IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN RE ETHAN C., *et al.*,	
Persons Coming under	
the Juvenile Court Law	
LOS ANGELES COUNTY	**Case No. S-187587**
DEPARTMENT OF CHILDREN	
AND FAMILY SERVICES,	
Petitioner and	
Respondent,	
	Case No. B-219894
v.	**(Court of Appeal)**
	Superior Court No.
WILLIAMSON. C.	**CK-78508**
Respondent and	**(LOS ANGELES**
Petitioner.	**COUNTY)**

ON APPEAL FROM THE SUPERIOR COURT,
LOS ANGELES COUNTY

HONORABLE SHERRI SOBEL, REFEREE

REPLY BRIEF OF PETITIONER WILLIAMSON C. ON THE MERITS

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ON APPEAL FROM THE SUPERIOR COURT,
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HONORABLE SHERRI SOBEL, REFEREE

REPLY BRIEF OF PETITIONER WILLIAMSON C. ON THE MERITS

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner WILLIAMSON C., also known as WILLIAM C., hereby submits the following as his reply brief on the merits after this Court granted review of a published decision of the Court of Appeal, Second Appellate District, Division Two, affirming a decision of the trial court making his surviving children dependents of the juvenile court. The fact that petitioner may not respond to all of respondent's points is not a concession that respondent is correct as to those points but is merely an indication that

petitioner is satisfied with the analysis he presented on those points in other pleadings before this court.

I.

INTRODUCTION.

Sometimes a brief is remarkable for what it does not say rather than for what it does say. Omissions or failure to respond to key points raised by the petitioner often reveals much about what the respondent thinks about the merits of the case. Many respondents take what might be called an ostrich approach to arguments it sees as problematic that were raised in the opening brief. Such respondents ignore the problematic issues and hope that the reviewing court will do so likewise. Sometimes it is effective but, more often that not, it fails.

Petitioner pointed out several flaws in the assumptions made by the Court of Appeal in its interpretation of subdivision (f) of sectgion 300 of the Welfare and Institutions Code and demonstrated how they could lead to absurd and unintended consequences. Among these are the assumption that jurisdiction may be founded based on a finding that a parent caused the death of a child through neglect or abuse without a finding that any surviving children are presently at risk for harm.

Petitioner pointed out that this could result in children being made dependents for mistakes that their parents made years, if not decades, earlier. Petitioner provided the example of former First Lady Laura Bush. Laura Bush caused the death of a child when she was seventeen years old when she ran a stop sign and collided with another car. Under respondent's rationale, Mrs. Bush's children could (perhaps even should) have been made dependents of the court. Respondent failed to discuss this example, most likely because it knew it could not defend any argument that Mrs. Bush's children were

somehow at risk for something that happened some 15 to 20 years before they were born.

Petitioner also pointed out that no child has ever been made a dependent solely based on the fact that his/her parent failed to properly use a child restraint car seat. Respondent failed to acknowledge that point. Petitioner also proposed the situation of police officers running a sobriety checkpoint and finding that one car contained children who were not strapped in. Petitioner asked the pointed question of whether the police would call Child Protective Services (CPS) and report the situation; petitioner also questioned whether CPS would even respond to such a call much less detain and remove the children. Again, respondent failed to respond to this point. The reason is patently obvious. It knows full well that officers operating a sobriety checkpoint have far more important things to do than detain a car in such a situation pending the arrival of a social worker who would likely do no more than chastise the parents and send them on their way. Others will be discussed *infra*. One of the key points that petitioner sought to make by raising these scenarios was to demonstrate that the position taken by the respondent was so extreme as to defy reason and was based solely upon an overly emotional reaction to the death of Valerie rather than a rational assessment of the actions of petitioner. It is petitioner's position that children should be made dependents of the juvenile court only if the past actions of their parents pose a reasonably foreseeable risk of future harm to them. The key here is "reason" and not "emotion." The decision to apply subdivision (f) of section 300 of the Welfare and Institutions Code to this case was not based on reason but on emotion. As such, the findings must be reversed.

ARGUMENT

II.

PRINCIPLES OF STATUTORY CONSTRUCTION COMPEL THE CONCLUSION THAT SECTION 300, SUBDIVISION (f), REQUIRES THAT THE PARENT BE CRIMINALLY NEGLIGENT OR CRIMINALLY ABUSIVE IN CAUSING THE DEATH OF A CHILD BEFORE JURISDICTION MAY BE SUSTAINED.

Petitioner has never denied that he drove his car without restraining Valerie in a a child car seat as required by Vehicle Code section 27360. However, a violation of that section is an infraction punishable by a nominal fine and does not require any sort of criminal *mens rea*. (*C.f.*, ***In Re Jorge M.*** (2000) 23 Cal.4th 866, 873). Respondent does not deny this.

Respondent also does not deny that petitioner is free of any blame for the accident that ultimately resulted in Valerie's death. However, respondent glosses lightly over the circumstances of the accident. The circumstances of the accident are absolutely critical to a proper resolution of this case. Petitioner, according to the police reports, was driving in a prudent manner and had the right of way; another driver ran a stop sign at a high rate of speed, struck petitioner's car at the very place where Valerie sat; petitioner's car was spun around and a third car then hit petitioner's car in the same spot; finally a fourth car also struck the car, again in the same spot. In other words, the spot where Valerie sat was hit not once, not twice, but three times, over the course of this incident, none of which were petitioner's fault in the slightest. Respondent seizes upon some language that the paramedic opined that the reason the child died was because of the failure to restrain her. That is sheer speculation on the paramedic's part as there is no indication that he/she had any expertise in accident reconstruction. The same is true of the opinion of the police officers investigating the scene.

What is known is that the spot where Valerie sat was hit no less that three times by large vehicles. One cannot say with any degree of certainty that Valerie would have survived this accident had she been properly restrained and certainly not after being struck three times by three large vehicles, including an SUV. Respondent's failure to fully consider the nature of the accident must be considered in evaluating its arguments. Indeed, one may note that children die in child car restraint seats on a regular basis.[1] Using these restraints is no guarantee that a child will survive a serious collision.

Petitioner's primary argument that criminal negligence is required before subdivision (f) of section 300 may be invoked was largely based on an analysis of the 1996 legislative history of the amendments to it. Petitioner is largely satisfied with the analysis he presented in the opening brief on that issue.

Petitioner will note that respondent's "analysis" is largely composed of various aphorisms used in construing statutory constructions. Those may be useful but they are only aphorisms – an aid to statutory construction. What must be acknowledged is that the Legislature originally intended that only criminal negligence could support a finding under subdivision (f) when it was first enacted as part of the massive restructuring of the juvenile dependency law back in 1989. This respondent failed to acknowledge.

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[1] According to the "SWITRS" database maintained by the California Highway Patrol (CHP) on its website, some 49 children six and under died in automobile accidents in 2009; 20 were in appropriate restraints and 29 were not. Thus, roughly 40% of all young child fatalities involved children who were appropriately restrained. While some of the 60% who were not might have been saved, it is problematic to say just how many. It may be noted that these statistics may be obtained by simply going on line to the website maintained by the CHP, linking on to the SWITRS link and becoming a "member" which costs nothing.

The 1996 changes merely deleted the necessity of obtaining a criminal conviction and permitted the Agency/Department to prove that a parent caused the death of a child through criminal negligence from proof beyond a reasonable doubt to a mere preponderance of the evidence. At no point in the legislative history is there an indication that the Legislature intended to expand the definition of negligence to include civil as well as criminal negligence. What the Legislature was concerned about was making it easier for agencies like respondent to prove that parents were criminally negligent in causing the death of a child by removing the barrier that there be a criminal conviction to that effect and by deleting the onerous burden of proof beyond a reasonable doubt. That was all the Legislature intended and nothing more.

Petitioner also notes that respondent failed to respond to his argument that the Legislature made no attempt to redefine the phrase "abuse or neglect" in its amendments to subdivision (f) back in 1996 further underscores that it intended that the original definition which clearly used the criminal definition of neglect and abuse remain in place under subdivision (f) as it would render it virtually indistinguishable from subdivision (j) which permits dependency jurisdiction when siblings/half siblings are abused.[2] A court will not interpret a statute so as to render it meaningless or largely duplicative of another statute. (***De Young v. San Diego*** (1983) 147 Cal.App.3d 11, 17). Once again,

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[2] The only difference would be that subdivision (f) would apply to instances in which the parent caused the death of a non-sibling. Typically, since non-siblings are not part of the same household as the "surviving children," it might well make sense to impose a higher standard under subdivision (f) than under subdivision (j) which basically incorporates the standards of subdivisions (a), (b), (d), (e) and (I) of section 300. This only supports a conclusion that subdivision (f) incorporates the criminal standards of neglect and abuse rather than the civil standards.

respondent has failed to respond to petitioner's argument and this is something that this Court may not ignore.

Respondent also failed to comprehend that the language of subdivision (f) is identical to the language found in subsection (4) of subdivision (b) of section 361.5, which permits a trial court to deny reunification services to a parent who "causes the death of a child through neglect or abuse." This language has been interpreted to mean that services may be denied only if the misconduct or neglect is "serious," (***Mardardo F. v. Superior Court*** (2008) 164 Cal.App.4th 481, 488) or if the misconduct is "too shocking to ignore." (***In Re Alexis M.*** (1997) 54 Cal.App.4th 848, 851). Such language clearly goes far beyond "ordinary" or "civil" negligence and reunification services can only be denied if there has been criminal negligence or abuse.

Respondent seems to accept that reunification services can be denied only if criminal negligence was present but fails to appreciate the principle of statutory interpretation that when the Legislature uses the same language in closely related contexts, it intends that the same meaning shall be accorded to the words. This is known as the principle of *ejusdem generis*. (***In Re Corrine W.*** (2008) 42 Cal.4th 522, 531; ***Bernard v. Foley*** (2006) 39 Cal.4th 794, 806-807). Since 361.5 clearly intends that criminal negligence is required before reunification services can be denied, then so, too, must subdivision (f) require "criminal negligence" before jurisdiction can be found. In fact, respondent ignores this principle altogether. This Court should not.

Respondent's attempt to distinguish the two sections by stating that a denial of reunification services is not automatic if there is a true finding under subdivision (f). That is true but it is also true the language of the two provisions is identical in all pertinent respects. However, as respondent notes, the "parent who meets the non-reunification requirements may still be offered

services if he/she can show that offering services would promote the children's best interests." (RB p. 10-11, citing Welfare and Institutions Code section 361.5, subdivision (c); *see also*, ***In Re William B.*** (2008) 163 Cal.App.4th 1220, 1227). In other words, according to respondent, it is the parent who has the burden of proof for providing him/her with reunification services and must do so by clear and convincing evidence, a very high standard of proof. Petitioner submits that the imposition of this very high standard of proof and placing it upon the parent is a clear indication that only criminal negligence will satisfy a finding of jurisdiction under subdivision (f) and this Court should so hold.

In his opening brief, petitioner presented several examples of how the use of mere civil negligence would lead to absurd results. One of them involved a parent driving a car who negligently strikes a child who darted out into the street. The other was a parent who negligently maintained a fence around a swimming pool and a neighbor child sneaked in and drowned. Petitioner demonstrated that imposition of jurisdiction over the parent's children would be absurd. Respondent failed to discuss either example, thus impliedly agreeing that jurisdiction under subdivision (f) would be absurd in such situations. Yet it failed to discuss why subdivision (f) would not apply to such situations. When a statute is applied to situations that are patently absurd, the statute is either absurd or the interpretation is absurd and courts will avoid absurd interpretations of statutes. (***California School Employees Association v. Governing Board of the Marin Community College District*** (1994) 8 Cal.4th 333, 339, 342). Limiting the extreme provisions of subdivision (f) to instances in which the parent has acted with criminal negligence avoids any possibility of absurd results.

Limiting the application of subdivision (f) to instances of criminal negligence will not result in absurd applications. If a parent has caused the death of a child through civil negligence and, as a result of such actions of the parent, his own children are at risk, the children can be made dependents under subdivisions (a) or (b) or even (j) of section 300. Petitioner, in his opening brief, specifically challenged respondent to fashion a situation where an individual who was civilly negligent in the death of a child and whose children are currently at risk for harm but are not covered by any of the other provisions of section 300. Respondent was unable to do so. This amply demonstrates that there is no need to expand subdivision (f) to instances involving civil negligence and why the Legislature intended that its extreme provisions apply only to situations involving criminal negligence.

Subdivision (f) was always intended to cover those situations in which the parent had criminal liability for the death of a child. That was its original purpose back when it was enacted in 1988. The Legislature realized that requiring an actual conviction impeded the ability of a trial court to apply this provision as the criminal courts move at a glacial pace, even in this day and age of global warming, compared to the dependency courts. It therefore eliminated the need for a conviction and reduced the burden of proof for proving that the parent was "criminally liable" for the death of another child but the Legislature had no intention of changing the basic purpose which was to permit a dependency court to make a finding that a particular child needed the protection of the courts if his/her parent was criminally liable for the death of another child. In other words, jurisdiction under subdivision (f) is permissible if (1) the parent was criminally negligent or abusive in causing the death of a child and (2) the Agency/Department proved that the parent was criminally negligent/abusive by a preponderance of the evidence. This is all

that the Legislature intended by the 1996 amendments to subdivision (f) and this Court should so hold.

Petitioner also noted that subdivision (f) included individuals who caused the death of a child through physical abuse. Child abuse of the sort contemplated by subdivision (f) is a form of battery and, as such, is punishable as a crime under Penal Code section 273a; if it results in death, it can be punished by life imprisonment under Penal Code section 273ab, depending on the age of the child. Since the abuse element of subdivision (f) must, perforce, be a crime, then, so, too, must the negligence element. Any other construction make little or no sense. There is simply no such thing as a "non-criminal" form of physical child abuse that results in death. Petitioner notes that respondent failed to craft any argument in response to this point. The only possible explanation is that it could not refute petitioner's point that, if the abuse element of subdivision (f), always requires a criminal responsibility, so, too, must the negligence element.

III.

PETITIONER WAS NOT CRIMINALLY NEGLIGENT IN CAUSING THE DEATH OF HIS DAUGHTER, VALERIE.

In his opening brief on the merits, petitioner stated he found no case on point on whether the mere failure to use a child car restraint seat is criminal or civil negligence; respondent likewise failed to identify any such cases as well. Respondent also failed to identify any cases in which dependency jurisdiction was based solely upon a failure to use a child restraint seat as well. In fact, petitioner has attempted to locate cases outside of California in which a court held that failure to use a child car restraint seat was criminal or civil negligence and found none. In general, petitioner is well satisfied with the analysis he presented on this issue in his opening brief but will raise some additional points.

Petitioner did locate a few cases in which a defendant was found guilty of criminally endangering the life of a child for failing to use a child restraint seat but, in all circumstances, there were other very serious actions committed by the defendant. For example, in ***Coffin v. United States*** (2007 D.C. Court of Appeal) 917 A.2d 1089, 1090, the children were unrestrained but the defendant had a blood alcohol level well in excess of the legal limit, was swerving all over the road and driving down the wrong side of the road. A conviction for child endangerment was affirmed but primarily because of the manner in which the defendant drove the car; the failure to use the child restraint seats was secondary at best.

In ***State v. Anspach*** (IA S.Ct. 2001) 627 N.W.2d 227, 234, the defendant was driving erratically, making sharp turns, driving twenty miles over the speed limit and trying to evade the police; the children were

unrestrained which at least one of them in the bed of a pick-up truck. Again, the key factor in the decision of the trial court to sustain a conviction for child endangerment was the driving, not the failure to restrain the children. Similarly in ***Snow v. Commonwealth*** (2000 VA Court of Appeal) 537 S.E.2d 6, 9, the deciding factor was that the defendant was driving a stolen vehicle at speeds in excess of 110 miles per hour and evading police was the deciding factor in sustaining a conviction for child endangerment and not the fact that the children were unrestrained. Obviously, defendant's conduct falls far, far short of these individuals. His driving was impeccable.

What must be understood is that driving a motor vehicle is not an unsafe activity. Millions of Californians do it every day and only a handful of accidents occur in which serious injuries take place relative to the total number of vehicle trips taken daily.[3] Indeed, driving an automobile is probably one of the safest activities involved for both drivers and passengers. Probably more pedestrians and bicyclists are injured by automobiles than are drivers and passengers. There is nothing about not using a seat belt or a child car restraint seat that increases the likelihood of an accident. Mere failure to use one is not likely to result in any injury. There must still be an intervening cause – someone speeding, someone driving intoxicated, someone running a stop sign and so on that causes a collision (or near collision) before injury occurs. In and of itself, a failure to use a child restraint car seat causes no injuries.

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[3] In the "SWITRS" portion of the website maintained by the CHP, there are statistics showing that Californians drove approximately 325 billion miles in 2009, the last year for which statistics are available. Some 3,076 people were killed and 232,777 were injured in some fashion or another. That means that, for every 100 million miles driven, one person died and 23 were injured. This is statistically insignificant and shows that driving is an extraordinarily safe activity. True, there are accidents and one should be prepared for them but the activity is still a safe one and must be so considered.

Failure to use one may increase the risk of injury in case of an intervening cause but, in and of itself, it causes no injuries. In its briefing, respondent does not acknowledge this very obvious point. Once one recognizes that failure to use prophylactic devices such as child restraint seats, seat belts, airbags and the like do not play any role in whether a automobile collision will or will not occur, it is not a factor in determining whether a driver "caused" the accident or collision. The driver's actions when operating the vehicle should be the sole determinative basis on which we determine whether the driver "caused" the accident and the injuries – was he/she speeding, intoxicated, running a red light, chatting away on a cell phone, evading the police and so on. The use or non-use of prophylactic devices meant to reduce the possibility of serious injury plays no role in assessing the causation of an accident.

If the Legislature believed that it was so inherently dangerous for children to be in cars unrestrained, the penalty would not be a nominal fine such as $100.00. It would very likely be a misdemeanor or even a felony. But it is not. The Legislature has set the penalty for a violation of Vehicle Code section 27360 with the recognition that transporting young children in automobiles is a safe thing to do with only a very small chance that something untoward will happen; however, because the chance is small but not infinitesimal, it has decreed parents take a minimal additional step to provide additional protection for their children in the event that this very small chance of a collision actually occurs in any particular automobile trip.

IV.

THERE MUST BE A PRESENT RISK OF HARM TO A MINOR BEFORE JURISDICTION UNDER SUBDIVISION (f) OF SECTION 300 MAY BE FOUND.

In many respects the key issue in this case is whether respondent was required to show that the minors Ethan and Jesus were presently at risk for future harm as a result of petitioner's failure to use a child restraint seat when he was driving Valerie to seek medical attention for an injured arm. Both the majority opinion in this case and the appellate court in ***In Re A. M.*** (2010) 187 Cal.App. 4th 1380, 1387 concluded that the respondent agency was not required to show a present risk of harm to the minors before jurisdiction could be found under subdivision (f). Neither case considered the impact of section 300.2 of the Welfare and Institutions Code. This provision states, in relevant part, as follows:

> "***Notwithstanding any other provision of law***, the purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually or emotionally abused, being neglected or being exploited and to ensure the safety, protection and physical and emotional well-being of children who are at risk for that harm."

The highlighted portion is critical to understanding this provision of law. This statute is meant to apply to all dependent children and to all of the provisions and not to just some. "Notwithstanding any other provision of law" is a phrase that means what it says – it is meant to apply regardless of what some other statute purports to say and to clarify other statutes. Section 300.2 was clearly intended to make sure that children could be made dependents of

the court only if there was a "present risk" of substantial harm to the child even if the relevant subdivision of section 300 was not wholly clear on the matter.

In its briefing, respondent notes that some of the subdivisions such as subdivisions (a) and (b) contain "substantial risk" language while others such as subdivision (f) and (h) seemingly do not. It then notes that section 300.2 was enacted in 1996, well before section 300 was enacted. One of the purposes for the enactment of section 300.2 was to provide additional protection for children. It does so by making sure that children are removed from their parents only if their parents pose a risk to their children. One of the critical reasons why the wholesale revision of the juvenile dependency law was enacted back in 1989 was to protect children against unnecessary removal from their parents. (Senate Select Committee on Children and Youth, Senate Bill 1195 Task Force on Child Abuse Reporting Laws, Juvenile Court Dependency Statutes, and Child Welfare Services (Jan. 1988) ("Report"). Section 300.2 is, as petitioner noted in his opening brief, simply a clarification of long-existing law that exercise of dependency jurisdiction must be based upon existing and reasonably foreseeable future harm to the welfare of the child. (***In Re D. R.*** (2007) 155 Cal.App.4th 480, 486, citing to ***In Re Robert L.*** (1998) 68 Cal.App.4th 789, 794). These principles of law go back to at least 1962 when the court stated that, before terminating custody and control of parents who "are morally depraved" requires such condition of moral lapse be found to exist at the time of the hearing. (***In Re Zimmerman*** (1962) 206 Cal.App.2d 835, 844). It is interesting that respondent does not discuss or attempt to distinguish these cases.

One of the concerns of the dissent in this case was that a single incident of misconduct that was not likely or highly unlikely to be repeated could be used to justify intervention by the dependency courts and cited ***In Re J. N.***

(2010) 181 Cal.App.4th 1010. Petitioner discussed this case at length in his opening brief and will not discuss it further except to note that petitioner has never argued and ***J. N.*** did not hold that a single act of parental misconduct could never justify dependency proceedings. All that petitioner argued and that ***J. N.*** held was that there are circumstances in which a single act of parental misconduct does not justify dependency proceedings – it depends on the nature of the parental misconduct and the parents' actions thereafter up to the time of the jurisdiction/disposition hearing. Respondent has simply misread what ***J. N.*** actually held.[4]

In other words, dependency proceedings have always been based upon the presumption that the child is presently at risk for harm. If there is no risk, there is no need for supervision by the Department/Agency. The Department/Agency certainly has better things to do than supervise parents who pose no present risk to children.

Under respondent's interpretation of subdivision (f), juvenile courts will be empowered to make children dependents of the courts simply because one of their parents made a tragic mistake years, if not decades, earlier. Such an expansive interpretation makes no sense and advances no public policy. Courts will avoid absurd interpretations of statutes. (***California School***

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[4] Respondent states that an earlier case, ***In Re J. K.*** (2009) 174 Cal.App.4th 1426 holds that a one time lapse of judgment can be the basis for dependency jurisdiction. Petitioner pointed out that ***J. K.*** really did not so hold. In ***J. K.***, jurisdiction was based on two incidents – the father's sexual assault (rape) of his daughter and striking her causing a dislocated shoulder. Those two incidents are indisputably far worse that the one time incident involved in ***J. N.*** and clearly far worse than petitioner's actions in this case. It is obvious that the parental misconduct in ***J. K.*** was extraordinarily severe when compared to failing to use a child car restraint seat. Petitioner also notes that respondent failed to discuss ***In Re Nicholas B.*** (2001) 88 Cal.App.4th 1126, 1128, is another case in which a one-time incident was insufficient to warrant jurisdiction.

Employees Association v. Governing Board of the Marin Community College District, *supra* 8 Cal.4th at 339, 342). Limiting the extreme provisions of subdivision (f) to instances in which the parent has acted with criminal negligence and in which there is a "present risk" of future harm to his/her child avoids any possibility of absurd results yet preserves the original intent of the legislation.

Petitioner also pointed out that not requiring a "present risk of harm" for petitions filed under subdivision (f) is rather like a *de facto* abolition of the statute of limitations. Respondent failed to discuss this argument in its brief which can only be seen that it had no valid response.

Petitioner will admit one thing. If the parent in question had caused the death of a child through criminal abuse or criminal negligence, then it might make some limited sense not to have a requirement of present risk or, to be more precise, to effectively assume there is a present risk because the parent was criminally responsible for the death of a child in the past. However, if the parent was merely civilly responsible for the death of a child, it makes little sense to presume a present risk especially if the negligence was a one time event as opposed to a chronic form of negligence such as maintaining a dirty or unsanitary home.

Petitioner's example of the teenaged Laura Bush not being fully alert while driving and accidentally killing another child is the classic example of a one time event that could not justify dependency proceedings in the future. Mrs. Bush learned a valuable lesson and went on to become an outstanding citizen and parent.

On the other hand, an individual who has criminally caused the death of a child has, as it were, shown a willingness to do evil and acted with a criminal *mens rea*. Perhaps a consequence of doing evil in causing the death

of a child through criminal negligence or criminal abuse might well be a presumption that the person presents some sort of present risk to his/her children or even negate the need to prove a present risk and allow the courts to assume dependency jurisdiction; if so, the Legislature should make that clear rather than allow trial courts to infer that was the Legislature's intent. Petitioner so submits but, even if this Court accepts such an inferred intent, it should be limited solely to instances where the parent was criminally responsible for the death of a child even though that fact is proven in a dependency court using a lesser standard of proof and with looser evidentiary guidelines than might otherwise be found in a true criminal proceeding.

In other words, if respondent is correct that section 300.2 does not apply to situations arising under subdivision (f), it demonstrates that the Legislature intended that it apply only if the parent had criminally caused the death of a child and not merely have been civilly responsible for the death of the child.

To say that it is unnecessary to prove a present risk of harm to children when 300, subdivision (f), applies might make some sense when the parent was criminally responsible for the death of a child but makes no sense if mere civil liability is involved. The former requires the commission of evil acts with a criminal *mens rea*. The latter does not.

The whole purpose of the juvenile dependency system is to protect and safeguard minors and their relationships with their parents. (Welfare and Institutions Code section 200). It is not to dredge up ancient history. Consistent with principles of due process, this Court must hold that subdivision (f), like all other provisions of section 300, has a "present risk" of harm element that must be proven before jurisdiction can be established.

V.

THE PARENT'S ACTIONS IN CAUSING THE DEATH OF A CHILD MUST HAVE BEEN A "SUBSTANTIAL" OR "PROXIMATE" CAUSE OF THE CHILD'S DEATH BEFORE JURISDICTION UNDER SECTION 300, SUBDIVISION (f), MAY BE FOUND FOR THE PARENT'S CHILDREN.

Petitioner, in his opening brief, noted that "cause" is something of a loaded term in the law and is also a term of art and respondent does not dispute this. It requires culpability; that is, to cause something is to be legally responsible for the effects of the action. In general, petitioner is satisfied with the principles of law he stated in his opening brief about causation as it relates to criminal and tort law and will not repeat that here.

What is important to recognize here is that the legal cause of Valerie's death was the automobile accident for which her father, petitioner herein, was not at fault. Both the police who investigated the accident and the social workers who reviewed the reports agreed that the driver who ran the stop sign was solely at fault for the accident. Respondent clearly downplays that in its brief. It fails to recognize that petitioner did nothing to cause the fatal accident and that is what this Court must focus on – responsibility for the collision and not on what prophylactic measures were or were not taken as they very likely played no real role in Valerie's death.

Petitioner discussed, at length, in his opening brief the law regarding the use of child car restraint seats and/or seat belts which appear, more or less, to be the same. Respondent did not dispute petitioner's analysis to any significant degree. More importantly, it did not dispute that it would have had the burden to show that Valerie would not have died had she been properly placed in a car seat and it should have presented expert testimony to that effect.

Respondent failed to recognize that use of car restraint seats is no guarantee that the child will survive a serious collision, especially one involving four cars and the car in which the child was a passenger was struck by violent forces no less than three times in the spot where the child was sitting. It be remembered that a car restraint seat is only a device that lessens the likelihood of death under certain circumstances; alone, it offers no guarantees. Children die in car seats all too often depending on the nature of the accident.[5] It must also be remembered that failure to use a car restraint seat does not increase the likelihood that there will be an accident; petitioner could have driven to Boston and back again without using a car seat for Valerie and, without any accident, Valerie would have been safe and sound.

The car restraint seat is designed to reduce the risk of death or serious injury only in the event of an accident.[6] Without the accident, the use of the car seat guarantees or minimizes nothing. Respondent fails to acknowledge this key principle. The focus must be on what caused this fatal accident and not on side issues. It was not petitioner's failure to use a car restraint seat that caused the accident; rather the cause of the accident was the decision of another driver to run a stop sign at a high rate of speed, slamming into

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[5] See the statistics cited in footnote one, *supra*, showing that 40% of all toddlers killed in automobile accidents in 2009 and who were passengers in cars in this state were properly restrained in car seats.

[6] However, in footnote 10 of petitioner's opening brief, he pointed out that there are circumstances in which the use of a car restraint seat might increase the risk of harm. Again, respondent fails to acknowledge that possibility. Petitioner is not saying that these situations justify the non-use of a car seat but merely demonstrates that the use of a car seat is not invariably going to reduce the odds that a child will be injured or killed in the event of a collision, a proposition that respondent seems to take on faith.

petitioner's car, spinning him around and causing two other vehicles to strike petitioner's car.

The question here is whether petitioner's one time failure to use a car seat continued to pose a threat to his surviving children or, whether, like the parents in ***J. N.***, *supra*, did he learn his lesson and is it now highly unlikely that he will repeat his conduct of failing to make sure his children are properly restrained when he transports them in a car? The psychological evaluation of petitioner showed that he has no problems with alcohol or drugs and, indeed, rarely uses alcohol. (CT 112). He showed deep emotional distress at the death of his daughter and cried when discussing it with the evaluator. (CT 114). All in all, petitioner seems to have responded in an appropriate manner and taken appropriate responsibility for this matter. It is highly unlikely that he would ever expose his children to this kind of danger again.

Another way to look at causation is the concurrent or contributing actions problem. Petitioner discussed this at length in his opening brief on the merits and cited this Court's decision in ***People v. Jennings*** (2010) 50 Cal.4th 616, a case cited by respondent only in passing. Respondent failed to appreciate what this Court said about "substantial factors" that cause death. It was petitioner's argument that the ***Jennings*** case held that a substantial factor must be one that, in and of itself, could cause death or severe injury. It need not cause death but has the potential for causing death or severe injury without any intervening action by anyone else or any other culpable action on the part of the perpetrator.

In this case, petitioner's failure to properly utilize a car seat could not have independently caused Valerie's death or even any serious harm. Further action, whether by petitioner or, as actually occurred here, by a third party who illegally ran a stop sign at a high rate of speed, was necessary. Failure to use

the child restraint seat could not be a cause of death in the same way that any one of the three causes of death in ***Jennings*** was. Therefore, petitioner's failure to use a child car restraint seat was not a significant factor in Valerie's death as that failure, absent any other actions, could not have caused death or injury in and of itself.

"Causation" as that term is understood in tort law and in criminal law is a difficult concept to apply to dependency law, especially in the context of subdivision (f) of section 300. Petitioner submits that the parent's actions must be of such a nature that death or serious injury is highly probable even in the absence of any other culpable actions by third parties or other actions by the parent himself/herself. If the parent's action requires other culpable actions either by himself/herself or by third parties, then the parent's original action does not qualify as a significant factor in the child's death under subdivision (f).

Had petitioner run a red light with a blood alcohol level well in excess of the legal limit causing the accident, petitioner would agree that scenario would present, at the minimum, an arguable case for a proper application of subdivision (f). A parent failed to properly use a child car restraint seat, was involved in an automobile accident for which he was criminally culpable (on at least a criminal negligence theory) and a child died as a result.

On the other hand, the instant case involves a situation in which the parent again failed to properly use a child car restraint seat but has absolutely no culpability, either under the civil or criminal law, for the ensuing accident. Under these circumstances, the failure to use the car seat should not be considered a "substantial factor" in Valerie's death as (1) there is the probability that the child would have died anyway; (2) petitioner bore no culpability for the actual accident that resulted in the death and (3) the failure

to use the child car restraint seat was not something that, standing alone, could result in death or serious injury.

Therefore, this Court, consistent with the principles discussed above, must hold that, unless the parent's actions, standing alone, could result in death or serious injury, those actions cannot result in a true finding under subdivision (f). Causation under subdivision (f) must be based on actions by a parent that, standing alone, have a significant probability of death or serious injury. If the parent's actions require further culpable actions by a third party (as actually occurred in this case), then the parent's actions do not rise to the level of a substantial factor. Consistent with these principles, petitioner's failure to properly use a child car restraint seat was not a substantial cause of the death of Valerie and the trial court erred in its application of subdivision (f) to this case.

VI.

THE TORT DOCTRINE OF "INDEPENDENT INTERVENING FACTOR" HAS NO APPLICATION TO DEPENDENCY JURISDICTION AND, THUS, PLAYS NO ROLE IN THIS CASE.

Petitioner is generally satisfied with the analysis he presented on this issue in his opening brief and will not discuss it further except to again note that petitioner's possible negligence in not using the child car restraint seat did not increase the likelihood of an accident in which the child would be injured and respondent did not contend otherwise.

Petitioner would also remind this Court that it has, cautioned against the unbridled incorporation of concepts developed in the criminal law (or tort) law into dependency law. (***In Re Celine R.*** (2003) 31 Cal.4th 45, 58-59; ***In Re James F.*** (2008) 41 Cal.4th 901, 916-917). Respondent seems to favor, in this context only, such an approach. Petitioner believes that the same caution this Court expressed in ***Celine R.*** and ***James F.*** is applicable to subdivision (f).

VII.

JOINDER WITH BRIEFING IN L. L.

To the extent permissible, petitioner joins in the arguments raised by the petitioners/appellants in the companion cases of ***In Re L. L.***, case S-190230 and case S-190245 – California Rules of Court, Rule 8.200, subdivision (a), subsection (5). As noted in the opening brief, these two cases have also been granted review and this Court specifically limited the briefing on the issue of whether subdivision (f) of section 300 requires criminal negligence or whether mere civil negligence is sufficient to warrant jurisdiction.[7]

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[7] As of this date, the opening brief on the merits in S-190230 has been filed and the opening brief in S-190245 is due on August 11, 2011.

VIII.

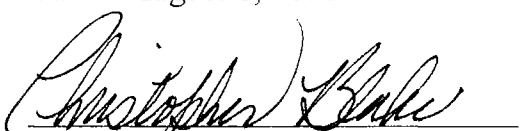
CONCLUSION.

For the reasons stated above and in his opening brief, petitioner respectfully submits that the trial court applied the wrong standards in determining whether Welfare and Institutions Code section 300, subdivision (f), applied to this case.

Petitioner submits that subdivision (f) applies only if the parent has been criminally negligent or criminally abused a child in causing death. Furthermore, there must be a present risk of harm to the parent's other children before subdivision (f) can apply and the parent's actions must be a "substantial cause" of the child's death before a true finding under subdivision (f) can be made.

The decision to employ the harsh provisions of subdivision (f) must be made on reason and not emotion. The death of any child is tragic but so is the unwarranted intrusion of the state into the life of a devastated family that lost the child. Petitioner submits that, whatever poor judgment he may have shown in not using a car seat in this case, his surviving children were not at any present risk for harm based on that fact alone and that his actions were not a "substantial cause" of his daughter's death as the sole cause of death was the automobile accident of which he was wholly exonerated. In accord with these principles, the Court should reverse the findings of the trial court and the Court of Appeal.

Dated: August 8, 2011



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CERTIFICATE OF NUMBER OF WORDS IN BRIEF.

I hereby certify that this brief consists of 7,387 words, including footnotes, as counted in the word count function of WordPerfect X-4, the computer program used to prepare this brief.

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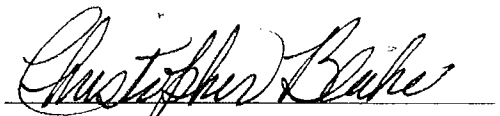

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I, CHRISTOPHER BLAKE, declare:

I am a citizen of the United States, over 18 years of age, and not a party to this action. My business address is 4455 Lamont Street, #B, San Diego, California 92109. On this date, I served one copy of the attached document, to wit:

Petitioner's Reply Brief on the Merits

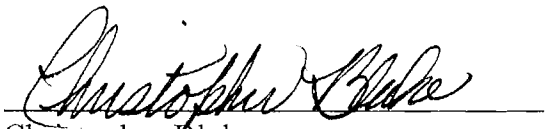
on each of the individuals below by placing in the course of Messenger Service, addressed as follows, or in the course of Delivery by United States Mail, first class postage, prepaid, as follows:

SEE ATTACHED LIST

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Diego, California.

Dated: August 8, 2011



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