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FAMILY LAW—Termination of Parental Rights: Establishing Standards for the Wyoming Law. In the Matter of Parental Rights to X, Y and Z, DS v. Dept. of Public Assistance & Social Services, 607 P.2d 911 (Wyo. 1980).

The county attorney of Sheridan County petitioned the district court at Sheridan on April 3, 1978 to terminate the parental rights of DS and RS to three minor children — X, a three year old, and Y and Z, six month old twins. The action was brought under the Wyoming Statutes pertaining to the judicial termination of parental rights.[1] Temporary custody was awarded to the Sheridan County Department of Public Assistance and Social Services, (D-PASS), and a trial initiated by the county attorney's petition followed. On July 6, 1978, the district court awarded custody of the three children to D-PASS and ordered a review of the decision within one year.[2]

In May of 1979, DS and RS moved the court for a review of its July 6, 1978 decision. The parents waived whatever rights they had to seek reconsideration of termination of parental rights to Y and Z, claiming that the twins suffered health problems which required medical and other special treatment that they (the parents) could not provide.

With respect to X, however, DS and RS sought to prove that their situation had improved, and more importantly, that the State had not and could not show that the child had been neglected. After hearing the evidence on these issues, the district court ordered that the parental rights of DS and RS be finally terminated. On appeal to the Wyoming Supreme Court, the district court's decision was reversed.

In the course of its decision, the court noted that a standard had not yet been defined against which a claim of parental abuse or neglect sufficient to justify the termination

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1. WYO. STAT. §§ 14-2-301 through 307 (1977).
2. In the Matter of Parental Rights to X, Y and Z, DS v. Dept. of Public Assistance & Social Services, 607 P.2d 911, 917 (Wyo. 1980). [Hereinafter cited in text as *XYZ*]. The trial court's order was somewhat unusual in this situation in "terminating" parental rights, yet allowing a review of the decision within one year. The Wyoming Supreme Court resolved the inconsistency by holding that the 1978 proceeding was in the nature of a temporary hearing and that the July 6, 1978 order must be considered as a temporary order.

of parental rights was to be examined. Because of the absence of such a standard, and also in light of the "delicate nature" of parental-rights-termination matters, the court announced its intention to "seize upon this opportunity to establish, for bench and bar, guides and standards which will, hopefully, point the way in this and future cases."[3]

The gist of the court's holding was that a trial judge must "strictly scrutinize" a claim of abuse or neglect before terminating parental rights since parental rights embody a fundamental liberty.[4] Furthermore, in specific regard to "abuse" and "neglect" standards, the court held that to survive a strict scrutiny test, the State must prove that the abuse or neglect poses "a serious danger to the child's physical or mental well-being, i.e. clearly detrimental to the child."[5]

This Note first considers the contextual framework within which *XYZ* was decided. Specifically, attention is given to the statutes, Wyoming precedent, and the tension present in cases of this type between protecting the parents' rights as opposed to emphasizing the best interests of the child.

Secondly, the *XYZ* decision itself will be analyzed. It is suggested that the court's approach to the issue of establishing standards was not perfectly logical, and consequently there are certain structural defects in the court's line of reasoning. While the court's mode of analysis might create some uncertainty, the substantive standards themselves clearly reflect the court's strong stance in favor of parent's rights.

Background Issues Relating to the *XYZ* Decision

The Statutes

Wyoming enacted statutes in 1955 conferring on the courts the power to sever the parent-child relationship.[6] Prior to the enactment of the statutes, there was no common

3. *Id.* at 917.
4. *Id.* at 918, 919.
5. *Id.* at 919.
6. 1955 Wyo. Sess. Laws Ch. 169.

law or statutory provision whereby the State or petitioners in adoption could obtain irrevocable custody of an abused or neglected child without consent of the parents.[7] At the time, Wyoming was one of the few states to have enacted such a law, and it was characterized as a "progressive piece of legislation."[8]

The statutory provisions upon which the dispute in *XYZ* was based are substantially the same as they existed in the original enactment. The pertinent provisions provide as follows:

> Wyoming Statutes Section 14-2-301:
>
> Any parent who abandons a child . . . or abuses or neglects a child may have his permanent care, control and custody of the child transferred to some other person, agency or institution and may have all his parental rights to the child terminated.[9]
>
> Wyoming Statutes Section 14-2-306:
>
> (a) After the hearing, if the court determines it is the best interest of the child that parental rights of his parents be terminated, the court shall appoint a suitable person to serve as guardian of the child. (b) If any child is abandoned, neglected or abused by one (1) parent, only the rights of the parent at fault may be terminated.[10]

Some indication of the legislature's intent regarding the law might be inferred from a report of the Wyoming Youth Commission, the group that proposed the legislation, which indicated that the statute was designed to reach the "flagrant cases of unfit parents."[11] Also, according to an Attorney General's opinion issued shortly after the enactment of the statute, "The State, by its laws and through its courts, will interfere with the parent-child relationship only when the welfare of the child requires it, and acts which terminate parental rights will be strictly construed."[12]

7. Note, *Termination of Parental Rights*, 13 WYO. L. J. 185, 186 (1958).
8. *Id.* at 185.
9. WYO. STAT. § 14-2-301 (1977).
10. WYO. STAT. § 14-2-306 (1977).
11. Report of the Wyoming Youth Council (1955-1957 Biennium) p.r.
12. 116 OP. ATT'Y. GEN. 638, 639 (1956), citing Virtue, BASIC STRUCTURE OF CHILDREN'S SERVICES at 161 (1953).

Both of these statements indicate that the intent of the legislature was to invoke the power of the State only as a last resort, and therefore the statutes were apparently not intended to upset the traditional right of parents to raise their children without unwarranted interference from the State. The basis for this conclusion is strengthened when one considers the passage of the Act in its historical context.[13] As noted above, in 1955 very few states had passed such a law and there is nothing to indicate that Wyoming lawmakers had in mind an extreme departure from Wyoming's past practice or from the prevailing law as it existed in the other states.

Unfortunately, a general statement of policy considerations is an insufficient guide to judges, legal practitioners and D-PASS professionals when confronted with the problem of actually administering the law. One notes that the statute does not define "abuse" or "neglect," nor does it make reference to the specific types of parental conduct or behavior that justify the State's intervention. Wyoming's approach is not unique in this regard. In fact, one commentator notes, "Most state statutes define neglect in broad, vague language, which would seem to allow virtually unlimited intervention."[14] He adds that the difficulty with this type of statute is, "[b]ecause the statutes do not reflect a considered analysis of what types of harm justify the risks of intervention, decisionmaking is left to the *ad hoc* analysis of social workers and judges."[15] The deficiencies of the Wyoming statutes, particularly as they relate to the last quotation cited above, become apparent when one analyzes the case precendent on the Act prior to the *XYZ* decision.

Wyoming Precedent

The court in *XYZ* had little in the way of precedent to guide (or impede) their determination of appropriate standards. Only two cases involving the Termination-of-Parental-

13. For an overview of the premises upon which state intervention for the protection of children has been based, see Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards*, 27 STANFORD L. REV. 985 (1975).
14. *Id.* at 1000.
15. *Id.* at 1001.

Rights statutes had come before the Wyoming Supreme Court prior to the *XYZ* case.

The first case, *In re Shreve*,[16] was an appeal of an order removing five children from the custody of their natural mother. The mother urged, among other things, that the evidence produced by the State was insufficient to support the decision of the trial court. Most notable in the context of this discussion is the fact that the court did not give any reasons for upholding the trial court's order other than a finding that the evidence, on the whole, was sufficient to "make out a case for the State and to disclose that [the mother] had neglected the children."[17]

The second case, *Matter of C.M.*,[18] was an appeal of termination of parental rights to the infant child of mentally retarded parents. A principal contention of the parents was that the State must provide "clear and convincing evidence" or "clear and satisfactory evidence" of neglect in a termination-of-parental-rights proceeding rather than a "preponderance of the evidence."[19] The parents also argued that under either standard, the lower court erred either by applying a preponderance of the evidence standard or by handing down a decision against the weight of the evidence.[20]

The court dismissed the distinction between the different standards of proof as "merely a play on words," and at least implied that a preponderance of the evidence would suffice in this type of case.[21] After stating that "No two cases of this type are alike, and each must be decided on the basis of its own facts," the court proceeded to engage in a close analysis of the facts.[22]

The holdings in both of these cases illustrate why it was vitally important for the court in *XYZ* to establish guides and standards. The *Matter of C.M.* decision, where the court

16. In re Shreve, 432 P.2d 271 (Wyo. 1967).
17. *Id.* at 273.
18. Matter of C.M., 556 P.2d 514 (Wyo. 1976).
19. *Id.* at 518.
20. *Id.*
21. *Id.*
22. *Id.* at 519.

failed to adequately address the standard of proof issue and endorsed an *ad hoc* approach to resolving the parent's rights to their child, is particularly bothersome. But neither of the decisions narrowed the broad statutory language or discussed in a significant manner the nature of the rights involved.

Parental Rights vs. Best Interests of the Child

In determinations of whether or not to terminate a parent's rights to retain the custody of a child, two competing arguments are often before the courts—the "parental rights" doctrine, and the "best interests of the child" doctrine.[23] As will be shown, which approach the court chooses to emphasize will have a significant impact on the issues considered relevant and possibly on the ultimate outcome of a particular case.

According to one commentator, the "parental right" doctrine holds that "a biological parent is entitled to custody of the child unless he is affirmatively shown to be unfit."[24] In other words, the presumption is in favor of the parent, and the State must meet the required burden of proof regarding the parent's unfitness if it is going to intervene on the child's behalf.

With the "best interests" approach, at least theoretically, parental unfitness is not an indispensable requisite to the termination of parental rights.[25] In determining the "best interests of the child" in the context of a dispute between the parents and a third party, it has been noted that the courts evaluate any of a large number of factors including "moral fitness of the competing parties; the comparative physical environments offered by the parties; the emotional ties of the child to the parties and the parties to the child; the desirability of maintaining the existing relationship between the child and the third party; and the articulated preference of the child."[26]

23. Note, *Alternatives to "Parental Right" in Child Custody Disputes Involving Third Parties*, 73 YALE L. J. 151, 152 (1963).
24. *Id.* at 153.
25. *Id.* at 156.
26. *Id.* at 153.

Rather than considering the two approaches as being mutually exclusive, it is advised that one visualize them as points along a continuum. At one extreme, a purist of the "parental rights" doctrine would argue that an inquiry into the child's best interest is completely impertinent until it can be shown that the parent is unfit.[27] Of course, within the "parental rights" doctrine, there is considerable room for disagreement as to what type of conduct or behavior will justify finding a parent "unfit." As the standard which is sufficient to reach a finding of "unfitness" become less stringent, the "parental rights" test becomes more akin to a "best interests" approach.

Under a pure "best interests" test, the child's welfare is the paramount consideration.[28] The "best interests" approach questions the presumption in favor of biological parents, and relies extensively upon psychological studies and the increasing knowledge in the area of child development in reaching a conclusion that a consideration of the child's welfare should not be contingent upon a finding of "unfitness" on the part of parents.[29]

As the continuum suggests, it is not always clear that a court or statute adopts one approach at the exclusion of the other. Indeed, most statutes articulate the "best interests of the child" as a primary factor to be evaluated in the decision to terminate parental rights.[30] Experience has shown, however, that both legislatures and the courts have placed primary emphasis on the rights of parents in termination cases.[31] Nevertheless, it is important to note that the "best interests" doctrine has gained considerable support in recent years.[32]

27. Note, *Termination of Parental Rights in Adoption Cases: Focusing on the Child*, 14 J. FAM. LAW 547 (1975-76).
28. *Id.* at 550-558.
29. Boskey and McCue, *Alternative Standards For the Termination of Parental Rights*, 9 SETON HALL L. REV. 1, 4 (1978).
30. *Id.* at 4.
31. *Id.*
32. *Id.* at 1-5.

THE *XYZ* DECISION

The Court's Analysis

The principal issue before the court in *XYZ* was whether or not the evidence justified the district court's termination of the parental rights of DS and RS and its refusal to modify that decision. At the outset, the court was presented with a problem of statutory construction.

Under Section 14-2-306(a), power is granted to terminate the parental rights of a child's parents "if the court determines it is in the best interest of the child." Yet Sections 14-2-301 and 14-2-306(b) require a finding of abandonment, abuse or neglect. The question was how to harmonize the "best interest" language with the abandonment, abuse or neglect standards. The court concluded that the parent's unfitness (that is, a showing of abandoment, neglect or abuse) is a threshold question to be proved by the State, and the best interest of the child be considered only insofar as it relates to protecting the child from the proven abuse or neglect of the parents.[33]

The court then turned to the parent's challenge to the sufficiency of the State's evidence, and determined that a standard must be established to point the way in this and future cases. The principal support which the court relied upon in formulating a standard came from the area of constitutional law.[34]

First, it was recognized that the right to associate with one's family is a fundamental liberty protected by the state and federal constitutions.[35] The court then noted that in analyzing legislative classifications, it has held that if a fundamental liberty interest is infringed the classification will be subject to strict scrutiny.[36] In deciding that this prin-

33. In the Matter of Parental Rights to X, Y and Z, *supra* note 2, at 917.
34. *Id.* at 918, 919.
35. *Id.* at 918 *citing* Stanley v. Illinois, 405 U.S. 645 (1972); Washakie County School District Number One v. Herschler, 606 P.2d 310 (Wyo. 1980); Matter of Adoption of Voss, 550 P.2d 481 (Wyo. 1976); and In re Adoption of Strausser, 65 Wyo. 98, 196 P.2d 862 (1948).
36. *Id.* at 918, *citing* Washakie County School District Number One, *supra* note 35; and also referring to San Antonio Independent School District v. Rodriquez, 411 U.S. 1, 17 (1973).

ciple was applicable to the case at hand, the court reasoned that although the constitutionality of the parental-rights-termination statute was not at issue in *XYZ*, the same considerations which require strict scrutiny of the statute should also require strict scrutiny of the statute's application.[37]

An insight into the nature of the substantive standards which were to be promulgated in *XYZ* became evident when the court applied its reasoning on the constitutional issues as follows:

> In other words, the trial judge trying a parental rights termination case must strictly scrutinize a claim of abuse or neglect or abandonment before terminating parental rights (a fundamental liberty). The trial judge is not free to terminate parental rights merely because the State or other petitioner shows that it is more probable than not that the natural parent is abusing or neglecting the child.[38]

Given the obviously important role that the constitutional rights issue played in the court's analysis, the specific standards which the court established understandably place a heavy burden on the State if it is to make out a case. Exemplary of the standards was the court's holding that abuse or neglect must pose a serious danger to the child's physical or mental well-being before a court may terminate parental rights.[39] Also it was established that the State must show "clear and unequivocal" evidence of abuse and neglect to justify termination of parental rights.[40] The standards will be discussed in considerably more detail throughout the following section.

37. *Id.* at 918. The court stated that it had not found support in the case law for a standard cast in terms of "strict scrutiny," but added that "where courts have undertaken to terminate the parent-child relationship, the scrutiny has, to say the least, in fact been strict," at 918. Selecting "strict scrutiny" as a standard by which a trial judge is to evaluate evidence indeed appears to be an unusual application of the concept. One should be cautioned here to avoid confusing the court's use of the concept in *XYZ* with the more typical application of "strict scrutiny" in the review of legislative classifications under the equal protection guarantee of the fourteenth amendment. For a discussion of strict scrutiny as used in the latter context, *see* NOWAK, ROTUNDA, AND YOUNG, CONSTITUTIONAL LAW 383-384 (1978).
38. *Id.* at 918.
39. *Id.* at 919.
40. *Id.* at 918, 919.

CRITIQUE OF THE DECISION

The Court's Mode of Analysis

The first question which should be considered in a critique of the *XYZ* decision is how adequately the court met its announced intention to establish guides and standards to point the way in termination-of-parental-rights cases. As will become evident in some of the discussion which follows, the court's narrowing construction of the statutory language clearly established certain parameters which should be helpful in promoting a consistent administration of the law. As such, the court was relatively successful in accomplishing a critical objective.

The standards which were promulgated are not entirely satisfactory, however. At least part of this criticism might have been avoided if the court had taken a different approach in establishing its reasoning in support of the standards which eventually emerged.

As will be recalled from the earlier discussion regarding the court's analysis, the reasoning in the decision was basically as follows:

Premise A: Any infringement of a fundamental liberty by a statute, (either on its face or by its application), will be subject to strict scrutiny.[41]

Premise B: The right to associate with one's family has been recognized and is recognized here as a fundamental liberty.[42]

Conclusion: It follows that the trial judge trying a parental-rights-termination case must strictly scrutinize a claim of abuse or neglect before terminating parental rights.[43]

41. *Id.* at 918.
42. *Id.* at 918, 919.
43. *Id.* at 918, 919.

To require a trial judge to strictly scrutinize evidence of abuse or neglect is indicative of the court's extreme concern over the infringement of a fundamental liberty. But in the context of *XYZ* and similar cases, saying that a trial judge should apply strict scrutiny only implies that the judge should take a "real hard look" at an allegation of abuse and neglect before terminating parental rights. It does not facilitate a determination of the specific kinds of abuse or neglect that will justify the state's intervention, nor does "strict scrutiny" in this context trigger a set of predetermined parameters within which the standards must fit.

Consequently, there is a regrettable gap in the court's reasoning. An adequate foundation is laid in regard to the parent's fundamental liberty. But the "strict scrutiny" concept does not link this fundamental liberty with the working definitions of abuse and neglect which eventually emerge.

A better approach, and one that would provide the continuity of reason lacking in the court's decision, would have divided the analysis into two separate and distinct issues. First, there is the general question of the procedural due process which should be afforded to parents in terminating their parental rights. Of specific concern in this regard is the standard of proof which the State must meet in order to make out a case. Secondly, there is the substantive matter of defining "abuse" and "neglect" in a manner that is consistent with the procedural due process requirements.

Approaching the task of establishing guides and standards in this manner, the court could have started by recognizing that due process is flexible and calls for such procedural protections as the particular situation demands.[44] The initial concern thus would have been the ascertainment of the nature of procedural protections that are demanded when the State attempts to terminate a parent's rights to custody of a child. As noted earlier, the procedural matter

44. Goldberg v. Kelly, 397 U.S. 254, 263 (1970).

of primary concern in *XYZ* was the evidentiary standard to be applied in a termination-of-parental-rights proceeding.[45]

At this point in the analysis, the United States Supreme Court's discussion of due process in *Mathews v. Eldridge*,[46] would have provided particularly helpful guidelines. There, the Court held that

> identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[47]

Applying these three factors to the *XYZ* situation would have established a logical due process basis for the clear and unequivocal evidence standard that the court adopted.[48] First, the private interest—the parent's right to the custody of his child—is without question an extremely important interest. Secondly, the preponderance of the evidence standard typically used in a civil proceeding may result in an erroneous deprivation of the parent's interest, and a substitute safeguard requirement of clear and unequivocal evidence is of probable value in avoiding such an

45. In Addington v. Texas, 441 U.S. 418 (1979), the Court considered the standard of proof required by the fourteenth amendment in a civil proceeding brought under state law to commit an individual involuntarily to a state mental hospital. Relevant to this Note was the Court's statement that "even if the particular standard-of-proof catch words do not always make a great difference in a particular case, adopting a standard of proof is more than an empty semantic exercise." In cases involving individual rights, whether criminal or civil, '[t]he standard of proof [at a minimum] reflects the value society places on individual liberty,'" at 425, *citing* Tippett v. Maryland, 436 F.2d 1153, 1166 (4th Cir. 1971) (Sobeloff, J., concurring in part and dissenting in part).
46. Mathews v. Eldridge, 424 U.S. 319 (1976).
47. *Id.* at 335.
48. For a discussion regarding the burden of persuasion in civil cases and the distinction between the "preponderance of the evidence" standard and "clear and unequivocal evidence" *see* MCCORMICK, EVIDENCE, §§ 339, 340 (2nd ed. 1972). Also, see J. Rose writing for the court in Ramirez v. Metropolitan Life Ins. Co., 580 P.2d 1136, 1141 (Wyo. 1978), in which "clear and convincing proof" is referred to as a high degree of proof.

error. Thirdly, the State's interest in its role as *parens patriae* is not significantly thwarted or burdened if a higher standard of proof is required.

Grounding the evidentiary proof standard on procedural due process would have been preferable to having the standard simply evolve from the trial judge's duty to "strictly scrutinize" an allegation of abuse or neglect. Also, identifying the evidentiary standard as a procedural due process matter and separating it as a distinct element of the guides and standards the court promulgated would have facilitated the task of establishing working definitions of "abuse" and "neglect."

The court in *XYZ* held that "abuse" and "neglect" will suffice under Section 14-2-301 only if the State produces clear and unequivocal evidence that:

(a) Such abuse or neglect poses a serious danger to the child's physical or mental well-being, i.e., clearly detrimental to the child;[49] or

(b) Such abuse consists of punishment which is not only considered severe, but which also harms the child;[50] or

(c) Such neglect consists of slovenliness in keeping a young child clean or his home in good order, but only if a serious health effect or risk is implicated;[51] or

(d) The child's health-mental or physical-and/or his social or educational well-being has actually been placed in jeopardy through the neglect or abuse of the parent.[52]

The guidelines regarding "abuse" and "neglect", like the evidentiary standard of clear and unequivocal proof, emerged from the court's view that allegations of a parent's unfitness must be strictly scrutinized. If, instead of relying on the strict scrutiny concept, the court had established that

49. *XYZ*, *supra* note 2, at 919.
50. *Id.*
51. *Id.*
52. *Id.*

this narrowing construction of the "abuse" and "neglect" terms was commensurate with the procedural due process protections demanded in a termination-of-parental-rights proceeding, there would have been a more logical and understandable basis for the standards, and a clearer connection with the court's initial premise that a fundamental liberty was at stake.

This criticism may be quibbling over labels and draftsmanship. The court's decision did arrive at a clear and unequivocal evidence standard,[53] and the court's substantive definitions of "abuse" and "neglect" are obviously compatible with this requirement of a higher standard of proof. Nevertheless, the basis for the standards would have been more precisely stated and more readily understood if the court had developed the standards with a traditional procedural due process analysis rather than using the "strict scrutiny" concept as a cornerstone in its decision.

Parental Rights

It was earlier pointed out that a dilemma exists between two competing approaches to the general question of deciding child custody cases—the "parental rights" doctrine on the one hand, and the "best interests of the child" on the other. It was suggested that one might visualize the two doctrines in their pure form at opposite ends of a continuum. Given this scheme, it seems abundantly clear that the courts in *XYZ* adopted a strict "parental rights" approach.

The court's harmonizing of the "abuse" and "neglect" requirements of Sections 14-2-301 and 14-2-306(b), with the "best interest" language of Section 14-2-306(a), immediately established its support of the "parental rights" doctrine. In the process of harmonizing the statutory provisions, the court resolved that establishing "abuse" or "neglect" is the threshold question, and the "best interest" language is pertinent only insofar as it guides the court in its disposition of a case once abuse or neglect is proven.[54]

53. *Id.*
54. *Id.* at 917.

A second major step the court took in support of "parental rights" involved its analysis of the constitutional issues. The court's emphasis on the fundamental liberties of the parents,[55] its conclusion that a trial court must strictly scrutinize a claim of abuse or neglect,[56] and the "clear and unequivocal evidence" standard,[57] are all indicative of the strong stance the court took in favor of "parental rights."

Those who disagree with the court's "parental rights" orientation might heed the advice of one commentator who notes, "considering the seriousness of the decision to intervene from the parents' perspective, intervention should only be permissible where there is a clear-cut decision, openly and deliberately made by responsible political bodies, that the type of harm involved justifies intervention."[58] The Wyoming Statutes do not embody a "clear-cut decision" to alter the traditional deference which has been afforded parents in raising their children without interference from the State. The court's decision in favor of "parental rights" was in accordance with the legislative mandate, and if the "best interests" notion is to gain ascendancy, it should be through legislative change.

The Void for Vagueness Doctrine

Termination-of-parental-rights statutes have come under attack in other states as being unconstitutionally void for vagueness.[59] The Wyoming Statutes were not directly attacked in the *XYZ* decision on this basis and consequently, the statutes' constitutionality was not a primary concern of this Note. Nevertheless, developments in this area of the law make it imperative to at least address the issue.

Vagueness attacks most often arise in a criminal context, but the Supreme Court has held that "civil" statutes are susceptible to vagueness challenges as well.[60] A challenge

55. *Id.* at 918, 919.
56. *Id.*
57. *Id.* at 919. *See also* Note, *The Void For Vagueness Doctrine in the Supreme Court*, 109 U. OF PENN. L. REV. 67 (1960).
58. *Wald, supra* note 13 at 1002.
59. *See, e.g.*, In the Matter of Five Minor Children, 407 A.2d 198 (Del. 1979); Alsager v. District Court of Polk County, Iowa, 406 F. Supp. 10 (S.D. Iowa 1975), *aff'd* 545 F.2d 1137 (8th Cir. 1976).
60. A.B. Small Co. v. American Sugar Ref. Co., 267 U.S. 233, 239 (1925).

of vagueness stems from "the extraction of obedience to a rule or standard which [is] so vague and indefinite as really to be no rule or standard at all."[61]

The United States Supreme Court has recently granted review of a case, the outcome of which could have some bearing on termination-of-parental-rights proceedings in Wyoming.[62] *Doe v. Delaware* is an appeal from a holding by the Supreme Court of Delaware that the Delaware statute regarding the termination of parental rights is not unconstitutional for vagueness.[63]

The Delaware law provides that the State may terminate parental rights if parents "are not fitted to exercise parental rights."[64] The parents contended that, by application of due process standards, the statute is "unconstitutionally vague, indefinite and overbroad."[65] The Delaware court held that "unfitness does not require precise definition to be constitutionally sound."[66]

If the United States Supreme Court finds the Delaware statute unconstitutional, there is a possibility that the Wyoming statutes could also be susceptible to a vagueness attack.

61. *Id.* at 239.
62. Doe v. Delaware, 49 U.S.L.W. 3092 (U.S. August 26, 1980) (No. 79-5932).
63. In the Matter of Five Minor Children, *supra* note 59. Note the change in case name on appeal to the Supreme Court to Doe v. Delaware, *supra* note 62.
64. DEL. CODE ANN. tit. 13 § 1103 (Supp. 1978).
Grounds for termination of parental rights. The procedure for termination of parental rights for the purpose of adoption or, if a suitable adoption plan cannot be effected, for the purpose of providing for the care of the child by some other plan which may or may not contemplate the continued possibility of eventual adoption, may be initiated whenever it appears that:
(1) The parent or parents of any child, or the person or persons or organization holding parental rights over such child, desires to relinquish such parental rights; or
(2) Any child has been abandoned; or
(3) The parent or parents of any child or any person or persons holding parental rights over such a child are found by the Court to be mentally incompetent and, from evidence of 2 qualified psychiatrists selected by the Court, found to be unable to discharge parental responsibilities in the foreseeable future. The Court shall appoint a licensed attorney as guardian ad litem to represent the alleged incompetent in the proceeding;
(4) The parent or parents of any such child, or any person or persons or organization holding parental rights over such child are not fitted to continue to exercise parental rights; or
(5) Both parents of a child are deceased.
Unless adoption is contemplated, the termination of 1 parent's parental rights by the other parent shall not be granted if the effect will be to leave only 1 parent holding parental rights, unless the Court shall find the continuation of the rights to be terminated will be harmful to the child.
65. In the Matter of Five Minor Children, *supra* note 59 at 199.
66. *Id.* at 199 *citing* In the Matter of Three Minor Children, 406 A.2d 14 (Del. 1979).

Given such a turn of events, the *XYZ* decision may be extremely important in that the court's narrowing construction of the statutory language in *XYZ* may be sufficient to save the statute from a finding that it is void for vagueness.

In *Alsager v. District Court of Polk County, Iowa,* the parental termination statute of the Code of Iowa was found to be unconstitutional because of vagueness.[67] The decision held that the parents were denied due process partially because of the Iowa Supreme Court's failure to cure the vagueness defects "either through a general narrowing construction in prior cases or by a specific narrowing construction in the Alsagers' own case."[68] Also in this regard, the United States Supreme Court has held that statutes which were susceptible to a finding of unconstitutionality for vagueness, or overbreadth, could be cured if a narrowing construction was given to the statutory language by the courts.[69]

Perhaps the "abuse" and "neglect" language of the Wyoming statutes provides sufficient specificity, and is therefore distinguishable as compared to Delaware's "unfitness to exercise parental rights" standard. The Supreme Court's upcoming decision in *Doe v. Delaware* will nonetheless be of interest to persons involved with termination-of-parental-rights proceedings in Wyoming, particularly if the Court establishes certain parameters within which a termination-of-parental-rights statute must exist in order to satisfy procedural due process requirements. Whatever the impact of *Doe v. Delaware* on Wyoming law, the void for vagueness doctrine should illustrate the importance of the court's attempt in *XYZ* to tighten up the statutory language.

67. Alsager v. District Court of Polk County, Iowa, *supra* note 59.
68. *Id.* at 21. The judgment appealed from in the Alsager case was affirmed by the 8th Circuit Court of Appeals, but not on the basis of the facial invalidity of the statute. By declining to affirm on this ground, the court noted that it was giving the Iowa courts "an additional opportunity to give the statutory provisions a plainly desirable limiting construction," Alsager v. District Court of Polk County, Iowa, 545 F.2d 1137, 1138 (8th Cir. 1976).
69. Grayned v. City of Rockford, 408 U.S. 104, 111-112 (1972) (vagueness) and Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973) (overbreadth).

CONCLUSION

The court's decision in *XYZ* to establish standards to be utilized in termination-of-parental-rights proceedings was a welcome step. Standards were sorely needed in light of the critical questions involved and the absence of any real guidance from the statutes or from case precendent.

While some criticism may be directed at the court's mode of analysis in *XYZ*, the real measure of the court's success must relate to how well it met its objective of defining "guides and standards—to point the way in this and future cases." The court's message that parental rights are not to be trifled with comes through loud and clear. The extent to which the court was successful in accomplishing its ultimate objective, however, will depend upon how understandable and workable the standards are at the trial level.

Prior to this decision, as was stated in *In the Matter of C.M.*, no two cases of this type were alike and each was to be decided on its own individual facts.[70] Adjudicating important issues such as a parent's rights to the custody of his child should not be done on an *ad hoc* basis. It places an unfair burden on all parties involved, and particularly the trial judge who is expected to exercise the wisdom of Solomon. In narrowing the discretionary aspects of the termination process and promulgating principles to guide in the resolution of the issues, the court in the *XYZ* decision took an important step in rejecting this *ad hoc* approach.

As a final note, it might be pointed out that whether or not one agrees with the court's strong stand in favor of parental rights, at least a standard now exists upon which a debate can focus if change is desired. If legislative changes are contemplated, the United States Supreme Court's resolution of the *Doe v. Delaware* case should be consulted prior to their implementation.

SIDNEY L. MOLLER

70. Matter of C.M., *supra* note 18, at 519.