



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 89
Issue 3 *Dickinson Law Review* - Volume 89,
1984-1985

3-1-1985

Recent Case

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Recent Case, 89 DICK. L. REV. 797 (1985).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol89/iss3/10>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

FAMILY LAW—CHILD ABUSE—HEARING CONDUCTED UNDER PENNSYLVANIA'S CHILD PROTECTIVE SERVICES LAW AFFORDED NECESSARY PROCEDURAL SAFEGUARDS TO ALLEGED ABUSER. *Cruz v. Commonwealth*, ____ Pa. Commw. ____, 472 A.2d 725 (1984).

In *Cruz v. Commonwealth*¹ the Pennsylvania Commonwealth Court² was faced with the question of whether a hearing conducted under the authority of Pennsylvania's Child Protective Services Law³ complied with the due process clause of the fourteenth amendment.⁴ For the first time, the court determined the due process rights of a person accused of child abuse⁵ under this law. In weighing the rights of the accused against the best interests of the child, the court held that the accused's sixth amendment right to confrontation and cross-examination is not an indispensable right in a child abuse hearing.

On October 14, 1980, a report was filed with the Berks County Children & Youth Services⁶ alleging that Alcides Cruz had sexually abused his minor daughter.⁷ An agency social worker conducted an investigation. As a result, a report of indicated⁸ child abuse was filed

1. ____ Pa. Commw. ____, 472 A.2d 725 (1984).

2. Judge Williams wrote the unanimous decision of the court.

3. PA. STAT. ANN. tit. 11 §§ 2201-2224 (Purdon Supp. 1984).

4. U.S. CONST. amend. XIV, § 1 provides in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law"

5. Child Protective Services Law § 2203 states in part:

"Child abuse" means serious physical or mental injury which is not explained by the available medical history as being accidental, or sexual abuse or sexual exploitation or serious physical neglect, of a child under 18 years of age, if the injury, abuse or neglect has been caused by the acts or omissions of the child's parents or by a person responsible for the child's welfare

6. Section 2216 of the Child Protective Services Law provides that each county shall have a child protective service within the county's children and youth social service agency. The service is the sole civil agency responsible for receiving and investigating reports of child abuse.

7. The Child Protective Service Law, defines a minor as anyone under the age of 18. See *supra* note 5. Cruz's daughter, the alleged victim, was 14 years old at the time of the hearing. *Cruz*, ____ Pa. Commw. at ____, 472 A.2d at 727.

8. Child Protective Services Law § 2203 states in part:

"Indicated report" means a report made pursuant to this act if any investigation by the child protective service determines that substantial evidence of the alleged abuse exists based on (i) available medical evidence, (ii) the child protective service investigation or (iii) an admission of the acts of abuse by the child's parent or person responsible for the child's welfare.

A founded report, as defined by § 2203, is "a report made pursuant to this act if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused."

in Pennsylvania's central register⁹ in November of 1980. A month later, Alcides Cruz requested that the report be expunged¹⁰ from the central register. The Director of Protective Services Programs of the Department of Public Welfare denied his request.¹¹

Cruz then requested a hearing.¹² The request was granted and, on June 9, 1981. A hearing was held before the Department of Public Welfare's Office of Hearings and Appeals. The hearing officer took testimony from the investigating social worker and the Director of Child Protective Services¹³ then questioned the alleged abuse victim and her twelve year old brother¹⁴ *in camera*, with only the attorneys present. The hearing officer recommended that the request for expungement be denied, and the Secretary of the Department of Public Welfare accepted the recommendation. As a result, Alcides Cruz appealed the order denying expungement to the Commonwealth Court.¹⁵

On appeal, Cruz challenged the order by arguing that several procedural defects in the hearing constituted a breach of his right to due process of law.¹⁶ Cruz further challenged the order by asserting that the Child Protective Services Law, which sanctioned the hearing, was itself unconstitutional.¹⁷ The court limited its scope of review of the hearing to a determination of (1) whether substantial evidence existed to support the findings, (2) whether the hearing of-

9. Child Protective Services Law § 2214 provides for the establishment of a statewide central register of all founded and indicated reports of child abuse in the state.

10. Child Protective Services Law states that "[e]xpunge" means to strike out or obliterate entirely so that the expunged information may not be stored, identified, or later recovered by any means mechanical, electronic, or otherwise."

11. Indicated and founded reports cannot be expunged from the central register until the subject child reaches the age of 18. When the child reaches 18, the report will be expunged unless there is a subsequent report involving the same child, a sibling, or another child in the care of the persons responsible for the subject child's welfare. Child Protective Services Law § 2215(n).

12. Section 2215(d) of the Child Protective Services Law gives a subject of a report the right to request a hearing before the Secretary or a designated agent of the Department of Public Welfare to challenge a denial of a request to expunge a report.

13. Alcides Cruz declined to testify on his own behalf. *Cruz*, ___ Pa. Commw. at ___, 472 A.2d at 727.

14. The brother of the alleged abuse victim had been an eyewitness to the repeated incidents of sexual intercourse between the victim and her father, Alcides Cruz. *Id.* at ___, 472 A.2d at 731.

15. 42 PA. CONS. STAT. § 763(a)(1)(1982) grants jurisdiction to the Commonwealth Court over all appeals from Commonwealth agencies having statewide jurisdiction.

16. Cruz contended (1) that his sixth amendment right to confront and cross-examine an adverse witness was violated when the hearing officer conducted an *in camera* interview with Cruz's children, (2) that the statute of limitations prescribed by the Law had run, (3) that the Department of Public Welfare was incorrect in not requiring the alleged victim to undergo medical and psychiatric examinations, (4) and that the Department's determination was based on less than substantial evidence. *Cruz*, ___ Pa. Commw. at ___, 472 A.2d at 725.

17. Cruz argued that the Law was unconstitutional because it did not give the accused an unqualified right to ascertain the identity of the person who made the initial report. *Id.* at ___, 472 A.2d at 729.

ficer conducted the hearing in compliance with applicable law, and (3) whether Cruz's constitutional rights were violated.¹⁸

Child abuse and neglect are not a novel problem, nor are they problems more prevalent in one society or culture than in another.¹⁹ Although occurrences of child abuse and neglect seem more widespread today,²⁰ incidents involving the victimization of children have occurred throughout history.²¹ Despite the vast amount of research conducted in recent years on the problem, its solution remains elusive.

The diverse theories propounded by scholars concerning the causes of child abuse²² create one of the difficulties encountered by social service agencies in identifying and treating child abuse and neglect victims. Popular myths about the characteristics of abusers, perpetuated by a society unwilling to accept that there are no stereotypical child abusers, exacerbate the difficulties.²³ Until recently, legislators did not recognize child abuse as a problem, distinct from other juvenile problems. Social service agencies, therefore, lacked specific legislation, which hindered their ability to protect children.

18. *Id.* at —, 472 A.2d at 729 (quoting the scope of review in appeals from adjudications of the Department of Public Welfare that was set out in *Montgomery County Child Welfare Services v. Hull*, 51 Pa. Commw. 1, 3-4, 413 A.2d 757, 759 (1980)). For the statutory authority for this scope of review see 2 PA. CONS. STAT. § 704 (1982).

19. Studies on child abuse and neglect traditionally deal with Western cultures. For a collection of essays examining child abuse and neglect in Taiwan, New Guinea, Republic of China, India, Japan, Turkey, Sub-Saharan Africa, Polynesia, and native South America see *CHILD ABUSE & NEGLECT: CROSS-CULTURAL PERSPECTIVES* (J. Korbin ed. 1981).

20. Some critics contend that the occurrence of child abuse only appears to be on the rise because mandatory reporting laws and improved child abuse legislation have spawned increased reporting of suspected cases that would otherwise have gone untreated. See S. O'BRIEN, *CHILD ABUSE: A CRYING SHAME* 8 (1980).

21. "Maltreatment of children has been justified for many centuries by the belief that severe physical punishment was necessary either to maintain discipline, to transmit educational ideas, to please certain gods, or to expel evil spirits." Radbill, *A History of Child Abuse and Infanticide*, in *THE BATTERED CHILD* 3-17 (R. Helfer & C. Kempe eds. 1968). See also GIOVANNONI & BECERRA, *DEFINING CHILD ABUSE* 31-75 (1979) (an overview of the history of child abuse in the United States from colonial times to the 1970's).

22. For many years, it was generally agreed that physical abuse of a child was caused by severe emotional pressures on one or both of the parents. With the relatively recent increases in the study of child abuse several other views have gained wide acceptance. One view is that our cultural heritage and societal predilection for violence make abuse a natural and inevitable result. Another view is that child abuse and neglect are closely related to economic poverty. A third view is that multiple causes such as alcoholism, family stress, learned behavior, mental retardation, and poverty combine to create an environment conducive to abuse and neglect. OFFICE OF HUMAN DEVELOPMENT SERVICES, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, *FEDERAL STANDARDS FOR CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAMS AND PROJECTS II-8* (1978). See also *infra* note 23 and accompanying text.

23. M. HALPERIN, *HELPING MALTREATED CHILDREN* 50-66 (1979). Examines and exposes the myths that surround the causes of child abuse and the people who are abusers. See also Steele & Pollock, *A Psychiatric Study of Parents Who Abuse Infants and Small Children*, in *THE BATTERED CHILD* 103 (R. Helfer & C. Kempe eds. 1968); S. O'BRIEN, *CHILD ABUSE: A CRYING SHAME* 45-50 (1980) ("Parents who abuse or neglect children do not appear unusual.").

Although all states have mandatory child abuse reporting laws,²⁴ in many instances these laws focus on punishing the abuser rather than affording help to the victim.²⁵ Thus, no explicit guidelines dealt solely with the identification and treatment of child abuse and neglect victims.

In 1973, under the leadership of Senator Walter F. Mondale, the Senate Subcommittee on Children and Youth conducted a series of hearings throughout the country in response to a growing concern that the existing state child abuse reporting and protection laws were inadequate and ineffective.²⁶ The study revealed that the lack in many state laws of a working definition of child abuse and neglect often rendered social service agencies powerless to protect children.²⁷ Congress responded to these findings by passing the Federal Child Abuse Prevention and Treatment Act of 1974.²⁸ The Act established the National Center on Child Abuse and Neglect,²⁹ which provides research and technical assistance as well as an information clearinghouse for private and state child protection programs.³⁰ To promote

24. For a statutory compilation of the child abuse and neglect mandatory reporting laws of every state, the District of Columbia, and the Virgin Islands, see Fraser, *A Pragmatic Alternative to Current Legislative Approaches to Child Abuse*, 12 AM. CRIM. L. REV. 103, 104 n.4 (1974).

25. "[N]either federal nor state laws had come to grips with the problem of child abuse and neglect. In the states, the focus was almost entirely on prosecuting cases. There were few treatment programs." Mondale, *Introductory Comments, Child Abuse Symposium*, 54 CHI-KENT L. REV. 635, 636 (1978).

26. See OFFICE OF HUMAN DEVELOPMENT SERVICES, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, *Preface to FEDERAL STANDARDS FOR CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAMS AND PROJECTS* at xi (1978); Mondale, *Introductory Comments, Child Abuse Symposium*, 54 CHI-KENT L. REV. 635 (1978).

27. Traditionally, the statutory definitions of child abuse and neglect have either been too narrow, so that many children in need of help fell outside the scope of the statute, or too vague, resulting in the risk of unjustified state intervention into the family. See generally Clements, *Child Abuse: The Problem of Definition*, 8 CREIGHTON L. REV. 729 (1977) (discussion of the need for a precise and limited legal definition of child abuse).

28. 42 U.S.C. §§ 5101-5115 (1982).

29. 42 U.S.C. § 5101(a).

30. 42 U.S.C. § 5101(b) provides in part that:
The Secretary, through the Center, shall

(1) Annual research summary

compile, analyze, publish, and disseminate a summary annually of recently conducted and currently conducted research on child abuse and neglect;

(2) Information clearinghouse

develop and maintain an information clearinghouse on all programs, including private programs, showing promise of success, for the prevention, identification, and treatment of child abuse and neglect;

(3) Training materials for personnel

compile, publish and disseminate training materials for personnel who are engaged or intend to engage in the prevention, identification, and treatment of child abuse and neglect;

(4) Technical assistance

provide technical assistance (directly or through grant or contract) to public and nonprofit private agencies and organizations to assist them in planning, improving, developing, and carrying out programs and activities relating to the prevention, identification, and treatment of child abuse and neglect;

(5) Research into causes, prevention, identification and treatment

these programs throughout the country, the Act provides for federal funding to states that meet certain qualifications, to be used in developing, strengthening, and implementing child abuse prevention and treatment programs.³¹

In response to this congressional inducement, the Pennsylvania General Assembly adopted the Child Protective Services Law.³² The law defines child abuse more comprehensively than the Juvenile Act,³³ thus making the job of the social services agencies and of the courts easier than in the past. The law also increases the availability of information and abuse reports to child protection agencies through the establishment of a statewide central register.³⁴ A provision in the law protects the privacy of those involved in a child abuse investigation by limiting access to these reports to selected agencies, officials, or other persons acting on behalf of the child.³⁵ The law further ensures confidentiality by restricting the reports contained in the register to those that are either founded or indicated.³⁶

The central register plays a crucial role in child protective services. The register aids physicians and hospitals in identifying patterns of abuse. It also serves as a monitoring device to ensure that local child protective agencies investigate reports promptly and provide the necessary services to the child and parents. A central register also helps detect "hospital skipping," a practice by which abusive parents take their injured children to different hospitals to avoid suspicion.³⁷ The Law also improves the results of child abuse prevention and treatment efforts by focusing the efforts on the treatment of the family as a whole rather than on the separation of the child from the family.³⁸

Critics have voiced concern about the potentially adverse affects

conduct research into the causes of child abuse and neglect, and into the prevention, identification, and treatment thereof;

31. 42 U.S.C. § 5103(b)(2).

32. See *supra* note 3.

33. The Juvenile Act, 42 PA. CONS. STAT. §§ 6301-6365 (1982) defines a dependent child as one who "is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals" *Id.* § 6302. For the more comprehensive definition of child abuse set out in § 2203 of the Child Protective Services Law, see *supra* note 5.

34. PA. STAT. ANN. tit. 11 § 2214(a).

35. Those authorized to obtain access to records include officials of a child protective service acting in the course of official duties, a physician or hospital that is treating a child who is suspected of being abused, a guardian *ad litem* for the child, courts of competent jurisdiction, Attorney General, and law enforcement officials. *Id.* § 2215(a).

36. *Id.* § 2214(h).

37. See PA. LEGIS. J. S926 (daily ed. Nov. 18, 1975) (statement of Sen. O'Pake).

38. Section 2202 of the Child Protective Services Law declares that one of the purposes of the Act is to provide "rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve and stabilize family life wherever appropriate"

that child abuse prevention legislation may have on the family.³⁹ In response to this concern, courts have required child protection agencies to justify the removal of the child from the family by more than a mere showing that the removal is in the child's best interest.⁴⁰ In *Santosky v. Kramer*⁴¹ the United States Supreme Court held that nothing less than "clear and convincing evidence" may be used by a court when deciding whether to terminate parental rights.⁴² The parents' fundamental liberty interest in the care and custody of their child is not diminished by their failure to be exemplary parents. On the contrary, parents' interest in preserving their family life may be increased because the state's intervention on behalf of the child may seem to threaten the family unit.⁴³ There are instances, nevertheless, when the state's interest as *parens patriae*⁴⁴ overrides the parents' interest, thus justifying the state's disruption of a family.⁴⁵

Courts devote special attention to parents' due process rights in child abuse or neglect proceedings in which a parent is the accused. The nature and possible ramifications of such a proceeding requires that procedural safeguards are followed so that any decision curtailing parental rights is in accordance with the due process clause of the fourteenth amendment.⁴⁶ While courts carefully guard parents' due process rights, they have not consistently deemed parents' sixth

39. "To give the government *total* unconditional authority to prescribe regulations empowering the state to take children away from parents may be characteristic of a totalitarian state such as Nazi Germany or Soviet Russia. It certainly has no place in the United States of America." H.R. REP. NO. 685, 93d Cong., 2d Sess. —, reprinted in 1974 U.S. CODE CONG. & AD. NEWS 2763, 2772 (emphasis in the original) (dissenting view of Rep. Earl F. Landgrebe on the proposed Child Abuse Prevention and Treatment Act). See also PA. LEGIS. J. H2996 (daily ed. Oct. 15, 1975) (Pennsylvania House of Representatives debate on proposed Child Protective Services Law).

40. If a child were taken from a home, over the objections of the family, because the removal was shown to be in the best interests of the child, but without any showing of the unfitness of the parents, the due process clause would be offended. *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (citing with approval *Smith v. Organization of Foster Families*, 431 U.S. 816, 862 (1977) (Stewart, J., concurring)).

41. 455 U.S. 745 (1982).

42. *Id.* at 769. The Supreme court held the N.Y. FAM. CT. ACT § 622 (Consol. 1981) to be unconstitutional because it required only a preponderance of the evidence to support a finding that a child is permanently neglected.

43. *Id.* at 753.

44. "*Parens patriae*" literally means 'father of the country,' and traditionally refers to the role of the state as guardian of persons under legal disabilities, such as juveniles or the insane." *In re Eberhardy's Guardianship*, 97 Wis.2d 654, 659 n.6, 294 N.W.2d 540, 543 n.6 (1980).

45. See, e.g., *Developments in the Law—The Constitution and the Family*, 93 HARV. L. REV. 1156 (1980) (an analysis of the sources of the state's authority and interest in intervening in the family on behalf of a child).

46. See *Brown v. Guy*, 476 F. Supp. 771 (D. Nev. 1979) (indigent parents have a right to court appointed counsel in child abuse or neglect proceedings); *Davis v. Page*, 442 F. Supp. 258 (S.D. Fla. 1977) (parents have a right to counsel in child dependency proceedings); *Alsager v. District Court of Polk City Iowa*, 406 F. Supp. 10 (S.D. Iowa 1975) (parents must receive notice in a parental termination proceeding advising them of the factual basis for the proposed termination).

amendment right to confrontation and cross-examination⁴⁷ deemed essential to a fair adjudication in child abuse or neglect proceedings.

Courts have often regarded custody hearings in divorce proceedings as analogous to child abuse and neglect proceedings with respect to sixth amendment rights.⁴⁸ While all courts recognize that a defendant has a constitutional right⁴⁹ to confront and cross-examine an opposing witness in traditional adversarial proceedings,⁵⁰ that same right has not been deemed indispensable in custody proceedings when a child is interviewed *in camera* to determine which parent the child prefers.⁵¹ Child custody proceedings are not typically characterized as adversarial proceedings because the parent is not pitted against the child nor the child against the parent. Rather, in a custody proceeding the court tries to determine the best result for both the child and the parent. Similarly, a child abuse or neglect proceeding falls outside the traditional adversarial setting because the child, although testifying to the parent's conduct, is not pitted against the parent. Rather, the court and the child protective service treat the child, the parents and other family members as one entity and focus attention on what is best for the family as a whole. Accordingly, a number of courts have held that the sixth amendment right to confrontation and cross-examination does not apply in child abuse and neglect proceedings when the child testifies *in camera*, provided that certain procedural safeguards are met.⁵²

47. See *infra* note 49 and accompanying text.

48. "[C]ases in which parents are vying for custody of children in contested divorce actions [are] highly analogous to dependency proceedings, in that both are civil in nature, the issues and relief sought are often parallel, and the welfare of the child is always involved." *In re Maricopa County Juvenile Action No. JD-561*, 131 Ariz. 50, ____ n.3, 638 P.2d 717, 724 n.3 (1981).

49. U.S. CONST. amend. VI provides in part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him"

50. The sixth amendment right to confront and cross-examine adverse witnesses has been deemed essential in the traditional adversarial proceeding so that any bias, malice, hostility, or unreliability on the part of the witness may be revealed. The right has been held to be necessary in a wide variety of adversarial proceedings. See, e.g., *Wolff v. McDonnell*, 418 U.S. 539 (1974) (civil rights action challenging administrative practices in a state correctional facility); *Illinois v. Allen*, 397 U.S. 337 (1970) (criminal prosecution for armed robbery); *Goldberg v. Kelly*, 397 U.S. 254 (1970) (termination of welfare payments); *Greene v. McElroy*, 360 U.S. 474 (1959) (wrongful discharge action in which the plaintiff was charged with communistic associations).

51. For cases allowing an *in camera* interview of a child in a custody dispute to determine the child's parental preference, see *Strain v. Strain*, 95 Idaho 104, 523 P.2d 36 (1974); *Currier v. Currier*, 271 Minn. 369, 136 N.W.2d 55 (1965); *Walker v. Walker*, 40 Ohio App.2d 6, 317 N.E.2d 415 (1974); *Cheppa v. Cheppa*, 246 Pa. Super. 149, 369 A.2d 854 (1977). For cases that hold that an *in camera* interview of a child in a custody dispute is per se unconstitutional, see *Schwartz v. Schwartz*, 382 S.W.2d 851 (Ky. 1964); *Cook v. Cook*, 5 N.C. App. 652, 169 S.E.2d 99 (1969).

52. "Unlike the right of a criminal defendant to confrontation, it is established that such rights are *not* universally applicable to all hearings." *In re Jones*, 240 Pa. Super. 382, 385, 429 A.2d 671, 675 (1981) (emphasis in original). See also *In re Maricopa County Juvenile Action No. JD-561*, 131 Ariz. 50, 638 P.2d 717 (1981):

[W]e are not here faced with the usual adversary proceeding involving the life,

If a court bars a parent from the *in camera* interview of the child, due process requires that the parent's attorney be present.⁵³ The attorney may then cross-examine the child on behalf of the parent to test the credibility or reliability of the witness and to uncover possible bias or malice motivating the child to testify. But at least one court has held that the attorney need not be in the same room as the child during the interview. The New Jersey Superior Court in *In re M.S.*⁵⁴ found that the use of a tape recorder and voice transmission equipment to relay the testimony of the child to the parent and his attorney in another room was not a violation of the parent's sixth amendment rights. Because the parent, through his counsel, was permitted to question the child the court held that the parent had been afforded the right to cross-examine the witness, even though there had been no actual face-to-face confrontation.⁵⁵ Thus, the holding of *In re M.S.* affords a trial judge broad discretion to conduct *in camera* interviews of a child provided the parent has an opportunity to challenge the testimony. Permitting children to testify in the privacy of the judge's chambers spares them the trauma of testifying in open court.⁵⁶ This procedure best ensures that the child will testify truthfully because the threat of the alleged abuser's presence has been removed.⁵⁷

In *Cruz v. Commonwealth*,⁵⁸ the Commonwealth Court held that the State's interest in protecting child abuse victims and in

liberty, or property of mature parties, but with the status and best interest of a ten and one half year old child, who also has as much at stake as any other party and who also has a fundamental right, equal at least in importance to the rights of the other parties, to be dealt with fairly.

Id. at ____, 638 P.2d at 723.

53. See, e.g., *Sipe v. Shaffer*, 263 Pa. Super. 27, 396 A.2d 1359 (1979); *Commonwealth ex. rel. Grillo v. Shuster*, 226 Pa. Super. 229, 312 A.2d 58 (1973).

54. 185 N.J. Super. 3, 447 A.2d 183 (1982).

55. *Id.* at 6, 447 A.2d at 185. *Accord In re C.L.T.*, 597 P.2d 518 (Alaska 1979). In *In re C.L.T.*, a mother's parental rights were terminated based in part on tape recorded testimony given by the investigating social worker. Because the mother's attorney had questioned the witness, the court found that "the opportunity for effective cross-examination was presented. The due process clause requires no more." *Id.* at 522 n.8.

56. See *In re Maricopa County Juvenile Action No. JD-561*, 131 Ariz. 50, 638 P.2d 717 (1981) (*in camera* questioning found to protect the child from possible harmful effects of a direct confrontation with his parents); *In re Driscoll*, 410 So.2d 255 (La. 1982) (child was found to have a justifiable and genuine fear of her father, the alleged abuser); *In re M.S.*, 185 N.J. Super. 3, 447 A.2d 183 (1982) (record showed that child was emotionally disturbed and that a private interview would be more likely to elicit a genuine and reliable response); see also *Marshall v. Stefanides*, 17 Md. App. 364, 302 A.2d 682 (1973) (*in camera* interview of a young child was used in a divorce-custody case to protect the child from possible severe psychological trauma).

57. See generally *Parker, The Rights of Child Witnesses: Is the Court a Protector or a Perpetrator*, 17 NEW ENG. L. REV. 643 (1982) (discussion of the psychological dilemma that face children who have to testify against their parents); *Meyers, Little Witnesses*, STUDENT LAW., Sept. 1982, at 14 (examination of the problems faced by prosecuting attorneys in a sexual abuse case when the only witness to the crime was the child-victim).

58. ____ Pa. Commw. ____, 472 A.2d 725 (1984).

preventing future abuse is paramount to the parent's interest, and that the Child Protective Services Law is a legitimate and appropriate means to that end.⁵⁹ The court then held, citing *Matthews v. Eldridge*,⁶⁰ that the procedural safeguards due a person accused of child abuse was to be determined by considering the following: first, the affect of the Commonwealth's action on the accused's interest; second, the risk of erroneous deprivation of that interest and the availability and effectiveness of substitute or additional procedural safeguards; last, the administrative or fiscal burdens that the substitute or additional procedural safeguards would impose on the Commonwealth.⁶¹

Having established the basis for its examination, the court turned to the contentions of the appellant, Alcides Cruz. Cruz asserted that his due process right of confrontation and cross-examination was violated when his children were questioned *in camera*. Cruz further argued that the *in camera* proceedings deprived him of his constitutionally protected interest in his good reputation.⁶² In support of his contentions, Cruz relied on *In re Jones*⁶³ for the proposition that a parent has a right to personally confront and cross-examine his children at the hearing. The Commonwealth Court reasoned, however, that the instant case was different because, unlike the parent in *Jones*, Cruz knew the identity of the *in camera* witnesses.⁶⁴

This distinction is important because knowledge of the identity of an adverse witness allows knowledge of any malice, vindictiveness, or prejudice that may prompt the witness to testify against the accused.⁶⁵ Thus, the court found that the appellant's sixth amendment rights were not violated by the *in camera* questioning of his children because the appellant had ample opportunity to interview the children through his attorney prior to the hearing. The appellant's attorney was present at the *in camera* questioning and had the opportunity to cross-examine the witnesses to further ensure the protection

59. *Id.* at _____, 472 A.2d at 728.

60. 424 U.S. 319, 334 (1976).

61. *Cruz*, ____ Pa. Commw. at _____, 472 A.2d at 728.

62. The court expressed some doubt as to whether Cruz actually had a constitutionally protected interest in his good reputation. The Department of Public Welfare relied on *Paul. v. Davis*, 424 U.S. 693 (1976) to support its contention that interest in a good reputation is not sufficient to trigger due process protections. The Commonwealth Court declined to decide this issue because it concluded that Cruz had been "afforded all the process he was due." *Id.* at _____, 472 A.2d at 728 n.3.

63. 286 Pa. Super. 574, 429 A.2d 671 (1981).

64. *Cruz*, ____ Pa. Commw. at _____, 472 A.2d at 727.

65. "In order to determine the credibility of this witness and the value of his testimony, the party adversely affected by his testimony must be informed of his identity and thus be given the opportunity to bring forth any possible bias motivating the damaging testimony." *In re Jones*, 286 Pa. Super. at 583, 429 A.2d at 676.

of the appellant's interests.⁶⁶ Using the *Matthews* test, the court recognized that while Cruz had an important interest in maintaining his parental rights, this interest was not jeopardized by the use of *in camera* questioning.⁶⁷

Cruz's next contention centered on his alleged due process right to ascertain the identity of the person who made the initial report of suspected child abuse to the child protective service.⁶⁸ Cruz also attacked the constitutionality of the Child Protective Services Law on the grounds that it denies the subject of the report an unqualified right to know the identity of the person initiating the report.⁶⁹ The court refused Cruz's "invitation to wade into these constitutional waters," stating that Cruz had not attempted to ascertain the identity of the person who made the report.⁷⁰

Cruz further contended that the report should be expunged from the central register because the Department of Public Welfare hearing took place after the statute of limitations prescribed by the Law had run.⁷¹ The court found this argument to be without merit. It reasoned that statutes of limitation prescribed by the Law were for the benefit of the child and were not to be used to shield an

66. The court devised a balancing test by which Cruz's interest in being able to confront and question his children was measured against the best interests of the children: [T]he ever-growing complexity of the dynamics between public and private interests requires a careful weighing of the importance of the respective interests involved and of the costs of employing alternative procedures. In light of the procedural safeguards which were accorded the appellant, and the marginal benefit which would have been derived from his presence as compared to the possible detriment to the children, we conclude that he had no right to be present during his children's testimony.

Cruz, Pa. Commw. at ____, 472 A.2d at 729.

67. See *In re Leslie H.*, No. 38 Harrisburg 1983, slip. op. (Pa. Super. July, 13, 1984). The trial judge had interviewed the victim *in camera* with neither the parents nor their attorney present. The Superior Court found that the parent's due process right to confrontation and cross-examination had been violated and remanded the case with instructions to follow the procedure approved in *Cruz*.

68. *Cruz*, ____, Pa. Commw. at ____, 472 A.2d at 729.

69. *But cf. Sims v. State Dep't of Public Welfare*, 438 F. Supp. 1179 (S.D. Tex. 1977). The District Court found TEX. FAM. CODE ANN. § 34.06 (Vernon 1975) unconstitutional because it provided for a central register where child abuse investigatory reports could be disseminated without judicial review. "A state may deny the parents access to the records concerning their family only where the source must remain confidential or where there has been a judicial determination of the need for confidentiality in an adversary proceeding." *Sims*, 438 F. Supp. at 1191.

70. *Cruz*, ____, Pa. Commw. at ____, 472 A.2d at 729. "There is no indication that the appellant ever requested from the Department of Public Welfare the identity of the person who originally made the report. Having never sought that information, he cannot complain now that his constitutional rights were violated." *Id.* The court further noted that § 2215(c) of the Child Protective Services Law specifically provides for the disclosure of the identity of the person initiating the report if the Department determines that such disclosure will not threaten the safety of that person.

71. Cruz construed the statutory requirement that an oral report of suspected child abuse be filed immediately and a written report be filed within 48 hours after the oral report as a statute of limitations. The court found nothing in the record that suggested "any deviation from the reporting procedures prescribed by the Law." *Cruz*, ____, Pa. Commw. at ____, n.4, 472 A.2d at 729 n.4.

alleged abuser from an adjudication.⁷² If the time limitation abbreviated the period during which a child could report a case of abuse, in many cases, including the instant one,⁷³ child protective services would be unable to protect a child in need, and this, the court held, would circumvent the legislative intent.⁷⁴

Cruz finally asserted that the Law requires a physical and psychological examination of the abused child and that his children had not undergone these examinations. The court found no language in the Law that absolutely requires a medical examination of the victim. Rather, the court noted that the Law designates "available medical evidence" as one of three bases for an indicated report of child abuse.⁷⁵ The court also recognized that in many sexual abuse cases, children do not manifest physical injury, and therefore precluding medical evidence.⁷⁶ In the instant case, the court held that because the report was made two years after the abuse, the Department of Public Welfare was correct in not subjecting the victim to a medical examination.⁷⁷ The Department of Public Welfare, merely recommends psychiatric examinations, the court noted, thus no error was committed when the victim failed to undergo a psychiatric evaluation.⁷⁸ Therefore, the Commonwealth Court found the hearing conducted by the Department of Public Welfare to be in compliance with the Child Protective Services Law.⁷⁹

The decision of the Commonwealth Court in *Cruz v. Commonwealth* marks the first judicial determination of the constitutionality of the Child Protective Services Law. With this decision, child protective agencies will be freer to help abuse and neglect victims, and the Pennsylvania General Assembly will be encouraged to enact more laws to deal with the problems of child abuse and neglect.⁸⁰ Undoubtedly, this decision will encourage informality in child abuse and neglect proceedings. A less formal proceeding will increase the accuracy of the fact finding, thus enabling the court

72. *Id.* at _____, 472 A.2d at 730.

73. Cruz's daughter reported the incidents of sexual abuse to her mother only after she learned that Cruz might be granted visitation privileges. *Id.*

74. *Id.*

75. *Id.*

76. *See supra* note 8 and accompanying text.

77. *Cruz*, _____ Pa. Commw. at _____, 472 A.2d at 730.

78. *Id.* at 731.

79. *Id.*

80. The court found that because both the victim and her brother "gave graphic testimony of repeated incidents of sexual intercourse" and Cruz was unable to either discredit or refute the testimony, the decision of the Department of Public Welfare was supported by substantial evidence. *Id.* Cruz's petition for appeal to the Pennsylvania Supreme Court was denied on May 31, 1984.

to better tailor its order to the treatment needs of the victims and their families.

Elizabeth Bitner