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"NO TEARS IN THE WRITER,  
NO TEARS IN THE READER"  
Robert Frost

### ACTUALLY INNOCENT

Like all other jailhouse lawyers ["writ writers" in prison slang]; I have wished to be able to help someone who is actually innocent, and who was being treated unjustly. When I finally did get the opportunity; it was not a Criminal Law case, as I had expected it would be, but instead, it was a Family Law case, and no one could be more innocent- than the three-year old child in the cause.

This case came to me quite unexpectedly. As far as I can recollect; I had been sitting in my cell typing a document to submit to one-court-or-another when a young hispanic man stopped by the cell door and had asked if I would mind reading over some legal mail that he had gotten, and for me to advise him on what to do. He handed me the paperwork and went down the stairs and into our dayroom area, presumably, to play games or watch tv.

I leaned against the wall and began reading the document. It was an affidavit, from Child Protective Services, in support of their Motion For Termination of his Parental Rights. Since the document already had a cause number assigned; I knew that this was simply notification, and that they most likely had already taken custody of the child/children, by Court Order.

A tale of personal terror unfolded before my eyes as I read of the physical abuse that was committed upon the person of a three-year old girl,

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who was the daughter of his ex-girlfriend. Although he and the woman had born a son together, the girl was the woman's child from a previous relationship.

The facts were laid out in plain and easy-to-read language: "The Child Protective Services Office had been called to the woman's home on December 2, 2002, after receiving a priority one referral alleging the physical abuse of the three-year old girl, and her brother, by their mother and her new boyfriend.

"The referral alleged that the mother contacted law enforcement on December 2, 2002, and reported a family disturbance with her boyfriend. The mother requested the officer's assistance in getting her daughter from her boyfriend. The mother reported that she and the girl had lived in the home of her boyfriend, and his father, for the last five months.

"The officers accompanied the mother to the home to check on the welfare of the child. The boyfriend was not located at the home; however, the girl was located curled in the corner of the bedroom. The officer observed that the three-year old had severe bruising all over her face and two black eyes. Upon closer inspection; the officer observed that it appeared that the girls hair had been pulled out and she had additional bruising on her back, buttocks and lower extremities. The officer contacted Emergency Medical Services and the child was transported to a hospital for treatment.

"On December 2, 2002; the CPS Caseworker responded to the hospitals referral and interviewed the mother. The mother advised that she had been involved in a relationship with the boyfriend for five months. The mother told the caseworker that she voluntarily placed her son with his paternal grandparents because she was unable to provide for the needs of her son.

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"The mother reported that, on November 28, 2002, she, the boyfriend, and the three-year old girl went to the boyfriends relatives home to celebrate Thanksgiving. While at the relative's home, her boyfriend consumed alcohol and became enraged because he thought she (the mother) was looking at another man. When they returned to the home where they were staying, the boyfriend held the three-year old girl on the bed and began beating the child in the face with his fists. The mother stated that she attempted to prevent the boyfriend from hitting the child; but, she could not stop him. The mother stated that she was aware of the bruising and injuries to the child's face but that she did not seek medical treatment for the child.

"The mother stated that she advised the boyfriend that she was leaving him on November 29, 2002, and that he became furious and prevented her from leaving. During the day and evening; the boyfriend continued to severely beat the child about the face and body. The mother stated that he had hit the child with his hand, fist, and with a belt. He forced the young girl to stand in the corner from 6:30 pm until 9:30 or 10:00 pm. If the child moved, he would spank the child with a belt.

"The mother further stated that on November 30, 2002, that she observed the boyfriend hitting the child all over her body with a belt. She said that she observed bruises on the child's back and buttocks; but, continued to stay in the home. She reported that she could not leave the home because the boyfriend asked her where she was going- when she left the bedroom.

"Additionally, the mother reported that on December 1, 2002, she advised the boyfriend that she was leaving and that he hit her and prevented her from leaving. Later, she said, she observed the boyfriend in the bedroom, holding the child on the bed, and hitting the child repeatedly in the face

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with his fists. The mother admitted that she was aware of the additional injuries to the child but failed to contact law enforcement for assistance or seek medical assistance for the child.

"On December 2, 2002, the mother, again, informed the boyfriend that she and the child were leaving his home. The boyfriend held the child in the bedroom and the mother ran from the home and contacted law enforcement. The officers contacted Emergency Medical Services and the child was transported to the hospital.

"The child was examined at the hospital on December 2, 2002. She had swelling and bruising across her forehead; severe black and blue bruising to her left and right eyes; and her eyes were swollen shut. The bruising around her eyes was in various stages of healing. There were cuts around her eyes and nose. The girl had large black and blue bruises on the sides of her mouth. She had severe bruising which were in different stages of healing around the stomach and upper genital area. She had black, blue, red, and yellow bruising on the front and back of her thighs, calves, and buttock. There were definite linear bruises on her legs, buttocks, back, and arms. She had numerous bruises on her upper and lower back. She complained of tenderness to her abdomen. The child had large hairless patches over most of her head and it appeared that the hair may have been pulled out.

The CPS affidavit noted that the three-year old weighed about twenty-five pounds. The mother's boyfriend was 5'7 and weighed two-hundred and thirty-five pounds.

Although the mother reported that her boyfriend had hit her, she had no cuts, bruises, or abrasions to show.

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A caseworker from CPS visited the home where the prisoner's son was being cared for, on December 2, 2002. The worker reported that the home was clean, that there were no safety hazards, and that the son was healthy and well cared for. The grandparents signed a safety plan and agreed that they would not allow the mother to remove the son from their home.

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As I wiped the tears from my eyes, I began to determine how I could assist the prisoner; who had brought me this legal document; and his son. The CPS affidavit had informed me that the son was never in any danger. The prisoner's parents had physical custody of the boy and their home was in a different area of the city than the home; where the abuse had occurred. I wanted to read the Family Law codes and to study on the subject of termination of parental rights, prior to advising anything.

The main problem that I was having personally was that I couldn't shake the visions of abuses that the young girl had been subjected to over the four or five days of the Thanksgiving week. Everything within my being cried out for me to help her, too. But, that may or may not be what the prisoner would want. At this point in time I just couldn't know.

I went to the dayroom, at the next opportunity, and found the young man and informed him that I had read and understood the document. As we sat on a bench in a vacant area of the dayroom; I introduced myself and explained that I was unfamiliar with Family Law; however, our law library had what I needed to help him.

After we got past the introductions; he explained that he had seen me working on legal work over the months, as he passed my cell. Many of the other prisoners had told him that I was a writ writer and that he should

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talk to me, he said. According to him, he had received the paperwork a week earlier, and had spent many days seeking the name of "who" to turn to for help. My name had been given to him by almost everyone he had spoken to. He asked for advice as to what to do.

I started off by explaining exactly what the document was. It was an affidavit that was used to support CPS' Motion seeking to terminate his right to be a parent to his son. It was also seeking to terminate the mothers' to be a parent to the son and the daughter. I told him that CPS would have most likely placed the girl in foster care or made some other arrangements, but, they would not remove the son from the grandparents' home, now. I told him that CPS could seek a court order to remove the boy "if" they felt he was in harms way; but, for now things would stay as they are. The boy would keep living with the prisoner's parents.

As we talked, I told him that I needed to go to the law library to research actions which we might take. I explained that I believed we could win the fight against termination of his rights.

I had spent several days studying laws for termination of parental rights and felt that CPS could not meet the burden of proof that would be required in order to terminate his rights. I had asked the young man if I could prepare a motion, for him, that he could send to the court seeking appointment of counsel. My reasoning was quite simple: he wished to communicate with the court; however, it would be in the best interest of all parties if those communications were done through an attorney. The man was a prisoner and was not able to afford to hire an attorney. I reasoned that the court might appoint an attorney due to the involvement of children, in the matter.

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I had prepared a Motion Requesting Appointment of Counsel; asking that the Court provide him with an attorney to help represent him during this proceeding. Once he mailed it; all we could do then, was wait.

A few months had gone by. I was sitting in my cell, typing on some legal document, when the prisoner came slowly walking up the tier. As he got to my cell door, he handed me a letter and said "we lost", and he walked away.

I immediately read the letter. It was from a lawyer who explained that she was appointed by the court to represent him. She then explained what CPS wanted; which was: to terminate his parental rights. I went to the dayroom to find the man, once I had finished reading the letter.

I found him sitting on a bench, his head hung low as he looked saddened with tears in his eyes as he contemplated the loss of his son. I hurriedly approached him and stated "we didn't loose!" We won. The court had given us an attorney to help us. He misunderstood the letter; thinking that she was telling him that they were going to take his son away from him. I told him that she was simply conveying the CPS position, and that we could now tell her what we wanted. Then she would relay that information to the court and CPS. I asked him for permission to prepare a letter that he could send to her- telling her what we would like the court to do, instead. He agreed.

Before I began writing the letter; I re-read the CPS affidavit in order to review what had happened to the young girl. I wanted to use the passion which accompanied her story, to help drive me as I wrote.

I proceeded to write, what I can only describe as being the most passionate letter that I have ever written, to the attorney pleading our position

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that not only should he not lose his parental rights, but also, his parents should be permitted to adopt the young girl- so that the boy and she can be raised as brother and sister, rather than them being placed in separate homes. I cited the CPS Affidavit and the caseworker's own observations that the son was healthy and well taken care of, in support of my position.

In the end: the court ruled in favor of everything that we had asked for. The prisoner's parental rights were not terminated. His parents were to remain guardians of his son, until he would be released from prison, and his parents would be allowed to adopt the young girl.

Several months had passed by after the court's decision had been announced, when I saw the prisoner in the hallway. He was smiling as broad of a smile as I have ever witnessed. He noticed me and called out "I have just been visiting with the kids." Somehow, I already knew that!

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The prisoner has awarded me "uncle" status for the children. His mother has prepared a notarized affidavit, on my behalf, and has thanked me repeatedly. All I wanted was for the abuse to end to the girl, and for her to be placed in a home where she and her brother could grow up being loved and cared for. She had already endured much more pain and suffering than her tender years should have ever known.

The prisoner, in this case, was actually innocent of placing his son in danger. Therefore, it would have been unjust for the court to have granted termination of his rights. In fact, the prisoner was instrumental in getting his parents to care for his son and to keep the boy in their home.



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The mother did have her parental rights terminated with regard to both children. I cannot see anyone thinking that it should be otherwise. She allowed the three-year old girl to be abused for at least four days that are documented. The person who abused the girl was sentenced to serve 99-years in prison.

As a jailhouse lawyer; I now have had the opportunity to help someone who was actually innocent and who was being unjustly treated. Although I did help the prisoner, in this case, it was the young girl who I really was determined to help. She was truly "actually innocent" of any wrongdoing. She was being abused because she was not the child of the man who was her mother's boyfriend. That, was as unjust as anything I have ever heard.

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Taylor