

EXAM # _____

**CHILDREN AND THE LAW
FINAL EXAMINATION**

Professor Pilkington-Casey

Fall 2007

INSTRUCTIONS:

This is an open book exam. You may use your text, notes, and additional cases I required you to read for class, any other books or written materials of your choice but no computers. You have three hours to complete it. The questions should be answered with references to common principles of laws involving children, including cases in your text and/or those assigned in addition to the text that apply to the issue(s), as well as generally adopted uniform statutes in your text if assigned as reading during the semester unless a question specifically sets out the law to apply.

Write all answers in the blue book(s). Write legibly. If you do not write legibly, you will lose points. Make sure your exam number is on all blue book(s). You will lose points for sentences or paragraphs that run on.

Write only on the right hand side of the page.

ESSAY QUESTIONS

Thoroughly answer each question asked. However, please note that I subtract points for wrong answers or information or analysis not directed to the question asked.

QUESTION 1 (30 POINTS)

You are the Judge in this matter.

FACTS

While enrolled as a sophomore at Bellwood High School, a minor student identified as J.P. kept an extended notebook diary, written in the first-person perspective, in which he detailed the “author's” creation of a pseudo-Nazi group at the Bellwood High School and at other schools in the Somersworth School District (“School District”). The notebook describes several incidents involving the pseudo-Nazi group, including one in which the author ordered his group “to brutally injure two homosexuals and seven colored” people and another in which the author describes punishing another student by setting his house on fire and “brutally murder[ing]” his dog. The notebook also details the group's plan to commit a “[C]olumbine shooting” attack on Bellwood High School or a coordinated “shooting at all the [district's] schools at the same time.” At several points in the journal, the author expresses the feeling that his “anger has the best of [him]” and that “it will get to the point where [he] will no longer have control.” The author predicts that this outburst will occur on the day that his close friends at the school graduate.

On August 15, 2005, J.P. told another student, Alan, about the notebook and supposedly showed him some of its contents. Alan told a teacher about the notebook. After waiting a day, the teacher told Assistant Principal Casey (“Casey”) about the notebook. Casey called Alan into his office and questioned him about the conversation with J.P. Then Casey decided to call J.P. into his office for a meeting.

During the meeting, Casey told J.P. that students had complained to him that J.P. was writing threats in his diary. J.P. denied these accusations and instead explained that he was writing a work of fiction. Casey asked J.P. for permission to search his backpack and J.P. consented. Casey discovered the notebook and briefly reviewed its contents. J.P. continued to maintain that the notebook was a work of fiction.

Casey called J.P.'s mother to tell her about the notebook. She too maintained that the notebook was fiction and explained that she also engaged in creative writing. Casey informed her that he would read the notebook in detail and “call her the next day with an administrative decision based on the safety and security of the student body.” Casey then released J.P. back into the general student population to complete the school day. Casey took the notebook home and read it several times. He found several lines in the notebook alarming and ultimately determined that J.P.'s writing posed a “terroristic threat” to the safety and security of the students at the high school.

As a “terroristic threat,” Casey determined that the writing violated the Student Code of Conduct. He therefore suspended J.P. from school for three days and recommended that he be placed in the school's alternative education program at KEYS Academy. J.P.'s parents appeals of the decision to the Principal of the Bellwood High School, the Assistant Superintendent of the school district, and finally to the School Board's designated

committee were unsuccessful. To prevent J.P. from being transferred to KEYS Academy, J.P.'s parents placed him in private school, where he completed his sophomore year without incident.

J.P.'s parents made the decision to transfer J.P. to a private school based upon their concern that the school's finding that J.P. made a terroristic threat and violated the Student Code of Conduct would become part of his permanent school record and follow him to any other district to which he might transfer. Such a record would require that J.P. attend an alternative education program, like that at KEYS Academy, and deprive J.P. of the ability to participate in musical education programs. J.P.'s parents worried that this record would affect J.P.'s ability to gain admission to the college of his choice, especially because he intends to major in music while attending college. Thus, in an effort to ensure that J.P. can return to Bellwood High School with a clean record, J.P.'s parents filed a lawsuit in January 2006.

J.P.'s parents alleged violations of J.P.'s First Amendment rights.

QUESTION 1 (30 POINTS)

As the Judge in this matter did Assistant Principal Casey violate J.P.'s First Amendment rights? Explain your decision including the factors, if any, that you utilized to reach your decision.

QUESTION 2 (50 POINTS)

Harold has requested you to represent him in a custody hearing to be held in February 2008.

FACTS

Alice and Harold married in 2002 and had one child, Julie, born in 2003. Alice had another child from a previous relationship, Cheryl, who was seven years old at the time of the marriage.

The parties separated in May 2006 when Alice and the children left the marital home amidst allegations that Harold had sexually abused Julie. Alice immediately thereafter filed a petition for dissolution of marriage, Harold filed an answer and counter-petition, and the trial court appointed a guardian ad litem for Julie. The trial court entered a consent judgment and order *pendente lite* in November 2006, which granted Alice sole physical and legal custody and awarded Harold supervised visitation with Julie without prejudice. The court will conduct a two-day trial in February 2008.

Alice states that Julie, who had just turned three years old at the time of her first disclosures, told her that the Harold had inserted his finger into Julie's vagina and rectum. Alice conceded that she did not believe Julie initially, but she became concerned about the allegations' truth after attending a training session at work about child sexual abuse. Alice testified that Julie later reported additional acts of sexual abuse to her. Alice contacted the police and had her pediatrician examine Julie. The pediatrician's visual exam of Julie revealed nothing out of the ordinary. Julie repeated the allegations to the pediatrician who telephoned the child-abuse hotline. Alice and the children left the marital home that same day.

Both Alice and Harold were police officers at the time the allegations arose. Harold remains an officer with the City Police Department at this time.

A forensic interviewer with Children's Advocacy Services interviewed Julie, but could neither rule out nor substantiate the abuse allegations. A physician affiliated with Children's Advocacy Services twice examined Julie. Because of Julie's apprehension, the physician could not perform a full genital exam; in his limited genital exams, he noted physical findings that were inconclusive regarding abuse.

Peg Schwartz, a forensic evaluator with Children's Advocacy Services, met with Julie six times for an extended evaluation. Ms. Schwartz testified that she could not reach a conclusion as to whether Julie was abused. She testified that she was reasonably sure that the Harold had touched Julie, but she was unable to rule out alternative explanations for any contact, such as application of medication.

Harold denies the sexual-abuse allegations, and no criminal charges were filed against him. Harold states that he had touched the outside of Julie's vagina when wiping her, but that he never touched Julie as an intentional sexual act. Harold also states that Alice encouraged Julie to curse him. Several months before their separation, according to the Harold, Alice told him that all of his money would go to child support and that she would find a way to prevent him from seeing the children. Harold considers Alice's daughter, Cheryl, to be his child too.

Dr. Lisa Emmenegger, a psychologist who performs abuse, neglect, and sexual-tendency assessments, interviewed the parties and administered various psychological tests. Dr. Emmenegger states that she could not reach a conclusion whether the abuse allegations were true. She questioned the parties' behavior and whether it may have influenced Julie. For example, when Julie made the initial allegations, the adults laughed; and Alice had Julie repeat the allegations to Harold and Alice's friend. According to Dr. Emmenegger, such behavior could positively reinforce Julie and affect her interest in repeating the statements. Dr. Emmenegger testified that she had gathered no information to suggest the continued separation of Harold and Julie, and she recommended therapeutic visits to help Harold and Julie to readjust to one another. The guardian ad litem recommended that Harold's visitation with Julie continue to be supervised, based largely on Julie's belief that "something" occurred.

QUESTION 2 (50 POINTS)

Harold wants you to advise him on the possibility of his obtaining joint legal and physical custody. Alice wants sole legal and physical custody.

1.) How would you advise Harold about his request for joint legal and physical custody?

Please explain your answer to the above questions including the criteria you used in your analysis to respond to Harold's inquiries.

QUESTION 3 (20 POINTS)

You are the Judge.

FACTS

Rena was born on October 10, 1993. She is an Eighth grade student at Rumford Middle School. Since she was ten years old, she has been a Jehovah's Witness. A principal tenet of her religion is that the act of receiving blood precludes an individual from resurrection and everlasting life after death. Consistent with this belief, she has periodically executed a written medical directive declaring that she will not assent to a blood transfusion and last executed such a directive on September 12, 2007. She understands that her refusal may well result in her death in the event of a life-threatening event.

On December 11, 2007, Rena, age 14, lacerated her spleen in a snowboarding accident and was brought into the hospital's emergency room. Upon examination, it was determined that in order to keep her blood count at a stable level a blood transfusion might become necessary to keep Rena alive. Both the patient and her parents indicated that they would not consent to a blood transfusion.

The hospital has filed a complaint for declaratory relief in your Court seeking authority to administer a blood transfusion if it becomes necessary to treat her injury. At a hearing, held December 12, 2007 the hospital presented medical evidence that there is a potential need for this authority in the event a blood clot breaks loose from the spleen laceration, which might result in a massive hemorrhage, which in turn might require a blood transfusion to sustain her life. At this hearing, the wishes of the parents and those of Rena through her attorney were made known.

QUESTION 3 (20 POINTS)

As the Judge in this matter will you give the hospital authority to administer the blood transfusion or will you allow Rena the right to refuse the blood transfusion? Explain your decision including the factors, if any, that you utilized to reach your decision.