

JUVENILE LAW CENTER
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ATTEST
MAY 23 1989
J. WHITE
PRO. PROTHY

THIS IS NOT AN
ARBITRATION CASE.
ASSESSMENT OF
DAMAGES HEARING
IS NOT REQUIRED.

T.M., by his next friend, Douglas H. Riblet;
B.J., by her next friend, J. Robertson
MacGiver; L.E., by her next friend,
Terese Fegley; G.M., by his next friend,
Penelope A. Boyd; M.M., by his next friend,
Penelope A. Boyd; on their own and on behalf
of all others similarly situated,

Plaintiffs,

-VS-

CITY OF PHILADELPHIA, 1540 Municipal
Services Building, Phila., PA 19102;
PHILADELPHIA COUNTY COURT OF COMMON
PLEAS, FAMILY DIVISION, JUVENILE
BRANCH, 517 CITY Hall, Phila., PA 19102

Defendants.

COMPLAINT - CIVIL ACTION

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
Lawyer Referral and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-1701

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de fecha de la demanda y la notificación. Hace falta presentar una comparencia escrita o en persona o con un abogado y entregar la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR EL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE FILADELPHIA
Servicio De Referencia E Informacion Legal
One Reading Center
Philadelphia, Pennsylvania 19107

1. INTRODUCTORY STATEMENT

Plaintiffs, by their attorneys, allege:

1. This action seeks declaratory and affirmative injunctive relief for defendants' failure to appoint counsel for children as required by the Pennsylvania Juvenile Act, 42 Pa.C.S. §6301 et seq. and the Child Protective Services Law, 11 P.S. §2201 et seq. and to redress the deprivation, under color of state law, of rights secured to plaintiffs by Article I, Section 9 of the Pennsylvania Constitution and the Fourteenth Amendment to the United States Constitution under 42 U.S.C. §1983.

2. Plaintiffs in this class action are thousands of children who are parties to "dependent child" proceedings in the Juvenile Court of Philadelphia County.

3. Named plaintiffs bring this action on their own behalf and on behalf of all other children who have been or will be parties to Juvenile Court dependency proceedings and deprived of their right to counsel under the Juvenile Act, or their right to an attorney guardian ad litem under the Child Protective Services Law, 11 P.S. §2201 et seq. , Article I, Section 9 of the Pennsylvania Constitution, and 42 U.S.C. §1983.

II. PARTIES

4. Plaintiff T.M. is a one and one-half-year-old minor child who is a resident of Philadelphia and who brings this action through his next friend, Douglas H. Riblet. Mr. Riblet is an attorney with the firm of Rawle and Henderson.

5. Plaintiff B.J. is a nine and one-half-year-old minor child who is a resident of Philadelphia and who brings this through her next friend, J. Robertson MacGiver. Mr. MacGiver is an attorney in the City of Philadelphia.

6. Plaintiff L.E. is a three-year-old minor child who is a resident of Philadelphia and who brings this action through her next friend, Terese Fegley. Ms. Fegley is an attorney with the firm of Morgan, Lewis and Bockius.

7. Plaintiff G.M. is a five-year-old minor child who is a resident of Philadelphia and who brings this action through his next friend, Penelope A. Boyd. Ms. Boyd is an attorney with the Disabilities Law Project.

8. Plaintiff M.M. is the brother of G.M. and a four-year-old minor child who is a resident of Philadelphia and who brings this action through his next friend, Penelope A. Boyd.

9. Defendant CITY OF PHILADELPHIA is a political subdivision of the Commonwealth of Pennsylvania, and is classified as a city of the first class with the power to enact funding ordinances and appropriate funds necessary to execute its powers under the Home Rule Charter. The City of Philadelphia is currently required to fund the court system in Philadelphia County. The City of Philadelphia is sued only for declaratory and injunctive relief purposes.

10. Defendant PHILADELPHIA COUNTY COURT OF COMMON PLEAS, FAMILY DIVISION, JUVENILE BRANCH, is pursuant to Article 5, Section 1 of the Pennsylvania Constitution and 42 Pa.C.S. §301 part of the judicial system of the Commonwealth of Pennsylvania, and serves the first judicial district, 42 Pa.C.S. §901(a). The Juvenile Branch is an administrative unit, 42 Pa.C.S. §957, composed of those judges of the Court responsible for handling, inter alia, matters involving dependent children in accordance with 42 Pa.C.S. §6301 et seq. The judges of the Juvenile Branch have the specific authority and statutory duty to appoint counsel for children. 42 Pa.C.S. §6337, 11 P.S. §2223. Defendant Philadelphia County Court of Common Pleas, Family Division, Juvenile Branch is sued only for declaratory and injunctive relief purposes.

11. All actions taken by the above-named defendants were and are done in accordance with official policy under color of state law, custom and practice.

12. At all times pertinent hereto, all defendants knew or should have known that their acts, practices, policies or omissions regarding the appointment of counsel in dependency proceedings were violative of plaintiffs' statutory and constitutional rights and should have taken action to correct them. Having failed to do so, defendants are in violation of the Pennsylvania Juvenile Act, 42 Pa.C.S. §6301 et seq., the Child Protective Services Law, 11 P.S. §2201 et seq., Article I, Section 9 of the Pennsylvania Constitution, and 42 U.S.C. §1983.

III. CLASS ACTION ALLEGATIONS

13. Named plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Pa.R.C.P. No. 1702. The class consists of all Philadelphia children currently, or in the future denied counsel while parties to dependency proceedings under the Juvenile Act and the Child Protective Services Law, in violation of their civil and constitutional rights.

14. The members of the class are so numerous that joinder of all members is impracticable. On information and belief, in 1987, there were 3,152 dependency petitions filed in the Juvenile Court of Philadelphia County. Only 760, or 24 percent, of the 3,152 children who were the subject of dependency petitions were represented by counsel; 2392, or 76 percent of the children for whom petitions were filed, were not represented by counsel. These are the only detailed statistics available to counsel; yet undersigned counsel have no reason to believe that 1987 was unrepresentative of the appointment process.

15. There are questions of law and fact common to the class, including but not limited to whether the denial of counsel denies plaintiffs rights secured by state law without due process of law.

16. The claims of named plaintiffs are typical of the claims of the members of the class, and the named plaintiffs will fairly and adequately represent the interests of the class. Plaintiffs are represented by counsel who have extensive experience litigating

civil rights class actions.

17. By its persistent failure to appoint counsel for children in dependency proceedings, defendants have acted and continue to act on grounds and in a manner generally applicable to the class, thereby making appropriate final affirmative injunctive relief or corresponding declaratory relief with respect to the class as a whole.

18. The injuries suffered by plaintiffs as a result of the policies and practices of defendants present a continuing controversy and are capable of repetition, yet may evade review, thereby making class relief appropriate.

19. The questions of law and fact common to members of the class predominate over any question affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Plaintiffs know of no interests of members of the class that have been raised in individually controlling separate actions. Plaintiffs know of no difficulties encountered in the management of a class action.

IV. FACTUAL ALLEGATIONS REGARDING PLAINTIFFS

20. Plaintiff T.M. was born on August 9, 1987, at twenty-three weeks gestation with bronchial pulmonary dysfunction and a variety of other physical ailments. Shortly thereafter given the

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complexity of T.M.'s medical problems, T.M.'s mother voluntarily placed him in DHS custody which necessitated a hearing within 30 days at which point counsel should have been appointed to represent T.M.

21. Counsel was not appointed at this stage of the proceeding as required. Since T.M. was placed, there have been five court hearings. The hearings were held before four different judges and one master. No child advocate was appointed at any of those hearings.

22. By February of 1988, T.M. had been placed in a specialized foster care setting, the foster parent being a registered nurse.

23. T.M.'s medical condition required twenty-four hour monitoring as the child continued to have problems breathing and eating. His foster parent was required to administer no fewer than six medications per day and to oversee the operation of three machines supporting his life.

24. Given these requirements, the foster parent was able to sleep for no more than four hours at a time over the last 15 months.

25. Out of exhaustion and believing it to be in T.M.'s best interest, the foster parent at the beginning of 1989 informed DHS that a pulse oxygen machine should be obtained for T.M. which would allow T.M.'s blood oxygen level to be calibrated precisely. Moreover, such a machine would signal in the event of trouble, thereby allowing the foster parent a more normal sleep pattern.

26. DHS refused to supply this equipment, citing budgetary constraint, suggesting alternatively that a bell be attached to T.M.'s toe which the foster parent would hear if T.M. went into convulsions as the result of his oxygen level dropping severely.

27. Needless to say, the foster parent was unwilling to endanger T.M.'s life in this way and counter-proposed renting the pulse-oxygen machine for one month, with a reassessment at the end of that time.

28. At the end of the assessment period, which concluded in April of this year, the foster parent was informed again that DHS would not assume this expense. Instead, DHS intended to transfer T.M. to a medical institution.

29. T.M.'s plight was brought to the attention of undersigned counsel who immediately sought appointment in the Dependent Division of Family Court in order to protect T.M.'s rights to live in the least restrictive placement and avoid unnecessary institutionalization.

30. Plaintiff B.J. is a nine and one-half-year-old child who was abandoned by her parents when she was four days old. She was taken into a neighbor's home, and has had no further contact with her natural parents.

31. That neighbor subsequently became certified as a foster parent and B.J. resided with her until she turned five years old.

32. When B.J. was five years old the foster mother developed a heart condition and B.J. was moved to a second DHS foster home because of the foster mother's poor health.

33. During that year she began to exhibit hyperactive behavior and her second foster family felt unable to handle her behavior.

34. Shortly after her sixth birthday, B.J. was moved to her third placement, St. Mary's Villa for Children, where she continues to reside. St Mary's is a residential treatment facility for children with emotional problems.

35. B.J. is involved in individual and group therapy and is enrolled in a private school where she is functioning at the fourth grade level.

36. Her counsellor at St. Mary's would like B.J. to function in a less structured environment, but she has not made much progress toward that goal since being at St. Mary's.

37. B.J. has never been represented by counsel.

38. A dependency petition requesting DHS supervision was filed on May 2, 1988 for plaintiff, L.E., a three-year-old girl, following two reports of abuse and neglect which were determined to be "indicated," and a series of suspicious accidents and lack of parental supervision. She was determined to be a dependent child on July 21, 1988. The first report alleged that L.E. had facial

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bruises including swelling on both cheeks as well as stomach bruises. The second report alleged that L.E. was suffering from second and third degree burn on her buttocks.

39. L.E. was not represented by counsel at the July 21, 1988 hearing. At that hearing, she was ordered returned to the home of her mother and stepfather under DHS supervision.

40. On August 10, 1988, a third report of abuse was filed for L.E. because she had a bruised eye and infectious impetigo which had remained untreated. On August 11, 1988, three weeks after being returned to her home, L.E. was admitted to Children's Hospital of Philadelphia with a suspected fractured neck. Examination identified other injuries: two fractured left ribs estimated at three to four weeks old; two fractured right ribs estimated at four to eight weeks old; a cigarette burn on her left calf; bruises on her left shoulder; multiple scars including a healed circular scar on the lower left leg; and a perfectly shaped square scare on the right shoulder. On August 26, 1988, a fourth report of abuse was filed for these injuries. Both of the reports filed after the July 21, 1988 hearing were found to be "indicated."

41. Although the neck fracture was not conclusively determined to result from abuse, the estimated dates that the fractures occurred support the likelihood that some, if not all, of the rib fractures, the cigarette burn, the weeping impetigo as well as the

bruised shoulder and eye occurred after the July 21, 1988 hearing where L.E. was not represented by counsel.

42. Since the appointment of counsel on September 16, 1988, L.E. has been receiving necessary and appropriate services in light of her medical and emotional needs.

43. Plaintiff G.M. was born on November 6, 1983. At the time of his birth, G.M.'s mother was in foster care and agreed that G. M. should be placed with his father. This constituted a voluntary placement and, accordingly, a hearing was required within 30 days at which point counsel should have been appointed for G.M. G.M. was released from the hospital to the care of his father.

44. G.M. resided with his father for the first seven months of his life. During that time, G.M.'s life was endangered. He suffered from malnutrition, dehydration and had unexplained burns on his buttocks. G.M.'s father subsequently was convicted of Endangering the Welfare of a Child and served nine months in prison.

45. In June 1984, G.M. was removed from his home, committed to DHS custody and placed in a foster home. At that time, his stomach was extremely distended and he weighed only 11 pounds.

46. G.M.'s brother, plaintiff M.M., was born on November 20, 1984. He was placed in a mother/baby foster home with his mother still a minor, but received grossly inadequate care from his mother and suffered from bronchialitis as a result.

47. M.M. was placed with G.M. in the same foster home in October 1985.

48. During the period of G.M.'s abuse at the hand of his father and M.M.'s neglect while in his mother's care, neither child was represented by counsel.

49. Moreover G.M. and M.M. were not represented by counsel until February 1987.

50. The goal of the family service plan was changed to adoption in February 1987 because neither parent had addressed the problems that brought the children into placement; moreover neither consistently visited the boys in their placement.

V. THE LAW GOVERNING APPOINTMENT OF COUNSEL FOR CHILDREN ALLEGED TO BE DEPENDENT IN PHILADELPHIA COUNTY

51. The Pennsylvania Child Protective Services Law, 11 P.S. §2201 et seq., mandates that the Court appoint a guardian ad litem who shall be an attorney when a proceeding alleging child abuse has been initiated. 11 P.S. §2223.

52. The Pennsylvania Juvenile Act requires the appointment of counsel for any minor who is before the dependency court at all stages of any proceeding under the Juvenile Act "unless his parent, guardian, or custodian is present in court and affirmatively waive[s] it. However, the parent, guardian, or

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custodian may not waive counsel for a child when their interest may be in conflict with the interest or interests of the child." 42 Pa.C.S. §6337. Upon information and belief, in every case in which a dependency petition has been filed, the interest of parent, guardian or custodian may be in conflict, and accordingly counsel for the child may not be waived.

53. In the alternative, if dependency cases do exist where the interests of parent, guardian or custodian and child do not conflict, there must be a procedural mechanism for the dependent court to make such a determination. Currently no such mechanism exists. Moreover, if the dependent court does refuse to appoint counsel for the child and the child wishes to be represented by counsel, the child would be unable to appeal that decision.

54. Under the Juvenile Act, all parties, children included, are entitled to be present at all proceedings, introduce evidence, be heard in their own behalf and to cross-examine witnesses. 42 Pa.C.S. §6338.

55. Under the Child Protective Services Act the attorney who acts as a guardian ad litem is charged with representation of the child's best interest at every stage of the proceedings and is entitled to, inter alia, receive relevant reports, interview witnesses, examine and cross-examine witnesses. 11 P.S. §2223.

56. Juvenile Act proceedings occur in four discrete stages: 1) the shelter care hearing (when a child has been taken into

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custody), 42 Pa.C.S. §6332; 2) the adjudicatory hearing, 42 Pa.C.S. §6341; 3) the dispositional hearing, 42 Pa.C.S. §6351(a); and 4) the disposition review hearing, 42 Pa.C.S. §6351(e). The Juvenile Act requires appointment of counsel by the Court for representation at each of the foregoing stages of the proceedings. 42 Pa.C.S. §6337.

57. Under the Child Protective Services Law, the attorney is charged with representation of the child's interest at every stage of the proceedings. The attorney guardian ad litem can petition the Court to order a local child protective service or other agency to establish or implement appropriate services and treatment plans for a child in need of them. Additionally, the attorney can petition to terminate or alter the conditions of any temporary or permanent placement of a child.

58. Attorneys for children in juvenile court proceedings must attend all proceedings under the Juvenile Act, participate in development and revisions of the service plan for the child required by state and federal law, and fulfill their ethical obligations under the Code of Professional Responsibility.

59. The inappropriate placement and or lack of services outlined above which plaintiffs were forced to endure are a direct result of inadequate funding and mismanagement of Philadelphia's Department of Human Services. These problems which have resulted in the Commonwealth's alternating decision to pull the

Department's license and/or provide it with only a provisional license, will obviously not be solved by the mere appointment of counsel. Indeed Philadelphia's dependent children will continue to be at risk until both the finance and management of the Department of Human Services are corrected. However, counsel can attempt to lessen the severity of these problems in individual instances.

VI. THE PRACTICE GOVERNING APPOINTMENT OF COUNSEL FOR CHILDREN ALLEGED TO BE DEPENDENT IN PHILADELPHIA COUNTY

60. In Philadelphia, in those instances where appointments for representation of children are made, three offices provide the vast majority of counsel. These are: the Child Advocate Unit of the Public Defender's Office, the Support Center for Child Advocates, and the Juvenile Law Center.

61. The Child Advocate Unit is staffed by six attorneys with an average caseload, upon information and belief, of several hundred cases.

62. The Support Center has only a single staff attorney who works with volunteer attorneys willing to accept appointments. Most of these attorneys are willing to accept only one appointment per year. Moreover, the number of these attorneys has increased only gradually.

63. The Juvenile Law Center has four attorneys and maintains a caseload of only 60 Family Court cases inasmuch as it is a public

interest law firm selecting cases with systems reform impact in a variety of child serving systems.

64. The resources of the three offices currently providing representation of children in dependency matters are per se insufficient to assume representation of the more than 2000 children at any one time who are without counsel.

VII. STATEMENT OF LEGAL CLAIMS

65. For plaintiffs' causes of action against defendants, each count enumerated below, plaintiffs reallege paragraphs 1 - 64 above, as if fully set forth herein, in each and every count.

COUNT ONE: DENIAL OF STATUTORY RIGHTS UNDER THE JUVENILE ACT CLAIMED BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS

66. Defendants' policies, practices, acts and omissions complained of herein in failing to appoint counsel for all children for whom allegations of dependency have been made deprive plaintiffs of rights secured by the Child Protective Services Law, 11 P.S. §2201 et seq. and the Pennsylvania Juvenile Act, 42 Pa.C.S. §6301 et seq.

COUNT TWO: CONSTITUTIONAL CLAIMS CLAIMED BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS

67. Defendants' policies, practices, acts and omissions in failing to appoint counsel for all children for whom

allegations of dependency have been made are unconstitutional, since they have deprived, are depriving, and will continue to deprive plaintiffs of their rights to due process of the law under the federal and state constitutions, in that they deprive plaintiffs of rights secured by state and federal law in violation of plaintiffs' rights to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution, for which there is a cause of action under 42 U.S.C. §1983.

VIII. NO ADEQUATE REMEDY AT LAW

68. As a proximate result of the defendants' policies, practices, acts and omissions complained of herein, and the conditions and circumstances described herein to which plaintiffs are subjected, plaintiffs have suffered, do suffer, and will continue to suffer immediate and irreparable injury. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs described herein. Plaintiffs will continue to be irreparably injured by the policies, practices, acts and omissions of the defendants unless this Court grants the injunctive relief plaintiffs seek.

IX. PRAYER FOR RELIEF

WHEREFORE, plaintiffs, individually and on behalf of all others similarly situated, pray that this Court:

- A. Assume jurisdiction of this action;
- B. Issue an order certifying this action to proceed as a class action pursuant to Pa. R.C.P. No. 1710;
- C. Issue a declaratory judgment pursuant to Pa. R.C.P. No. 1602 that the policies, practices, acts and omissions complained of herein deny plaintiffs' right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and by Article I, Section 9 of the Pennsylvania Constitution and right to counsel under the Pennsylvania Child Protective Services Law, 11 P.S. §2201 et seq. and Pennsylvania Juvenile Act, 42 Pa.C.S. §6301 et seq.
- D. Issue affirmative preliminary and permanent injunctions sufficient to rectify the unconstitutional acts and omissions complained of herein, as follows:
- 1) Order defendants to appoint qualified counsel for plaintiffs and ensure continuing representation of the child's interest at every stage of the proceedings so that the ongoing harms complained of herein will be eliminated.
- E. Retain jurisdiction over defendants until such time as the Court is satisfied that their unlawful policies, practices, acts and omissions complained of herein no longer exist and will not recur.
- F. Award plaintiffs reasonable attorneys' fees and costs of this action.

G. Award such other and further relief as this Court deems just and proper.

Respectfully submitted,


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DATED: 5/23/89

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T.M., a minor, et al.

v.

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ASSESSMENT OF DAMAGES HEARING IS
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: ATTORNEYS FOR
PLAINTIFFS

: PHILADELPHIA
: COUNTY COURT OF COMMON PLEAS

: TRIAL DIVISION

: TERM, 19

: CLASS ACTION

: NO.

MAY TERM, 1989

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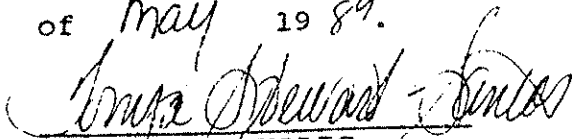
VERIFICATION

I, Samuel B. Magdovitz, Esq., being duly sworn according to
law, depose and state that the foregoing facts are true and
correct to the best of my knowledge, information and belief.


Samuel B. Magdovitz

Sworn to and Subscribed

Before Me This 23rd Day
of May 19 89.


NOTARY PUBLIC

TONYA STEWART-SANTOS
Notary Public, Phila., Phila. Co.
My Commission Expires April 29, 1991

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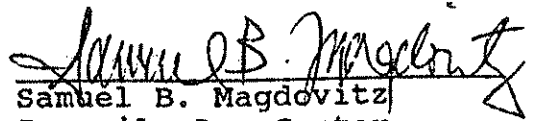
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CERTIFICATE OF SERVICE

I, Samuel B. Magdovitz, attorney for Plaintiffs, hereby
certify that a true and accurate copy of the within COMPLAINT-
CIVIL ACTION was hand-delivered on May 23, 1989 to:

Guy Vilim, Esq.
Divisional Deputy City Solicitor
1540 Municipal Services Bldg.
Philadelphia, PA 19102

Howland W. Abramson, Esq.
1515 Market St.
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Philadelphia, PA 19102


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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

T.M., et al. : CIVIL ACTION
v. : NO. 89-4630
CITY OF PHILADELPHIA, et al. : CLASS ACTION

CERTIFICATE OF SERVICE

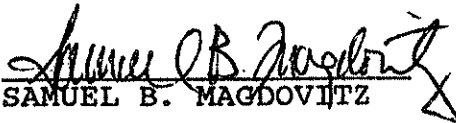
I, Samuel B. Magdovitz, certify that on this 29th day of June, 1989, I caused the foregoing document to be delivered by first class mail to the following counsel:

Doris Leisch, Esq.
Deputy City Solicitor
1540 Municipal Services Building
Philadelphia, PA 19102

Counsel to City Defendant

Howland W. Abramson, Esq.
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Counsel to Family Court Defendant


SAMUEL B. MAGDOVITZ