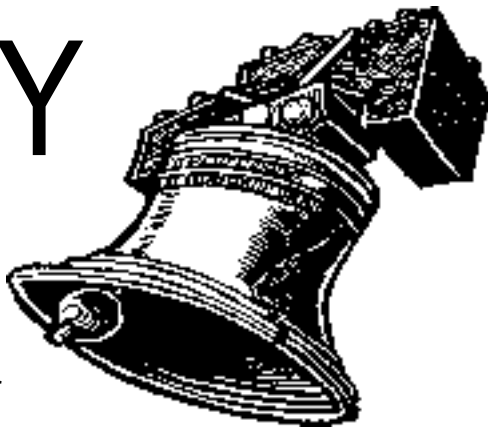


LIBERTY BELL

A News and Commentary Paper



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Introduction to Arguments

INJUSTICE AT THE HANDS OF MASSACHUSETT JUDGES

STATEMENT OF FACTS

Severe deprivations of father's/men's rights through horrendous violation of federal due process laws are taking place under the MGL c209A (restraining order law) and MGLch208 sec 28, sec 34, and MGL c211B (divorce/paternity and childsupport laws). The operation of the restraining order and divorce/paternity laws is inextricably intertwined so that the motives involved in restraining orders extend beyond 'fear of physical harm'. Easily obtained RO's guarantee no chance for physical custody by the father.

Unconstitutional Violations of the MGL c209A (Restraining Order) law:

RO's based on 'fear of imminent physical harm' are overwhelmingly used to initiate Divorce/Paternity Actions since they are handed out like candy. Alleged abusers -overwhelmingly men- are entered into abusers list carrying permanently a badge of infamy. Perjurious affidavits for an ex parte hearing hold no liable for women. Judges use no rules of evidence and defy controlling decisional law requiring them to obtain 'objective' fear. Judges are advised by the 209A manual to meet with and take counsel from special interest groups. Victim (women) advocates advise women what to say to the judge and go beyond the bar. Women use MGL c209A restraining order law to effect eviction of nonabusive fathers for ensuing divorce action. The '10 day' hearing often lasts 10 minutes. Judges administer rules of behavior for men that criminalize men for non-harming violations -such as sending a Birthday Card to child.

Unconstitutional violations of father-discriminating divorce/paternity laws

When both parents are 'fit' only one parent will be the custodial parent. Judges copy 'made up' findings of facts. Women get custody except for the most extreme condition of nonfitness. Now, Judges state that mothers must agree even for fathers to get shared legal custody. Judges advise women to alter signed divorce agreements. Fathers lose all parental rights that afford the often father-alienating process by which a mother precludes his

possibility of later custody. Noncustodial child support is irrational since it presumes two households can be supported on the same income as one. The guidelines make most fathers indigent or destitute. Judges routinely put 20% of fathers over the guidelines as incentive to work more and tell fathers what they must earn, or else go to jail.

Divorce /Domestic Violence Industry (DDVI)based on Hysteria/Bad Law

The special interest groups of this industry live on court-ordered fees, payments, and litigation cost that go on forever. The special interest groups of DDVI and their interests are: **Lawyers, Judges** -divorce and criminal(for domestic violence cases) actions are never ending; **Women's (changed now to victims') advocates** in court rooms (which all judges know to be women's advocates and advise women how to plead their case and monitor judge behaviors and anti-women decisions -of course no men's advocates); **Free legal aid organization** (for helping parents with children in court -if the parents are women that is, - no free legal aid for men); **Visitation centers** (for basically just men to see the children for \$50 per hour when they never have committed any act that a reasonable person would consider 'actionable' abuse if any at all... and the fastest growing industry in Mass. -some judges have indirect investments here. "when in doubt send him there!"); **Batterers groups** (instituted only for men -and paid by men to attend -under court order, -none for women); **Battered woman aid shelters** (obviously only for women -no men allowed, advise women how to get a 'effective' divorce with trumped up abuse allegations); **Psychologists** to treat all the children in the divorce and restraining order actions; **Mental health evaluation clinics** (where men in divorce are deemed angry and therefore unfit too often); **Guardian Ad Litem** -appointed by judges (friends and finders of what ever judge wants - sometimes judge's wives); **Social service agencies** (DSS who tells mothers that if they don't get a restraining order against fathers, then DSS will take over custody of children!); **Abuse training, helping, and awareness organizations** that train po-

lice and counsel judges how women men are in denial if they don't admit their abusiveness, and who write rules and legislative laws on domestic violence), and; **State prosecuting agencies** that receive extra funds for domestic violence; **Department of revenue and the courts** who receive federal money in proportion to the amount of court-ordered child support that is handed out; and **Universities** like Northeastern University who received a \$93million in Federal grants to set up a department of Domestic Violence). Judges are intimidated by the influential power of DDVI activists.

SUMMARY OF ARGUMENT: The court erred both in its dismissal reasons and in ignoring the alleged facts of the complaint and hearing. The alleged facts clearly undermined the court's assumption that the four elements of a car repossession for the MGL209A *ex parte* hearing law were operable. Besides, a 10 day wait for a hearing is clearly unconstitutional for such fundamental rights deprivations and the substantive due process required. The Divorce/Paternity (MGL208§28, 34, MGLC211B) laws in operation -according to our alleged facts - show constitutional (federal) violations both in the nature and standards of these laws, and their horrendous lack of substantive due process required when such amendment level liberties are at stake too. Judges are obliged to watch for constitutional violations and are solely responsible for not administering the substantive due process required absent the protection of a jury. Since judges commit such severe constitutional violations as alleged, they are outside their jurisdiction and are therefore state actors. These results and further allegations of facts show clear fundamental rights violations by fathers/men overwhelmingly and therefore fully justify a 42 USC §1983 (and 42 USC §2000 et seq.).

ARGUMENT ON THE ISSUES: (Note: arguments at issue in Part II will reference Part I by paragraph: e.g. I#3 for Part I paragraph #3. It may be helpful for the reader to skim this Part I section before reading Part II.)

PART I: Arguments In Support Of Specific Arguments At Issue in Part II

1. Restraining Order Law (mglc209A) and Divorce/Paternity law deprives multiple fundamental rights and privileges at the level of the Bill of Rights. Fathers/men suffer an overwhelmingly high disproportionate impact under the operation of these two inextricably connected laws. These laws cut through the very basis of what society rests upon and what this constitution was formed to secure – the right to life, liberty, and the pursuit of happiness. The deprivation of such fundamental rights so assured under these divorce/paternity law and supported by so easily obtained restraining order laws bypasses constitutional guarantees for the sake of special interests groups and is destroying the relationships and incentives that make a society thrive. Below we posit arguments in support of our specific statement of issues arguments in Part II.

2. **Multiple constitutional rights are always at issue in c209A restraining order and divorce/paternity law.** Child custody loss, child support (state forced extraction of money from non-

custodial parent, asset redistribution away from noncustodial parent, forcible restriction from own house, state forced work and earnings requirements, restriction of where one can go, and even his right to leave the country are all fundamental liberty losses which divorce and restraining order laws will produce by default. These liberties are constitutional liberties^{29,34}, long establish and which can't be denied without the highest level of due process.

The right to parent (one who controls the care, custody, and management of one's own children) is a liberty interest guaranteed by 1st, 5th, and 14th amendment.^{5,19,27,36,37,41 42,43}

3. **Standard of Due Process:** Courts must offer and maintain Due Process of the highest level to support orders or trial outcomes consistent with any constitutionally valid compelling state interest. Liberties above which include the parent-child relationship as well as family life of parents and their children are protected by constitutional due process of law. This level of due process requires both substantive and procedural due process^{36,37,41}. A state must have a compelling interest (meaning clearly grave consequences are assured -and not a rational or legal convenience) to interfere with a fundamental liberty and then if it does, it must interfere in the least possible way to remedy just that problem at issue. The standard is clear and convincing -and no less. The burden of proof is on the state to prove the compelling interest; the state must particularize the interest in the case at hand, and on a civil case, the person asking for state impairment of a fundamental liberty must prove so at the standard of clear and convincing. Lastly, a state can't deprive either party in a civil case of the other's constitutional rights³². Each party must jointly have his full fundamental rights lacking a constitutionally acceptable compelling state interest. In pursuing a substantial state interest, the state cannot choose means which unnecessarily burden or restrict constitutionally protected activity.¹⁴

4. **Ex parte hearing** "Whenever one is assailed in his person or his property, there he may defend... The right to meaningful opportunity to be heard within limits of practicality must be protected against denial by particular laws that operate to jeopardize it for particular individuals."¹⁰ Defendants must be heard before depriving of rights¹⁸ with a full and meaningful (with all required elements in effect) hearing. Dissenters in (^{7,26}) agreed with this even for car license denials and welfare benefits. Assuredly, for such explicit fundamental liberties, a pre-termination full hearing must occur. This is certainly true for MGL c209A (abuse) law; its manual shows -i.e. to pass 'due process' muster – that Assault and Battery criminal due process is required.

5. **Vague Rules and Bad Law:** Both the ch209A (restraining order) law and divorce/paternity laws rest on vague (and here presumed unconstitutional) standards upon which judges can deprive defendants of the most fundamental liberties.

"Vague laws offend several important values; first, vague laws may trap the innocent by not providing fair warning; second, vague law impermissibly delegates basic policy matters to police-

men, judges, and juries for resolution on an ad hoc and subjective basis, with attendant dangers of arbitrary and discriminatory application; and third, where a vague statute abuts on sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms."¹⁹ Such laws afford entrance to the very discriminatory and corruptive influence into the judicial process that is alleged in this complaint which is the extraordinary circumstance alleged here.

6. **M.G.L c 209A (Restraining order law):** This law's standard of 'fear of imminent physical harm' is by definition subjective to the 'alleged victim'. It defines an abuser by defining the women 'abused' by virtue of her declaration of 'fear'. This is a mind-crime worse than Orwell's '1984' vintage. The subjective character of fear makes it clearly unconstitutional. The Supreme Judicial Court (Mass)¹⁶ did not pronounce the constitutionality of this law but referenced the burden of demonstrating "a substantial likelihood of immediate danger of abuse" before entering the restraining order. This is clearly more 'special interest group' gobbledygook with such ill-defined 'standards' as 'likelihood', 'danger' and lastly 'abuse' which is subjective as defined above. Such vague terms serve only to by-pass constitutional clarity to deprive rights unconstitutionally. The law is a fraud perpetrated on men and fathers to injure them and especially to preclude any opportunity for them to secure even the generally meager chance for child custody in the surely associated divorce/paternity action. This Law - is clearly a criminal law in the guise of a civil complaint by it's own explanation. Any violation of the law -even devoid of any ill intention is a criminal violation with up to 2 1/2 years in jail. There is operationally no meaningful hearing that satisfies the requirement of substantive due process -at the *ex parte* level, nor at the '10 day' hearing. We reject the 'many' laws that Massachusetts supposedly has for due process protection but argue how they are implemented! The very fact that the MGL209A manual requires judges to meet with and take counsel from special interests of the DVVI is ominous to impartial due process. Under the operation of this law -at the 'fear' level, no constitutionally compelling state interest is operational. State interest in protection of plaintiffs of such ill-defined 'abuse' by the most severe rights-deprivation of defendants is clearly unconstitutionally. "We find it intolerable that one Constitutional right should have to be surrendered in order to assert another."⁴⁰ -or to assert a specious rationality. P&F and District Court judges routinely deprive innocent fathers/men of their most fundamental liberties functionally at the whim of women -fully supported and fostered by the fraudulent law -with benefits accruing to so many special interest groups. It's bad law not only on its face but if the facial standard is acceptable it is carried out to maliciously, harassingly, discriminatingly, and irreparably harm overwhelmingly identifiable defendant fathers, and for reasons beyond 'fear of physical harm' that have preponderant and significant implications in the inextricably intertwined divorce/paternity action which virtually assures further

denial of constitutional rights of fathers and enormous gain for the plaintiff mother – i.e. a preponderant alternative motive. The law is unconstitutional.⁴⁷ The P&F and District judges know fully the incredible rights deprivations taking place in these actions and are necessarily aware of the constitutional violations to which they pertain.

7. Divorce/Paternity law: This law also has a standard ‘best interest of child’ which is not only vague but is part of a law that for the usual case of two fit parents defaults into denying one parent (the noncustodial) his most fundamental liberties. All laws must comport to the implications of the ‘supremacy clause’. Again, standards and laws predicated on denying a fit parent his constitutional rights are unconstitutional. “We find it intolerable that one Constitutional right should have to be surrendered in order to assert another.”⁴⁰ – or to assert a specious convenience. The State can’t deprive either part in a civil case of his constitutional rights –so under a divorce or separation both parties must jointly have their full fundamental rights³². Lastly “a (once) married father...could not constitutionally be treated differently from a currently married father living with his child”³⁸. The ‘best interest of the child’ standard is an intrusion into the rights of a parent. “Pages of human experience teach that parents generally do act in the child’s best interest. ...The statist notion that government power should supersede parental authority... is repugnant to American tradition.”³³. It is only the perversion brought on by State intrusion and its denial of one fit parent’s rights that fosters the upset, turmoil, destitution, criminality circumstance that fostered the explosion of the DDVI with their propaganda that men are batterers and women are victims and that fathers somehow do not care about their kids, or lack the care or concern of mothers. Phony and unconstitutional standards cannot and must not supercede the guarantees of the of the Bill of Rights and the equal protection and due process of the 14th amendment. The operational destruction of fathers under court judgments and the exploding divorce rate with the establishment of a divorce culture have shown the error in previous ‘custom’ in divorce laws and procedures.

8. Extraordinary Circumstance: Influence and participation of the Divorce and Domestic Violence Industry: The Divorce and Domestic Violence Industry (DDVI) has its root in the unequal divorce and paternity laws that defaults a fit parent (overwhelmingly the father) of two fit parents into a noncustodial position who loses what all agree are fundamental parenting rights (care (financial and hands-on), custody, and management of child) and thereby have child support (more accurately child extortion and ransom) payments to (overwhelmingly) women amounting to ten’s to 100’s of thousands of dollars over as many as 23 years. The State orders him how much to earn to pay the assigned child support, to pay for college – even if you have to go into debt, to work many jobs, not leave the country if he owes child support –or go to jail. ‘Parenting is both a responsibility and its own reward. Slavery is the divorcing of responsibility from reward – a circumstance of the

noncustodial parent. Present divorce law and results would be reprehensible to the founding fathers and is reprehensible to decent –non special interest group -people. The divorce/paternity laws and its processes promote unending legal actions and concomitant requirements that continually harass and irreparably harm noncustodial parents (read fathers) for up to 23 years per child and provokes 10s to 100’s of thousands of dollars to be expended by him on court-ordered or court-needed fees and costs which accrue to all other DDV industry special interest groups. Vagueness in the MGL209a abuse standard together with the unconstitutional due process of this law effectively and perniciously allows even those fathers who’s family actions put them in the state-proclaimed ‘prime caretaker’ position to be ousted from the house and labeled ‘an abuser’ thereby negating his opportunity to be a custodial parent. With their wealth, the DDVI strongly lobbies the legislature and influences the executive and ultimately the judiciary to foster the horrendous unequal treatment, harassment, and persecution that noncustodials (fathers/men) receive. The few women in positions of noncustodials or restraining order defendants are not generally harmed at all to the degree men are. The DDVI have created an atmosphere of intimidation that promotes a bad faith judicial process and its concomitant harassment of fathers/men. The unconstitutional immunity of judges plays no small part in the judges’ willingness to participate. The fact that only ticketed lawyers can practice law undermines their willingness to risk the ire of judges who act badly. Lastly, there is no jury to protect defendants against bad law as envisioned by the founding fathers when they constitutionally allotted ‘right of trial by jury’ to the people. Our court system has denied much of that redress. Corruption of the Courts occurs through the executive influence on judge appointments, legislative influence on votes and lobbying (even writing rules) and the maintaining and fostering vague (and thereby unconstitutional) laws and court processes. Clear defacto exploitation, discrimination, and criminalization of fathers under court-orders is evident by the father-only visitation centers and batterers’ groups and almost-father only noncustodials as opposed to mother-only legal aid and battered women-shelters, -victim (women’s) court advocates (actually allowed beyond the ‘bar’!), almost only-father arrears posters, and all the propaganda on ‘deadbeat dads’ and men batterers, and more..

9. Justification of Federal Jurisdiction: There is clearly cognizable deprivations of fundamental liberties taking place and evidenced by the defacto male-only circumstances afforded to fathers under orders of the court. Fathers are the discernible group of enormously disproportional impact under either or both of the inextricably intertwined divorce/paternity and restraining order laws²⁵. The fathers are operationally singled out for these State laws ‘as applied’ under their vagueness to lose their fundamental rights, receive dissimilar treatment and punishment from women even under similar circumstances and of the guise of admin-

istrative convenience as in divorce court.^{17,44} We argue our case in the words of authorities:

“Congress enacted 42§1983² to provide an independent avenue for protection of federal constitutional rights. The remedy was considered necessary because ‘state’ courts were being used to harass and injure individuals, either because state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights,³⁰. The “very purpose of §1983 was to interpose the federal courts between the States and the people, as guardians of the people’s federal rights to protect the people from unconstitutional action under color of state law, ‘whether that action be executive, legislative, or judicial’”³⁰. “The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental liberties may not be submitted to vote; they depend on the outcome of no elections.”²⁸ “If a constitutional violation is alleged, even with respect to the most important state statute, a plaintiff is free to bring his suit in federal court without any requirement that he first exhaust state judicial remedies”³¹. “The purpose of the 14th amendment is to secure every person within State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constitutional agents”³⁴.

Complaint alleging an “irrational and wholly arbitrary” demand by the state are allegations ...sufficient to state a claim for relief under traditional equal protection analysis.”⁴⁵. When as here, exceptional circumstance prevail, by the bad faith of the courts, harassment and harm to fathers/men it produces by the DDVI ultimate influence on the court, evident in separate and unequal court orders and provisions, and clear to all honest observers, an extraordinary and pressing need justifies federal jurisdiction⁴⁸. The Younger abstention is also overcome if state statutory scheme unduly deprives a fundamental liberty -beyond Younger Abstention⁴⁸. All these conditions are fulfilled in our complaint and along with the corruptibly influenced State courts the federal court is the only court for proper redress, federal Jurisdiction is not only appropriate but necessary.

10. State Actors: State actors can be judge in the appearance of adjudication and certainly in their administrative actions. “It is the duty of the courts to be watchful for CONSTITUTIONAL RIGHTS of the citizen, against any stealthy encroachments thereon.”¹¹. “State Judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights.”²² “When a judge acts intentionally and knowingly to deprive a person of his constitutional rights, he exercises no discretion or individual judgment; he acts no longer as a judge, but as a “minister” of his own prejudice.”³⁵ “A judge is not im-

mune from criminal sanctions under the civil rights act.” “State officials acting in their official capacities, even if in abuse of their lawful authority, generally are held to act “under color” of law. This is because such officials are “ clothed with the authority” of state law, which gives them power to perpetrate the very wrongs that Congress intended Section 1983 to prevent. “¹⁵ “If a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost.”^{21,24} “It is not a judicial function for judge to commit intentional tort, even though tort occurs in courthouse.”⁴⁶ Conduct of trial judge must be measured by standard of fairness and impartiality.”²⁰ “Judges must maintain a high standard of judicial performance with particular emphasis upon conducting litigation with scrupulous fairness and impartiality.”^{1,6}

11. Denying Immunity: “There was no judicial immunity to civil actions for equitable relief under Civil Rights Act of 1871. 42 U.S.C.A.^{2,39,28}. “Referring both to the objective and subjective elements, we have held that qualified immunity (Ed. Note: or “good faith”) would be defeated if an official “knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury. . .”²³ “The resolution of immunity questions inherently requires a balance between the evils inevitable in any available alternative. In situations of abuse of office, an action for damages may offer the only realistic avenue for vindication of constitutional guarantees.”¹²