TAG ARCHIVES: AUTISM AND CUSTODY BATTLES ARE HAPPENING

The Constitutional Right to Be a Parent

Posted on 26 March, 2013 by autism custody battles

Below are excerpts of caselaw from state appellate and federal district courts and up to the U.S. Supreme Court, all of which affirm, from one perspective or another, the absolute Constitutional right of parents to actually BE parents to their children.

No case authoritative within this circuit, however, had held that the state had a comparable obligation to protect children from their own parents, and we now know that the obligation does not exist in constitutional law." K.H. Through Murphy v. Morgan, 914 F.2d 846 (C.A.7 (Ill.), 1990.

"Rights to marry, have children and maintain relationship with children are fundamental rights protected by the Fourteenth Amendment and thus, strict scrutiny is required of any statutes that directly and substantially impair those rights." P.O.P.S. v. Gardner, 998 F2d 764 (9th Cir. 1993)

"Parents right to rear children without undue governmental interference is a fundamental component of due process."
Nunez by Nunez v. City of San Diego, 114 F3d 935 (9th Cir. 1997)

The rights of parents to the care, custody and nurture of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and such right is a fundamental right protected by this amendment (First) and Amendments 5, 9, and 14. Doe v. Irwin, 441 F Supp 1247; U.S. D.C. of Michigan, (1985).

The several states have no greater power to restrain individual freedoms protected by the First Amendment than does the Congress of the United States. Wallace v. Jaffree, 105 S Ct 2479; 472 US 38, (1985).

Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. Though First Amendment rights are not absolute, they may be curtailed only by interests of vital importance, the burden of proving which rests on their government. Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976).

Law and court procedures that are "fair on their faces" but administered "with an evil eye or a heavy hand" was discriminatory and violates the equal protection clause of the Fourteenth Amendment. Yick Wo v. Hopkins, 118 US 356, (1886).

Even when blood relationships are strained, parents retain vital interest in preventing

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irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. Santosky v. Kramer, 102 S Ct 1388; 455 US 745, (1982).

Parents have a fundamental constitutionally protected interest in continuity of legal bond with their children. Matter of Delaney, 617 P 2d 886, Oklahoma (1980). .

The liberty interest of the family encompasses an interest in retaining custody of one's children and, thus, a state may not interfere with a parent's custodial rights absent due process protections. Langton v. Maloney, 527 F Supp 538, D.C. Conn. (1981).

Parent's right to custody of child is a right encompassed within protection of this amendment which may not be interfered with under guise of protecting public interest by legislative action which is arbitrary or without reasonable relation to some purpose within competency of state to effect. Regenold v. Baby Fold, Inc., 369 NE 2d 858; 68 Ill 2d 419, appeal dismissed 98 S Ct 1598, 435 US 963, IL, (1977).

Parent's interest in custody of her children is a liberty interest which has received considerable constitutional protection; a parent who is deprived of custody of his or her child, even though temporarily, suffers thereby grievous loss and such loss deserves extensive due process protection. In the Interest of Cooper, 621 P 2d 437; 5 Kansas App Div 2d 584, (1980).

The Due Process Clause of the Fourteenth Amendment requires that severance in the parent-child relationship caused by the state occur only with rigorous protections for individual liberty interests at stake. Bell v. City of Milwaukee, 746 F 2d 1205; US Ct App 7th Cir WI, (1984).

Father enjoys the right to associate with his children which is guaranteed by this amendment (First) as incorporated in Amendment 14, or which is embodied in the concept of "liberty" as that word is used in the Due Process Clause of the 14th Amendment and Equal Protection Clause of the 14th Amendment. Mabra v. Schmidt, 356 F Supp 620; DC, WI (1973).

"Separated as our issue is from that of the future interests of the children, we have before us the elemental question whether a court of a state, where a mother is neither domiciled, resident nor present, may cut off her immediate right to the care, custody, management and companionship of her minor children without having jurisdiction over her in personam. Rights far more precious to appellant than property rights will be cut off if she is to be bound by the Wisconsin award of custody." May v. Anderson, 345 US 528, 533; 73 S Ct 840, 843, (1952).

A parent's right to care and companionship of his or her children are so fundamental, as to be guaranteed protection under the First, Ninth, and Fourteenth Amendments of the United States Constitution. In re: J.S. and C., 324 A 2d 90; supra 129 NJ Super, at 489.

The Court stressed, "the parent-child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection." A parent's interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility. Stanley v. Illinois, 405 US 645, 651; 92 S Ct 1208, (1972).

Parent's rights have been recognized as being "essential to the orderly pursuit of happiness by free man." Meyer v. Nebraska, 262 US 390; 43 S Ct 625, (1923).

The U.S. Supreme Court implied that "a (once) married father who is separated or divorced from a mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child. Quilloin v. Walcott, 98 S Ct 549; 434 US 246, 255^Q56, (1978).

The U.S. Court of Appeals for the 9th Circuit (California) held that the parent-child relationship is a constitutionally protected liberty interest. (See; Declaration of Independence –life, liberty and the pursuit of happiness and the 14th Amendment of the United States Constitution — No state can deprive any person of life, liberty or property without due process of law nor deny any person the equal protection of the laws.) Kelson v. Springfield, 767 F 2d 651; US Ct App 9th Cir, (1985).

The parent-child relationship is a liberty interest protected by the Due Process Clause of the 14th Amendment. Bell v. City of Milwaukee, 746 f 2d 1205, 1242^Q45; US Ct App 7th Cir WI, (1985).

No bond is more precious and none should be more zealously protected by the law as the bond

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between parent and child." Carson v. Elrod, 411 F Supp 645, 649; DC E.D. VA (1976).

A parent's right to the preservation of his relationship with his child derives from the fact that the parent's achievement of a rich and rewarding life is likely to depend significantly on his ability to participate in the rearing of his children. A child's corresponding right to protection from interference in the relationship derives from the psychic importance to him of being raised by a loving, responsible, reliable adult. Franz v. U.S., 707 F 2d 582, 595^Q599; US Ct App (1983).

A parent's right to the custody of his or her children is an element of "liberty" guaranteed by the 5th Amendment and the 14th Amendment of the United States Constitution. Matter of Gentry, 369 NW 2d 889, MI App Div (1983).

Reality of private biases and possible injury they might inflict were impermissible considerations under the Equal Protection Clause of the 14th Amendment. Palmore v. Sidoti, 104 S Ct 1879; 466 US 429.

Legislative classifications which distributes benefits and burdens on the basis of gender carry the inherent risk of reinforcing stereotypes about the proper place of women and their need for special protection; thus, even statutes purportedly designed to compensate for and ameliorate the effects of past discrimination against women must be carefully tailored. the state cannot be permitted to classify on the basis of sex. Orr v. Orr, 99 S Ct 1102; 440 US 268, (1979).

The United States Supreme Court held that the "old notion" that "generally it is the man's primary responsibility to provide a home and its essentials" can no longer justify a statute that discriminates on the basis of gender. No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas. Stanton v. Stanton, 421 US 7, 10; 95 S Ct 1373, 1376, (1975).

Judges must maintain a high standard of judicial performance with particular emphasis upon conducting litigation with scrupulous fairness and impartiality. 28 USCA § 2411; Pfizer v. Lord, 456 F.2d 532; cert denied 92 S Ct 2411; US Ct App MN, (1972).

State Judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights. Gross v. State of Illinois, 312 F 2d 257; (1963).

The Constitution also protects "the individual interest in avoiding disclosure of personal matters." Federal Courts (and State Courts), under Griswold can protect, under the "life, liberty and pursuit of happiness" phrase of the Declaration of Independence, the right of a man to enjoy the mutual care, company, love and affection of his children, and this cannot be taken away from him without due process of law. There is a family right to privacy which the state cannot invade or it becomes actionable for civil rights damages. Griswold v. Connecticut, 381 US 479, (1965).

The right of a parent not to be deprived of parental rights without a showing of fitness, abandonment or substantial neglect is so fundamental and basic as to rank among the rights contained in this Amendment (Ninth) and Utah's Constitution, Article 1 § 1. In re U.P., 648 P 2d 1364; Utah, (1982).

The rights of parents to parent-child relationships are recognized and upheld. Fantony v. Fantony, 122 A 2d 593, (1956); Brennan v. Brennan, 454 A 2d 901, (1982). State's power to legislate, adjudicate and administer all aspects of family law, including determinations of custodial; and visitation rights, is subject to scrutiny by federal judiciary within reach of due process and/or equal protection clauses of 14th Amendment…Fourteenth Amendment applied to states through specific rights contained in the first eight amendments of the Constitution which declares fundamental personal rights…Fourteenth Amendment encompasses and applied to states those preexisting fundamental rights recognized by the Ninth Amendment. The Ninth Amendment acknowledged the prior existence of fundamental rights with it: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The United States Supreme Court in a long line of decisions, has recognized that matters involving marriage, procreation, and the parent-child relationship are among those fundamental "liberty" interests protected by the Constitution. Thus, the decision in Roe v. Wade, 410 US 113; 93 S Ct 705; 35 L Ed 2d 147, (1973), was recently described by the Supreme Court as founded on the "Constitutional underpinning of … a recognition that the "liberty" protected by the Due Process Clause of the 14th Amendment includes not only the freedoms explicitly mentioned in the Bill of Rights, but also a freedom of personal choice in certain matters of marriage and family life." The non-custodial divorced parent has no way to implement the constitutionally protected right to maintain a parental relationship with his child except through visitation. To acknowledge the protected status of the relationship as the majority does, and yet deny protection under Title 42 USC § 1983, to visitation, which is the exclusive means of effecting that right, is to negate the right completely. Wise v. Bravo, 666 F.2d 1328, (1981).

One of the most precious rights possessed by parents is the right to raise their children free of government interference. That right, "more precious than mere property rights," is a liberty

interest, protected by the substantive and procedural Due Process Clauses of the Fourteenth Amendment. Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). Moreover, the fact that the custodians are grandparents rather than parents is legally insignificant, because families headed by extended family members are entitled to the same constitutional protections as those headed by parents, Moore v. City of East Cleveland, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) Even relatives who are licensed as foster parents enjoy the same constitutional rights as other custodial relatives. Rivera v. Marcus, 696 F.2d 1016 (2d Cir. 1982).

Because of the magnitude of the liberty interests of parents and adult extended family members in the care and companionship of children, the Fourteenth Amendment protects these substantive due process liberty interests by prohibiting the government from depriving fit parents of custody of their children. See Stanley v. Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); Santosky v. Kramer, 455 U.S. 745, 760, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); Duchesne v. Sugarman, 566 F.2d 817, 824 (2d Cir. 1977); Hurlman v. Rice, 927 F.2d 74, 79 (2d Cir. 1991). In the United States Supreme Court's view, the state registers "no gains toward its stated goals [of protecting children] when it separates a fit parent from the custody of his children." Stanley, 405 U.S. at 652.

Grandparents are also entitled to procedural due process. "An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed.2d 865 (1950)).

The grandchildren have a Fourth Amendment right not to be seized by the government for child protective purposes unless it has probable cause to believe that the children have been neglected. Tenenbaum v. Williams, 193 F.3d 581 (2d Cir. 1999), cert. denied, 529 U.S. 1098, 120 S.Ct. 1832, 146 L.Ed.2d 776 (2000). Probable cause exists only if the officials have persuasive evidence of serious ongoing abuse and reason to fear imminent recurrence. Robison v. Via, 821 F.2d 913, 922 (2d Cir. 1987).

Grandparents cannot be dismissed from the dependency case because the dependency case is the only legal way that the state can interfere with their custody. The state must prove that they are abusive or neglectful and that the children would be at risk of immediate serious harm if returned.

FROM THE COLORADO SUPREME COURT, 1910

In controversies affecting the custody of an infant, the interest and welfare of the child is the primary and controlling question by which the court must be guided. This rule is based upon the theory that the state must perpetuate itself, and good citizenship is essential to that end. Though nature gives to parents the right to the custody of their own children, and such right is scarcely less sacred than the right to life and liberty, and is manifested in all animal life, yet among mankind the necessity for government has forced the recognition of the rule that the perpetuity of the state is the first consideration, and parental authority itself is subordinate to this supreme power. It is recognized that: 'The moment a child is born it owes allegiance to the government of the country of its birth, and is entitled to the protection of that government. And such government is obligated by its duty of protection, to consult the welfare, comfort and interest of such child in regulating its custody during the period of its minority.' Mercein v. People, 25 Wend. (N. Y.) 64, 103, 35 Am. Dec. 653; McKercher v. Green, 13 Colo. App. 271, 58 Pac. 406. But as government should never interfere with the natural rights of man, except only when it is essential for the good of society, the state recognizes, and enforces, the right which nature gives to parents [48 Colo. 466] to the custody of their own children, and only supervenes with its sovereign power when the necessities of the case require it.

The experience of man has demonstrated that the best development of a young life is within the sacred precincts of a home, the members of which are bound together by ties entwined through 'bone of their bone and flesh of their flesh'; that it is in such homes and under such influences that the sweetest, purest, noblest, and most attractive qualities of human nature, so essential to good citizenship, are best nurtured and grow to wholesome fruition; that, when a state is based and builded upon such homes, it is strong in patriotism, courage, and all the elements of the best civilization. Accordingly these recurring facts in the experience of man resulted in a presumption establishing prima facie that parents are in every way qualified to have the care, custody, and control of their own offspring, and that their welfare and interests are best subserved under such control. Thus, by natural law, by common law, and, likewise, the statutes of this state, the natural parents are entitled to the custody of their minor children, except when they are unsuitable persons to be intrusted with their care, control, and education, or when some exceptional circumstances appear which render such custody inimicable to the best interests of the child. While the right of a parent to the custody of its infant child is therefore, in a sense, contingent, the right can never be lost or taken away so long as the parent properly nurtures, maintains, and cares for the child.

Wilson v. Mitchell, 111 P. 21, 25-26, 48 Colo. 454 (Colo. 1910)

A version of this column originally appeared in FamilyRights.us.

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Posted in Constitutional Right, Justice System | Tagged Autism and Custody Battles are happening, Care Custody, Constitutional Law, Constitutional Right, Fundamental Right, Fundamental Rights | Leave a reply

CPS Fails at Detecting Domestive Violence

Posted on 16 January, 2013 by autism custody battles

Domestic violence is present in about 4 percent of the families involved in child protective services (CPS). Yet, until recently, CPS has not directly addressed domestic violence in its handling of child abuse and neglect cases. In recognition of the connection between domestic violence and the risk of harm to children,

CPS agencies in a number of states have begun collaborating with state and local domestic violence programs to develop strategies for addressing domestic violence.

TOO LITTLE TOO LATE!

The domestic violence movement began less than 30 years ago in order to provide safety to battered women because public institutions were not doing so. The criminal justice system did not treat domestic violence as a crime. Batterers were not being held accountable for their abuse. Some battered women and their advocates viewed CPS as yet another public institution that blamed battered women for the harm their batterers caused to their children.

Historically, when domestic violence was identified, CPS workers have often misunderstood its dynamics and held battered mothers responsible for ending it. If the mother wouldn't leave the situation, the children would be removed from the mother.

CPS workers only have a few mandatory hours of Domestic Violence training. They don't have the expert training to recognize the subtle emotional and behavioral signs on children in such horrific situations, emotional abuse and psychological abuse in particular. The CPS worker will fall right into the trap of believing the manipulative persuasive abuser and fail to realize how the victims are protecting the abuser.

STAND UP FOR YOUR RIGHTS!

If you are involved in a CPS investigation, ask the worker on the first visit to please bring in a Domestic Violence worker. Until they do bring one, you don't have to allow them in. The DV workers are trained to pick up on children who were manipulated. This is to your advantage.

A version of this column originally appeared in autismcustodybattles.wordpress.com.

Posted in Uncategorized | Tagged Abuse And Neglect, Advocates, Autism, Autism and Custody Battles are happening, Child Abuse And Neglect, Child Neglect, Child Protective Services, CPS agencies, Cps Worker, CPS workers, Criminal Justice System, Emotional Abuse, Neglect Cases | Leave a reply

Tips from Eric G. Mart, Ph.D., ABPP on Disproving MSBP and Autism

Posted on 7 January, 2013 by autism custody battles

Dr. Mart took the time to contact me and give me some terrific advice. All of you mothers who are being accused of MSBP and have children with Autism, please read this carefully.

At all court appearances, make sure to have with you two very important groups of documentations. In the first group, it is helpful to show documentation that professionals evaluated and diagnosed the child with Autism. Then, they treated the child for a long time. Not the mother.

The next group of documentation is important because it outlines the law that no person (mother) should be evaluated or diagnosed against their knowledge. It is a violation of your rights if a law guardian, lawyer, CPS worker, or judge alleges that the mother has 'mental health issues".

Arm Yourself.

1 – Original IEP and diagnosis reports showing that the professionals once diagnosed and serviced your child, it doesn't matter how outdated it is. Once it is on paper, they can try to retract it later if they are bribed to take a one-sided position but it doesn't make a difference. If a speech therapist serviced the child in 2009 and submitted progress notes to the Board of Ed, it shows they were agreeing to the needs of the child based on the IEP.

If they say they changed their mind about the child's issues, Challenge them with this: "Were you lying then or are you lying now?"

2 – American Psychological Association – Ethical Principles of Psychologists and Code of Conduct: 2010 Amendments, Standard 9: Assessment , 9.03 Informed Consent in Assessments

(b) Psychologists inform persons with questionable capacity to consent or for whom testing is mandated by law or governmental regulations about the nature and purpose of the proposed assessment services, using language that is reasonably understandable to the person being assessed.

Dr. Mart, thank you so much for taking the time out of your busy schedule and helping us women who are battling this terrible systematic abuse in family courts across the United States.

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Posted in Autism, Child Protective Services, Child Welfare, Justice System, Juvenile Court | Tagged Autism and Custody Battles are happening, Cps Worker, Law Guardian, Mental Health Issues | Leave a reply

Warning Signs for Bribery of the Family Court Judge in a Custody Case

Posted on 6 January, 2013 by autism custody battles

All over the world, poor people are denied access to legal representation or family support because they cannot bribe the corrupt CPS worker or prosecutor, then held indefinitely in a custody battle—or found guilty—because they cannot bribe the corrupt judge. The ability to put cash in the right hands often makes the difference between freedom and entrapment for victims of abuse of the judicial system.

Caught on viedotape: Judge Garson accepted $1,000 and a box of cigars from Paul Siminovsky, a divorce lawyer who regularly fraternized in Garson's chambers

"The poor need legal aid, not pressure to pay

— Judge Garson accepted $1,000 and a box of cigars

bribes. They need proof that
everyone is equal before the law."
— Council of Europe Commissioner for Human Rights Thomas Hammarberg

Warning Signs of Bribery of the Family Court Judge in a Custody Case

1 – If you tell any court appointment worker about sexual abuse and you lose custody to your abuser, then you know that your CPS worker or Lawyer or Law Guardian involved in child trafficking Rings. They will bribe the courts to give custody to the batterer and then use the children for their child trafficking rings. In the case of Alanna Krauss, the child was begging to live with the mother for fear of Domestic Violence, which was ignored. In the case of Amy Neustein, the mother repeatedly reported sexual abuse to the attorneys, Judge Deutsch, and Ohel local division for children's services in Brooklyn NY. Her please were ignored.

Media Links:

Example One: Nancy Shaefer exposes Childrens Protective Service CPS as pedophiles in the system. (Former State Senator of Georgia and her husband Bruce were found brutally killed)

Example Two: Famed Child Psychiatrist Dr. William Ayers retained by the court for forensic evaluations enjoyed years of trust in the courts until he was exposed as a pedophile. His victims testified after years of believing they must submit to his rigorous 'treatment' by order of the courts.

2- Your Family, Friends, and supporters are not allowed into the courtroom. Even if the family court is open to the public and media, the very people you will want in the courtroom are thrown out by the judge. This is because they do not want anyone to believe your bizarre story about what went on in there. When you tell people, they will say you are making it up. This gives them the freedom to order you around without having to answer to your supporters.

3- It feels like the judge already knows what he needs to order without you even opening your mouth. If you walk into the courtroom with a list of evidence and documentation, they will not hear you out. They will not let you submit your documentation or evidence. Ever wonder why? Even if you show mind-blowing information, if they don't take it from your hands, they didn't have to enter it into the case thus not hearing you out.

4 – The CPS worker or Law Guardian testifies that the Mother appears to have mental health issues. Note: they are not mental health professionals and have no legal right to make allegations, ye the judge will hear them out without a doctor's evaluation report citing your mental illness. Furthermore, the alleged mental illness is enough to pass custody over to the father. Again, nobody ever got proof of your mental illness. May times it's left off at "friends and neighbors say she is nuts".

5 – Judge taking out large sums of money in the form of property loans and later paying them back is one method that a judge might employ to conceal the fact that he or she is being enriched from an outside source. When a judge's income is inadequate to serve as the source of loan repayments, it is likely that the funds are coming from somewhere else.

6- Cronyism leads to liars appointed as forensic evaluators. You are not entitled to your report. You don't understand how your meeting with the evaluator turned into a negative blast-fest in the courtroom, while you listen in horror. NY TIMES "Though they have been around for years, court-appointed forensics have become increasingly commonplace — and controversial — in New York, which may be the high-conflict custody capital of the nation."

7 – You are deemed to be an unfit parent, had your parental rights stripped of you, without a conviction before a jury of peers. Oftentimes, this is a temporary ruling based on "urgency" of the testimony of the CPS ACS worker in the courtroom. Unequal custody rulings by a single judge are wrong and you have a constitutional right to have a trial by jury. By then, though, they will not hear you out because by the time they schedule it, the children have been with the father for so long, the court will prefer to keep that as a status quo. This is done on purpose. "Psychologists are included in the slander process through court ordered "evaluation" of the psyches of family members, turning legal matters into alleged psychological problems, and defamation of character by these alleged "professionals" who oblige the courts' requests for their

services."

8- You feel like the reason your case keeps being adjourned is not for fact finding but for prolonging litigation thereby lining the pockets of the professionals of the system. "Courts and evaluators sit in passive judgment, yet rarely render guidance. Evaluators are scientifically incapable of identifying the "better" parent-yet earn millions from desperate parents by pretending they can. Attorneys rarely end conflict, but regularly use courts to encourage litigation, absorb resources, and harm their clients, children, and community."

9 – Your free legal aid lawyer asks you for "money on the side". You drop the lawyer. Your mess gets worse in court.

10 – You take the kids to the law guardian for an interview, or the CPS worker arrives to your home. In either case, they already have a pre-formed character opinion on you. You might even see the law guardian look at his notes as he already has a file of information on you. Whatever you say makes no difference. They already know you are "mentally ill" and will say that in court. The visit or appointment is just a formality for record keeping. Even if you sit in silence they already know what they will do with you in court.

SPEAK UP!

If anything like this has happened to you or is currently happening. Wake up! It's true and it's happening nationally across America in the Family Courts we turn to for "justice". If we can join hands and make light of what is happening, we stand a chance of ending this corruption.

A version of this column originally appeared in autismcustodybattles.wordpress.com.

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