Wendy has a protection order against Keith. She does not trust him with Anna. Wendy has temporary custody with Keith having the following visitation: Wednesday 5:30 p.m. to 8:30 p.m. and every other weekend from Friday 5:30 p.m. to Sunday at 8:30 p.m. Keith has alternating holiday visitation.

### CURRENT PREFERENCES OF ADULT PARTICIPANTS

Wendy does not know if Anna is safe with Keith. She is afraid that Keith may hurt Anna or leave town. Wendy wants to protect Anna. She believes that Keith will spank and hit her like he has done with her other children. At times Wendy does not want Anna to have visitation with Keith but she realizes that he must have some visitation. She would like to be the custodial parent and for Keith to have the standard non-custodial visitation.

Keith would like to have Anna Marie go with him on short visits. In July, Keith would like to take Anna with him to Missouri. He wants to be able to spend time with his daughter. He wants custody of Anna Marie and wants her to live with him. He is afraid that Wendy is physically abusing her. Keith wants to be able to have a relationship with his daughter without the interference that he has experienced in the past. Keith would like to be the custodial parent with Wendy having the standard non-custodial visitation.

### PURPOSES OF EVALUATION AND SOURCES OF INFORMATION

A major purpose of this evaluation is to measure the impact each parent has on Anna Marie in a wide variety of situations – situations that are vital for a child's healthy psychological development.

In all instances, Anna Marie was never asked direct guilt-inducing "choice" questions which pit one parent against the other. In fact, a child rarely understands at a conscious level the full implications of any particular test task. (Some are semi-obvious; others are not obvious at all).

In this regard, keep in mind that children are "programmed" (or "bribed") verbally: "Remember, honey, if anyone asks, Daddy never picks you up on time," or "Your Mom does nothing but complain, she wrecks all our good times." By relying on nonverbal responses, as the tests do, the child is never forced to disobey a parental request, and loyalty conflicts are thereby eliminated or greatly reduced.

The child's responses to the test items are mostly deep, unconscious, gut-level reactions. An unconscious response is based on thousands of observations and interactions filtered and "weighed" by each child's own unique set of needs, assets, and liabilities. In other words, when a child responds to a test item, that response is the result of countless interactions with the "measured" parent, weighed and filtered through the child's own unique personality system. This brings us to the complexity of custody decision making.

In contradistinction to what one might think, the most critical data in custody decisions are not, strictly speaking, what a parent may do, but how a child reacts to what a parent does.

Hence, the major thrust of an evaluation is not to measure lots of things about parents but rather to gather in-depth information about how well a child is able to use or profit from a particular parent's way of doing things.

I, CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN FIRST JUDICIAL DISTRICT COURTS.

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Machine-generated OCR, may contain errors.

In this particular evaluation, which essentially involves two entire families, a variety of other techniques were used; in addition to those already mentioned. Each adult participant responded to all or most of the following:

1. A specially designed Questionnaire for Custody Evaluations.
2. An extensive Self-Report Data form designed to allow each participant to express many personal points of view systematically.
3. Spontaneous and structured Family Interaction Data described more fully elsewhere in this report.
4. The Parent Awareness Skills Survey (PASS) enables us to understand how each parent chooses to communicate with Anna Marie. It shows the degree to which a parent can identify the important issues involved in responding to a child in a variety of situations; the degree to which a parent chooses solutions adequate to help children with everyday crises; the attention paid to clear expression and the child's feelings; and a variety of other important issues which together determine how effectively a parent will convey his or her ideas to a child.
5. A specially developed test that asks key participants detailed questions about Anna Marie's schedule. This test is useful not only in determining what these adults view as a child's "normal" day, but further, by comparing answers allows one to ascertain who in fact is really taking care of the child. This is especially helpful in situations like the present one, where it is alleged that one participant who is actively seeking more time with the child is not, in fact, the one who is spending much time with her.

### SELF-REPORT DATA AND INFORMATION FROM SELECTED DOCUMENTS

#### Self report and questionnaire data summary

The following ratings, 1 through 10, 10 being the highest and best score, summarizes the respondents' responses to the Child's Access to Parental Strength form, and the Self-Report Data form.

This chart offers ratings in the following areas:

Solution-oriented vs. Adversarial: the responses are screened for the degree to which the respondent has a solution-oriented outlook toward custody problems as opposed to an entrenched adversarial stance. The solution-oriented person puts the needs of the child first and further recognizes that the "other family" may have legitimate contributions to make toward the child's welfare as well as needs of their own.

The second category is called Flexible vs. Closed-minded. This category measures the degree to which a person is creative and flexible as opposed to having a dogmatic, know it all attitude.

The third category is called Honesty and it measures the degree to which the respondent offers normal, thoughtful responses as opposed to using every available opportunity to make himself or herself "look good".

The fourth category called Awareness of Child's Needs measures the degree to which the respondent is aware of a child's ever-changing developmental needs.

The fifth category, Number of Constructive Ideas, is exceedingly important. It shows the amount of energy and thoughtfulness the respondent has given over the complex issues, which surrounds childcare in a tense and adversarial situation.

The sixth category called Quality and Competency of Response, refers to the degree to which solutions offered are goal-directed. An example would be the degree to which discipline is used as a means of achieving specific goals. For example, better behavior, rather than simply a way of merely hurting or punishing a child.

| Category                                 | Participants |       |
|------------------------------------------|--------------|-------|
|                                          | Keith        | Wendy |
| 1. Solution-oriented vs. Adversarial     | 2            | 4     |
| 2. Flexible vs. Closed-minded            | 2            | 5     |
| 3. Honesty                               | 1            | 5     |
| 4. Awareness of Child's Needs            | 1            | 8     |
| 5. Number (actual) of Constructive Ideas | 10           | 25    |
| 6. Quality of Competency of Solutions    | 1            | 5     |

Keith's performance on this part of the test shows his lack of parenting skills. Keith is very adversarial in his approach to his daughter. He wants to have custody and cut Anna away from her mother and siblings. He is very closed minded in his responses. He took every opportunity to look good and put Wendy in the role of the villain. He had only a minimal amount of constructive ideas and the quality of the solutions was rather poor and unworkable.

Wendy wants Anna to have regular visitation with her father. Wendy knows how bonded Anna is with her brothers and sisters. She wants Anna to be with her family. She knows that Keith needs visitation but she believes that Keith sabotages her childcare arrangements and her other children. Wendy answered in normal thought out responses without making herself look good. She was able to respond to the questionnaire in a forthright, knowledgeable manner. She is very aware of her daughter's needs and has some vital knowledge about her daughter. She had an adequate amount of constructive ideas; the quality and competency of the solutions were about average.

#### FAMILY INTERACTION DATA

Child development research has not shown that any particular parents behavior is absolutely necessary (or sufficient) to produce a mentally healthy child. However, the body of research as a whole, clinical experience and common sense do suggest that certain behaviors are highly desirable. This evaluation includes a careful consideration of these factors (i.e., patience, flexibility, a willingness to be communicative, etc.).

Our interest is much more on the so-called interaction factor which states that what is important is not necessarily how a parent behaves toward a child, but rather how a child is able to utilize or profit from the manner in which a particular parent behaves.

I CERTIFY THAT THE FOREGOING  
IS A TRUE AND CORRECT COPY  
OF THE ORIGINAL FILED IN FIRST  
JUDICIAL DISTRICT COURTS.

DATE 9-15-66



For example, I am much less interested in whether a parent does things "by the book" than whether the parent chooses his or her words and actions in a way that is based on the child's ability to understand and profit from these words and actions.

This means that I place high value on the parent who is a consistent and accurate listener to, and observer of, what is going on in the child. It is only with this information that a parent can choose what the best words and actions at any given moment happen to be. This underscores the fact that excellent observation and listening skills, coupled with a high degree of flexibility, are far more important tools for a parent to have than "book learning".

The following observations and the results of these observations are expressed by rating the following categories:

1. The parent's ability to meaningfully communicate a sense of warmth, love and acceptance.
2. The parent's ability to communicate clearly.
3. The parent's ability to teach and be a role model for competent problem solving.
4. The extent to which the parent conveys a sense that he or she (the parent) understands (even though not necessarily agreeing with) the child's views and feelings. This ability to make a child feel listened-to and understood is a main ingredient of a child's growing sense of self-esteem.
5. The extent to which a parent's responses are based on accurately perceived feedback from the child.
6. The extent to which the parent accurately gauges a child's emergent needs.
7. The extent to which the parental response engenders independence and a sense of self-sufficiency in the child.

#### Summary of Family-Interaction Observations

| Category                                      | Participants |       |
|-----------------------------------------------|--------------|-------|
|                                               | Keith        | Wendy |
| 1. Communicates acceptance and love           | 5            | 6     |
| 2. Communicates clearly                       | 3            | 5     |
| 3. Role-model for competence                  | 3            | 5     |
| 4. Understands child's position               | 3            | 4     |
| 5. Accurate perception of feedback from child | 3            | 4     |
| 6. Gauges child's needs                       | 3            | 4     |
| 7. Engenders independence                     | 3            | 4     |

Keith and his daughter Anna were observed on August 26, 1998. She was excited to be with her father and play with him during the observation. Keith was able to play with her, to keep her attention, and to let her engage in the activities which she enjoyed doing. Anna was able to express her feelings towards her father.

Wendy and Anna Marie were able to participate in the play activities. Anna felt very comfortable with her mother. There was a lot of hugging and time spent sharing ideas. Wendy was able to engage her in the various activities they were playing with. Wendy was able to get Anna Marie to give her feedback about the activities. Mother and daughter seemed to enjoy being with each other.

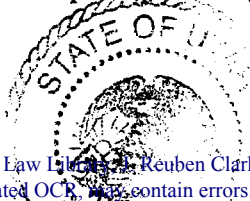
## PARENT AWARENESS SKILLS SURVEY (PASS)

The Parent Awareness Skills Survey (PASS) yields scores that reflect the degree to which a parent is aware of certain important elements in interacting with children. The first has to do with a parent's ability to be aware of, to identify, so to speak, the critical issues involved in given situations. For example, a question asks about a 3-year-old who grabs toys away from an 8-year-old. There are a variety of issues one could choose to address in this situation. One might, for example, simply hit the 3-year-old and yell at him not to grab the toy away. This may even be effective, at least in the short run, in stopping the 3-year-old from grabbing. However, the savvy parent is aware of several other critical issues in a situation like this. For example, that it is not all that unusual for 3 year olds to "grab". Secondly, there would be awareness that both children need help in coping with the described situation. This is what is meant by an awareness of critical issues involved. It is an awareness of just what it is that needs to be addressed in creating an optimum solution. Other areas measured by the PASS include the parent's awareness of a solution that is adequate to the situation. An awareness that it is important to communicate in words that are understandable to children, an awareness that one should address the child's emotional feelings which are aroused in the various situations, and an awareness that it is often important to take into consideration the child's past history. For example, suppose a parent notices that his or her child cannot take in too much information by the spoken word all at one time. A parent so noticing would give directions in short spurts rather than in long sentences. The final area measured by the PASS reflects the degree to which a parent pays attention to whether or not what he or she is doing is working. We call this an awareness of feedback data. This means that the parent fine-tunes his or her response as things go along, based on how the child is responding, and modifies what is being done so as to insure maximum effectiveness.

| Category                                              | Participants |       |
|-------------------------------------------------------|--------------|-------|
|                                                       | Keith        | Wendy |
| 1. Awareness of Critical Issues.                      | 2            | 4     |
| 2. Awareness of Adequate Solution                     | 5            | 5     |
| 3. Awareness of Communicating in Understandable Terms | 3            | 4     |
| 4. Awareness of Child's Feelings                      | 2            | 4     |
| 5. Awareness of Child's Past History                  | 4            | 5     |
| 6. Awareness of Feedback Data                         | 3            | 4     |

Keith has a very minimal amount of awareness of critical issues with the situations presented to him. He was able to come up with an average amount of solutions that would be considered adequate. He was aware of the need to communicate to the child in understandable terms. He could use some help in the areas of feelings, past history, and feedback data. Keith has some positive parenting skills. He could use some additional help through reading and additional instruction.

Wendy has a better awareness of the critical issues when dealing with parenting issues. She seems to be able to come up with adequate solutions. She is aware of the need to communicate in understandable terms with the child. She knows the child's feelings, past history, and is aware of the need for feedback data. Wendy has adequate parenting skills



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## Home Environment

Betty M. Cadwell and Robert H. Bradley developed the home observation for Measurement of the Environment at the University of Arkansas in 1984 for the purpose of evaluating whether or not a child's environment is conducive to their optimal development. It consists of assessing environment characteristics in the child's home as well as interaction between the child and their caregiver. The version used for Anna was the Early Child Home Inventory.

On November 5, 1998, at about 5:00 p.m. this evaluator visited Wendy's home. The home is located at 156 West 400 North, Logan, Utah. Five of Wendy's children were at the home. Anna was helping them color pictures with pencils and crayons. The children were friendly and excited to help answer the questions. Anna was very much a part of the situation. Her older brother David, age five, was pouting and had a difficult time saying much. Anna's three older sisters were laughing and seemed to enjoy what they were doing. They were able to show me the home and backyard. The home is a three-bedroom home with a full basement. Some of the children live in the basement bedroom. The home was cluttered and lived in, but basically it was clean and much like any home which has six children and a working mother with no father in the home.

The home is determined to be in the lower fourth of homes evaluated. There were some learning materials available to the children. Anna's older siblings share some learning experiences when they do their school lessons. The physical environment could use some cleaning and more stimulation. Anna and the other children have responsibilities in the home. She is expected to pick up her bedroom area and dress herself. There are older siblings who are modeling a host of behaviors. The children have playground equipment and sufficient books and videos to provide stimulation. The home is probably the best Wendy can do with the amount of money coming into the home and the lack of time with her children.

Keith's apartment was visited on December 3, 1998. He and Anna were there when I arrived at 5:45 p.m. This is an apartment in a large apartment complex just below Utah State University. There is limited space in front of the apartment; there is no play area close by. This apartment was originally used for college students. The apartment has three rooms; kitchen-living room, bedroom, and bathroom. Keith had his bed, and Anna had her bed in the corner. She had several toys, however, she had no books. Anna was making some pictures and gluing them together. Keith had sufficient food, but the apartment had no artwork or refinement. It appears to be a place where Keith sleeps and cooks some meals, but he does not spend a lot of time there. This would not be a place where a child of three years of age should be raised. This is an apartment building with few other young children, with a lot of cars coming and going. This is not a place where Anna can grow up and be stimulated and develop her abilities. Wendy has recently told me that Keith has moved again. This evaluator has not visited Keith's new apartment. Keith has moved a significant amount of times since he has been in Utah. He does not seem to be able to settle in one place and stay.

## Denver Development

### Developmental Evaluation of Anna Lomsdal

Anna Lomsdal was observed and evaluated in the play room at the private home of Susan L. Ericksen, RN, MS, LMFT, on December 12, 1998 for 1 1/2 hours.

## Denver Developmental Screening Test

The *Denver Developmental Screening Test* was originally developed in 1967 by William Frankenburg, M.D. and Josiah Dodds, Ph.D., at the University of Colorado Health Sciences Center in Denver to detect developmental delays in children from birth through six years of age. It is commonly used in areas such as determining readiness for kindergarten and for screening in Head Start programs. It is completed by testing the child on specific skills that most children at similar developmental stages can perform. The DDST screens children for delays in Personal-Social, Fine Motor-Adaptive, Language, and Gross Motor areas of development.

Anna was administered the most recent version of the DDST, the *Denver II*. She was brought to the assessment by her mother, Wendy Lomsdal, who was present during the testing and provided information for the parental-response questions.

At the time Anna was tested, her age was 3 years and 8 ¾ months.

**Personal-Social:** This area includes the ability to perform tasks involved with self-care, such as self-feeding and dressing. It also includes the ability to engage socially with others in social activities such as playing simple games with others. Anna did not show any developmental delays in this area. However, her mother stated they rarely play games at home because it is difficult to keep the pieces of the games together. She stated Anna enjoys doing puzzles; however, this type of an activity would not require the social interaction that a game would.

**Fine Motor-Adaptive:** This portion of the test evaluates eye-hand coordination, manipulation of small objects, and problem solving ability. Anna did very well in this area and passes all tasks at her developmental level. She enjoyed drawing and eagerly engaged for this part of the testing.

**Language:** This area includes the ability to communicate wants and needs to others in an understandable way. Although Anna was very shy and refused to talk at first, after being in the playroom for a while, she answered questions that did not seem intrusive to her. However, in asking her to define words, when she was asked, "What is a ball, etc.," she would not respond verbally. However, if I picked up a little toy girl that appeared to be about the same age as Anna, and asked her, "Does this little girl know what a ball is," she readily responded with the correct answer. Thus, although she would not respond personally, she would redirect correct answers "through" the doll.

**Gross Motor:** This area includes the ability to use large muscles to participate in activities such as running, hopping, and throwing. Anna passes this area, also. However, as in the language area, she would only respond through the doll. She seemed to be very self-conscious doing anything that would call attention to herself, such as trying to stand on one foot, and not being able to do it.

**Conclusions:** Anna passes all developmental levels appropriate for her age. However, given her experience in attending a day care and the usually egocentric type of thinking exhibited by children of this age, Anna was very cautious in her interactions and responses in a way characteristically unusual for a child of her age. Normally, children of this age are anxious to try new things and to show what they do know. Anna was overly cautious about engaging in activities other children her age would easily engage in. After a warming-up time where she began to feel okay about playing, she still seemed overly cautious when asked to attempt a task that she might fail at.

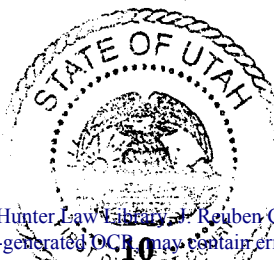
Anna's mother, Wendy, was present during and after the administration of the test. She encouraged Anna to cooperate and was responsive to Anna's attempts to check with her prior to becoming involved in the testing. Indeed, Anna seemed to need to check with her mother prior to attempting any of the tasks or simply playing with the toys. Instead of getting down to Anna's level by sitting on the small chairs at the table or sitting on the floor, Wendy stated that her back bothers her "from having so many children" and that she had to sit on an adult-sized chair, which was provided for her.

When Anna began to draw pictures, she asked her mother to draw first, and Wendy drew for her and she filled in the parts. At one point during the testing, when Anna was asked to copy a circle, she began drawing eyes and a mouth in the circle and proceeded to draw several lines protruding from the body. She also drew several lines around the square, calling it a "TV." When Wendy suggested Anna draw hair on her "person," she drew several lines protruding from the head of her figure. Whenever she attempted to draw a person, she would draw a line all the way around the body of the figure when it was completed.

Once Anna felt more comfortable in the playroom and after her mother gave her a verbal approval to do so, she began playing with all of the toys that were available to her. She explored the toys in normal ways appropriate to her age level. By the end of the session, she was randomly taking toys off the shelf as well as out of the toy box and no longer looked at her mother for permission. Upon finishing the session, she appeared in a hurry to leave with her mother, and as her mother lingered to ask a few parenting questions, Anna seemed to be impatient to go, even with all of the stimulating toys in the room. At the beginning of the session, it seemed that Wendy was very much in control of Anna's actions. However, by the end of the session, it seemed the opposite-Anna seemed to be demanding of her mother's leaving with her and Wendy seemed to comply.

Anna's behavior at the beginning of the session seemed to be of shyness as she was very reluctant to explore her environment. Once she was comfortable, she seemed to open up and display a normal curiosity level for a child her age. However, at times her play, even after it was offered to her. She also seemed to be over aware of all the aspects of the playroom, including the books high on the shelf and a small bag of items on a top shelf which most children her age would not have noticed. Upon displaying this type of behavior, Wendy stated that Anna seems to have become very fearful of being around adult males, although she didn't know why. She stated that at a local store a few days ago, Anna "cowered" away from Wendy's boyfriend upon seeing him while in the check-out line with her, although she seems to normally feel at ease around him.

At other times, Anna seemed to totally ignore what was going on in the room, especially if she was asked to complete a task that seemed risky for her to do. She did not outright refuse to do the task as most children, but she appeared to totally ignore everyone else in the room and focused on another activity as if to "escape" trying the task at all if it seemed she might fail at it.



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Overall, Anna seems to be a bright child, although shyness may affect her social interactions with others. However, she seemed to need her mother's permission to explore the environment more than most children at her age, seemed to be hypervigilant of her surroundings, and was able to "tune out" more than other children her age when situations seemed too risky for her to attempt without a fear of failure. Because of these types of behaviors, it seems that Anna's best interest would include a secure, structured environment with as little need for adaptation as possible. It may also be helpful for Anna to be seen by a play therapist that could evaluate her further and help her work through the reasons for the hypervigilant behaviors she seems to display.

**This concludes The *Denver Development Screening Test* by Susan Ericksen.**

### **Psychological reports**

Wendy Lomsdal had a psychological evaluation on May 6, 1992 by Kenneth R. MacDonald, Ph.D., clinical psychologist. This evaluation was done in Springfield, Missouri, during the time she and her boyfriend were accused of abusing Rachel Jackson. Findings: "She has a long history of maladaptive lifestyle, characterized by relationships that are over valued and then devalued. There appears to be strong feelings of alienation and isolation and a desperate fear of abandonment. Her lifestyle appears to be abandoning men before they abandon her. Wendy appears to be in need of outpatient treatment, although concerns must be noted about her motivation to engage in that process. This makes intervention very difficult. In any event, she does appear to desperately need parenting training so as to understand her attitude that can communicate a rejection of the child. The long-standing maladaptive lifestyle, with regard to interpersonal relationships, will be difficult to alter as her fear of abandonment dominates her functioning."

Diagnosis: Axis I Deferred

Axis II 301.90 Personality disorder NOS

(Borderline, Narcissistic, dependent traits)

Axis III None

On August 19, 1992, Brian P. Cysewski, Ph.D., Clinical Psychologist, reviewed Dr. MacDonald's report and MMPI. He reports that "Dr. MacDonald was interpreting the results of the MMPI in an overly rigid and simplistic manner. He believes that Wendy's performance reflected her extremely naïve ultra-religious and sometimes-atypical belief system."

### **Alleged Incidents of Abuse**

December 18, 1991. There was a child abuse/neglect summary from Texas County Missouri regarding Wendy's other daughter Rachel Jackson, DOB 1-5-1991. She was a victim of physical abuse and was treated at St. John's Regional Health Center, Springfield, Missouri. Protective custody of Rachel Jackson was taken by Chief Juvenile Officer Russell Sheldon. Rachel's injuries were suspicious in nature and no one could realistically ensure her safety at that point in time. Wendy reports that her boyfriend was the individual who abused Rachel. Wendy has some responsibility due to the fact she was overwhelmed, frightened, and probably depressed. This incident was described as a very severe case of abuse. The social service worker believes that Butch Crandall may have done the actual abuse, but Wendy's part in the abuse and/or knowledge that the abuse was occurring was evident. Since that time, Wendy has been working hard to protect her children.



On January 15, 1997 there was a Report of Child Abuse and Neglect Report. Keith Cox called DCFS to report that he had some pictures showing the abuse of his child Anna Marie Lomsdal. Keith was asking to bring the pictures to the office of Family Services. He did not show up that day. He had brought the pictures in on January 17, 1997. DCFS investigated the incident the comments by DFS worker "Very loving mother". In the closure summary the worker found no bruises on the child, the house was clean and Anna well cared for.

On March 8, 1998, in child abuse and neglect report revealed a nurse from the Logan Regional Hospital reported that Keith Cox had taken Anna Marie Lomsdal to the hospital emergency room. Keith was referred to the DCFS. He reported they would not listen to him because he has called them so many times with complaints. During the investigation of this incident the police officers went to the Cache County Jail to interview Keith Cox. He was placed in jail for violating a protective order. On March 12, 1998, the case was closed without merit.

On June 4, 1998, the Logan City Police was dispatched to 156 West 400 North, Logan, Utah. Keith had called the police because he was having difficulty obtaining custody of Anna. Keith called the police to prevent trouble from occurring during the exchange. Keith arrived at the police department a short time later. He showed them a red mark above Anna's right eye. No action was taken.

On September 24, 1998, Bill Bernard from the Guardian Ad Litem wanted to inspect Keith's residence as he had just moved. Keith was very uncooperative and wouldn't give Bill any information. Officer's viewed temper of Keith Cox and the situation as a whole. Police decided that this night was not a good night for visitation.

### Concerns

Keith believes that Wendy is physically abusing Anna. He has colored photos allegedly showing that Anna was abused. He believes he has the proof but he believes that Family Services won't investigate the situations. Keith has not been successful in getting them to charge Wendy. This evaluator has no information from anyone else that Wendy is hurting Anna. This is not consistent with observed behavior and information received during this evaluation.

Keith wants to be part of Anna's life and wants to parent her. He does not have an environment, which he can be a part of Anna's life at the present time. Keith has moved a significant number of times since he and Wendy have separated. He has not provided a stable home life.

Wendy and Keith have a great deal of anger and hostility between themselves. They do not know how to effectively communicate about co-parenting issues. This couple needs help to separate and to continue to be positive around Anna.

Keith has given this evaluator a pile of letters that Wendy has written to him. He states she is mentally incompetent. Wendy is oriented to person, place, and time. If she has some different and strange beliefs, so be it. Both individuals have been involved in several strange situations before, during, and after their marriage. Having one parent accusing the other of inappropriate behavior only confuses the issue. Both parents have exhibited some rather strange behavior, i.e., moving in with each other when they were both married in the beginning of their relationship.

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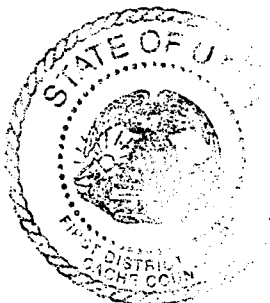
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Keith believes that he can care for Anna, yet he lacks the skills, the stability, and the resources to care for Anna. Keith does not understand that Anna is part of a family with brothers and sisters. Keith loves his daughter and would benefit from getting additional parenting skills.

Both individuals seem to have a love hate relationship, their relationship has always been fraught with conflict and with a lot of anger between the two individuals. I do not believe that Wendy's emotional problems, at the present time, interfere with her parenting her children. DCFS has been involved in her home and have talked with her. If they thought Anna was at risk they would have continued to monitor her home and Anna.

#### RULE 4-903

- A. Child's preference. As a child of three years of age, she is really too young to state a preference. See the Denver Development Evaluation.
- B. The benefit of keeping siblings together. Anna Marie has six other siblings. At the present time she is living with five of them. She is very close and wants to be with them. She is bonded to them and is upset and frustrated when she has to leave home to be with Keith. After a few minutes with Keith she settles down and seems to enjoy her visits. She is bonded to her other siblings and wants to be with them.
- C. Strength of child's bond with both parents. She views her home as being with her mother. She has a room full of toys and is part of a family. At Keith's apartment she has a bed in a corner with only a few toys and a small amount of clothes. Keith has moved a number of times since he separated from Wendy. Anna does not view Keith's apartment as her home. She is very attached to her mother and siblings.
- D. The general interest in continuing previously determined custody arrangements where the child is happy and well adjusted. This is an extremely frustrating and confusing situation with Keith and Wendy. This evaluator has a host of material, which states that Wendy is having visions or communications with God. Keith believes that she is mentally ill. Keith knew about Wendy's visions and religious beliefs when he moved in with her and her husband and when he married her. Keith began pointing the finger after they were separated and he wanted to raise Anna. Anna has never lived with Keith for any amount of time. Keith has never parented a child as a single parent.



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E. Factors relating to the parents character or status, or their capacity or willingness to function as parents, including:

- i. Moral character and emotional stability. There are major concerns about both individuals regarding their moral character and emotional stability. Keith has a number of letters trying to state that Wendy is mentally ill and emotionally unstable to care for her children. However, this relationship has gone on for the past four or five years. Keith is able to work and support himself. Wendy also is able to work and support herself and her children. This evaluator considered getting a psychological evaluation on both parents. This was rejected because of the cost, plus the information would not help the court determine what was in Anna's best interest. Both Wendy and Keith knew about the different behaviors that each of them have exhibited, they have both chosen to lived together and then marry. Now Keith is trying to say she is mentally ill. He has known about Wendy's behavior since the beginning. This evaluator believes that Keith is trying to use Wendy's behavior to his advantage. This couple will continue their relationship in the future. Keith is believed to be posturing to look good for this evaluation. Granted, he wants access to his child, but he has been with Wendy for a long time, and why is he now stating that she is mentally ill?
- ii. Duration and depth of desire for custody. Wendy is the parent who has raised Anna and has the experience to care for all of her children. She has a home at 156 West 400 North, Logan, Utah. She has been the parent who has spent the most time with Anna. Wendy and Anna have a positive bond. Anna enjoys living with her and her other siblings. Keith could have a positive influence in Anna's life if he would not accuse Wendy of child abuse. Keith loves his daughter and wants to spend time with her. They spend considerable time in supermarkets, or in the Cache Valley Mall. Keith could use some information to increase his parenting skills.
- iii. Ability to provide personal rather than surrogate care. Both parents work, and, therefore, Anna must go to a daycare center. Wendy does not want Keith to be around the daycare provider because she is concerned about the conflict that Keith will cause and she is afraid she will lose her provider. Keith has never provided care for Anna on a regular basis for any extended period of time.
- iv. Significant impairment of ability to function as a parent through drug abuse, excessive drinking, or other causes. Both parents deny the use and abuse of alcohol, and drugs.
- v. Reasons for having relinquished custody in the past. This is a divorce action. The court can use this information to help determine what is in Anna's best interest.
- vi. Religious compatibility with the child. Wendy is a member of the Church of Jesus Christ of Latter Day Saints. She attends church on a regular basis. Keith does not want to make his religious affliction known.
- vii. Kinship. Keith and Wendy do not have any extended family in the Cache Valley area.
- viii. Financial conditions. Wendy makes \$7.75 per hour as a health care worker with two elderly ladies. Keith has worked at ICON for last year. He is making \$7.50 per hour.



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## SUMMARY AND RECOMMENDATIONS

This couple has a host of unresolved issues. They both can point out the wrongs the other has done or is doing. There are some concerns about the stability of both parents. Both have real issues, past and present. Both parents should work on developing stable, healthy, behavior patterns. Wendy has a series of marriages; six, which have all failed. Keith has had two marriages fail. Both parents have behaviors that are self-defeating.

Both parents should have therapy on a regular consistent basis. Therapy may help them deal with their self-defeating behaviors. They also need help with parenting Anna. Usually a recommendation of time spent with a therapist to help them co-parent would be recommended. There is far too much blaming and shaming happening with the parents to even be in the same room. At the present time, both parents need to begin taking parenting classes, either at DFS or at an educational institution in the Cache Valley area.

Wendy should be the custodial parent for the following reasons, she has a past history of successfully raising and caring for Anna. Anna can be with her siblings and continue that relationship. Keith's apartment and lifestyle is not consistent in raising a three-year-old girl. Wendy has a home and the environment that can give Anna a chance for positive growth and development.

Keith should be allowed to have regular visitation with Anna. He should not deal with the daycare provider. He should not go into Wendy's home or call unless he has made previous arrangements with Wendy. He should have the following visitation:

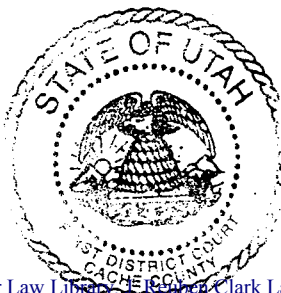
**Reasonable Visitation** should be defined as the parents may agree. If they are not able to agree, the definition for school-age children (beginning kindergarten) will be as follows:

**Midweek:** One weekday evening specified from 5:30 - 8:30 p.m. to be specified by the non-custodial parent or court.

**Alternate Weekends:** Friday 6:00 p.m. to Sunday 7:00 p.m.

**HOLIDAYS TAKE PRECEDENCE OVER THE WEEKEND VISITATION AND  
THE ALTERNATING WEEKEND SCHEDULE DOES NOT CHANGE.**

**Holiday Visitation:** 6:00 p.m. day before the holiday to 7:00 p.m. of the holiday unless otherwise specified.



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## ODD NUMBERED YEARS

Human Rights Day  
Easter from Friday 6:00 p.m. to  
Sunday 7:00 p.m.  
Memorial Day Friday 6:00 p.m. to  
Monday 7:00 p.m.  
July 24<sup>th</sup> to 11:00 p.m.  
Veteran's Day  
Day before or after Child's Birthday  
3:00 p.m. to 9:00 p.m.  
First half of Christmas vacation, including  
Christmas Eve and Christmas Day  
To 1:00 p.m.

## EVEN NUMBERED YEARS

New Year's Day  
President's Day  
July 4<sup>th</sup> to 11:00 p.m.  
Labor Day from Friday 6:00 p.m. to  
Monday 7:00 p.m.  
Columbus Day  
UEA weekend from Wednesday 6:00  
p.m. to Sunday 7:00 p.m.  
Child's Actual Birthday to 9:00 p.m.  
Thanksgiving day from Wednesday  
7:00 p.m. to Sunday 7:00p.m.  
Second half of Christmas vacation  
Beginning 1:00 p.m.  
Christmas Day

**Father's Day:** With Father 9:00 a.m. to 7:00 p.m.

**Mother's Day:** With Mother 9:00 a.m. to 7:00 p.m.

**Summer Vacation:** Keith should have a total of two weeks summer visitation. One of these weeks should be taken in July and one in August. He should notify Wendy 30 days in advance of the dates of summer visitation.

**Telephone:** Brief phone contact with the non-custodial parent at least two times per week.

**Family Functions:** Special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the visitation schedule.

**Pickup/Return:** The non-custodial parent shall pick up the child at the times specified and return the child and the time specified.

**Special Events:** The custodial parent shall notify the non-custodial parent within 24 hours of receiving notice of all significant, social, sports and community functions in which the child is participating or being honored, and the non-custodial parent shall be entitled to attend and participate fully.

**Records/Reports:** The non-custodial parent shall have access directly to all school reports including preschool and day care reports and medical reports and shall be notified immediately by the custodial parent in the event of a medical emergency.

**Change of Address:** Each parent shall provide the other with his current address and telephone number within 24 hours of any change.

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DATE 9-15-99

**Child Care:**

Parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the non-custodial parent, if willing and able, to provide child care.

**Religious Holidays:**

Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

### HELPING CHILDREN COPE WITH DIVORCE

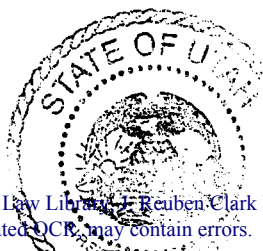
It is widely accepted that children of divorce suffer a number of painful emotional reactions and sometimes exhibit behavioral disturbance. However, a number of techniques can be used by divorcing parents to reduce the harmful effects on children. The most important factor of all is development of a cooperative co-parenting relationship during the divorce and afterwards. Children usually adjust best after a divorce when they have frequent access without conflict to both their mother and father.

The following five factors have been found to contribute to children's adjustment after divorce.

1. Frequent contact with the non-custodial parent (unless there is a lot of child-centered conflict, or the non-custodial parent has such severe psychological maladjustment that he or she cannot be supportive of the child, given the involvement of the other parent).
2. An absence of hostile comments about the other parent. This produces good co-parenting cooperation and support.
3. A consistent, safe structured and predictable home environment without parenting disruptions.
4. Good healthy, caring and conflict-free relationships between the child and both parents.
5. Healthy emotional well being of the custodial parent.

In order to improve the child's adjustment after the divorce, there should be a focus on the child's coping skills. In addition, parents should focus on improving each child-parent relationship. They should also focus on improving their own parenting skills and their cooperation with each other. Sometimes group treatment in the school or elsewhere can help children talk about their feelings after a divorce. It helps them to talk with their siblings, with their parents, with friends, or with a therapist.

After a divorce, parents need to be good listeners to their children. This helps the child cope with emotionally charged subjects. Do not share the details of marital infidelity or sexual deprivation with the children. Do not tell them what you do not like about your spouse. Explain firmly to the children that they can not rescue or restore the marriage. Make sure they realize that the divorce is not their fault. Explain your reluctance to divorce. Explain how the children have been a great pleasure in the marriage. Let them know what changes to expect. Make sure they realize they will have continuing contact with both parents.



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In the first two years after a divorce, children especially need the following four types of assistance:

1. Additional emotional support.
2. Protection from ongoing hostilities between the parents.
3. A structured home environment with a predictable daily routine.
4. A communication link with each parent.

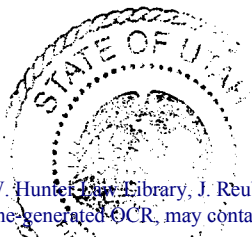
Most children clearly need both a mother and a father after divorce. Therefore, each parent must accept the ex-spouse in spite of personal hurt and anger.

Of all the factors surrounding divorce that can be harmful to a child emotionally, the most destructive is post-divorce conflict between parents. In many cases, there is ongoing litigation between the parents in which each one wants to hurt the other financially and emotionally. The children are at great risk for getting caught up in a battle of this type. Often they are used as pawns in the battle. Sometimes the parents hate each other so much that they even want to kill each other. Physical fighting is common. Sometimes they are angry about infidelity or jealousy. A frequent outcome of conflict is that the father resents the support payments and eventually stops making them. At the same time, the mother resents the father's continuing contact with the children and subtly discourages that. As a result, the children lose both the financial and emotional support of the non-custodial father in many cases.

Children must see themselves as made from both their mothers and their fathers. It is important that they can see the good qualities in both of their parents. They must view each the non-custodial parent as worthy because they unconsciously know they are somehow like that person. If they hear one parent criticized by the other, they feel personally put down. They might think that they would turn out like that too. This can cause the development of low self-esteem.

Children typically want to think that both parents can be there for them at a wedding, at a graduation, and other important times. They might need both parents, especially when they get ill or get into financial difficulty. If the conflict between parents is too great, then this source of support is lost for the child.

In many cases, divorce does not end marital conflict. Sometimes the parents are so preoccupied with their own emotional pain that they cannot see their children's needs. This becomes an especially great problem when there is an ongoing custody battle between the parents. The child loves both parents, but they get used as a spy or informant. They also suffer when they hear criticism of the other parent. The result can be a feeling of sadness or worry about the parent or a feeling of emotional isolation. Children are desperately trying to cope with their fantasies and their terror. During the custody conflict, they may develop anxiety disorders and many symptoms of depression. Sometimes it seems that the parent is more dependent on the child. The child feels compelled to prevent psychological deterioration of the parent.



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The financial problems that are always present with a divorce get much worse when there is a post-divorce legal conflict. In these cases, there is poor cooperation and increased legal fees. The children suffer emotionally from this, and may exhibit aggressive behavior or withdrawn behavior. When it's time for a weekend visit, one parent may say, 1. The children do not want to visit their mother or father. I cannot make them visit. 2. Of course, parents can make their children go to school, and in most cases they could also enforce the visitation requirements. Children may actually be afraid such a parent will feel hurt if they admit that they want to take their visits with the other parent. In these cases, the parent may subtly discourage the visit either by being late or not showing up at all, by changing plans at the last minute, or by suggesting attractive alternative activities for the child. He or she might plan to take them to a movie or a circus on the day when the visit with the other parent was supposed to occur. At the same time, a parent may get messages from a new wife, husband, or friend that he or she resents the time or money spent on children from a prior marriage. All of this can contribute to reduced contact between children and a parent.

As the children get older, they may want to change their visitation plans to accommodate their own social life. The parents must be mature enough to adjust to that need without taking it as a personal rejection.

The best relationship that former spouses can maintain is the cooperative, co-parenting relationship. If they can agree on issues surrounding child rearing, then the children will adjust much better.

When the relationship between the parents is good enough that they can agree on joint custody, both parents on average are more satisfied. There is a lower rate of going back to court.

The attitude that co-parents must take is one in which they are reasonable and forgiving. They have to maintain a sense of decency. They must not grab at the easiest weapon they can find to hurt their ex-spouse because that would often be the children.

In order to make cooperative co-parenting work, each parent must repeatedly tell himself or herself, 1. This is another adult who loves my child. It's good for my children to have more adults love him or her. 2. This method can be used to help the custodial parent recognize the value of visits with grandparents, aunts, uncles, cousins and other people. If the parent truly loves the child, they can put the needs of the child first, making an effort to stay on good terms with ex-in-laws.

The parents need to separate their own lingering hostility towards the ex-spouse from the child's need for a continuing relationship with the other parent and with grandparents. It's also important for the grandparents to remember not to take sides against their former son-in-law or daughter-in-law.

When they get along well enough to live nearby each other and cooperate with baby-sitting and child care for each other, the parents help their children adjust much better. This reduces the child care expense and increases contact with loving family members. Often the two parents have different work schedules, which allows them to share childcare responsibilities. Each parent must remind himself or herself, 1. This is my child. I love my child. My child needs two parents. There is something good about my child's other parent. It's okay for my child to remain close to the other parent. 2. These kinds of self-statements help each parent better tolerate the continued contact the child has with the other parent.

In some cases, divorced couples require counseling or mediation to help them cooperate in child rearing. This can also help control or reduce their anger, hostility, and rage.

Children generally adjust best after a divorce when they live in the same house and attend the same school as they did before the divorce. They adjust best when they learn from both parents in advance about the divorce. They must be told by both parents, 1. I love you. 2. They must have continuing contact with as many supportive relatives as possible. They must not be used as spies or for revenge.

In order to establish cooperative co-parenting, each parent must realize that it's understandable after the pain of the divorce that they experience tension and conflict between them. However, the child has important needs so the parents must set aside their differences. They must bring their problem-solving skills to bear on helping their child with the emotional and behavioral difficulties that often occur for all children, and especially for children of divorce. They must focus on the child's needs first. That is possible and very helpful.

Parents can learn the skills that will improve their children's adjustment. These include consistency, emotional stability, problem-solving skills, appropriate limit setting, and open communication skills.

Teenagers are found to adjust much better when there is social support from friends, relatives, and sometimes a therapist. Parents have to find ways to reduce the shock and stress of divorce on the children. They can do this by reducing the life changes that the children must go through. Whenever possible, maintain family routines, family rituals, and activities.

After a divorce, typically one or both parents will re-marry. The addition of a stepfather helps boys more than it does girls. Everyone in the family must go through adjustments to new stepparents. The adjustment to re-marriage of parents is much more difficult when there is ongoing hostility between the parents.

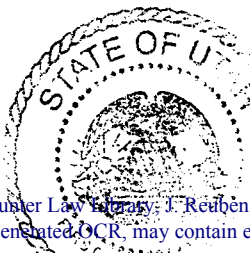
Respectfully submitted,



T. Brent Price, Ph.D.,  
Clinical Social Worker

April 15, 1999

Some of the information has changed. Anna is now four years of age and Keith's address has changed. Usually I will not do a custody evaluation until it is completely paid in advance. The homestudy was completed in February, 1999, but not paid for completely until April 19, 1999.



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## **EXHIBIT I(E)**



KEITH COX  
619 E 400 N  
Logan, Utah 84321  
(435)753-8697 (message phone)

Pro se

IN THE FIRST JUDICIAL DISTRICT COURT  
CACHE COUNTY, STATE OF UTAH

Wendy A. Lomsdal,  
Petitioner,  
vs.  
Keith Cox,  
Respondent

MOTION OF JUDICIAL NOTICE OF  
ADJUDICATIVE FACTS

Civil No. 974100564DA

Now comes Keith Cox, defendant, to present the following adjudicative facts as Attachments (A through Z and AA), which are not in reasonable dispute. Below provides short comment to each Attachment.

- A. Order of the State of Washington of September 18, 1990 for Star Atwood, child of Wendy Lomsdal. See Page 2, Section 2.2 and all Page 3 requiring Wendy Lomsdal to pay child support and voluntarily relinquishing custody of Star Atwood. Bears on CJA Rule 4-903 (E) (v).
- B. Investigative Summary Assist to Texas County of December 12, 1991 (9 pages). A Request for Detention by Juvenile Officer Russell L. Shelden of January 5, 1991 (1 page). Order of Disposition of April 16, 1992 in the interest of Rachel Jackson (2 pages). Order Terminating Jurisdiction of June 4, 1993. This material goes to the issue of CJA Rule 4-903 (E) (v) and/or (ix). Interestingly enough, Dr. Price does not address the problem of abuse in his Custody Evaluation under his heading, Rule 4-903.

- C. Hospital report of March 31, 1996. Wendy stating bruise on eye of Anna Marie resulted from running into edge of door.
- D. Letter of April 3, 1996 to Judge Clint Judkins of First Judicial District Court Cache County, State of Utah containing: writing found in trash stating that the Defendant, Keith Cox, is "the sacrifice" and other evidence of Wendy Lomsdal lying to the Court by claiming a car that is not hers.
- E. Ex parte protective order of March 19, 1996 stating that petitioner does not want any child visitation of Keith Cox with Anna Marie supervised or otherwise. Petitioner claims in court appearance of April 4, 1996 that Respondent repeatedly hit Petitioner. In her ex parte order Petitioner said Respondent hit Petitioner once. Showing inconsistent in her complaints.
- F. Power of Attorney by Wendy Lomsdal stating that in case of her death or incapacity, Eugene Perkins, a boyfriend, should become guardian of her children. This excludes wishes of grandparents, uncle (her brother), fathers of children, and former friends of Wendy. Also, letter from Michael Jackson filed with the court March 19, 1996 stating "I just wish we, you and I, could be on friendly terms for the children's sake."  
(Page 3, Paragraph 2)
- G. Note from Wendy Lomsdal to Respondent demonstrating her strange writings in her own hand.
- H. Picture date October 2, 1996 received with Christmas card of December 1996 from Jack and Willia Carling. Picture has bruise on back of Anna Marie's leg and forehead.



- I. Stipulation filed by Wendy Lomsdal on January 21, 1997 for split physical custody after the age of 4 1/2 years. Also amended Judgement from State of Missouri of October 23, 1996. She freely agreed with the custody agreement. The defendant being the author of the agreement. Her attorney reworded the final agreement.
- J. Ex parte protective order of November 7, 1997 stating that petitioner does not want social services investigation into her allegations within the order.
- K. Affidavit of impecuniosity of Wendy Lomsdal of December 1, 1997. Bank records of Lewiston State Bank: withdrawal slip for account 1042197. Withdrawal of \$4025.66 from account 1042197 on November 18, 1997.
- L. Police Report of December 28, 1997 showing attempt of Petitioner to deny Respondent visitation.
- M. February 15, 1998 denial of Motion for supervised visitation. Standard visitation order is approved. Court orders mutual restraining order no derogatory remarks are to be made in the presence of the child.
- N. Handout of Dr. Steven D. Schneider, M.D., given to Defendant at curbside by Petitioner.
- O. Hospital report of March 8, 1998 with photographs of bruising of Anna Marie Lomsdal. Hospital report of March 23, 1998.
- P. Warrantless arrest probable cause statement dated March 10, 1998. Statement to Logan Police Department of Petitioner. Findings in order Precipe: An order for dismissal, Criminal 981100153 data April 20, 1998. Dismissed without prejudice in the interest of justice. This arrest was due to the defendant making payment of child support at Petitioner's work place.

- Q. Hearing of May 7, 1998 appointing Guardian Ad Litem.
- R. Letter of Guardian Ad Litem, Dianne Balmain of May 13, 1998, which confers no power to deny visitation.
- S. Affidavit of Wendy A. Cox on May 26, 1998 stating that defendant, Keith Cox, lied about where he lived. Hearing of June 11, 1998 on Motion and Order to Show Cause why defendant should be held in contempt of court. Petitioner did not appear.
- T. Picture of Anna Lomsdal taken on August 15, 1998 with bruise on her mid-back. Police report was made. Picture of Anna Lomsdal taken on August 26, 1998 with bruise on her head and middle of lower back.
- U. Refused certified letter, Z 157458409 postage dated September 5, 1998, with Respondent's address inside and outside. Wendy Lomsdal refused delivery on 8<sup>th</sup>. Bill Bernard denied defendant on the 9<sup>th</sup> and 11<sup>th</sup> because he had not received respondent's new address. He could have asked the petitioner for the address. This goes to custodial interference. Note of Sonny Gray gave to defendant denying visitation Labor Day Weekend.
- V. Hearing of September 24, 1998 stating that allegations of abuse have been investigated. Letter from Paul Schaaf dated September 22, 1998 stating that the allegations of abuse were not investigated.
- W. Notice of change of address of December 1998.
- X. Letter to Dianne Balmain, Guardian Ad Litem, from Wendy Lomsdal stating that Anna Marie "has become very rebellious."
- Y. Series of pictures late August and early September 1999 of bruises on the back of Anna Marie. They are self-explanatory. *A/so of April 28, 1999*

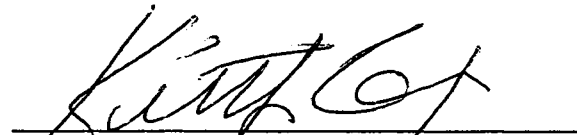
Z. Copy of Illustration 7-6 entitled Location of Injuries (source: St. Louis Police Dept.)

from "Recognizing Child Abuse--A Guide for The Concerned" by Douglas J.

Besharov.

AA. Telephone page showing address of defendant at 619 East 400 North, Logan,

Utah.



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Keith Cox, Respondent, Defendant

## **EXHIBIT I(F)**

J: Rhonda Ledbetter, Social Service Worker II      RE: Child  
Texas County Office      Rachel Jackson  
Missouri Division of Family Services      DOB 1-5-91  
P. O. Box 190  
Houston, MO 65483

: Mary Taft, Social Service Worker II  
Joan Wagner, Social Service Supervisor I  
Greene County Family Services  
101 Park Central Square  
Springfield, MO 65806

: 12-20-91

RECEIVED  
DEC 22 1991  
TEXAS COUNTY  
FAMILY SERVICES

INVESTIGATIVE SUMMARY

ASSIST TO TEXAS COUNTY

REASON FOR REFERRAL:

On 12-18-91, Texas County Family Services contacted this office requesting an assist to see Rachel and interview her mother, who was to be at St. John's Regional Health Medical Center. Texas County received a CA/N referral from a mandated reporter stating that Wendy Lomsdal and unknown male took Rachel to the emergency room at Texas County Hospital this morning. Rachel had a closed head injury. There is significant bruising to the right side of Rachel's head. Wendy Lomsdal and unknown male said that three days ago Rachel fell out of a rocking chair. Wendy Lomsdal and unknown male said Rachel had bruising and swelling then but it got better and they didn't get medical care. This morning about breakfast time Rachel stopped breathing, started gasping and vomiting. Unknown male did CPR on Rachel. Rachel was taken to ER. Rachel has bruising on left arm, left leg, and right side of head. Rachel has decreased use of left arm and left leg. Medical personnel said bruises on head are larger than story would indicate and look older than three days and not consistent with story.

INVESTIGATION:

On 12-18-91, this worker contacted Sheila Dullum, Social Worker at St. John's Hospital. Mrs. Dullum explained that the mother has been repeatedly stating, "Please don't let them take my baby." The mother has also commented that over the past few months, Rachel has had bruises and she wondered how they got there. The mother also has asked the hospital if the baby would be ready to go today. The hospital is fearing that the mother may wish to take the baby out AMA.

This worker was then transferred to Barbara Rainey, who is the nurse assigned to Rachel's care. Ms. Rainey stated that Rachel has many injuries. These include a right subdural hematoma, which is one-to-five days old; a right black eye, which is now green; the black eye would be three-to-five days old. She has bruises on her chest, which are three-to-four days old. She has bruises on both hands, that probably occurred last night. Rachel also has a fractured right forearm, and probably a left fractured tibia, which is two-to-three weeks old.

This worker contacted Rhonda Ledbetter, Texas County DFS, and arrangements were made for Texas County Sheriff to contact Greene County Sheriff, to assist in a joint investigation.

On 12-18-91, at approximately 4:30 p.m., this worker met Greene County Deputy John Matney at St. John's. When Officer Matney and this worker arrived at the Pediatric Intensive Care Unit, Wendy Lomsdal and Butch Crandall were hovering over the child's bed. This worker explained that a child abuse/neglect referral had been received.

Ms. Rainey explained to Officer Matney, the mother and this worker the extent of Rachel's injuries. In addition to those mentioned in the previous phone conversation, she stated that Rachel had two bruises on her bottom, a bruise on her left thigh, a bruise behind her ear, and a bloody-scabbed area under her nose. It was also explained that the right wrist has two bones that are broken and that Rachel has lost three pounds in three weeks.

There was much verbal commotion in the room at the time. The nursing staff located an empty patient's room where the interviews could be held. Due to the continued highly emotional state of Ms. Lomsdal, Officer Matney disappeared with Butch Crandall.

This worker spoke privately with Wendy Lomsdal, from approximately 5:00 p.m. to 6:40 p.m. Ms. Lomsdal explained that she is divorced from Michael Jackson, but her name has not officially been changed. Ms. Lomsdal explained that she is using the name of Lomsdal, it is her maiden name and all of her identification is in this name.

Initially, Ms. Lomsdal did not want to tell this worker much information. Periodically, this recurred by Ms. Lomsdal's making statements such as "I'm not going to tell you", and "Why do you have to know?"

This worker asked Ms. Lomsdal how many times she has been married. Ms. Lomsdal was very reluctant to tell this worker. Ms. Lomsdal stated that she had been married several times, two of which occurred while she was a member of the Scientology Church. She explained that the marriages were not legal. Ms. Lomsdal stated that she was a member of this church for six years. She explained that she was lucky to get out and that she does have problems trusting people, due to these experiences.

Ms. Lomsdal's oldest child is Sonny Gray, DOB 10-25-79. Sonny's father is Jimmy Gray, has lived in Flat River, Missouri, since 9-91. Sonny has maintained regular visitation with his father and is with his father at this time. Ms. Lomsdal showed this worker a Social Security letter where she receives \$434 per month effective 1-91, from his father's Disability from a car accident.

Ms. Lomsdal was married to Brad Atwood for two years. Their daughter, Starr Ann, was born on 3-6-84. Mr. Atwood has had custody of Starr for the past two to three years. Ms. Lomsdal showed this worker a court order child support paper from Clark County stating that she is to pay \$25 per month child support to the Child Support Enforcement Office in Olympia, Washington.

This worker mentioned Ms. Lomsdal's mother, and Ms. Lomsdal became upset. She did not want this worker to contact her or to let her know anything about this present situation. Ms. Lomsdal explained that her mother is alcoholic and had schemed with her ex-husband for him to get custody of Starr Ann. Ms. Lomsdal explained that Brad Atwood was a drug dealer, but now he's a volunteer director of a food pantry. He has remarried and has one child. The family lives in Kings City, Oregon.

Ms. Lomsdal further explained that when she was pregnant with Sariah, that she talked to Starr, and found that Social Services had conducted an investigation

12-20-91

but it was a false report of sexual abuse. (Later in the interview Ms. Lomsdal told this worker that Brad Atwood had sexually abused Sonny, six to seven years ago.)

Ms. Lomsdal was married to Michael Jackson for five years and nine months. The marriage occurred in Washington. Their daughters, Sariah and Alberta "Rose" Jackson, were born in Amboy, Washington. Her daughter, Rachel, was born in Plato, Missouri, at home during an ice storm. Ms. Lomsdal had been planning the birth with the assistance of the mid-wife; the mid-wife was unable to come during the ice storm but made it there two days later to check out the baby. Ms. Lomsdal stated the divorce took place in Ozark County, on 10-5-90, as shown in the divorce papers, which this worker saw. Ms. Lomsdal stated that she has actually been separated from Michael Jackson for the past 4½ months. She stated that he had been ill with a covecandida. Ms. Lomsdal stated this was a self diagnosis as he had not been to a doctor. She explained that he had severe allergic reactions, and depression stems from this disease.

Ms. Lomsdal stated that the family came to Missouri by way of Texas. They initially stayed with a Cox family, in Mansfield; then they stayed with other friends when she got pregnant. She had then moved to Plato, Missouri, off of Farm Road 58-80. Ms. Lomsdal showed this worker her electrical service application dated 9-20-90.

Ms. Lomsdal stated that they went to Washington in 6-91, to visit and fix up a truck. She ended up getting stranded there. Ms. Lomsdal stated that they (which include Ms. Lomsdal, Michael Jackson, and the three girls) stayed at his parents' home for two months. His parents are Don and Georgia "Pete" Jackson. They live in Amboy, Washington. Their phone number is 206-247-5998. As the children were too active for an older couple, Ms. Lomsdal explained that she and the three daughters went to stay with friends, Vicky and Eugene Perkins, in Amboy. They do not have a phone but Eugene Perkins is an janitor at the Act III Theater, in Portland, Oregon. The theater's phone number is 503-287-0338. Ms. Lomsdal explained that they were there for two months.

Ms. Lomsdal stated that she graduated from Beaverton High School. While in Washington, she contacted an old boyfriend who is Butch Crandall. Ms. Lomsdal explained that she and the girls lived at Butch's home prior to Halloween, until Butch helped her with the children get back to Missouri on the bus. She stated that they stayed there in order to save money for the pre-paid and cheaper bus fare.

While Ms. Lomsdal and the girls were staying with Butch Crandall, she took Rachel to the Tanisborne Clinic, in Hillsboro, Oregon. This clinic is operated through St. Vincent Medical Center. Ms. Lomsdal stated that on a Sunday, in November, Rachel became sick with a fever of 102.9 degrees; she had round spots on the bottoms of her feet and ulcers in her mouth. The clinic stated that she had "hand, foot and mouth disease". Rachel was given a prescription for Tylenol with Codeine. Due to the ulcers Rachel did not want to continue nursing. At that time she weighed 19 pounds.

During this time period, Michael Jackson came to Plato, Missouri, and stayed at her home in Plato during October and November. He then went back to Richfield (state unknown) and stayed with friends, Jim DeBuse. He is currently living with his parents in Amboy.

This worker questioned Ms. Lomsdal about Rachel's current injuries and bruises. Ms. Lomsdal told this worker that the black eye was due to Rachel poking herself

in the eye. She stated that this swelled. They then put socks on her hands to use as mittens to keep her from rubbing her eyes. She stated that the eye almost healed up and then the fall from the rocking chair occurred. Ms. Lomsdal also stated that Sariah (three years old) also pokes Rachel in the eye.

Ms. Lomsdal stated that she did not know about the bruises on Rachel's bottom until the nurse was showing this worker.

Ms. Lomsdals initial response when this worker asked her about the bruises on the chest was "I don't know". Then, she explained that when Rachel had stopped breathinn that morning, she was trying to keep her aroused by tapping on her. Ms. Lomsdal did not think that she had these bruises the previous night.

This worker asked about the arm and Ms. Lomsdal's response was that she assumed that it must have happened when she fell from the rocking chair.

In asking Ms. Lomsdal about Rachel's hands, she stated that Rachel had been wearing mittens and the first time she had noticed these bruises was today.

Ms. Lomsdal told this worker that the bruise on Rachel's leg must have occurred when Sariah was pushing Rachel in an umbrella stroller during one of their bus station stops. She explained that Sariah likes to care for Rachel, pick her up; she has dropped her on the floor and on the T.V. corner. (This was later reconfirmed by Butch Crandall.)

Ms. Lomsdal explained that all of them have had colds lately. They seem to have gotten these from a family with children on the bus. Ms. Lomsdal thought that the bloody scab on Rachel's nose was from the cold.

This worker asked Ms. Lomsdal about the bruise behind her ear. Ms. Lomsdal did not know about this bruise and asked, "What bruise behind her ear?" This was pointed out during the session with the nurse.

Ms. Lomsdal also stated that some of these bruises could have occurred from the Emergency Room Personnel that were always poking at Rachel. Barbara Rainey had earlier stated that a few of the bruises were from trying to find a vein and pointed these out to this worker.

The rocking chair incident was discussed. In the middle of this discussion, Butch Crandall and Officer Matney came back into the room. Ms. Lomsdal explained that the accident probably happened on Sunday night. This timing was arrived at from backtracking their steps. Ms. Lomsdal drew this worker a picture of her house. She stated that there was a swivel rocking chair in front of a bookcase, made from concrete blocks and wood. The living room is next to the kitchen. She stated that she had placed Rachel in the chair and then went into the kitchen, and within two minutes, she heard a "boom"; the next thing she knew was that Rachel came crawling to her on her hands and knees, crying. She stated there was a dot on her forehead. Rachel seemed to be okay. She did not have a fever and she was eating normally that evening and she stated she did not think too much about it. Ms. Lomsdal stated she assumed that when Rachel fell out of the chair, she hit her head on the concrete block.

Ms. Lomsdal stated that the following day they went to get mail, which would have been on Monday; at this time Rachel's head started swelling. They put an ice pack on it and the swelling had gone down in a short amount of time. Ms. Lomsdal stated that, if (she's at fault for) anything, she did not get medical help.



12-20-91

Ms. Lomsdal state that she was hoping Rachel would get better. She stated that she was late on a doctor's payment and feared he would not see her.

At this time Butch Crandall and Deputy Matney entered the room. Ms. Lomsdal continued to explain that morning's activities. She stated that she had made pancakes for the girls. Rachel was being held by Butch, who fed her pancakes and applesauce. She fell asleep on his lap.

Mr. Crandall stated that he then took Rachel for a short walk outside but about 10 seconds after leaving the door, he came back in because she had quit breathing, and she felt limp and listless. Mr. Crandall stated that he told Wendy that something was wrong. She contacted "911", but they decided it would be quicker for them to drive to Houston than for an ambulance to come out there and then drive back.

Ms. Lomsdal stated that she did put her finger in Rachel's mouth to check for foreign matter and the position of her tongue. Ms. Lomsdal stated that she was trying to keep from falling asleep while Butch drove them to Houston. They arrived in Houston about 10:00 a.m. Ms. Lomsdal stated that she was upset that she could not go with Rachel during the helicopter ride to Springfield.

Ms. Lomsdal explained that Rachel does whimper. She stated that she does not know if the whimpering was due to being in pain or if it was something emotional. Ms. Lomsdal agreed with Butch that Rachel is spoiled.

Ms. Lomsdal stated that Rachel was whimpering when she had recently tried to hold her hands to get her to walk around and strengthen her leg. Ms. Lomsdal stated, "I can't stand to hear a baby cry." She explained that she does hold Rachel a lot.

Butch Crandall stated that when Rachel's head swelled, the swelling spread to her other eye.

Ms. Lomsdal made a small passing comment during the questioning, "I dont' know (referring to how the injuries happened) unless my dogs (pause), no they did not do anything."

As additional information, Ms. Lomsdal stated that Rachel has not had any of her immunizations. She stated her other children were on WIC, in Ozark County, in 1990, and showed this worker the WIC card. Ms. Lomsdal did add that maybe she should apply for Food Stamps and AFDC. She stated she hesitate regarding AFDC because Rachel does not have a birth certificate.

Butch Crandall stated that his real name is Burgess T. Crandall, III. Mr. Crandall's birthdate is 12-9-51. Mr. Crandall gave his address as 22880 A Northwest Birtch, Hillsboro, Oregon 97124. Mr. Crandall told this worker during the questioning that he took off on vacation as a long-haul driver for one month so that he could help Wendy with the girls on the bus ride to Missouri. Mr. Crandall stated that previously he had been a surgical scrub nurse.

Ms. Lomsdal gave additional personal references of a brother Armand Cobbs and his wife, Heidi, who live in Amboy, Washington; and Nauda Tucker, 12105 N.E. 192nd St., Battleground, Washington 98604. Their phone number is 687-3802.

Ms. Lomsdal stated that the above friends could be contacted, along with Michael's parents or anyone else. She stated that this worker could go to the home and see the girls, even in her absence.

Numerous times, Ms. Lomsdal made statements: "I didn't hurt her", and "Please don't take my baby". Ms. Lomsdal would frequently apologize for her emotions, begging this worker, "Please don't hold them (her emotions) against me." Ms. Lomsdal seemed to be very scared during this interview. She stated that she did not want to be totally honest with this worker. Ms. Lomsdal explained that she had heard many stories about Social Services' stealing kids when their parents were away. Ms. Lomsdal wanted many assurances and wanted to know what this worker thought would happen.

This worker and Officer Matney explained the investigative process again to Ms. Lomsdal and Mr. Crandall. In response to Ms. Lomsdal's questions about how this worker felt, this worker explained that we were trying to find out what happened to Rachel and that she has many bruises and injuries. This worker explained that I was concerned that she was not taken to a doctor, especially on the part of Mr. Crandall, as he stated that he used to be a surgical scrub nurse.

This worker did encourage Ms. Lomsdal to leave Rachel in the hospital until she is well enough to go home. This worker warned Ms. Lomsdal that she if she did remove Rachel against medical advice, that she may be charged with endangering the welfare of a minor. This worker explained to Ms. Lomsdal that her priority should be Rachel's health.

Officer Matney had arranged for Ms. Lomsdal and Butch Crandall to stay at Missouri Hotel as they did not have other resources.

Afterwards, this worker discussed the case with Officer Matney. From his interview with Butch Crandall, Mr. Crandall stated that Wendy Lomsdal is emotional and at times could be violent. Butch Crandall told Officer Matney that when Wendy would over-punish the children, she would then give them hugs and tell them that she was sorry. When asked what was outside of usual punishment, Butch Crandall responded, "You know." (Please refer to Officer Matney's report.)

Officer Matney and this worker went back into the Pediatric Intensive Care Unit in order for Officer Matney to take pictures. Ms. Lomsdal and Butch Crandall were not present at that time. Previously, Ms. Lomsdal had commented to this worker that Rachel bruises easily. This worker inquired of Barbara Rainey if this had been checked out. She stated that it had and the child does not have a condition where she bruises easily, according to their tests.

While we were in the PICU, Dr. Brown, the Orthopedist, showed up in order to see Rachel and review the x-rays concerning her forearm fracture. During this time with the nurses, Rachel was more alert. One of the nurses showed this worker how much weight that Rachel had lost, by pulling up her skin near her groin and leg. The nurses state that Rachel will probably be in Intensive Care for 48 hours before she is moved to the floor.

Nurses stated that there had been a continuous problem that day with the mother and also Butch being in the room.

Upon leaving this unit, Officer Matney and this worker saw Wendy Lomsdal and her friend in the waiting room. Ms. Lomsdal explained that she had asked a friend that belonged to a church up here for help. This friend is Barbara Bird, who lives in Willard. Her phone number is 742-3738. Ms. Lomsdal explained that she was now a member of the Reorganized Church of Jesus Christ of Latter Day Saints, and this has been much support to her. The church people from her home have gotten together an offering to help with the helicopter ride expense.

Ms. Lomsdal continued to plead for promises that we would not take her child away. This worker told her that Rachel will remain in Intensive Care where she needs to be.

Upon leaving, Ms. Bird caught up in the hallway with this worker. She stated that she is not a relative or anything but she is concerned and wanted to know if Ms. Lomsdal had been charged with anything. This worker stated no, and explained the investigative procedure to her.

On 12-19-91, this worker spoke with Captain Ed Young of the Greene County Sheriff's Department regarding this case.

On this same date, updates were also made with Sheila Dullum and Rhonda Ledbetter.

On 12-19-91, this worker received a phone call from Sheila Dullum. Ms. Dullum stated that Ms. Lomsdal's emotional state continues to be very difficult. Ms. Dullum related an incident occurring this date, where Wendy Lomsdal was in Dr. McCrory's office. She was begging him not to take her child. She got down on her knees to do this. Dr. McCrory got down on his knees to be eye-level with her, told her that she needed to stop this behavior and walked out of the room.

Ms. Dullum stated that Wendy Lomsdal has been continually in the hallways screaming at the top of her lungs, "Don't take my baby". She has even grabbed one of Susie's arms (a Pediatric Clinician, R.N.). Ms. Dullum explained that Ms. Lomsdal had been on this tirade continuously since the child was admitted.

Ms. Dullum also told this worker that the nurses had found an additional bruise, on Rachel's bottom. The bruise could be observed in the crevice area between the buttocks when the buttocks are spread apart.

On 12-19-91, this worker received two phone calls from Wendy Lomsdal. She stated that she had talked to the doctor and knew that they were not wanting Rachel to go home with her. She stated that she had been talking to Sister Diane who is from the Chaplain's office. Ms. Lomsdal stated that she knows she did not hurt Rachel but she has been thinking that if she didn't Butch is the only other person that could have. She explained that frequently he would have Rachel alone for 15 to 20 minutes. He liked to take her out on walks. Ms. Lomsdal told this worker that she had trusted him. She stated that Butch had Rachel alone more times that she had Rachel alone. Ms. Lomsdal stated, "If he did that to Rachel, he needs help."

Ms. Lomsdal explained that she had had a phone call from Butch. He had gone to the house in order for the girls to come home. Butch told her that looking at the rocking chair and bookcase, that Rachel could not have hit her head, because the blocks were too high up. She stated that Butch told her that his sense of philosophy was that "'If people accuse me, I'll admit to it.'"

Ms. Lomsdal explained that the first week they stayed with Butch, Rachel loved him; but after the second week, Rachel appeared to be afraid of him. She would reach for him and pull away. Ms. Lomsdal admitted that she had had a vague suspicion in Oregon but never could figure out why. Ms. Lomsdal stated that she had seen Butch be jealous of Rachel because Rachel loves her (Ms. Lomsdal) more than him.

Ms. Lomsdal stated that her children mean more to her than Butch Crandall.

Ms. Lomsdal was very scared that Jimmy Gray had left his home to take the girls back from Butch to care for them. Ms. Lomsdal stated that Jimmy had seen Rachel when she was swollen. Ms. Lomsdal stated that Butch weighs 300 pounds and is very strong. She explained that he broke three maul handles while he was working on her property.

This worker explained to Ms. Lomsdal her options of getting Jimmy to take the girls back to his house, or voluntarily placing the children in foster care. Ms. Lomsdal added an option of Jimmy's staying at her house to supervise Butch.

Ms. Lomsdal additionally explained to this worker that Butch told her he was abused as a child. Ms. Lomsdal explained that he lives a hermit lifestyle. She stated that his family lives within six miles of his home but he has not seen his family in ten years.

During these phone conversations this worker continued to encourage Ms. Lomsdal to get counseling over what has happened with Rachel and the alcoholism of her mother. Ms. Lomsdal declined counseling over her recent problems but stated she could use counseling about the alcoholism effects.

On 12-20-91, this worker received a phone call from Captain Ed Young of the Greene County Sheriff's Department. He had been contacted by St. John's Security that Butch Crandall was in the hospital. This information was then related to Rhonda Ledbetter with a request of how to proceed.

On 12-20-91, this worker received a phone call from Sheila Dullum. Ms. Dullum explained that Butch was back at the hospital, he wants to go to Oregon and needs money in order to get there. She explained that Ms. Lomsdal would not let him in Rachel's room. Rachel has now been moved to a regular room. The hospital has arranged for an employee to be in the room with Rachel 24-hours a day so that she is never left alone.

On 12-20-91, this worker received a phone call from Wendy Lomsdal. Ms. Lomsdal stated that she had made a tape of all the things that she could remember. She explained that she did see Butch one time, in the presence of St. John's Security people. He denied everything and had tears in his eyes. This reminded her of a situation that happened with her ex-husband, Brad Atwood.

Ms. Lomsdal told this worker that she remembered a comment that Butch had made to her at first. She related that Butch had stated, "I can't hurt the older girls, they will tell on me." Ms. Lomsdal stated that she does not want him around and she fears what he may do if she is home alone with her kids. Ms. Lomsdal stated that she wanted us to know that so that Rachel may be able to go to her home. She immediately added a comment, "But, you may want to investigate me further."

#### EVALUATION:

Ms. Wendy Lomsdal has tried to be cooperative in that she has given permission for a worker to visit her home and talk to Sariah and Alberta "Rose" Jackson, but was very hesitant to divulge her past.

This worker has many concerns about Ms. Lomsdal's emotional state. Ms. Lomsdal has urged this worker not to judge her based on her emotions. Ms. Lomsdal's

behavior at Rachel's bedside has been difficult, according to hospital personnel, to the extent that it may be detrimental for the nurses to do their jobs. Ms. Lomsdal has continued to tell the doctors, nurses and other patients' families such comments as "Don't take my baby", "I love her, I didn't hurt her." Her behavior has continued since Rachel's short hospitalization. The incidents in the doctor's office and hospital hallways are bizarre.

This worker is also concerned about Ms. Lomsdal's emotions and parenting ability from her comment that she can't stand to hear a baby cry.

Rachel Jackson's physical injuries are not consistent with Ms. Lomsdal's initial explanations. Ms. Lomsdal stated that the black eye occurred because Rachel was poking herself continuously in the eye. The bruise on Rachel's eye covers the skin around the eye and not the corner of the eye.

Ms. Lomsdal stated that she did not know about the bruises on Rachel's bottom and hands. Ms. Lomsdal assumes that the broken wrist occurred when she fell from the rocking chair and was apparently unaware that it was hurt.

Ms. Lomsdal stated that the bruises on Rachel's chest occurred when she was trying to keep Rachel from falling asleep and she thought that she had saved her life, and wanted to be commended for that instead of being involved in a child abuse investigation. The bruises on Rachel's chest are older bruises than what would have occurred from tapping.

Ms. Lomsdal has indicated that the bruising may have occurred from her three-year-old daughter, Sariah's poking at Rachel's eye, the dogs, and medical personnel in the emergency rooms.

It is probable that Rachel Jackson could have fallen from the rocking chair. The injuries that Rachel has are not consistent with one fall from a rocking chair. Rachel has many bruises of different age-dating stages, two broken bones in her forearm that are approximately a week old, and a probable leg fracture which is two to three weeks old.

At this time the situation has changed in that Ms. Lomsdal now feels that if she did not hurt Rachel, that Butch Crandall may have hurt Rachel.

At this point in the investigation, there is "reason to suspect - physical abuse" of Rachel Jackson by an unknown perpetrator. This is based upon medical diagnosis and photographs. There continues to be a need for further investigation into Burgess "Butch" Crandall's role in Rachel's injuries. Based on Ms. Lomsdal's display of behavior in the hospital, evaluation may need to be completed by a psychologist and/or psychiatrist.

Should Mr. Crandall be the actual perpetrator, assessment needs to be made into Ms. Wendy Lomsdal's part in the abuse and/or her knowledge that the abuse was occurring.

*Mary Taft*  
Mary Taft  
Social Service Worker II

*Joan Wagner*  
Joan Wagner  
Social Service Supervisor I

## **EXHIBIT I (G)**

STATE OF MISSOURI, )  
Plaintiff,) )  
vs. ) )  
Wendy A. Lomsdal, )  
Defendant.) )

Case No.: CR9-91-574FX

DEFERRED PROSECUTION AGREEMENT

COMES NOW the parties, State of Missouri by and through Bradford E. Ellsworth, Prosecuting Attorney of Texas County, Missouri and Defendant, Wendy A. Lomsdal, with the advise and counsel of J. Marty Robinson, her attorney and, in consideration of the mutual promises herein set forth, agrees as follows:

1. In exchange for the promises and agreements set forth herein below the State agrees to defer prosecution of the class D felony charge of Endangering the Welfare of a Child for a period of two (2) years from the date of this agreement.

2. Defendant, Wendy A. Lomsdal, agrees to cooperate fully with the Division of Family Services in regard to the minor child, Rachel Ann Jackson which agency has legal custody of said minor child.

3. Defendant, Wendy A. Lomsdal, agrees to cooperate fully and truthfully as a witness for the State in the case of Burgess T. Crandell III, who is charged with Endangering the Welfare of a Child, in Texas County, Missouri Case Number CR9-92-102F.

4. Defendant, Wendy A. Lomsdal, agrees to follow a course of good conduct and to violate no laws of the State of Missouri or its political subdivisions.

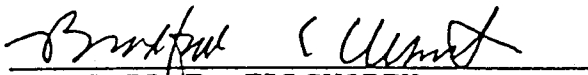


5. In the event this case is dismissed at the end of the two (2) year period, Defendant shall pay the Court costs applicable to this case.

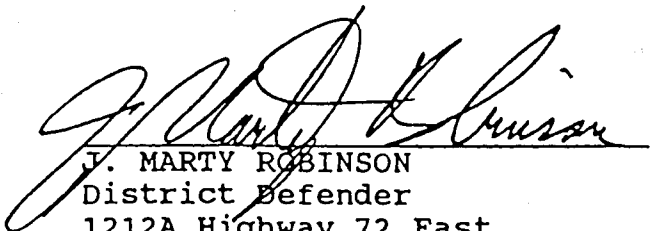
6. This agreement shall be filed with the Circuit Clerk of Texas County, Missouri.

7. By the execution of this agreement, Defendant, Wendy A. Lomsdal, waives her constitutional right to a speedy trial.

DATED: JUNE 22, 1992

  
BRADFORD E. ELLSWORTH  
Prosecuting Attorney  
Texas County, Missouri  
116 East Main Street  
Courthouse Annex  
Houston, Missouri 65483  
(417) 967-2029

  
WENDY A. LOMSDAL  
Defendant

  
J. MARTY ROBINSON  
District Defender  
1212A Highway 72 East  
Suite 04  
Rolla, Missouri 65401  
(314) 368-2260



## **EXHIBIT I (H)**

STATE  
REGISTER

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In Re the Marriage of:

WENDY A. ATWOOD,  
Now known as WENDY A. JACKSON,

Petitioner,

and

BRAD N. ATWOOD,

Respondent.

NO. 85 3 01857 2

ORDER FOR MODIFICATION  
OF CHILD SUPPORT

FILED

SEP 18 1990

JoAnne McBride, Clerk, Clark Co.

I. BASIS

1.1 A Petition for Modification of Child support was filed  
by Respondent on November 6, 1989.

1.2 (a) A hearing was held on September 14, 1990.

(b) Persons appearing at the hearing were: Respondent's  
attorney, PHILIP A. FOSTER.

(c) The Petition was heard on Affidavits only.

II. FINDINGS

Based on the case record to date, the income and resources of  
each party's household as set forth in the attached certified  
child support worksheets, the Financial Affidavits on file and the  
testimony heard, if any, the Court FINDS that:

ORDER FOR MODIFICATION OF CHILD SUPPORT - 1

MARSH, HIGGINS & FOSTER  
LAW OFFICES  
1112 DANIELS STREET.  
P.O. BOX 54  
VANCOUVER, WA 98666  
(206) 695-7909

2.1 Support is necessary for the following dependent child:

| <u>Name</u> | <u>Date of Birth</u> | <u>SSN:</u> |
|-------------|----------------------|-------------|
| STARR ANN   | 3/6/84               |             |

2.2 The Order of child support in this matter should be modified for the following reasons: There has been a substantial change of circumstances since the Decree was entered in that the parties voluntarily transferred physical custody of the minor child of the parties, STARR ANN, on or before November 8, 1987, and that since November 8, 1987, the minor child, STARR ANN, has been in the sole care, custody and control of the Respondent, and the Respondent has incurred financial obligations and expenses for the support of STARR ANN, which have not been contributed to or off-set by any payments made by Petitioner.

2.3 (a) The mother's net income is \$0.00 per month. The mother is unemployed, appears to be pregnant, and appears to be raising three (3) other very young children.

(b) The father's net income is \$1,717.00 per month. This income is actual.

2.4 Support shall be based on the child support schedule for Clark County.

(a) The amount of child support calculated using the standard calculation is \$25.00, the minimum amount authorized under the schedule.

### III. CONCLUSIONS OF LAW

3.1 This court has jurisdiction over the parties and the subject matter of this action.

ORDER FOR MODIFICATION OF CHILD SUPPORT - 2

MARSH, HIGGINS & FOSTER  
LAW OFFICES  
1112 DANIELS STREET.  
P.O. BOX 54  
VANCOUVER, WA 98666  
(206) 695-7909

1 3.2 Child support should be as provided in the following  
2 Order.

3 IV. ORDER

4 IT IS ORDERED that:

5 4.1 The Order of child support is modified as set forth  
6 below. The support award is based upon the income set forth in  
7 the worksheet of the father.

8 4.2 The parent responsible for paying child support shall  
9 be: Wendy Jackson, SSN: 544-74-8867, P.O. Box 83, Theodosia, MO  
10 65761, who is unemployed. The Court did not impute income to the  
11 mother.

12 4.3 Support payments shall be effective as of November 1,  
13 1989, and are thereafter due on the 1st day of each month.

14 4.4 Child support shall be paid as follows:

| <u>Name of Child</u> | <u>Monthly Amount</u> |
|----------------------|-----------------------|
| 15 STARR ANN         | 16 \$25.00            |

17 4.5 Child support is extended beyond the eighteenth birthday  
18 of STARR ANN, so long as STARR ANN is enrolled in college or a  
19 vocational training program, but in no event past her 23rd  
20 birthday.

21 4.6 Support payments shall be made: to the Washington State  
22 Child Support Registry, P.O. Box 9009, MS HJ-12, Olympia,  
23 Washington 98504.

24 4.7 Petitioner shall provide health insurance coverage for  
25 the child listed in paragraph 2.1 above if coverage that can be  
26 extended to cover the child is or becomes available to that parent

ORDER FOR MODIFICATION OF CHILD SUPPORT - 3

MARSH, HIGGINS & FOSTER  
LAW OFFICES  
1112 DANIELS STREET.  
P.O. BOX 54  
VANCOUVER, WA 98666  
(206) 695-7909

1 through employment or is union related as provided under RCW  
2 26.09.105.

3 4.8 Respondent shall have no obligation to pay child support  
4 to Petitioner from November 8, 1987, onwards.

5 WARNING: VIOLATION OF THE RESIDENTIAL PROVISIONS OF THIS  
6 ORDER WITH ACTUAL KNOWLEDGE OF ITS TERMS IS PUNISHABLE BY CONTEMPT  
7 OF COURT, AND MAY BE A CRIMINAL OFFENSE UNDER RCW 9A.40.070(2).  
8 VIOLATION OF THIS ORDER MAY SUBJECT A VIOLATOR TO ARREST.

9 Any parent owing a duty of child support shall be obligated  
10 to provide health insurance coverage, including both medical and  
11 dental, for his or her child if coverage that can be extended to  
12 cover the child is or becomes available to that parent through  
13 employment or is union-related as provided under RCW 26.09.105;  
14 IF PROOF OF HEALTH INSURANCE COVERAGE IS NOT PROVIDED WITHIN  
15 TWENTY (20) DAYS, THE RECEIVING OR THE DEPARTMENT OF SOCIAL &  
16 HEALTH SERVICES MAY SEEK DIRECT ENFORCEMENT OF THE COVERAGE  
17 THROUGH THE RESPONSIBLE PARENT'S EMPLOYER OR UNION WITHOUT FURTHER  
18 NOTICE TO THE RESPONSIBLE PARENT AS PROVIDED UNDER CHAPTER 26.18  
19 RCW.

20 THE PARENTS SHALL COOPERATE IN THE PROMPT PROCESSING OF ALL  
21 INSURANCE CLAIMS AND REIMBURSE THE OTHER FOR ALL OUT-OF-POCKET  
22 EXPENDITURES REIMBURSED BY INSURANCE. THE PARENT MAINTAINING THE  
23 INSURANCE SHALL PROVIDE THE OTHER PARENT WITH SIGNED INSURANCE  
24 CLAIM FORMS AND ID CARDS AS REQUIRED BY THE INSURANCE COMPANY AND  
25 SHALL TIMELY PROCESS ALL CLAIMS.

26  
NOTICES

21 AS PROVIDED BY RCW 26.23.050(1), A NOTICE OF PAYROLL DEDUCTION MAY  
22 BE ISSUED OR OTHER INCOME WITHHOLDING ACTION UNDER RCW CHAPTERS  
23 26.18 OR 74.20A MAY BE TAKEN WITHOUT FURTHER NOTICE TO THE  
24 RESPONSIBLE PARENT, IF A SUPPORT PAYMENT IS NOT PAID WHEN DUE, AND  
25 AN AMOUNT EQUAL TO OR GREATER THAN THE SUPPORT PAYABLE FOR ONE (1)  
26 MONTH IS OWED UNDER AN ORDER ENTERED PRIOR TO JULY 1, 1990; OR AT  
ANY TIME AFTER ENTRY OF AN ORDER BY THE COURT ON OR AFTER JULY 1,  
1990, UNLESS THE COURT APPROVES AN ALTERNATE PAYMENT PLAN.

THE RECEIVING PARENT MAY BE REQUIRED TO SUBMIT AN ACCOUNTING OF

ORDER FOR MODIFICATION OF CHILD SUPPORT - 4

MARSH, HIGGINS & FOSTER  
LAW OFFICES  
1112 DANIELS STREET.  
P.O. BOX 34  
VANCOUVER, WA 98666  
(206) 695-7909

**WORKSHEET A: CHILD SUPPORT OBLIGATION**

| Name      | Age | Basic Amt | Case:               | Atwood | Cause No: |
|-----------|-----|-----------|---------------------|--------|-----------|
| Starr Ann | 5   | \$291.19  | Number of Children: |        | 1         |
|           |     | \$0.00    |                     |        |           |
|           |     | \$0.00    |                     |        |           |
|           |     | \$0.00    |                     |        |           |
|           |     | \$0.00    |                     |        |           |

| PART I: BASIC SUPPORT AMOUNT      | FATHER     | MOTHER | TOTALS     |
|-----------------------------------|------------|--------|------------|
| 1. Monthly Gross Income           |            |        |            |
| a. Wages, Salary                  | \$1,717.04 | \$0.00 |            |
| b. Interest, Dividends            | \$0.00     | \$0.00 |            |
| c. Business Income                | \$0.00     | \$0.00 |            |
| d. Other Income                   | \$0.00     | \$0.00 |            |
| e. Total Gross Income             | \$1,717.04 | \$0.00 | \$1,717.04 |
| 2. Monthly Deductions             |            |        |            |
| a. Income Taxes                   | \$257.56   | \$0.00 |            |
| b. FICA/SE Taxes                  | \$131.34   | \$0.00 |            |
| c. Mandatory Union/Prof Dues      | \$0.00     | \$0.00 |            |
| d. Mandatory Pension Pmt          | \$0.00     | \$0.00 |            |
| e. Non-Recurring Income           | \$0.00     | \$0.00 |            |
| f. Total Deductions               | \$388.90   | \$0.00 | \$388.90   |
| 3. Monthly Net Income             | \$1,328.14 | \$0.00 |            |
| 4. Combined Monthly Net Income    |            |        | \$1,328.14 |
| 5. Basic Child Support Amt        |            |        | \$291.19   |
| 6. Proportional Share of Income   | 100%       | 0%     |            |
| 7. Parents' Basic Support Amounts | \$291.19   | \$0.00 |            |

| PART II: HEALTH, DAY CARE, AND SPECIAL CHILD EXPENSES |        |        |         |
|-------------------------------------------------------|--------|--------|---------|
| 8. Health Care Expenses                               |        |        |         |
| a. Monthly Health Insur Premiums                      | \$0.00 | \$0.00 |         |
| b. Uninsured Monthly Expenses                         | \$0.00 | \$0.00 |         |
| c. Total Monthly Health Expenses                      | \$0.00 | \$0.00 |         |
| d. Combined Monthly Expenses                          |        |        | \$0.00  |
| e. Maximum Ordinary Monthly Amt                       |        |        | \$20.00 |
| f. Extraordinary Monthly Costs                        |        |        | \$0.00  |
| 9. Day Care and Special Expenses                      |        |        |         |
| a. Day Care Expenses                                  | \$0.00 | \$0.00 |         |
| b. Education Expenses                                 | \$0.00 | \$0.00 |         |
| c. Long Distance Transportation                       | \$0.00 | \$0.00 |         |
| d. Other:                                             | \$0.00 | \$0.00 |         |
| e. Total Day Care/Special Expenses                    | \$0.00 | \$0.00 |         |
| 10. Combines Day Care/Special Expenses                |        |        | \$0.00  |
| 11. Total Part II Expenses                            |        |        | \$0.00  |
| 12. Parents' Shares of Part II Expenses               | \$0.00 | \$0.00 |         |

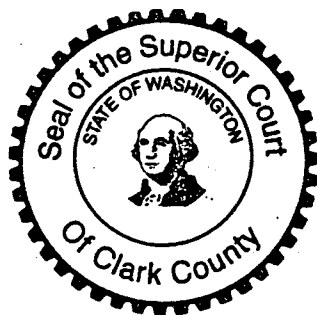
| PART III: TOTAL CHILD SUPPORT OBLIGATION            |          |        |  |
|-----------------------------------------------------|----------|--------|--|
| 13. Total Support Obligation                        | \$291.19 | \$0.00 |  |
| PART IV: CHILD SUPPORT CREDITS                      |          |        |  |
| 14. Child Support Credits                           |          |        |  |
| a. Monthly Health Care Expense Credit               | \$0.00   | \$0.00 |  |
| b. Day Care/Special Expense Credit                  | \$0.00   | \$0.00 |  |
| c. Other:                                           | \$0.00   | \$0.00 |  |
| d. Residential Schedule Credit                      | \$291.19 | \$0.00 |  |
| e. Total Support Credits                            | \$291.19 | \$0.00 |  |
| PART V: NET SUPPORT OBLIGATION AND TRANSFER PAYMENT |          |        |  |
| 15. Net Support Obligation                          | \$0.00   | \$0.00 |  |

# **WORKSHEET B: RESIDENTIAL SCHEDULE ADJUSTMENT**

|                                        |           |         |         |         |         |
|----------------------------------------|-----------|---------|---------|---------|---------|
| 6. Children                            | Starr Ann |         |         | 0       | 0       |
| 7. Basic Support Per Child             | \$291.19  | \$0.00  | \$0.00  | \$0.00  | \$0.00  |
| 8. Ordinary Expenses Per Child         |           |         |         |         |         |
| a. Total Monthly Health Expense        | \$0.00    | \$0.00  | \$0.00  | \$0.00  | \$0.00  |
| b. Max Ordinary Monthly Health Expense | \$20.00   | \$20.00 | \$20.00 | \$20.00 | \$20.00 |
| c. Ordinary Health Care Amount         | \$0.00    | \$0.00  | \$0.00  | \$0.00  | \$0.00  |
| d. Other Ordinary Expenses             | \$0.00    | \$0.00  | \$0.00  | \$0.00  | \$0.00  |
| e. Total Ordinary Expenses Per Child   | \$0.00    | \$0.00  | \$0.00  | \$0.00  | \$0.00  |
| 9. Adjusted Basic Support              | \$291.19  | \$0.00  | \$0.00  | \$0.00  | \$0.00  |
| 0. Overnights With Father              | 340       | 45      | 45      | 0       | 0       |
| 1. Proportional Overnights With Father | 93%       | 12%     | 12%     | 0%      | 0%      |
| 2. Overnights with Mother              | 25        | 320     | 320     | 365     | 365     |
| 3. Proportional Overnights With Mother | 7%        | 88%     | 88%     | 100%    | 100%    |
| 4. Father's Credit Proportion          | 100%      | 0%      | 0%      | 0%      | 0%      |
| 5. Mother's Credit Proportion          | 0%        | 100%    | 100%    | 100%    | 100%    |
| 6. Father's Residential Sched Credits  | \$291.19  | \$0.00  | \$0.00  | \$0.00  | \$0.00  |
| 7. Mother's Residential Sched Credits  | \$0.00    | \$0.00  | \$0.00  | \$0.00  | \$0.00  |

## **WORKSHEET C: ADDITIONAL FACTORS**

|                                                          | FATHER | MOTHER |
|----------------------------------------------------------|--------|--------|
| 8. Present Value of Major Assets                         |        |        |
| a. Real Estate                                           |        |        |
| b. Stocks and Bonds                                      |        |        |
| c. Vehicles                                              |        |        |
| d. Boats                                                 |        |        |
| e. Pensions/IRAs/Accounts                                |        |        |
| f. Cash                                                  |        |        |
| g. Insurance                                             |        |        |
| h. Other                                                 |        |        |
| 9. Liens and/or Extraordinary Debt                       |        |        |
| 10. Monthly Income Not Attributable to these Proceedings |        |        |
| a. New Spouse                                            |        |        |
| b. Other Adults in Household                             |        |        |
| c. Child Support (other relationship)                    |        |        |
| d. Extraordinary Income of Children                      |        |        |
| e. Income from Assistance                                |        |        |
| f. Maintenance (other relationship)                      |        |        |
| g. Other                                                 |        |        |
| 11. Monthly Child Support Paid (other children)          |        |        |
| 12. Maintenance Paid (other relationship)                |        |        |
| 13. Children in Household (other relationship)           |        |        |
| 14. New Spouse's Name                                    |        |        |
| 15. Names of Other Adults in Household                   |        |        |



STATE OF WASHINGTON } ss.  
COUNTY OF CLARK }

I, JoAnne McBride, County Clerk and Clerk of the Superior Court of Clark County, Washington, DO HEREBY CERTIFY that this document, consisting of 7 page(s), is a true and correct copy of the original now on file and of record in my office and, as County Clerk I am the legal custodian thereof.

Signed and sealed at Vancouver, Washington this date:

7-22-98  
JoAnne McBride, County Clerk

by [Signature] Deputy



## **EXHIBIT I (I)**

## POWER OF ATTORNEY

I Wendy A. Lomsdal of 3 02 South 100 East, Logan Utah  
84321, nominate and appoint  
Donald Eugene Perkins of 123 W. Main, Logan, Utah 84321  
as my attorney in fact to act in my stead and for myself as follows:  
see attached

*(List all powers of the attorney as appointed in sufficient detail as to inform the attorney and those he would deal with as to his rights and responsibilities.)*

I give my attorney in fact full and complete authority to perform every act herein specified or necessary, requisite or incident to those acts as though I were personally present. I ratify and confirm all acts that my attorney should perform in my behalf pursuant to this instrument.

Signed as a sealed instrument this 5 day of  
March, 1996

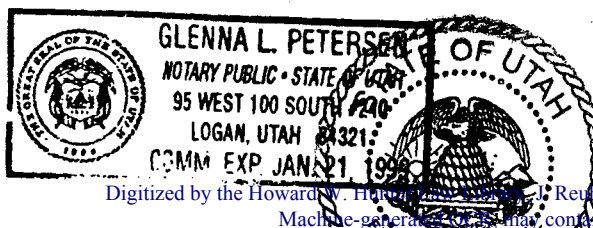
On this 5<sup>th</sup> day of Mrch, 1996,  
personally appeared before me  
Wendy A. Lomsdal who signed  
the foregoing instrument.

Wendy A. Lomsdal  
(name)

(witness)

Glenna L. Petersen  
Notary Public

(witness)



I, CERTIFY THAT THE FOREGOING  
IS A TRUE AND CORRECT COPY  
OF THE ORIGINAL FILED IN FIRST  
JUDICIAL DISTRICT COURTS.

DATE 1/20/00  
[Signature]  
DEPUTY CLERK

If at any time I become unable for any reason to care and provide for my

5 children, namely: Alberta Rose Jackson, born 19 Dec. 1986 SS# 491-04-1057  
Sariah Elaine Jackson, born 28 July 1988 SS# 491-04-1058  
Rachel Ann Jackson, born Jan. 5, 1991 SS# 491-06-9154  
David Michael Jackson, born 25 Nov. 1992 SS# 646-28-9911  
Anna Marie Carol Lomsdal, born Mar 19, 1995 SS# 646-28-9911

I, Wendy A. Lomsdal, hereby grant full care, control and custody to Donald Eugene Perkins, 123 W. Main, Logan Utah, 84321; whom I consider a full RESPONSIBLE AND TRUSTWORTHY INDIVIDUAL WHO WILL MAKE ANY AND ALL DECISIONS ON BEHALF OF MY CHILDREN IN AND FOR THEIR BEST INTERESTS. I do this willingly and with full purpose in my heart to always provide a stable, loving and caring environment for my children.

NO ONE may claim I did this under duress. If any such claim is made it is FALSE AND VOID.

Mr. Perkins may choose to relocate my children for their safety and best interests. I now declare that if this occurs it will be the best thing for my children, and support his decision to do so.

Mr. Perkins may entreat the help of family, friends and associates as he sees fit BUT always retaining FULL CARE CONTROL AND CUSTODY ON MY BEHALF.

I also hereby grant Mr. Perkins the right and access to any funds in bank accounts and state benefits through the Horizon Card of Utah.

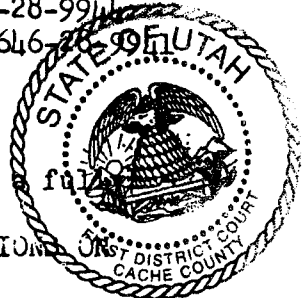
Mr. Perkins may use my residence to care for my children in my incapacity.  
Mr. Perkins may use my vehicle also.

AT NO TIME MAY ANY OF THE FOLLOWING CLAIM RIGHTS OF GUARDIANSHIP OVER MY CHILDREN WITHOUT MYSELF AND A JUDGE PRESENT IN A COURTROOM SITUATION:

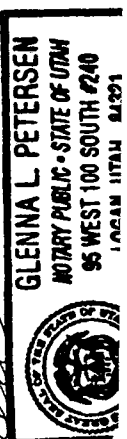
Michael J. Jackson; Keith Wayne Cox, Janet Lomsdal, Thomas Eugene Lomsdal, Donald or Georgia Jackson, Harold Nesby, Carol and Richard Green and Arvin and Sharon Mortenson.

I THOROUGHLY AND COMPLETELY TRUST DONALD EUGENE PERKINS WITH THE LIVES AND BEST POSSIBLE INTERESTS OF MY CHILDREN WITH NO DOUBT OR HESITATION WHATSOEVER.

ANY PERSON, ENTITY OR GROUP OR GOVERNMENT WHO CHALLENGES THIS POWER OF ATTORNEY I WILL SUE IN CIVIL COURT.



I, CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN FIRST JUDICIAL DISTRICT COURTS.  
DATE 1/20/00



*Glenna L. Petersen*

## **EXHIBIT I (J)**

BLISHED 1905



# Lewiston State Bank

P.O. Box 32, 17 East Center  
Lewiston, Utah 84320  
435-258-2456 800-233-6510

P.O. Box 6097, 2190 North Main  
North Logan, Utah 84341  
435-750-6700 888-710-6403

FOR ACCOUNT INFORMATION  
24 Hours a Day, Call  
**Anytime Access**  
Lewiston State Bank's  
Telephone Banking Service  
**435-258-3700**  
**800-233-6510**

IN ACCOUNT WITH:

1042197

0/30/97-11/25/97

544-74-8867

WENDY LOMSDAL  
295 WEST CENTER  
LEWISTON, UT 84320

2

Page 1 of 1

## SUMMARY OF ACCOUNT

| YOUR BALANCE<br>LAST STATEMENT         |           | CHECKS         |                    | DEPOSITS |                                         | SERVICE CHARGE | YOUR BALANCE<br>THIS STATEMENT |                        |
|----------------------------------------|-----------|----------------|--------------------|----------|-----------------------------------------|----------------|--------------------------------|------------------------|
| NUMBER                                 | AMOUNT    | NUMBER         | AMOUNT             | NUMBER   | AMOUNT                                  |                |                                |                        |
| 4,125.66                               | 2         | 4,125.66       | 0                  | 0.00     | 0.00                                    | 0.00           | 0.00                           |                        |
| EST                                    | INSURANCE | FINANCE CHARGE | + PREVIOUS BALANCE | + LOANS  | - PAYMENTS & CREDITS                    | = NEW BALANCE  | APPROVED CREDIT                | AVAILABLE CREDIT       |
|                                        |           |                |                    |          |                                         |                |                                |                        |
| RANGE OF BALANCES TO WHICH RATES APPLY |           |                | PERIODIC RATE(S)   |          | CORRESPONDING ANNUAL<br>PERCENTAGE RATE |                | THIS BILLING CYCLE             |                        |
|                                        |           |                |                    |          |                                         |                | AVERAGE DAILY BALANCE(S)       | ANNUAL PERCENTAGE RATE |
|                                        |           |                |                    |          |                                         |                | DAYS                           |                        |

|                                                           |          |
|-----------------------------------------------------------|----------|
| Average balance used to calculate annual percentage yield | 4,044.71 |
| Interest earned during statement period                   | 0.00     |
| Interest paid year-to-date                                | 28.69    |
| Beginning statement interest rate                         | 3.25%    |
| Annual percentage yield earned                            | 0.00%    |

## Money Market Personal Account Transactions

| DATE  | DESCRIPTION                | CHECKS   | DEPOSITS | BALANCE  |
|-------|----------------------------|----------|----------|----------|
| 03-97 | Check # 1                  | 100.00   |          | 4,025.66 |
| 20-97 | Withdrawal to CLOSE for DD | 4,025.66 |          | 0.00     |

|                  |                  |                  |
|------------------|------------------|------------------|
| Check-----Amount | Check-----Amount | Check-----Amount |
| 1 * 100.00       |                  |                  |

This account is closed

## **EXHIBIT I (K)**

Keith Cox  
619 East 400 North  
Logan, UT 84321  
753-8697 message phone  
pro se

LOGAN DISTRICT

FILED 3 1 45 PM '00

FIRST JUDICIAL DISTRICT COURT  
CACHE COUNTY, STATE OF UTAH


---

|                |   |                               |
|----------------|---|-------------------------------|
| Wendy Lomsdal, | ) | MOTION AND ORDER FOR          |
|                | ) |                               |
| Petitioner     | ) | PAYMENT OF COURT COSTS AND    |
|                | ) |                               |
| vs.            | ) | ATTORNEYS FEES IN THIS ACTION |
|                | ) |                               |
| Keith Cox,     | ) | Oral Argument Requested       |
|                | ) |                               |
| Defendant      | ) | Civil no. 974100564DA         |

---

Now comes Keith Cox and requests the honorable Court pursuant to CJA Rule 4-911 grant the following.

1. The moving party lacks the resources to pay costs and fees (see CJA Rule 4.911(2)A).  
Attached Affidavit.
2. Petitioner has had resources to pay costs (see Lewiston Bank statements) qualified under Utah Rules of Evidence Rule 902(9) and Rule 803(8).
3. Petitioner has paid \$2000 to her attorney recently. (see affidavit of Clara Didericksen)

  
Keith Cox

**RELIEF SOUGHT**

A. Defendant prays the Court grant this motion that each party pay their own court cost, attorney fees and expert witness fees.

---

**Judge CLINT JUDKINS**

Dated this day \_\_\_\_ of \_\_\_\_\_ 2000



ABLISHED 1905



# Lewiston State Bank

P.O. Box 32, 17 East Center  
Lewiston, Utah 84320  
435-258-2456 800-233-6510

P.O. Box 6097, 2190 North Main  
North Logan, Utah 84341  
435-750-6700 888-710-6403

For Account Information  
24 Hours a Day, Call  
**Anytime Access**  
Lewiston State Bank's  
Telephone Banking Service  
**435-258-3700**  
**800-233-6510**

IN ACCOUNT WITH:

1042197

9/27/97-10/29/97

544-74-8867

WENDY LOMSDAL 1  
295 WEST CENTER  
LEWISTON, UT 84320

Page 1 of 1

## SUMMARY OF ACCOUNT

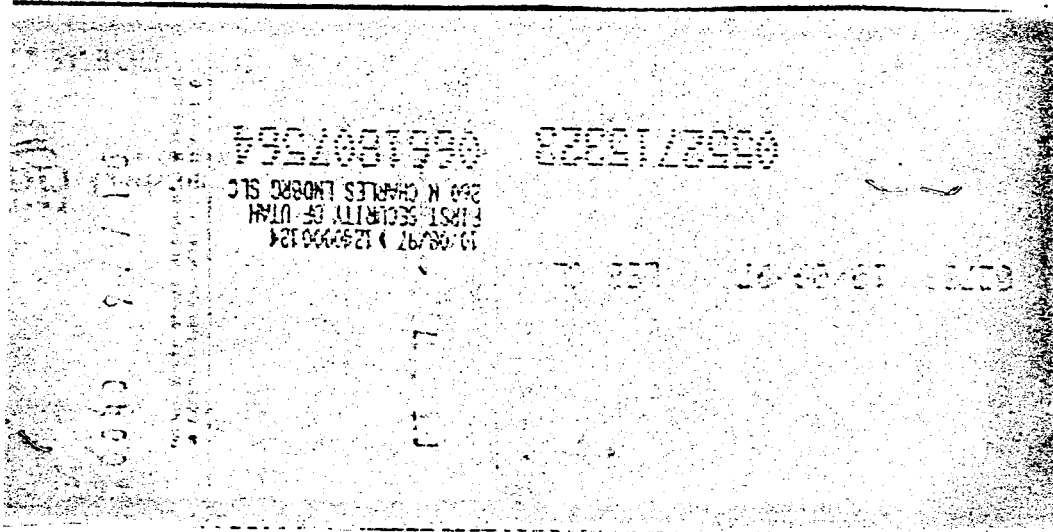
| YOUR BALANCE<br>LAST STATEMENT         |           | CHECKS         |                    | DEPOSITS |                                         | SERVICE CHARGE | YOUR BALANCE<br>THIS STATEMENT |                        |
|----------------------------------------|-----------|----------------|--------------------|----------|-----------------------------------------|----------------|--------------------------------|------------------------|
| NUMBER                                 | AMOUNT    | NUMBER         | AMOUNT             | NUMBER   | AMOUNT                                  |                |                                |                        |
| 4,213.47                               | 1         | 100.00         | 1                  | 12.19    | 0.00                                    |                | 4,125.66                       |                        |
| REST                                   | INSURANCE | FINANCE CHARGE | + PREVIOUS BALANCE | + LOANS  | - PAYMENTS & CREDITS                    | = NEW BALANCE  | APPROVED CREDIT                | AVAILABLE CREDIT       |
|                                        |           |                |                    |          |                                         |                |                                |                        |
| RANGE OF BALANCES TO WHICH RATES APPLY |           |                | PERIODIC RATE(S)   |          | CORRESPONDING ANNUAL<br>PERCENTAGE RATE |                | THIS BILLING CYCLE             |                        |
|                                        |           |                |                    |          |                                         |                | AVERAGE DAILY BALANCE(S)       | ANNUAL PERCENTAGE RATE |
|                                        |           |                |                    |          |                                         |                | DAYS                           |                        |

|                                                           |          |
|-----------------------------------------------------------|----------|
| Average balance used to calculate annual percentage yield | 4,149.83 |
| Interest earned during statement period                   | 12.19    |
| Interest paid year-to-date                                | 28.69    |
| Beginning statement interest rate                         | 3.25%    |
| Annual percentage yield earned                            | 3.30%    |

## Money Market Personal Account Transactions

| DATE     | DESCRIPTION   | CHECKS | DEPOSITS | BALANCE  |
|----------|---------------|--------|----------|----------|
| 09-09-97 | Check # 1     | 100.00 |          | 4,113.47 |
| 09-29-97 | Post Earnings |        | 12.19    | 4,125.66 |

|                  |                  |                  |
|------------------|------------------|------------------|
| Check-----Amount | Check-----Amount | Check-----Amount |
| 1 * 100.00       |                  |                  |



295 w Ch  
Leviston Utah 84320  
258 3043

10/17/97

97-76/1243  
0

Pay to the  
Order of First Sec. Bank \$100.00

One hundred dollars and no/100ths

**LB** Lewiston State Bank  
17 East Center St. • Lewiston, Utah 84320

For \_\_\_\_\_

Wendy Marshall

⑆124300767⑆ 1042197⑆ ⑈0000010000⑈

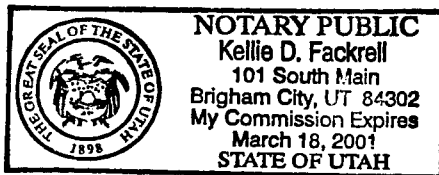
## Affidavit

I, Clara Didericksen, do state under pains and penalties of perjury, the following.

I was out walking recently and was picked up by Wendy Lomsdal. She stated that she had paid her own attorney \$2000 for trial.

Clara Didericksen  
Clara Didericksen, Witness

Subscribed and Sworn to this 3<sup>rd</sup> day of Feb. 2000



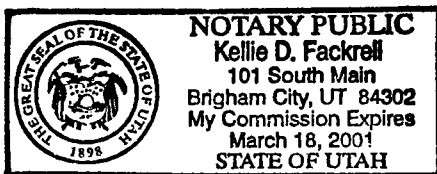
Kellie D. Fackrell  
NOTARY

## Affidavit

Defendant Keith Cox, of 619 East 400 North in Logan, Utah, does state under pains and penalties of perjury that today, February 3, 2000, he has approximately \$200 in his checking account and that these are the only funds available to him.

Keith Cox  
Keith Cox, Witness

Subscribed and Sworn to this 3<sup>rd</sup> day of February 2000



Kellie D. Fackrell  
NOTARY

## **EXHIBIT I (L)**

---

AFFIDAVIT OF  
J. VINCENT ECCLES  
EVENTS OF SEPTEMBER 9, 1998  
PICKING UP ANNA MARIE WITH KEITH COX

---

I, J. Vincent Eccles, do state upon pains and penalties of perjury that the following statements are true as to the events I observed on September 9, 1998 at 5:30 pm at 156 West 400 North, Logan, UT 84321.

Keith Cox drove me in his truck to the above address to pick up Anna Marie. Bill Burnard met us at the curbside. Bill Burnard stated that he could not let Keith Cox take his daughter for the evening visitation of 3 hours, because Keith had not notified the court where his new place of residence is. Bill stated that he had the authority for this situation. Bill stated he would deny Keith future visitations until Keith met with Bill at Keith's new residence as proof of new residence. Bill also stated that he had denied Keith his Labor Day weekend visitation with Anna Marie for the same reasons above.

Keith Cox stated that he had sent a letter of notification of his new address to Wendy Lomsdal at her home address on Saturday, September 5, 1998. Bill Burnard responded that this letter of notification was not adequate to meet the requirements of the court order. Keith Cox had an envelope in his back pocket. He removed the envelope from his pocket to give to Bill Burnard. Keith said that it had the address notification letter in it. Bill Burnard refused to receive the letter.

Bill Burnard requested Keith make an appointment with Bill to allow Bill to visit Keith's new residence. Keith refused on the grounds that Bill Burnard does not have the authority to represent the court in refusing his visitation rights. Keith stated that only the judge has the authority if the parents cannot agree on altering visitation and that the visitation is for the benefit of the child.

Bill Burnard stated that he would not go to Keith's new residence this evening because it would be on his personal time. Bill had plans to meet someone else.

Keith stated that, when Keith and Bill talk on the phone, Bill argues for Wendy's innocence against the claims of Keith that Wendy is a child abuser. Bill claimed he never said that Wendy was innocent of these claims in the phone conversations.

Dated this 11 day of January 2000

J. Vincent Eccles

J. VINCENT ECCLES

1487 Lynnwood

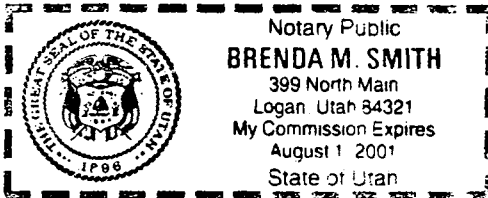
Logan, Utah 84341

(435)753-3819

Subscribed and Sworn to this 11<sup>th</sup> day of January 2000

Brenda M. Smith

Witness



## **EXHIBIT I (M)**



### CHILD WELFARE RISK ASSESSMENT

|                           |                              |              |           |         |          |       |
|---------------------------|------------------------------|--------------|-----------|---------|----------|-------|
| e Name: AnnaMarie Lomsdal | PLEASE CHECK<br>TYPE OF CASE | PLEASE CHECK |           |         |          |       |
|                           |                              | Admin        | Quarterly | Closure | Transfer | Other |
| e: April 2, 1998          | CPS [X]                      | [ ]          | [ ]       | [X]     | [ ]      | [ ]   |
| rker: Lynn Jaggi          | In-Home [ ]                  | [ ]          | [ ]       | [ ]     | [ ]      | [ ]   |
| TRUCTIONS:                | Out-of-Home [ ]              | [ ]          | [ ]       | [ ]     | [ ]      | [ ]   |

icate level of risk by entering appropriate data (e.g. person being rated and/or date and/or ✓ or X) in box below applicable risk descriptor for each ile.

cale does not apply, place check mark or "X" mark in box marked "N/A".

nformation is unknown, place check mark or "X" mark in box marked "unknown".

mmment section should include justification for ratings, progress on ongoing treatment plans, and family strengths.

reas of higher risk are distinguished by bold line.

#### CARETAKER/ALLEGED PERPETRATOR

##### 1 Degree of Perpetrator Accessibility to Victim

[ ] N/A [ ] Unknown

|                             |                                                                          |                                |                                          |                              |                                      |
|-----------------------------|--------------------------------------------------------------------------|--------------------------------|------------------------------------------|------------------------------|--------------------------------------|
| Not accessible. No contact. | Limited accessibility. Infrequent contact & only with adult supervision. | In-home, infrequent caretaker. | Not in-home but has unsupervised access. | In-home, frequent caretaker. | Primary caretaker, constant conduct. |
|                             |                                                                          |                                |                                          |                              | XXXXXXXXXXXXXX                       |

omments: Wendy is a single parent, works outside the home, but is the primary care giver.

##### 2 Parenting Skills

[ ] N/A [ ] Unknown

|                                                                                                                                                                    |                                                                                                                      |                                                                                                                             |                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Caretaker consistently applies appropriate discipline techniques; has good knowledge of age appropriate behavior; displays flexibility; consequences fit behavior. | Marginally consistent discipline; fair knowledge of age appropriate behaviors; fairly flexible, open to improvement. | Same as previous, except children do not always know what to expect; caretaker is not very flexible or open to improvement. | Inconsistent or inappropriate discipline; poor knowledge of age appropriate behavior; inflexible, consequences don't fit behavior, child may exhibit emotional stress; caretakers hostile to change. |
| XXXXXXXXXXXXXXXXXXXX                                                                                                                                               |                                                                                                                      |                                                                                                                             |                                                                                                                                                                                                      |

omments: No deficiencies in parenting were observed during my brief involvement.

##### 3 Maltreatment History of Caretaker

[ ] N/A [ ] Unknown

|                                  |                                                                                              |                                                                                            |                                                                   |                                                                                        |
|----------------------------------|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| Loved, well cared for, no abuse. | Some perceived conflict with caretakers; no specific abuse or neglect; situational problems. | Specific examples of abuse or neglect; sees self as unloved, unwanted or poorly cared for. | Serious ongoing maltreatment; authorities may have been involved. | Obsessed with past maltreatment, has physical scars or emotional/ physical disability. |
|                                  |                                                                                              |                                                                                            | XXXXXXXXXXXXXXXXXXXX                                              |                                                                                        |

Comments: Wendy states that she was extensively abused (physically and sexually) as a child. I don't know if authorities were involved.

| Previous Placement Experience      |                                                                                            |                                                                                                                                      |                                                         | [ ] N/A [ ] Unknown     |
|------------------------------------|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|-------------------------|
| No previous out-of-home placement. | Previous caretaker-initiated out-of-home placements (relatives, friends, hospitals, etc.). | Previous agency involved voluntary or involuntary placements. Less than six months; includes shelter care and emergency foster care. | Previous agency involved placement for over six months. |                         |
|                                    |                                                                                            |                                                                                                                                      |                                                         | XXXXXXXXXXXXXXXXXXXXXXX |

Comments: Wendy was charged in Missouri with failure to protect due to her husband abusing one of the children. This child was placed in foster custody for an extended period of time.

| 3 Child Fearful or Anxious |                                                                                                                                             |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                       |                                                                                                                                                                                | [X] N/A [ ] Unknown |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Child is calm.             | Child is hesitant to talk and ask's the investigator not to tell caretaker <u>OR</u> nervous around the investigator but answers questions. | Appears frightened; avoids contact with caretaker; checks caretaker response <u>OR</u> excessively nervous around investigator; initially hesitates or refuses to answer questions, but does with prompting; may lie or cover up. | Child continually checks caretaker response. Won't answer some questions, denies or tells conflicting stories; may use rehearsed answers. <u>OR</u> Appears frightened of investigator. Child may lie to cover up or cry out of fear. | Severely withdrawn; cries, shakes, cowers, etc. Extreme fear of caretakers, other adults, including investigator. Child <u>absolutely</u> refuses to participate in interview. |                     |
|                            |                                                                                                                                             |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                       |                                                                                                                                                                                |                     |

Comments:

## FAMILY FACTORS

| 1.1 Family Violence: Conflict Resolution             |                                                                                    |                                                                               |                                                                                                   |                                                                                                | [ ] N/A [X] Unknown |
|------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|---------------------|
| No family violence. Adequate problem solving skills. | Verbal aggression present; moderate problem solving skills; some mutual tolerance. | Verbal threats of violence; pattern of conflict; poor problem solving skills. | Physical violence present (e.g. slapping, whipping, shoving, etc.). Physical coercion or threats. | Serious physical violence. Medical treatment needed. Physical coercion or threats with weapon. |                     |
|                                                      |                                                                                    |                                                                               |                                                                                                   |                                                                                                |                     |

Comments: Keith Cox, AnnaMarie's father, claims that there has been some verbal/physical violence towards the children in the past. I haven't been able to substantiate current family violence.

| 1.2 Role Reversal in the Family        |                                                                      |                                                       |                         | [ ] N/A [X] Unknown |
|----------------------------------------|----------------------------------------------------------------------|-------------------------------------------------------|-------------------------|---------------------|
| Appropriate child and caretaker roles. | Minor imbalance in household, management or emotional support roles. | Children assuming majority of adult responsibilities. | Complete role reversal. |                     |
|                                        |                                                                      |                                                       |                         |                     |

Comments:

| Availability of Housing         |                                                        | [X] N/A [ ] Unknown                       |                                            |
|---------------------------------|--------------------------------------------------------|-------------------------------------------|--------------------------------------------|
| Adequate housing and utilities. | Adequate temporary housing.<br>Utilities inconsistent. | Pattern of temporary living arrangements. | Homelessness. Lack of essential utilities. |
|                                 |                                                        |                                           |                                            |

Comments:

## ALTREATMENT/ABUSE FACTORS

| Sexual Abuse                 |                                                                                | [X] N/A [ ] Unknown                                                                                 |                                                 |                                                       |                                      |
|------------------------------|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------|-------------------------------------------------------|--------------------------------------|
| Sexual abuse or impropriety. | Sexual suggestiveness; sexual comments; exposure to soft porn. No Molestation. | Harassed, encouraged propositioned exposure to hardcore or illegal porn. <u>No Sexual Activity.</u> | Exhibition to Child. Child did not participate. | Molest. No Intercourse Porno pictures taken of child. | Penetration; oral sex. Prostitution. |
|                              |                                                                                |                                                                                                     |                                                 |                                                       |                                      |

Comments:

## 2 Physical Abuse: Discipline

| [ ] N/A [ ] Unknown                                 |                                                                                                |                                                                                                             |                                                                             |                                                                                     |                                                                         |
|-----------------------------------------------------|------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| No physical discipline. Inappropriate methods used. | Minimal physical discipline used i.e. spanking on rear. Not excessive. No marks left on child. | Excessive or inappropriate discipline used. No resulting injury, although potential for some injury exists. | Excessive or inappropriate discipline used resulting in superficial injury. | Excessive or inappropriate discipline used, resulting in moderately serious injury. | Excessive or inappropriate discipline used, resulting in severe injury. |
| XXXXXXXXXXXX                                        |                                                                                                |                                                                                                             |                                                                             |                                                                                     |                                                                         |

Comments: The current injury to AnnaMarie appears to have been caused by an accidental falling on the arm of a chair.

## 3 Physical Abuse: Confinement or Restriction

| [X] N/A [ ] Unknown                     |                                                                                                         |                                                                                                                                               |                                                                                                                               |
|-----------------------------------------|---------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| No physical confinement or restriction. | Mild confinement used occasionally physical movement not restricted i.e. excessive grounding; time-out. | Moderately excessive confinement or restriction i.e. confined for 24 hours; physical movement restricted, but for no more than several hours. | Physical or emotional harm; sensory deprivation; confined for several days, physical restriction for more than several hours. |
|                                         |                                                                                                         |                                                                                                                                               |                                                                                                                               |

Comments:

## Activity Record

01 May 99 - 01 Jun 99

Case Name: Lomsdal, Anna

Case ID: 867462

**03 May 99 18:45 1 minutes REC**

This referral was taken in the Division of Child and Family Services. It was marked as Priority 2. Intake worker, Mary Jo Peck. (Lundahl, Wanda 01 Jun 99)

**04 May 99 20:00 60 minutes CLHV Child First Seen (FTF with Victim), Support Person Offered, Unscheduled Home Visit, Home Visit Other Than Working Hours, Victim Interviewed**

UHV. Rose, Rachel, Sarah and Anna (alleged victim were all present) . Was there for 45 minutes however mother never did return. When I arrived at the home Rose (age 13) was watching the younger children and it was reported to this worker that their mother had gone to the store and not been gone very long. They expected her home soon. Rose invited me into the home and I was able to interview Anna in the presence of her three older sisters as support persons. Since they are members of the family no confidentiality form was necessary. I spent some time talking about ordinary things about her life. Anna was quite verbal and seemed to be very comfortable with talking with me. In fact, I stayed at the home for approx. 45 minutes and as I left to go Anna blocked the door and did not want me to leave. In observing Anna at the time of this uhv it was noted that no bruising was observed on her face or her back. It is noted that the pictures Mr. Cox (fa) provided to DCFS have the date hand written in and there is no way to know when the pictures were actually taken or even if, in fact, it was not Mr. Cox himself who bruised his child and then photographed it. It is also noted that the pictures provided to DCFS at the time of this investigation do not appear to indicate any significant (or even minimal bruising) on Anna. Further, the pictures are said (by Mr. Cox) to have been taken on 4-28-99 yet no report of abuse was made until 5-3-99, six full days after Mr. Cox states he observed and photographed the "bruising." In any case, at the time of this uhv no marks or signs of injury are noted on Anna. Anna did seem to have what appear to be the remains of a fever blister in the final stages of healing on her lip. Anna does not report having been abused by either parent. Anna appeared comfortable there in the home with her sisters. She was adequately clothed and groomed. I spent 45 minutes at the home waiting for mother to return from the store but finally left at about 8:45PM. The children were watching a movie (James and the Giant Peach) when I left and seemed to be fine in the care of their older sister Rose. It is noted that the condition of the home was adequate for daily living. Sparsely furnished and quite old, but still adequate. It is also noted that the other three daughters of Wendy Lomsdal who were present at the time of this uhv were adequately clothed and appeared to be adequately cared for. Again, Rose reported to this worker that she had anticipated her mother's arrival home sooner and that she thought she would be back any time. She reported that her mother is ususally quite accurate in returning when she says she will. I left one of my cards and asked to have Wendy L. call me as soon as she returns. (Lundahl, Wanda 01 Jun 99)

**05 May 99 08:15 3 minutes CLOV**

It was announced to me by my receptionist that Wendy Lomsdal was at my office and wanted to meet with me. Unfortunately I was scheduled in court and had other obligations and was unable to see her at that time. I asked my receptionist to please have her call me back with a time that would be appropriate and that would work for her and my schedules. It is noted that she did not have an appointment but she had apparently been told by her daughters of my visit the previous night and had been given the card and so she wanted to come and discuss the situation with me. (Lundahl, Wanda 01 Jun 99)

**05 May 99 09:30 30 minutes REV Reviewed Prior CPS Records**

I reviewed the prior DCFS records on this family. It is noted that in September of 1998 there was a sexual abuse allegation made where the alleged victim was David Jackson who was five years old. He is the son of Wendy Lomsdal. The alleged perpetrator was 15 year old Christopher Dudley who was the son

**Total Duration: 4 hr 29 min**

# CHILD ABUSE NEGLECT REPORT

Report Number: 865211  
Report Start D/T: 19Apr99 14:14:37  
Report Completion D/T: 20Apr99 12:28:22  
Report Worker: Peck, Mary-Jo  
Report Office: N Ogden East Family Services  
Report Source: Neighbor

## Person Section

| Name<br>Last, First MI | Client ID | DOB     | Age  | Role | Rel to<br>PV | M/F | In<br>Home |
|------------------------|-----------|---------|------|------|--------------|-----|------------|
| Lomsdal, Anne          | 070356177 | 19Mar95 | 4VI  | PV   | F            | Y   |            |
| Lomsdal, Wendy A       | 090356176 | 09Jun56 | 42PT | MO   | F            | Y   |            |
| Ackerman, Robin        | 060044384 | 14May59 | 39NI | FR   | F            | N   |            |
| Jackson, David         | 060356177 | 25Nov92 | 6VI  | BR   | M            | Y   |            |
| Jackson, Sarah E       | 030356177 | 28Jul88 | 10VI | SI   | F            | Y   |            |
| Jackson, Rachel A      | 040356177 | 05Jan91 | 8VI  | SI   | F            | Y   |            |
| Jackson, Alberta R     | 020356177 | 19Dec86 | 12NI | SI   | F            | N   |            |
| Atwood, Starr A        | 060410953 | 06Mar84 | 15NI | SI   | F            | N   |            |
| Gray, Sonny            | 060376341 | 25Oct79 | 19NI | BR   | M            | Y   |            |
|                        |           |         |      |      |              |     |            |
|                        |           |         |      |      |              |     |            |

## Family Address

|                                    |                         |
|------------------------------------|-------------------------|
| Report Address: 156 West 400 North | Phone: ( 435 ) 753-9383 |
| City: LOGAN State: UT Zip: 84321   |                         |

## Narrative Section

Referent is concerned because Wendy goes to work at 7 a.m. then brings her children home from school and leaves from about 4 p.m. to sometime and midnight every night. She states there is a 19 year-old brother in the home until he goes to work at midnight. A few weeks ago, Wendy was gone for the weekend and so referent's concern is that no one was home with the children from midnight until 8 the next morning when Sonny would have come home from work. Today she called because the four youngest children were playing outside, and she doesn't believe there is anyone home. She can't verify that though. She is upset that Wendy is never home for her children. On Easter she came home from her boyfriend's at about noon. On Monday's the children have called to invite referent's children to come over for a party, and when referent asks to talk to mother she is not home for those days. She also states there have been times that she and other neighbors have fed the children at 9 p.m. because their mother never called them home for dinner. She states the children sleep in the basement of the home and the blankets they have are crib sized blankets. She states the basement is heated, but it gets cold.

Referent states Starr lives with her father. She came to live with her mother for a few weeks and couldn't stand it so went back to her dad's home. Referent states (Alberta) is not currently living in the home either. She is living with a friend of their family's, Robin. It was later discovered by DCFS this is Robin Ackerman. Referent stated that Rachel was in state's custody for a while, about two years ago.

Referent gave referent the on-call (crisis) number, as well as directed to her contact LCPD if she can't reach DCFS. I asked her to call while the child was at the time of the neglect occurring. Informed her this would not be investigated.

Referent/Place to See Child(ren):  
Referent/Place to See Parent(s):  
Referent Source of Information:  
Condition of Home:  
Actions Taken by On-Call/CPS:  
Precautions:  
Special Conditions:

## Referent Information

|                                    |                         |
|------------------------------------|-------------------------|
| Name: Baker, Sherry                | Rel To PV: Neighbor     |
| Report Address: 155 WEST 400 NORTH | Phone: ( 435 ) 755-9092 |
| City: Logan State: UT              | Zip: 84321              |

|         |      |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
|---------|------|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| 3/11/98 | 1110 | FV | Det. Peterson and I went to _____ and AnnaMarie's day care home. _____ name is _____ and lives at _____ was outside with four children, two of whom were _____ and AnnaMarie. _____ said that _____ first noticed the bruise on AnnaMarie's eye last Thursday (3/5/98) and was told by Wendy that Anna had fallen on a chair. _____ said _____ has been concerned with the children coming to _____ home so hungry each morning. They are brought at 7:00 AM and are picked up at 4:00 PM. _____ said that the arrangement is that _____ feeds them breakfast and lunch (along with some snacks) but _____ is worried that they might not be fed properly at night because they are so hungry in the morning. _____ said that _____ before that they didn't eat the night before. The kids are often dirty when they come. Today AnnaMarie had on the same clothes as yesterday and had gum on her face and dirty hair. Wendy brought some clean clothes for AnnaMarie. _____ gave her a bath and stated that there were no other injuries on her other than the injury below her eye. The injury was still visible today. I took a few photographs of AnnaMarie and a couple of _____. _____ said _____ has never noticed any suspicious injuries on the children. |  |  |
| 3/11/98 | 1130 | TC | I called the _____ to speak with the referent, _____ was not at work so I called and left a message on _____ home phone _____ requesting that call me.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| 3/11/98 | 1140 | FV | Det. Peterson and I went to the residence where Wendy apparently works by taking care of an elderly person. The address is _____ in Logan. No one answered the door.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |
| 3/11/98 | 1200 | FV | Det. Peterson and I went to the Lomsdal residence at 156 West 400 North in Logan. No one answered the door. Det. Peterson and I agreed that Law Enforcement would not seem to be needed any further on this investigation. I will attempt to contact Wendy later on in the day.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| 3/11/98 | 1345 | FV | I returned to _____ but no one answered the door.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |

Lomsdal,Anna

Case ID: 867462

Service Type: CPS

ation Date: 02Jun99 10:00am

Worker: Lundahl,Wanda

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| Number | Factor name                               | Risk level | Risk short description          |
|--------|-------------------------------------------|------------|---------------------------------|
|        | Child's Interview/Interaction with Worker | A          | Child open                      |
|        | Children At Risk: Lomsdal,Anna            |            | Perp/Caretaker: Lomsdal,Wendy A |
|        | Comments: VERY OPEN AND ENGAGING.         |            |                                 |

|                                                        |   |                                 |
|--------------------------------------------------------|---|---------------------------------|
| Child's Perceived Fear of Caretaker and/or Perpetrator | A | No fear                         |
| Children At Risk: Lomsdal,Anna                         |   | Perp/Caretaker: Lomsdal,Wendy A |
| Comments:                                              |   |                                 |

|                                                                                     |   |                                 |
|-------------------------------------------------------------------------------------|---|---------------------------------|
| Violence and Conflict Resolution in the family                                      | A | No family violence              |
| Children At Risk: Lomsdal,Anna                                                      |   | Perp/Caretaker: Lomsdal,Wendy A |
| Comments: AS IT RELATES TO WENDY L. AND HER FAMILY THERE IS NO DOCUMENTED VIOLENCE. |   |                                 |

|                         |  |                 |
|-------------------------|--|-----------------|
| Role Reversal in Family |  |                 |
| Children At Risk:       |  | Perp/Caretaker: |

Comments:

|                                |   |                                 |
|--------------------------------|---|---------------------------------|
| Availability of Housing        | A | Adequate housing and utilities  |
| Children At Risk: Lomsdal,Anna |   | Perp/Caretaker: Lomsdal,Wendy A |
| Comments:                      |   |                                 |

|                                                      |   |                                 |
|------------------------------------------------------|---|---------------------------------|
| Emotional Maltreatment (*Refer to Policy 202.A.1.a.) | A | No emotional maltreatment       |
| Children At Risk: Lomsdal,Anna                       |   | Perp/Caretaker: Lomsdal,Wendy A |
| Comments:                                            |   |                                 |

## **EXHIBIT II**





LOGAN REGIONAL HOSPITAL  
LOGAN, UTAH

*Anna Marie Smith*  
*20-03-82*



P OF REPORT NUM

REPORT NUM



P OF REPORT NI

## **EXHIBIT III (A)**

1 today because there was a conflict. Stated that there was a  
2 conflict in their firm.

3 MR. MATHEWS: Who is your client's new counsel?

4 MR. LARSON: Well, that's why he has to get another  
5 one, because he had that Amanda -- what's her name. I don't  
6 even know what her last name is now.

7 THE COURT: But there is a conflict. So you still  
8 haven't obtained Counsel, then, Mr. Cox?

9 MR. COX: No, I haven't.

10 THE COURT: And Mr. Larson is no longer going to  
11 represent you?

12 MR. COX: Me and him had a verbal agreement, and I'll  
13 honor that. So he's going to withdraw.

14 MR. LARSON: The thing is when he came to me I told  
15 him, "No custody battles or I'm not going to take the case,  
16 period."

17 THE COURT: All right, and now there's a custody  
18 battle.

19 MR. LARSON: Yeah, and he's got some evidence that  
20 certainly bears out a change in the complexion of things. I  
21 just -- I'm not going to do a custody battle for poor people.  
22 It just don't work.

23 THE COURT: All right. How long have the parties been  
24 separated?

25 MS. COX: Since November 17<sup>th</sup>, when the protection order

1 was closed.

2 THE COURT: In fact I wouldn't mind seeing that report  
3 before I set the matter -- because looking at what I'm seeing  
4 here, I've seen these type of accidents before, these pictures  
5 here.

6 MS. COX: Well, and he saw her when he came to my home.

7 MR. MATHEWS: They did a full investigation.

8 MS. COX: Mr. Yagee came to my home.

9 MR. LARSON: I haven't seen it. Like I say, certainly  
10 there's an issue here that needs to be weighed, and that's the  
11 difficulty.

12 THE COURT: Okay. What was the nature of the accident?

13 MS. COX: May I speak or --

14 MR. LARSON: Sure. Tell me what the accident --

15 THE COURT: Tell me what happened.

16 MS. COX: I was at class, and my older son and kids  
17 were watching Anna, and she was crawling from one couch to the  
18 chair next to it, and her hand slipped and she fell. I'm not  
19 sure which eye it was, but she hit her eye right here and it  
20 caused a bruise. There wasn't any swelling, or she didn't have  
21 a headache or anything.

22 So that was Tuesday, and Keith picked her up Sunday  
23 morning and took her to the hospital. I found out about it  
24 because he told me, and I went and got copies of the medical  
25 report.

1 MR. MATHEWS: I will, your Honor. I'm wondering if we  
2 can -- I will call Lori and ask her what her schedule is, but I  
3 would like to get this back on track to get this over with. So  
4 if we could have a --

5 THE COURT: I'll review it in -- let's review it in  
6 July?

7 MS. COX: No, please, your Honor.

8 THE COURT: It takes about at the most -- or at the  
9 least, 60 days to get a custody evaluation completed.

10 MS. COX: But will they start it without payment, your  
11 Honor?

12 MR. MATHEWS: No.

13 THE COURT: They won't start it without payment.

14 MS. COX: Is there any way we can require him to have  
15 it paid within -- so that it can be started?

16 THE COURT: July what, did you say?

17 COURT CLERK: July 9<sup>th</sup> at 2 o'clock.

18 THE COURT: July 9<sup>th</sup> at 2 o'clock in the afternoon.

19 If it hasn't been started at that time, then the Court may  
20 consider that Mr. Cox is no longer seeking custody of the minor  
21 child. So if you want custody, put your money where your mouth  
22 is and pay the custody evaluation so we can get it started.

23 MR. COX: Okay.

24 THE COURT: All right. Go ahead, Mr. Mathews.

25 MR. MATHEWS: I'll call Lori Holmes and determine when

1 she can start the evaluation.

2 THE COURT: All right.

3 MR. MATHEWS: And if she can start the evaluation on  
4 a date certain, I will notify Mr. Cox somehow, through his  
5 Counsel or --

6 MR. LARSON: What's your address? Let's put it on the  
7 record.

8 MR. MATHEWS: I've got to have his address.

9 THE COURT: All right.

10 MS. COX: I don't know where he takes my daughter.

11 MR. LARSON: What's your address? Tell the Judge where  
12 your address is.

13 MR. COX: At 64 West 600 South is where I get my mail.

14 MS. COX: That's not where he lives, your Honor. He  
15 won't tell me where he lives or where he's taking her.

16 THE COURT: Tell Mr. Larson -- I'm going to let you  
17 withdraw here in just a few moments.

18 Ms. Cox, you're not prejudiced one iota by this  
19 Court's order today. We are continuing, the existing orders  
20 are in effect, and Anna is remaining with you on a temporary  
21 basis. We're just doing a custody evaluation. If everything  
22 turns out the way you say, then you have custody of this child  
23 on a permanent basis, but where he has the right as a father to  
24 assert custody, to assert that right, so we're going to have  
25 the investigation.

## **EXHIBIT III (B)**

1 THE COURT: All right.

2 MS. DENHOLM: I think my understanding was more that  
3 he wanted to meet with us to explain the basis of his report,  
4 answer any questions that we had. Though I suppose --

5 THE MATHEWS: I think his letter said that based on  
6 the outcome of the meeting that he may make some different  
7 recommendations. So I just assumed that that was kind of an  
8 informal mediation, and we don't have any objection to that.

9 THE COURT: Ms. Denholm, let me tell you, if Dr. Price  
10 is willing to go to that effort, then I think that you ought to  
11 pursue it. Dr. Price is held with great esteem by this Court.  
12 I've read many, many custody evaluations from many different  
13 evaluators. I don't know of one that is better than Dr. Price.

14 So if the two of you are able to meet with him, and  
15 he's willing to try to work out or explain the basis of his  
16 -- I think it's fully explained in his evaluation, but if he  
17 wishes to meet with you to explain further his recommendations,  
18 and hopefully reach a resolution that the two of you can make,  
19 fine. Then let's let him do that, and save you some further  
20 litigation.

21 It's always a -- this is always a good time for a  
22 reality check. Mr. Cox, it is. It's a good time for a reality  
23 check. I think that both of you, from what Dr. Price has told  
24 me, are good parents. Both of you can provide and have good  
25 parenting skills with Anna, but if he were called to testify,



## **EXHIBIT III (C)**

1 keep in mind that children are programmed or bribed --" well,  
2 let me just back up and ask you one question before we get into  
3 that. How old was Anna when you went to do the evaluation?

4 A. When I was doing the evaluation, she was three years  
5 of age.

6 Q. Okay.

7 A. When I started in July 22<sup>nd</sup>, 1998, she was three years  
8 of age.

9 Q. I was interested in what you had to say, because I  
10 know that she's a young child, a toddler, which I guess would  
11 be accurate. You talk about -- in that paragraph you talk  
12 about children who may be programmed, and then you talk about  
13 how you get around that by relying on non-verbal responses.  
14 Could you go into that just a little bit and explain to the  
15 Court how that's done.

16 A. Because of Anna Marie's age, and I wasn't able to use  
17 the normal tests and evaluations that I would use on a child  
18 who is five-and-a-half or older, I had Anna Marie evaluated by  
19 one of my colleagues, Susan Erickson, and there was a Denver  
20 Developmental Report that was done. Starts on page 8.

21 What I was interested in seeing was Anna was -- if she  
22 was on task with her developmental issues, and about what sort  
23 of things she might struggle with and what would be her areas  
24 that she needed to improve and if she had any deficits.

25 Q. Okay, and this was done through non-verbal responses?

1 regular, consistent visitation, and that the Court should be  
2 able to insure that he be allowed to have access and visitation  
3 with his daughter.

4 Q. There's no suggestion here that Anna doesn't love her  
5 parents.

6 A. No, I think Anna loves both of her parents, and I  
7 think Anna enjoys spending time with both parents.

8 Q. That recommendation that you just articulated to the  
9 Court, is that still your recommendation today?

10 A. Well, as far as I have information, that's still my  
11 recommendation.

12 MR. MATHEWS: Thank you, Dr. Price.

13 THE COURT: Ms. Balmain.

14 MS. BALMAIN: Thank you. I have just a few questions.

15 CROSS EXAMINATION

16 BY MS. BALMAIN:

17 Q. Do you recall what address it was that you did visit  
18 Mr. Cox at?

19 A. At 619 East 400 North, Logan, Utah.

20 Q. Do you recall how many different addresses he had  
21 during the course of your evaluation?

22 A. At least three that I was aware of, because I think  
23 shortly after I visited this twice, he moved.

24 Q. Okay. Did you review any of the records regarding the  
25 allegations that another child of Ms. Lomsdahl had been abused?

1 A. To be the primary parent or to take care of her?

2 Q. To be the primary parent.

3 A. Well, the number of times you'd moved. That you don't  
4 have -- you're not able to demonstrate the parenting knowledge,  
5 reservoir of knowledge, the parenting skills. The fact that  
6 Anna has siblings that she's very attached to, and I think she  
7 would be very upset if you took them away from her.

8 Q. You've already answered the question.

9 A. Thank you. Q. You state on page 13 in paragraph 2  
10 that "I do not believe that Wendy's emotional problems at the  
11 present time interfere with her parenting with her children."  
12 Do you believe she does have emotional problems?

13 A. I think she struggles with depression. I think she  
14 has some issues that have not been resolved about what we've  
15 previously talked about being able to maintain a relationship  
16 with a husband, but I don't think there's anything that I'm  
17 aware of that interferes with her being a good parent.

18 Q. At point B on Rule 4-903, the second sentence says,  
19 "Anna has six other siblings."

20 A. Or has siblings.

21 Q. There's only one Anna, but she has ten siblings.

22 A. Is that including yours in Missouri?

23 Q. Yes.

24 A. I was focusing on the ones living with Wendy, but  
25 you're right.

1 a forwarding address of phone. So then I left word with the  
2 gentleman that if possible to have Mr. Cox contact me so that  
3 I could get his address. The Court had strongly ordered in  
4 the previous hearing that Mr. Cox keep the Court aware of his  
5 address.

6 I went and met with Mr. Cox on a Wednesday evening at  
7 the usual time he picked up Anna at 5:30, and informed him at  
8 that time that I needed to know where he lived before he could  
9 take Anna to that residence, and he was uncooperative at that  
10 time, didn't want to tell me.

11 He said that he had sent a letter to Wendy Lomsdahl  
12 with the correct address in it, and apparently Ms. Lomsdahl  
13 did not open this letter and just returned it, and he felt that  
14 that was adequate to inform the Court and myself and whoever  
15 else needed to know of his address.

16 There was some discussion about it, and Mr. Cox became  
17 a little bit threatening. So I called the Logan City Police  
18 Department. Mr. Cox left the scene. Logan City showed up and  
19 he came back and there was some discussion at that time as to  
20 what was going on.

21 Q. Okay, and so did Mr. Cox visit with Anna that night?

22 A. No.

23 Q. In September of 1998?

24 A. No.

25 MR. COX: What date was this?

1 A. Yes, it was.

2 Q. So that I could -- you testified you went to ascertain  
3 where he was living; is that correct?

4 A. I'm sorry, repeat the question.

5 Q. You went to -- that particular night you testified to,  
6 the purpose of that contact was to ascertain his new address;  
7 is that correct?

8 A. Right, and I felt at that time that he hadn't complied  
9 with the Court order, which was to keep us all informed -- the  
10 Court and the guardian ad litem's office -- of his present  
11 address, and told him that I was -- or that he was not allowed  
12 to take Anna that night until he complied with that order.

13 Q. And he refused?

14 A. He did.

15 THE COURT: Mr. Cox, do you have questions of this  
16 witness?

17 MR. COX: Yes.

18 CROSS EXAMINATION

19 BY MR. COX:

20 Q. How many times did you refuse me my visitation with my  
21 daughter?

22 A. As to my recollection, I think it was twice.

23 Q. Uh-huh. One was on the 9<sup>th</sup> of September?

24 A. Yes, that's correct.

25 Q. And did I ask you a question, "Where do you get your

1 There's a living room, kitchen, bathroom, and two bedrooms  
2 upstairs, and what is now three bedrooms downstairs, with a  
3 backyard, (inaudible) and big tree.

4 Q. And you live there with whom?

5 A. Sunny Gray, who is my oldest. He's 20. He works and  
6 pays me rent. Star Atwood, who will be 16 in March. She is my  
7 oldest daughter. She's been there since November 1<sup>st</sup>, when her  
8 stepmother asked me to bring her to my home. Also, there's  
9 Rose Jackson, who is 13. She goes to Mount Logan Middle  
10 School. Her and Sarah and David and Rachel are all full  
11 brothers and sisters. Sarah --

12 Q. You're getting ahead of yourself.

13 A. Okay. Sarah is 11; she goes to Edith Bowen. Rachel  
14 is 9; she goes to Edith Bowen. David is 7; he goes to Edith  
15 Bowen. Then Anna Marie is almost 5, and she goes to Head  
16 Start.

17 Q. Okay, and how old is Rachel?

18 A. Rachel is now 9 years old. She was baptized just  
19 January. Maybe she's 8. I'm sorry.

20 Q. And they're all living with you at this point?

21 A. Yes, they are.

22 Q. Do you have any children who are not living with you?

23 A. No, I don't.

24 Q. All of your children live with you; three of whom --  
25 now, you have Anna, who is the youngest?

## **EXHIBIT III (D)**



1 THE COURT: Go ahead. I don't hear an objection.  
2 Answer the way you feel appropriate.

3 THE WITNESS: Okay. "Alert, very quiet female patient  
4 brought to ED by father. Father concerned of possible physical  
5 abuse by mother. Divorced father had visitation --" looks  
6 like "on Sunday. Picked child up this morning."

7 "Noted one centimeter abrasion with contusion left  
8 eye orbit, brownish yellow in color. Eyes tracked well. Neck  
9 supple, no drainage from ears, good bilateral breath sounds.  
10 Two small one-centimeter yellowish contusions posterior thorax,  
11 left scapular area. Abdomen soft. No nausea, vomiting. Large  
12 birthmark right lower quadrant to right thigh. Multiple old  
13 contusions over bony prominences."

14 "Father requests photos be taken. Child nonverbal  
15 with RN. Will shake head yes or no. Did tell father that she  
16 hit her eye on chair. No other signs and symptoms of trauma.  
17 Father almost badgering with child. Told to refrain from doing  
18 that multiple times."

19 Q. The copy I've got is just a little bit different than  
20 that. Oh, okay. I guess this was a printout up here. Okay.  
21 Is this your handwriting on this page?

22 A. Yes.

23 Q. Okay. I've got the pictures somewhere.

24 THE COURT: Would you like these marked, Mr. Cox?

25 MR. COX: What?

1 THE COURT: Would you like these marked and introduced  
2 into evidence?

3 MR. COX: I sure would.

4 THE COURT: Any objection to the Court receiving these  
5 into evidence?

6 MS. BALMAIN: No, thank you.

7 MR. MATHEWS: No.

8 THE COURT: Be received.

9 (Exhibit No. 2 received into evidence)

10 THE COURT: Ask your next question, Mr. Cox.

11 MR. COX: Yeah.

12 Q. BY MR. COX: Who arrived at the decision that this  
13 should be reported to Social Services?

14 A. That's our policy that we do that. If there's any  
15 question of abuse, we report.

16 Q. On the front page of that report does it say that you  
17 asked me to refer?

18 A. No. It just says you were concerned about possible  
19 physical abuse by mother. Nowhere do I have that you request  
20 that that be reported. I just automatically do that according  
21 to our policy.

22 Q. You did ask me, though, if it would be all right,  
23 right?

24 A. I don't specifically remember that. I don't normally  
25 ask that of people. I mean, I just in any --

1 THE COURT: I'll sustain the objection. Strike the  
2 answer. Now, Mr. Cox, I don't want you asking him any more  
3 questions about child support. It's not his realm to testify  
4 about that.

5 Q. BY MR. COX: How often have I contacted you since I've  
6 been here by phone and otherwise?

7 A. Frequently. Probably every-other week.

8 MR. COX: I guess that's all I have.

9 THE COURT: Anything further, Mr. Mathews?

10 MR. MATHEWS: No.

11 THE COURT: Ms. Balmain?

12 MS. BALMAIN: No, thank you.

13 THE COURT: Thank you. You may step down.

14 Mr. Cox, do you have any additional witnesses?

15 MR. COX: I'd like to call Dianne Balmain to get her to  
16 confirm this material that came from Missouri.

17 MS. BALMAIN: May I respond?

18 THE COURT: You may.

19 MS. BALMAIN: My role as guardian ad litem doesn't  
20 allow me to be a witness in the case. I'm a lawyer and an  
21 advocate for one of the parties. If Mr. Cox would like me  
22 to verify to the Court that I did receive some records from  
23 Missouri regarding past abuse of Ms. Lomsdahl's other children  
24 who were (inaudible) by a former partner of hers, I'd be glad  
25 to do that.

1 THE COURT: Very well.

2 MS. BALMAIN: That is information that I received from  
3 Mr. Cox. Also I provided that to DCFS as part of one of their  
4 investigations.

5 MR. COX: I'd like this to be entered into evidence,  
6 the investigative summary.

7 THE COURT: Do you want to respond, Ms. Balmain?

8 MS. BALMAIN: I can respond. Unfortunately those  
9 records are part of the Missouri Division of Child and Family  
10 Services records, and my thought, actually, as to how that  
11 information would come before the Court is that I had called  
12 Wanda Lundall to testify. She's the last one of the DCFS  
13 personnel in Utah to do an investigation, and as part of her  
14 investigation she did review all of the prior investigations,  
15 which included all of the documentation from Missouri.

16 I didn't offer any of the specifics of any of the DCFS  
17 investigations because it's rather voluminous, and some of the  
18 forms are difficult to understand if you're not acquainted with  
19 them on a day-to-day basis. So I don't necessarily have an  
20 objection to that investigative summary coming into the Court's  
21 attention, but I would want to articulate to the Court that the  
22 information therein was considered as part of any investigation  
23 regarding any risk to Anna at this time.

24 Frankly what happened was that one of Ms. Lomsdahl's  
25 older children, who was actually very young at that time, was

1 MS. BALMAIN: I know that she did, because I gave it to  
2 her.

3 THE COURT: All right. Very well. Mr. Mathews, do you  
4 have a response to the proffer of these documents?

5 MR. MATHEWS: Well, I think if we're going to allow  
6 those documents to come in as evidence, then certainly the  
7 summary of the investigations that were done here by DCFS,  
8 those should be appended, attached with those documents,  
9 so that the Court has a full view of what was examined and  
10 considered here when DCFS in Utah made their reports on what  
11 those conclusions were.

12 THE COURT: Let me indicate --

13 MR. MATHEWS: Otherwise -- oh, go ahead.

14 THE COURT: Let me indicate to all parties we've got to  
15 short circuit it here. You know you can become inundated with  
16 information. The Court's reviewed all of the documentation  
17 which has been submitted to it. The Court has also reviewed  
18 the testimony by Ms. Lundall.

19 I have no objections to receiving the documents.  
20 I think your point is well taken, Mr. Cox. If you want the  
21 actual reports to be made a part of the evidence and you want  
22 to produce the summary, the Court will receive it.

23 I don't think that's going to make any difference, the  
24 actual receipt of the documents. I'm well aware of what went  
25 on in both places. It may be a lot to do about nothing to see

# **UNITED STATES CONSTITUTIONAL PROVISIONS**

## **I. Article III**

## **II. Amendments V, IX, X, XIV**

## Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

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- [Next Article--Previous Article](#)
  - [Table of Articles and Amendments](#)
  - [Overview of Full Constitution](#)
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**AMENDMENT V**

**[Criminal actions - Provisions concerning - Due process of law and just compensation clauses.]**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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## AMENDMENT IX

**[Rights retained by people.]**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

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## **AMENDMENT X**

### **[Powers reserved to states or people.]**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## AMENDMENT XIV

### Section

1. [Citizenship - Due process of law - Equal protection.]
2. [Representatives - Power to reduce appointment.]
3. [Disqualification to hold office.]
4. [Public debt not to be questioned - Debts of the Confederacy and claims not to be paid.]
5. [Power to enforce amendment.]

### **Section 1. [Citizenship - Due process of law - Equal protection.]**

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

### **Sec. 2. [Representatives - Power to reduce appointment.]**

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

### **Sec. 3. [Disqualification to hold office.]**

No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

### **Sec. 4. [Public debt not to be questioned - Debts of the Confederacy and claims not to be paid.]**

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims

shall be held illegal and void.

**Sec. 5. [Power to enforce amendment.]**

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

**History:** Proposed by Congress on June 16, 1866; declared to have been ratified by three-fourths of all the states on July 28, 1868.

# **TITLE 42 UNITED STATES CODE §1983**

### § 1983. Civil action for deprivation of rights

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

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.)

#### HISTORICAL AND STATUTORY NOTES

**Revision Notes and Legislative Reports**  
1979 Acts. House Report No. 96-548, see 1979 U.S. Code Cong. and Adm. News, p. 2609.

#### Codifications

R.S. § 1979 is from Act Apr. 20, 1871, c. 22, § 1, 17 Stat. 13.

Section was formerly classified to section 43 of Title 8, Aliens and Nationality.

#### Amendments

1979 Amendments. Pub.L. 96-170 added "or the District of Columbia" follow-

ing "Territory," and provisions relating to Acts of Congress applicable solely to the District of Columbia.

#### Effective Dates

1979 Acts. Amendment by Pub.L. 96-170 applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub.L. 96-170, set out as a note under section 1343 of Title 28, Judiciary and Judicial Procedure.

#### CROSS REFERENCES

Attorney's fees to prevailing party other than United States, see 42 USCA § 1988. Citizenship clause, see USCA Const. Amend. XIV, § 1.

Conspiracy to interfere with civil rights, damages for, see 42 USCA § 1985. Institutionalized persons required to exhaust remedies to maintain action under this section, see 42 USCA § 1977e.

Jurisdiction of district courts of civil rights actions, see 28 USCA § 1343.

Privileges and immunities clauses, see USCA Const. Art. IV § 2, cl. 1 and Amend. XIV, § 1.

#### LIBRARY REFERENCES

##### Administrative Law

Defense against discrimination, complaint, see West's Federal Practice Manual § 16321 et seq.

Discriminatory zoning, see West's Federal Practice Manual § 12763.

Exhaustion doctrine, application of, see Koch, Administrative Law and Practice § 13.5

Federal jurisdiction, see West's Federal Practice Manual § 7521 et seq.

Habeas corpus, see Koch, Administrative Law and Practice § 8.15.

Immunity, see Koch, Administrative Law and Practice § 10.78

Preliminary procedures, see West's Federal Practice Manual § 16161 et seq.

Preparation of complaint, see West's Federal Practice Manual §§ 7966, 9084.

Procedural techniques of constitutional damage suit, see Koch, Administrative Law and Practice § 7.42

# **CONSTITUTION OF UTAH**

**Article I, Section 1. [Inherent and inalienable rights.]**

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

No History for Constitution

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*Last revised: Wednesday, December 30, 1998*



**Article I, Section 7. [Due process of law.]**

No person shall be deprived of life, liberty or property, without due process of law.

No History for Constitution

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*Last revised: Wednesday, December 30, 1998*

**Article I, Section 11. [Courts open -- Redress of injuries.]**

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

No History for Constitution

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*Last revised: Wednesday, December 30, 1998*

**Article I, Section 18. [Attainder -- Ex post facto laws -- Impairing contracts.]**

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

No History for Constitution

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*Last revised: Wednesday, December 30, 1998*

**Article I, Section 24. [Uniform operation of laws.]**

All laws of a general nature shall have uniform operation.

No History for Constitution

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*Last revised: Wednesday, December 30, 1998*

**Article I, Section 26. [Provisions mandatory and prohibitory.]**

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

No History for Constitution

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*Last revised: Wednesday, December 30, 1998*

**Article I, Section 27. [Fundamental rights.]**

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

No History for Constitution

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*Last revised: Wednesday, December 30, 1998*

**Article IV, Section 1. [Equal political rights.]**

The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.

No History for Constitution

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*Last revised: Wednesday, December 30, 1998*

# **UTAH CODE ANNOTATED, as Amended [1953]**



**30-3-3. Award of costs, attorney and witness fees - Temporary alimony.**

(1) In any action filed under Title 30, Chapter 3, 4, or 6, and in any action to establish an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.

**30-3-4. Pleadings - Findings - Decree - Use of affidavit - Sealing.**

(1) (a) The complaint shall be in writing and signed by the petitioner or petitioner's attorney.

(b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the cause. If the decree is to be entered upon the default of the respondent, evidence to support the decree may be submitted upon the affidavit of the petitioner with the approval of the court.

(c) If the petitioner and the respondent have a child or children, a decree of divorce may not be granted until both parties have attended the mandatory course described in Section 30-3-11.3, and have presented a certificate of course completion to the court. The court may waive this requirement, on its own motion or on the motion of one of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section 78-3-31 and rules of the Judicial Council. The court or the commissioner in all divorce cases shall enter the decree upon the evidence or, in the case of a decree after default of the respondent, upon the petitioner's affidavit.

(2) The file, except the decree of divorce, may be sealed by order of the court upon the motion of either party. The sealed portion of the file is available to the public only upon an order of the court. The concerned parties, the attorneys of record or attorney filing a notice of appearance in the action, the Office of Recovery Services if a party to the proceedings has applied for or is receiving public assistance, or the court have full access to the entire record. This sealing does not apply to subsequent filings to enforce or amend the decree.

**30-3-5.2. Allegations of child abuse or child sexual abuse - Investigation.**

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court, after making an inquiry, may order that an investigation be conducted by the Division of Child and Family Services within the Department of Human Services in accordance with Title 62A, Chapter 4a. A final award of custody or visitation may not be rendered until a report on that investigation, consistent with Section 62A-4a-412, is received by the court. That investigation shall be conducted by the Division of Child and Family Services within 30 days of the court's notice and request for an investigation. In reviewing this report, the court shall comply with Section 78-7-9.

### **30-3-10. Custody of children in case of separation or divorce - Custody consideration.**

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. The court may inquire of the children and take into consideration the children's desires regarding future custody or visitation schedules, but the expressed desires are not controlling and the court may determine the children's custody or visitation otherwise. Interviews with the children may be conducted by the judge in camera only with the prior consent of the parties.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) A court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising therefrom by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(c) Nothing in this section may be construed to apply to:

(i) abuse, neglect, or dependency proceedings under Title 62A, Chapter 4a, Child and Family Services, or Title 78, Chapter 3a, Juvenile Courts; or

(ii) adoption proceedings under Title 78, Chapter 30, Adoption.

**History:** L. 1903, ch. 82, § 1; C.L. 1907, § 1212x; C.L. 1917, § 3004; R.S. 1933 & C. 1943, 40-3-10; L. 1969, ch. 72, § 7; 1977, ch. 122, § 5; 1988, ch. 106, § 1; 1993, ch. 131, § 1; 1997, ch. 43, § 1; 1999, ch. 6, § 1.

**Amendment Notes.** - The 1997 amendment, effective May 5, 1997, added Subsection (4).

The 1999 amendment, effective May 3, 1999, in Subsection (1) inserted "or visitation" and "or visitation schedules" in the third sentence and added the last sentence, and substituted "Child and Family Services" for "Family Services" in Subsection (4)(c)(i).

**Cross-References.** - Disposition of property and children, § 30-3-5.

Removal of children from homestead, § 30-2-10.

### **NOTES TO DECISIONS**

**Compiler's Notes.** - In 1997, the Utah legislature changed the designation of parties in domestic

#### **30-3-10.4. Modification or termination of order.**

(1) On the motion of one or both of the joint legal custodians the court may, after a hearing, modify an order that established joint legal custody if:

(a) the circumstances of the child or one or both custodians have materially and substantially changed since the entry of the order to be modified, or the order has become unworkable or inappropriate under existing circumstances; and

(b) a modification of the terms and conditions of the decree would be an improvement for and in the best interest of the child.

(2) The order of joint legal custody shall be terminated by order of the court if both parents file a motion for termination. At the time of entry of an order terminating joint legal custody, the court shall enter an order of sole legal custody under Section 30-3-10. All related issues, including visitation and child support, shall also be determined and ordered by the court.

(3) If the court finds that an action under this section is filed or answered frivolously and in a manner designed to harass the other party, the court shall assess attorney's fees as costs against the offending party.

**62A-4a-412. Reports and information confidential.**

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report is confidential and may only be made available to:

- (a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;
- (b) a physician who reasonably believes that a child may be the subject of abuse or neglect;
- (c) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;
- (d) a contract provider that has a written contract with the division to render services to a child who is the subject of a report;
- (e) any subject of the report, the natural parents of the minor, and the guardian ad litem;
- (f) a court, upon a finding that access to the records may be necessary for the determination of an issue before it, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

- (i) limited to objective or undisputed facts that were verified at the time of the investigation; and
- (ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;
- (g) an office of the public prosecutor or its deputies in performing an official duty;
- (h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment; and

(k) any person identified in the report as a perpetrator or possible perpetrator of child abuse or neglect, after being advised of the screening prohibition in Subsection (2).

(2) (a) No person, unless listed in Subsection (1), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of child abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) Except as provided in Subsection 62A-4a-116 (8)(c), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the management information system, in violation of this part or Section 62A-4a-116, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

Amended by Chapter 321, 2000 General Session

Amended by Chapter 304, 2000 General Session

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*Last revised: 06/28/2000*

**76-5-301.1. Child kidnaping.**

(1) A person commits child kidnaping when the person intentionally or knowingly, without authority of law and against the will of the victim, by any means and in any manner, seizes, confines, detains, or transports a child under the age of 14 with intent to keep or conceal the child from its parent, guardian, or other person having lawful custody or control of the child.

(2) A seizure, confinement, detention, or transportation is deemed to be against the will of the victim if the victim is younger than 14 years of age at the time of the offense, and the seizure, confinement, detention, or transportation, is without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis.

(3) Violation of Section **76-5-303** is not a violation of this section.

(4) Child kidnaping is a first degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life. Imprisonment is mandatory in accordance with Section **76-3-406**.

Amended by Chapter 40, 1996 General Session

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*Last revised: 04/28/2000*

**76-5-303. Custodial interference.** (1) A person, whether a parent or other, is guilty of custodial interference if, without good cause, the actor takes, entices, conceals, or detains a child under the age of 16 from its parent, guardian, or other lawful custodian:

(a) Knowing the actor has no legal right to do so; and

(b) With intent to hold the child for a period substantially longer than the visitation or custody period previously awarded by a court of competent jurisdiction.

(2) A person, whether a parent or other, is guilty of custodial interference if, having actual physical custody of a child under the age of 16 pursuant to a judicial award of any court of competent jurisdiction which grants to another person visitation or custody rights, and without good cause the actor conceals or detains the child with intent to deprive the other person of lawful visitation or custody rights.

(3) Custodial interference is a class A misdemeanor unless the child is removed and taken from one state to another, in which case it is a felony of the third degree.

Amended by Chapter 18, 1984 General Session

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*Last revised: 04/28/2000*



**78-7-9. Appointment of attorney guardian ad litem in child abuse and neglect proceedings.**

(1) If child abuse, child sexual abuse, or neglect is alleged in any proceeding in any state court, the court may upon its own motion or shall upon the motion of any party to the proceeding appoint an attorney guardian ad litem to represent the best interest of the child, in accordance with Sections 78-3a-911 and 78-3a-912.

(2) The court may appoint an attorney guardian ad litem, when it considers it necessary and appropriate, to represent the best interest of the child in all related proceedings conducted in any state court involving the alleged abuse, child sexual abuse, or neglect.

(3) The attorney guardian ad litem shall be appointed in accordance with and meet the requirements of Sections 78-3a-911 and 78-3a-912.

(4) If an attorney guardian ad litem has been appointed for the child by any court in the state in any prior proceeding or related matter, the court may continue that appointment or may reappoint that attorney guardian ad litem, if still available, to act on behalf of the child.

(5) The court is responsible for all costs resulting from the appointment of an attorney guardian ad litem and shall use funds appropriated by the Legislature for the guardian ad litem program to cover those costs.

(6) If the court appoints a guardian ad litem attorney pursuant to this section or Section 78-3a-912, the court may assess all or part of those attorney's fees, court costs, paralegal, staff, and volunteer expenses against the minor's parent or parents in an amount that the court determines to be just and appropriate. The court may not assess those fees or costs against a parent who is found to be impecunious.

(7) An attorney guardian ad litem appointed in accordance with the requirements of this section and Sections 78-3a-911 and 78-3a-912 is, when serving in the scope of duties of an attorney guardian ad litem, considered an employee of this state for purposes of indemnification under the Governmental Immunity Act

**78-45c-201. Initial child custody jurisdiction.**

(1) Except as otherwise provided in Section 78-45c-204, a court of this state has jurisdiction to make an initial child custody determination only if:

(a) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) a court of another state does not have jurisdiction under Subsection (1)(a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 78-45c-207 or 78-45c-208; and

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a significant connection with this state other than mere physical presence; and

(ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) all courts having jurisdiction under Subsection (1)(a) or (b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 78-45c-207 or 78-45c-208; or

(d) no state would have jurisdiction under Subsection (1)(a), (b), or (c).

(2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination.

Enacted by Chapter 247, 2000 General Session

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*Last revised: 06/28/2000*

# **UTAH RULES OF EVIDENCE**

**Rule 201. Judicial notice of adjudicative facts.**

- (a) *Scope of rule.* This rule governs only judicial notice of adjudicative facts.
- (b) *Kinds of facts.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- (c) *When discretionary.* A court may take judicial notice, whether requested or not.
- (d) *When mandatory.* A court shall take judicial notice if requested by a party and supplied with the necessary information.
- (e) *Opportunity to be heard.* A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
- (f) *Time of taking notice.* Judicial notice may be taken at any stage of the proceeding.
- (g) *Instructing jury.* In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

### Rule 803. Hearsay exceptions; availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *Present sense impression.* A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.

(2) *Excited utterance.* A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) *Then existing mental, emotional, or physical condition.* A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) *Statements for purposes of medical diagnosis or treatment.* Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) *Recorded recollection.* A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) *Absence of entry in records kept in accordance with the provisions of paragraph (6).* Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of Paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) *Public records and reports.* Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) *Records of vital statistics.* Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to

requirements of law.

(10) *Absence of public record or entry.* To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) *Records of religious organization.* Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Marriage, baptismal, and similar certificates.* Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) *Family records.* Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) *Records of documents affecting an interest in property.* The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) *Statements in documents affecting an interest in property.* A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in ancient documents.* Statements in a document in existence twenty years or more the authenticity of which is established.

(17) *Market reports, commercial publications.* Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) *Learned treatises.* To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) *Reputation concerning personal or family history.* Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) *Reputation concerning boundaries or general history.* Reputation in a community arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

(21) *Reputation as to character.* Reputation of a person's character among associates or in the community.

(22) *Judgment of previous conviction.* Evidence of a final judgment, entered after a trial or

upon a plea of guilty (but not upon a plea of *nolo contendere*), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) *Judgment as to personal, family or general history, or boundaries.* Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purpose of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.



## Rule 902. Self-authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic public documents under seal.* A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *Domestic public documents not under seal.* A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in Paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) *Foreign public documents.* A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) *Certified copies of public records.* A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with Paragraph (1), (2), or (3) of this rule or complying with any law of the United States or of this state.

(5) *Official publications.* Books, pamphlets, or other publications purporting to be issued by public authority.

(6) *Newspapers and periodicals.* Printed materials purporting to be newspapers or periodicals.

(7) *Trade inscriptions and the like.* Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) *Acknowledged documents.* Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) *Commercial paper and related documents.* Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) *Methods provided by statute or rule.* Any method of authentication or identification provided by court rule, statute, or as provided in the constitution of this state.



# **UTAH CODE OF JUDICIAL ADMINISTRATION**

**Rule 4-903. Uniform custody evaluations.****Intent:**

To establish uniform guidelines for the preparation of custody evaluations.

**Applicability:**

This rule shall apply to the district and juvenile courts.

**Statement of the Rule:**

(1) Custody evaluations shall be performed by persons with the following minimum qualifications:

(A) Social work evaluations shall be performed by social workers licensed by the state in which they practice.

(B) Psychological evaluations shall be performed by psychologists licensed by the state in which they practice.

(C) Psychiatric examinations shall be performed by a licensed physician with a specialty in psychiatry.

(2) In divorce cases, one evaluator shall perform the evaluation on both parties and shall submit a written report to the court, unless one of the prospective custodians resides outside of the jurisdiction of the court. In those cases, two individual evaluators may be appointed. The evaluators must confer prior to the commencement of the evaluation to establish appropriate guidelines and criteria and shall submit only one joint report to the Court.

(3) Evaluators must consider and respond to each of the following factors:

(A) the child's preference;

(B) the benefit of keeping siblings together;

(C) the relative strength of the child's bond with one or both of the prospective custodians;

(D) the general interest in continuing previously determined custody arrangements where the child is happy and well adjusted;

(E) factors relating to the prospective custodians' character or status or their capacity or willingness to function as parents, including:

(i) moral character and emotional stability;

(ii) duration and depth of desire for custody;

(iii) ability to provide personal rather than surrogate care;

(iv) significant impairment of ability to function as a parent through drug abuse, excessive drinking or other causes;

(v) reasons for having relinquished custody in the past;

(vi) religious compatibility with the child;

(vii) kinship, including in extraordinary circumstances stepparent status;

(viii) financial condition; and

(ix) evidence of abuse of the subject child, another child, or spouse; and

(F) any other factors deemed important by the evaluator, the parties, or the court.

**Rule 4-911. Motion and order for payment of costs and fees.****Intent:**

To establish the process by which the court may order the payment by one party of the costs and fees of another party in a domestic relations or domestic violence action.

**Applicability:**

This rule applies to the district court.

**Statement of the Rule:**

(1) In any action designated by § 30-3-3(1), either party may move the court for an order requiring the other party to provide costs, attorney fees, and witness fees, including expert witness fees, to enable the moving party to prosecute or defend the action. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amount requested. The motion may include a request for costs or fees incurred:

- (A) prior to the commencement of the action;
- (B) during the action; or
- (C) after entry of judgment for the costs of enforcement of the judgment.

(2) The court may grant the motion if the court finds that:

- (A) the moving party lacks the financial resources to pay the costs and fees;
- (B) the non-moving party has the financial resources to pay the costs and fees;
- (C) the costs and fees are necessary for the proper prosecution or defense of the action; and
- (D) the amount of the costs and fees are reasonable.

(3) The court may deny the motion or award limited payment of costs and fees if the court finds that one or more of the grounds in paragraph (2) is missing or enters in the record the reason for denial of the motion.

(4) The order shall specify the costs and fees to be paid within 30 days of entry of the order or the court shall enter findings of fact that a delay in payment will not create an undue hardship to the moving party and will not impair the ability of the moving party to prosecute or defend the action. The order shall specify the amount to be paid. The court may order the amount to be paid in a lump sum or in periodic payments. The court may order the fees to be paid to the moving party or to the provider of the services for which the fees are awarded.

# UTAH RULES OF PROFESSIONAL CONDUCT

**Canon 1. A judge shall uphold the integrity and independence of the judiciary.**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

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**Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all activities.**

A. A judge shall respect and comply with the law and should exhibit conduct that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of the judicial office to advance the private interests of others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness but may provide honest references in the regular course of business or social life.

C. A judge shall not belong to any organization, other than a religious organization, which practices invidious discrimination on the basis of race, sex, religion, or national origin.

### **Canon 3. A judge shall perform the duties of the office impartially and diligently.**

A. *Judicial duties in general.* The judicial duties of a full-time judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. *Adjudicative responsibilities.*

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or permitted by rule, or transfer to another court occurs.

(2) A judge shall apply the law and maintain professional competence. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge should maintain order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to judicial direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit, and shall use all reasonable efforts to deter, staff, court officials and others subject to judicial direction and control from doing so. A judge should be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge should require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Canon does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law. Except as authorized by law, a judge shall neither initiate nor consider, and shall discourage, ex parte or other communications concerning a pending or impending proceeding. A judge may consult with the court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges provided that the judge does not abrogate the responsibility to personally decide the case pending before the court. No communication respecting a pending or impending proceeding shall occur between the trial judge and an appellate court unless a copy of any written communication or the substance of any oral communication is provided to all parties. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the court if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. A judge may, with the consent of the parties either in writing or on the record, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. A judge should require similar abstention on the part of court personnel subject to judicial direction and control. This Canon does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court. This Canon