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Controversy in the Deaf Community

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NEWS

CONTROVERSY IN THE DEAF COMMUNITY

By MOLLY MACK

The Michigan Child Welfare Services' decision to implant a cochlear implant in two children has reignited controversy in the Deaf community over the use of the cochlear implants. Lee Larson lost custody, but not parental rights, over her two young children for a non-cochlear implant related issue. While the Michigan not-for-profit has custody over the children they are pushing to have a cochlear implant placed in both children.

Larson and the children's father are both Deaf and have refused the surgery based not only on their rights as parents to refuse elective procedures, but also as Deaf adults who want their children to grow up and embrace the same culture and lifestyle that they enjoy. Proponents of the surgery argue that placing a cochlear implant in a child drastically enhances their quality of life and makes them more capable of succeeding in a hearing world.

Cochlear implants are the only medical intervention that can restore partial hearing in cases of profound sensorial neural deafness. A cochlear implant is placed directly on the brain and transforms speech and sound into electrical signals that the brain can interpret. It bypasses the normal function of the outer ear, hair cells and cochlea, using surgically implanted electrodes and digital signal processors worn on the ear or body to do the work that the damaged or malformed ear structures cannot do themselves.

Terry Zwolen, Ph.D., a clinical associate professor and analyst research scientist at the University of Michigan Cochlear Implant Program is very positive about the impact that a cochlear implant can have, especially on a young child. After completing a study of 102 children with cochlear implants, Zwolen noted that the sooner a child gets an implant, the sooner speech and language develop. These children also do better on word and sentence recognition tests. However, Zwolen notes that there is no guarantee that these children will lead a normal life.

> ***"...the social service agency ... made a moral decision that the children must be hearing to have any chance at a meaningful life."***
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> — Howard Rosenbaum, attorney with Equip for Equality

This reference to a normal life is one that most bothers people in the Deaf community. Many people who have a hearing disability do not consider themselves disadvantaged. Rather, they feel that the anatomical difference between Deaf people and hearing people has lead to cultural differences. That is why it is important to Larson, and many in the Deaf community, that these children not be given a cochlear implant; not only because it will destroy their ties with the Deaf community, but also because they will never fully fit into the hearing society.

Opponents of cochlear implants point to a number of other disadvantages including dependence on the medical community for programming and reprogramming of the cochlear implant, lack of evidence that the device enhances speech perception, the risk of infection from the surgery, and communication problems with the apparatus itself.

Howard Rosenblum, a senior attorney at Equip for Equality, feels very strongly about this issue. As the only culturally Deaf attorney in Illinois, Howard is adamantly against the use of cochlear implants, especially in young children. "Every time a deaf child receives an implant typically the deaf child does not have a choice. What is different about the Michigan case is that the deaf children's parents, who are themselves Deaf, have chosen not to implant their children. Despite the Deaf parent's decision, the social service agency that has responsibility of the children have made a moral decision that the children must be hearing to have any chance at a meaningful life. As anyone can see, Deaf adults do have meaningful lives... We do not need to be fixed, but rather need to be given the same opportunities as everyone else."

On October 4, 2002, the trial over whether these two children would receive cochlear

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sues on a daily basis, the voices of those who must face the ultimate tragedy of having their children taken away is just as important in the debate. One such parent is Ms. Washington (who asked that we not publish her real name for privacy reasons). Washington is currently battling with DCFS and the Cook County State's Attorney's Office to get her children back after they were taken away on allegations that her home was unsafe for them.

When asked how she came into the system, she stated that a neighbor called the hotline and after an investigation, her children were taken. Washington admits that she had been struggling to provide for her four children and that many times, they had no food to eat because she could not find a job and she was dealing with substance abuse problems. Her children have now been in foster care for almost three years and although she is doing all the services required by DCFS, there has still been no move to return her children to her.

Washington explains, "I think the major problem isn't that we aren't given jury trials but that no one listens to what the parents have to say. All they want to do is remove the kids; they never give the parents a chance to explain themselves. You walk in the courtroom and you feel like you are the enemy and that you're guilty and everybody thinks you are. I know I caused my own problems but I love my kids and I feel like no one will give me credit for the changes I've made to make a better life for them."

There are indeed many issues and emotions involved and changes that must occur so that everyone who makes the journey through the Cook County Juvenile Court system can say that they were treated fairly, even if they do not agree with the outcome of the case. The Special Committee plans to hold several more hearings to discuss child custody and domestic relations issues, two topics integrally connected to the Cook County Juvenile Justice System. Changes will be slow at best because of the sensitive issues involved. No one can say what changes will be made, but the hearings are the first step in helping children find a permanent place to call home and aiding their families to adequately deal with the challenges they face.

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Pub. L. No.106-554, 114 Stat. 2763, 2763A-335 (2000). The problem with the filtering mechanisms, according to the libraries that sought to have the act stricken, was that they overprotected Internet searches and prevented library patrons from accessing educational information. In May 2002, a Pennsylvania District Court permanently enjoined the Federal Communications Commission and the Institute of Museum and Library Services from withholding federal funds for any public library that failed to comply with CIPA. *American Library Ass'n, Inc. v. U.S.*, 210 F.Supp. 2d 401 (E.D.Pa. 2002).

Outside the online pornography issue, Edelman is not the only researcher who has asserted that educational interests are undermined by digital restrictions on research. Princeton computer-science associate professor Edward W. Felten attempted to meet a public challenge presented by the Secure Digital Music Initiative (SDMI) to break through "watermark" protections on digital music. Felten succeeded and was about to publish his findings for an academic conference when the SDMI threatened him with liability under the DMCA. Felten withdrew his original paper but still published a portion of his research.

Other educational groups have dealt with their insecurities over copyright protections by implementing some of their own restrictions. The Institute of Electrical and Electronics Engineers (IEEE) started a policy in November 2001, requiring all authors to indemnify IEEE for any DMCA liability. Also, leaders of six major higher-education organizations asked college presidents to try stopping the illegal distribution of copyrighted materials, but the request was mainly concerned with commercial online material. In October 2002, the University of Chicago sent a university-wide notice that it would not protect "individuals who distribute copyrighted material without an appropriate license." ("Letter to the University Community," Gregory A. Jackson, Vice President and Chief Information Officer, University of Chicago, October 9, 2002.)

As educators express copyright concerns, the recent leniency shown by courts and the legislature

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from that marriage. The marriage lasted 12 years. After her divorce in 2000, she met a man in her village that promised to marry her and take care of her two children. They began a relationship, during which Wasila, her third child, was born. Three months later, Katsina State adopted the Sharia Penal Law.

Lawal's lawyer, Hauwa Ibrahim, states, "What angers us most about this case is that the judge failed to implement sharia correctly. They convicted her of adultery, but the child was conceived before the law came into effect. It was not a crime when she did it." Dan Isaacs, *Nigerian woman fears stoning before appeals*, CHICAGO SUN-TIMES, Page 8, August 25, 2002. Lawal has been granted 30 days to appeal and is still awaiting the decision of the appeals court.

Under Sharia Penal Law, pregnancy outside of marriage is sufficient evidence for a woman to be convicted of adultery. There is a higher burden of proof in convicting a man of adultery. The act must have been witnessed by four men and he must also confess his crime to the judge.

Professor Howlett commented on the prescribed Sharia death penalty, "It is another example of that which is justified as a cultural right but appears to be more to do with male prerogative and control."

Professor Auwala H. Yadudu, an expert on Sharia implementation in a democratic Nigeria suggests that Muslims in Nigeria are content with Sharia legislation and the concern by human rights activists are looked upon with disdain and suspicion.

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of trust on the part of this administration in the judicial process."

The government classified Padilla as an enemy combatant on June 9, 2002, but before that classification it had faced a deadline to press criminal charges on Padilla by June 11, 2002 due to his detainment.

When Padilla was arrested at O'Hare International Airport he did not have any radioactive material or any other bomb-making equipment. He had with him $10,526 of undeclared money. After his arrest in Chicago, he was transferred to a high security federal facility in Manhattan.

In the same jurisdiction, Judge Shira A. Scheindlin, a federal judge in a separate case, held that the material witness law could not be used to hold people indefinitely in criminal investigations.

The fear is Padilla, a U.S. citizen, is being classified as an enemy combatant solely because the government is not prepared to charge him with any criminal violations, but wants to keep him detained. Padilla's defense attorneys have accused the government of forum shopping in transferring Padilla from New York.

Professor Raphael said, "Holding a U.S. citizen without the assistance of counsel, without the filing of charges against him, is exactly what due process does not allow. The precedent is horrible and frightening."

The fear for public interest attorneys is that the executive branch of the government has acted alone in its classification of Padilla, and the situation is not the same as when the court decided Ex Parte Quirin. The foundation of our system of government is input from all three branches of government, and here a U.S. citizen is being held based on the action of one branch.

Padilla apparently converted to Islam during his time in a prison in Florida, before that he grew up in the Logan Square section of Chicago where he was a member of the gang the Latin Kings.

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have indicated that education may not be the field on which digital copyright battles were intended to be fought. As expressed by John Genga, a prominent intellectual property attorney with the firm Paul, Hastings, Janofsky & Walker in Los Angeles, California, "The battleground is not education. It really has to do with protecting works from Internet piracy." Over the next several months, the courts and the legislature will be making that determination.

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pharmaceutical companies for price-fixing vitamins, among other allegations, on behalf of the damages states' citizens incurred. This multistate case was filed by the attorneys general after the federal government criminally prosecuted the pharmaceutical companies and imposed million dollar fines on the companies. The money collected by the federal government, however, did not benefit the injured consumers. The suit filed by the attorneys general did receive funds on behalf of the states' citizens. In other cases, the attorneys general offices actually help with the investigation and are instrumental in the prosecution of the case, showing that a variety of arrangements between state and federal antitrust enforcement exist.

The Salton case is unique because it did not originate or proceed with the assistance of one of the federal enforcement agencies, indicating a sense of maturity with regard to attorneys general antitrust efforts that is likely to continue to develop with time. The Illinois Attorney General's involvement in this case suggests the office might be preparing for a more active role in multistate actions as the economic benefits from antitrust enforcement becomes clearer. Both the independence of multistate actions and Illinois' increasing role in antitrust enforcement mean more protection for consumers.

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In order to fund these new programs, Congress increased the budget significantly. From 1995 to 2000, the appropriations for these education programs ranged from approximately $23 million to $31 million. When the Act was reauthorized, Congress set a maximum spending limit of $70 million per fiscal year through 2007. In 2002, Congress appropriated $50 million for 2002. 42 U.S.C. § 11435 (2002).

The revisions made to the Act address virtually all aspects of education. While only time will tell whether or not the revision to the Act will be a success, Calvert is quite optimistic. "I feel that the McKinney-Vento Act offers districts an opportunity to knit safety nets of hope and support for homeless kids... [and] offers [educators] an opportunity to increase our awareness, our understanding, our compassion, and our ability to serve homeless children."

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family members, could face deportation. The new provision could undermine the decades-long efforts of many police departments to win the trust of the community. By putting state and local police into the business of questioning and detaining individuals solely on the basis of immigration status, a wedge could be driven between the immigrant communities and the police.

Supporters of Section 133 argue that the idea behind it was to give law enforcement officers who are closest to the communities the authority to act when they have reason to believe that immigration laws are being violated. Thus, the fact that they have close ties to the community will only help to enforce immigration laws.

This provision does not turn all law enforcement officials into immigration police; their primary responsibility will continue to be the enforcement of local laws. However, this arrangement will make it so they no longer have to close their eyes to immigration law violations.

Since September 11, several jurisdictions around the country have expressed interest in having their police departments trained to identify likely illegal aliens during the course of their normal duties. At least two of the September 11th terrorists had come into contact with local police but were not detained because local law enforcement did not recognize that they were in the country illegally.

Requests for greater state-federal cooperation in immigration law enforcement have come from both South Carolina and Florida. South Carolina's Attorney General Charlie Condon requested to have his state's police officers trained in immigration law enforcement and authorized them to enforce immigration laws. Florida announced in August that it signed the first special agreement with the Justice Department where law enforcement officers will be trained and deputized to arrest immigrants deemed a threat to national security.

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been in a prior fight with his attacker or that he was fearful of further harm. Because of his failure to show knowledge of the risk of serious danger on the part of prison personnel, the Court of Appeals affirmed the lower court's grant of summary judgment for the defendants. This decision states that prison officials will not be held liable simply because a fight breaks out between inmates. The standard is clear that they must have had knowledge of a serious risk of danger and could have prevented it, but failed to take any action.

These two cases set a clear precedent for what an inmate must prove in order to sue prison officials. Further, they serve as a deterrent to prison personnel against allowing fights to erupt between inmates. While an inmate cannot file a suit for any fight he or she is in, corrections officials and personnel must be on their guard to prevent inmate brawls and to protect vulnerable prisoners from attack.

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implants began. Judge Feeney, sitting before the family court heard a great deal of medical testimony about the benefits of using a cochlear implant and many Deaf individuals' testimony regarding the impact having a cochlear implant will make on these children. In the end, Judge Feeney decided that her court did not have jurisdiction to hear this issue because the use of cochlear implants was an elective surgery and the children's hearing loss did not constitute a medical emergency. Even though parents rights were the deciding factor in the Judge's decision, the ruling clearly classifies cochlear implants as an unnecessary device supporting the Deaf culture's view that people with hearing loss can participate fully in the community. Only time will tell whether the current view of these devices will continue.

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Although the case concerned only one victim, under the terms of the settlement, C.B.M. has agreed to halt application of its zero-tolerance policy in the five states (Arizona, California, Hawaii, Nevada and Oregon) where it operates housing facilities and to revise all employee manuals with respect to current eviction proceedings. Alvera's attorneys believe that this settlement will serve as a model for property management companies nationwide.

While no state has enacted laws forbidding landlords from evicting domestic abuse victims under the terms of a zero-tolerance policy, several states offer some protection for victims. Commonly, the laws provide the victim a defense against eviction if she can provide documentation of prior abusive incidents in the form of police reports or restraining orders. Although Pollack reports that there has been work to add a domestic violence exception to this policy at the state level, "advocacy efforts with local housing authorities may prove more fruitful."

In light of a recent survey by the U.S. Conference of Mayors, reporting that 56 percent of cities surveyed cited domestic violence as a primary cause of homelessness, many believe state and local response to this problem is long overdue.