In The Circuit Court for Baltimore City

89

P-119070

T-3351
CW 16-31-25

PATERNITY/NON-SUPPORT

In the Matter of

Calendar Dates

SEE 1 OF 2

Assistant States Attorney

_____

_____

Attorney for Defendant

_____

_____

TAB PRODUCTS CO. SPACEFINDER SYSTEMS M8743 1-94

CASE NO. PJ 70-119070 119070 PAGE 2 of ____

DATE	DOCKET ENTRIES	NO.
6/20/90	Supplemental Memorandum in Support of Motion to Vacate Enrolled Judgment	12
6/27/90	Motion to Strike Enrolled Voluntary Decree held sub curia (Hollander, J.)	
8/27/90	Petition for Contempt and Show Cause Order	13
8/31/90	Memorandum Opinion and Order of Court	14
9/28/90	Order for Appeal	15
10/09/90	Letter, dtd Oct. 8, 1990, to Clerk, Circuit Court for Balto. City re. Steno. Test., fd.	16
10-19-90	Steno. Test., dtd. May 24, 1990, Pgs. 1-32, Court Reporter Kenneth Norris, fd.	17
10/22/90	Def agrees to pay 25.00 wk until case has been resolved	
11/05/90	Steno Test. dated June 1, 1990, pp 1-58, Court Reporter - Lisa K. Bankins, fd.	18
10/23/90	Order To Proceed without a Prehearing Conference, Court of Special Appeals, dtd Oct. 22, 1990, /s/ Karwacki, J., fd.	17½
11-26-90	Steno. Test. dtd June 12, 1990, Court Reporter, Brenda Trowbridge fd.	19
11-28-90	Steno. Test. dated June 26, 1990, Court Reporter, Christopher Metcalf, fd.	20
12-21-90	Original Papers forwarded to the Court of Special Appeals via Certified Mail # P 724 023 196	21
8-29-91	Original Papers returned from the Court of Special Appeals	22
8/29/91	Mandate: Court of Special Appeals: July 22, 1991: Per Curiam filed. Judgment affirmed. Costs to be paid by appellant. August 21, 1991: Mandate issued.	23
	Ck OS	

CC-65 (1/83)

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY ~~Paternity~~ CASE NO. PJ 70-1190 70 PAGE 1 of ___

PARTIES	ATTORNEY(S)
Francina Yvonne Covington	Sondra Crain
v.	
Jose Dejesus Rodriguez	Alfred Nance

DATE	DOCKET ENTRIES	NO.
3/3/89	Paternity Petition	1
3/30/89	Consent Decree	2
"	Waiver of Rights	3
12/20/89	Motion to Strike Consent Decree	4
"	Summons issd. (sd. 1/5/90)	5
1/24/90	Pltf's Opposition to Motion to Strike	6
2/23/90	Request for Hearing	7
3/26/90	Answer to Motion to Set Aside Decree	8
4/27/90	SAO to reset (Hollander, J.)	
5/16/90	Subpoena	9
5/21/90	Memorandum Against Motion to Set Aside an Enrolled Judgment	10
5/24/90	Affidavit of Service	10A
"	Memorandum in Support of Motion to Vacate Judgment	10B
5/24/90	Hearing on Motion to Strike - PP 6/1/90 postponed sd. (Hollander, J.)	
6/1/90	Case to continue PP 6/12/90 (Hollander, J.)	
6/20/90	Post-Trial Memorandum Against Motion to Set Aside an Enrolled Judgment	11

CC-66 (1/83)

Court of Special Appeals

Courts of Appeal Building
Annapolis, Md. 21401-1699

(301) 974-3646
WASHINGTON AREA (301) 261-2920

LESLIE D. GRADET
CLERK

SUSAN L. ROSENBLUM
CHIEF DEPUTY

Copy

FILED

DEC 26 1990

PD 119070

No. 1690, September Term, 1990

— IMPORTANT —
This is how the case must be titled on all briefs.

Jose' Rodriguez
v.
Francina E. Arrington

Attorneys for Appellant: NANCE ESQUIRE, ALFRED

Attorneys for Appellee : CURRAN JR. ESQUIRE, J. JOSEPH
SIMMS ESQUIRE, STUART O.
CRAIN ESQUIRE, SONDRA H.

The Record in the captioned appeal was received & docketed on 12/21/90.

The brief of the APPELLANT is to be filed with the office of the Clerk on or before 1/30/91. (Rule 8-502 (a)(1)).

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after filing of appellant brief (Rule 8-502(a)(2)).

This appeal has been set for argument before this Court during the week of June 3, 4, 10, 11, 12, 13, 14, 17 and 18, 1991.

Stipulations for extensions of time within which to file briefs will not be granted where the request will delay argument (Rule 8-502(b)).

Counsel is likewise notified to advise the office of the Clerk (Pursuant to Rule 8-523) of intent to submit on brief at the time of filing his brief. No submission on brief will be accepted within ten (10) days prior to the date of argument without specially obtained permission of the Court.

Leslie D. Gradet

LESLIE D. GRADET

CLERK OF THE COURT
OF SPECIAL APPEALS

for Appellee

Sent 12/21/90

No. ..... (LEAVE BLANK) SEPTEMBER TERM, 19 .....

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT FOR BALTIMORE CITY

Judge: HONORABLE ELLEN L. HOLLANDER

IN THE CASE OF

JOSE' RODRIGUEZ

Appellant

VS.

FRANCINA E. ARRINGTON

Appellee

TO THE

COURT OF SPECIAL APPEALS

ALFRED NANCE, ESQUIRE 1 EAST LEXINGTON STREET, SUITE 200 BALTIMORE, MARYLAND 21202 (301) 659-6907	FOR APPELLANT
STUART SIMMS, STATE'S ATTORNEY OF MARYLAND SANDRA CRAINE, ASSISTANT STATE'S ATTORNEY CLARENCE M. MITCHELL, JR. COURTHOUSE WEST CALVERT & FAYETTE STREETS BALTIMORE, MARYLAND 21202 (301)	FOR APPELLEE

Filed ..... (LEAVE BLANK)

JOSE' RODRIGUEZ	*	IN THE
PLAINTIFF	*	CIRCUIT COURT
vs.	*	FOR
FRANCINA ARRINGTON	*	BALTIMORE CITY
DEFENDANT	*	Case No. 70/119070

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Jose' Rodriquex vs. Francina Arrington

Index (Continued)

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY ~~Paternity~~ CASE NO. PJ 20-1190 20 PAGE 1 of ___

PARTIES	ATTORNEY(S)
Francina Yvonne Covington	Sondra Craig
v.	
Jose Dejesus Rodriguez	Alfred Nance

DATE	DOCKET ENTRIES	NO.
3/3/89	Paternity Petition	1
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6/1/90	Case to continue PP 6/12/90 (Hollander, J.)	
6/20/90	Post-Trial Memorandum Against Motion to Set Aside an Enrolled Judgment	11

CASE NO. PJ 70-119077 PAGE 2 of ____

DATE	DOCKET ENTRIES	NO.
6/20/90	Supplemental Memorandum and Support of Motion to Vacate Enrolled Judgment	12
6/27/90	Motion to Strike Enrolled Stipulated Decree held sub curia (Hollander, J.)	
8/27/90	Petition for Contempt and Show Cause Order	13
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12-21-90	Original Papers forwarded to the Court of Special Appeals via Certified Mail #P724023196	21

JOSE' RODRIGUEZ

PLAINTIFF

VS.

FRANCINA ARRINGTON

DEFENDANT

NO. 70/119070

PAGE:

DOCKET:

IN THE CIRCUIT COURT FOR BALTIMORE CITY

Saundra E. Banks, Clerk

CERTIFICATE BY CLERK OF THE COURT, TO TRANSCRIPT OF RECORD.

State of Maryland, Baltimore City, Set.:

I, Saundra E. Banks, Clerk of the Circuit Court for Baltimore City, hereby certify that the foregoing is a true transcript, taken from the record and proceedings of the said Court, in the Therein entitled cause.

I further certify that all counsel of record, heretofore, have been notified to inspect the foregoing transcript of record, prior to its transmission, and that said counsel have had ample opportunity for such inspection.

In testimony whereof, I hereunto set my hand and affix the seal of the Circuit Court for Baltimore City aforesaid, on this day of 6th. day of December, 1990 .

COSTS PAID IN THE CIRCUIT COURT FOR BALTIMORE CITY:

Transcript of Record	$ 50.00
Open Court Costs	0.00
Total Costs	$ 50.00

SEAL OF THE COURT

Stenographic Testimony - $722.50

Court Reporter(s) Kenneth Norris, Brenda Trowbridg
Christopher Metcalf & Lisa Banki

Saundra E. Banks

Clerk of the Circuit Court for Baltimore City

CC-192

Court of Special Appeals

(23)

No. 1690, September Term, 1990

Jose' Rodriguez
v.
Francina E. Arrington

DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:
July 22, 1991: Per Curiam filed.
Judgment affirmed. Costs to be paid by appellant.

August 21, 1991: Mandate issued.

RECORD RETURNED TO CLERK OF CIRCUIT COURT FOR:
BALTIMORE CITY
BALTIMORE, MD 21202 DATE: 8/21/91

BY: HAND DELIVERED

Sedie D. Gadet

REMARKS:

MANDATE
Court of Special Appeals

(2&3)

No. 1690, September Term, 1990

Jose' Rodriguez
v.
Francina E. Arrington

JUDGMENT: July 22, 1991: Per Curiam filed. Judgment affirmed. Costs to be paid by appellant.

August 21, 1991: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for BALTIMORE CITY
PD70-119070

Record		50.00
Stenographer Costs		722.50
	* Total *	772.50 *

In Court of Special Appeals:

Filing Record on Appeal		50.00
Printing Brief for Appellant		75.60
Reply Brief		39.60
Portion of Record Extract--Appellant		766.80
	* Total *	932.00 *
Printing Brief for Appellee		93.60
	* Total *	93.60 *

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this twenty-first *day of* August *A.D. 19* 91

Sedi D. Gradet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1690

September Term, 1990

JOSE DeJESUS RODRIGUEZ

v.

FRANCINA E. ARRINGTON

Moylan,
Bloom,
Davis,

JJ.

PER CURIAM

Filed: July 22, 1991

Jose DeJesus Rodriguez appeals from the decision of the Circuit Court of Baltimore City (Hollander, J.) finding that he entered into a consent paternity decree voluntarily, knowingly, and intelligently and that, as a result, the enrolled judgment based on the decree was not the result of mistake or irregularity.

Appellant presents three questions for our consideration, though not in this order:

> 1. Did the trial court err in denying appellant's motion to vacate the judgment?
>
> 2. Did the trial court err when it refused to order the State to comply with appellant's request for a blood test?
>
> 3. Did the trial court improperly restrict the cross-examination of the plaintiff?

While we do not believe the existence, vel non, of mistake or irregularity, as contemplated by Maryland Rule 2-535(b), in the instant appeal is a close question, an explication of the mistake or irregularity which will justify setting aside a judgment under the Rule is instructive in view of the frequency with which the Rule is invoked. We hold that, under the facts of this case, there is no mistake or irregularity, and hence the judgment must stand. For reasons to be set forth hereafter, we affirm the judgment of the lower court, as we find no merit in any of appellant's contentions.

Facts

Francina Evonne Arrington, appellee, in February 1989 filed a paternity petition in the Circuit Court for Baltimore City.

The petition alleged that Jose DeJesus Rodriguez, appellant, was the father of a minor child, Nicole Erica Rodriguez (Nicole), born to her on August 9, 1987.

In March of 1989, appellant received a letter directing him to report on March 31 to the Domestic Relations Division (DRD) of the Circuit Court of Baltimore City.[1] On the appointed date, appellant appeared, with his wife, as requested. At what has been referred to as a "settlement conference" conducted at DRD,[2] appellant signed a "Notification of Rights" (Notification) form. The Notification appears as Appendix I to this opinion. A review of the form reveals that appellant signed his name on both of the

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[1]The letter requesting appellant's presence at DRD does not appear in the record.

[2]The meeting was held in accordance with Md. Fam. Law Code Ann. § 5-1016, which provides:

> **§ 5-1016. Voluntary support agreement.**
>
> (a) *Settlement proposals.* — (1) Before or after the filing of a complaint, the alleged father may propose a settlement concerning the child's support whether the alleged father admits or denies paternity.
>
> (2) The proposed contribution may be in a lump sum, installments, or otherwise.
>
> (b) *Conditions for settlement.* — A settlement agreement shall be prepared, executed, and submitted to the court for approval if:
>
> (1) the complainant agrees to accept the settlement;
>
> (2) the State's Attorney is satisfied that the amount and terms of the settlement are fair and reasonable;
>
> (3) the complainant has been advised properly regarding the contents of the settlement; and
>
> (4) the complainant is competent to accept the settlement.
>
> (c) *Incorporation in order.* — If the court approves the settlement agreement, the terms of the agreement shall be incorporated in a court order.
>
> (d) *Effect of order.* — A court order incorporating a settlement agreement is as enforceable as any order that is passed after a hearing.

available lines, thereby indicating simultaneously that he wanted an explanation of the form and that no explanation was required. According to the hearing examiner present at the meeting at DRD, appellant placed his initials next to his signature, which had been crossed out, on the line indicating an election to forego an explanation of the form. The initials and the line through the signature were intended to acknowledge that his signature was to be deleted. She said that this was standard procedure when a putative father signs both lines, thereby indicating some confusion regarding the form. In this case, the initials indicate that, although there may have been some initial confusion, appellant ultimately indicated he did not want the form explained to him. It is undisputed that no interpreter was provided for appellant's benefit at the DRD meeting. Communications were apparently conducted in English.

After appellant admitted paternity on March 31, a Consent Paternity Decree (Decree), signed by Judge Richard T. Rombro, was entered in the circuit court on April 6, 1989.[3] After failing to make the agreed-upon child support payments and receiving from the Child Support Enforcement Administration a notice dated November 20, 1989,[4] on December 20, 1989, appellant filed a

---

[3]The enrolled decree, inter alia, obligated appellant to pay child support through the Bureau of Support Enforcement in the amount of $25.00 per week effective April 3, 1989, and $50.00 per week as of June 5, 1989, until Nicole reaches the age of eighteen, dies, marries, or becomes self-supporting.

[4]The notice informed appellant that because of arrearages in his child support obligation, the Internal Revenue Service would withhold from his federal income tax refund, if any, the amount necessary to fulfill the

(Footnote Continued)

"Motion to Strike Consent Paternity Decree Order of March 31, 1989." In his motion, appellant alleged, inter alia, that he was not the father of Nicole; that "a valid blood test will prove that he is not the father of the child"; and that his consent was not "voluntarily, knowingly, and intelligently made in that Defendant has difficulty communicating in and understanding the English language." Appellee filed pro se an opposition to the motion to strike. Appellee, through the Office of the State's Attorney, also filed an "Answer to Motion to Set Aside Paternity Decree." Subsequently, a "Memorandum Against Motion to Set Aside an Enrolled Judgment" was filed by appellee. In the answer, appellee asserted that no interpreter was required at the DRD meeting because there was no indication one was needed. There was also a denial of paternity. In the memorandum, it was argued, inter alia, that the Decree was final; that the circuit court had no cause to exercise its revisory power over the judgment resulting from the agreement of the parties; and that appellant fully understood the rights to which he was entitled and intelligently waived them.

After a hearing on appellant's motion,[5] Judge Ellen L. Hollander, in a comprehensive Memorandum Opinion and Order, found that appellant waived the rights included in the Notification and that he entered into the Decree voluntarily, knowingly, and

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(Footnote Continued)
obligation. The total amount of arrearage on the date of the notice was $500.00.

[5]The hearing was conducted on four occasions between May 24, 1990, and June 26, 1990.

intelligently. Consequently, according to Judge Hollander, the Decree was not enrolled as a result of mistake or irregularity. This appeal followed.

DISCUSSION

I.

Appellant's first contention is that the trial court erred in not "vacating" the judgment entered upon the Decree when it was the result of mistake or irregularity.[6] According to this argument, the mistake or irregularity was the waiver by appellant of his right to contest his paternity, which waiver was not voluntarily, knowingly, and intelligently made.

Appellee counters that the judgment of the lower court must be affirmed because, as the lower court found, appellant failed below to show the requisite mistake or irregularity. In addition, appellee asserts that there was "overwhelming" evidence supporting the trial judge's finding that appellant's waiver was valid. Because there was no "mistake" or "irregularity," as those words have been defined under Maryland law, we need not fully address, as the circuit court did, whether appellant's waiver was valid. We explain.

By statute, the power of the circuit court in this case to revise the judgment entered by the circuit court as a result of the consent decree is strictly limited. Maryland Cts. & Jud. Proc. Code Ann. § 6-408 (1974, 1984 Repl. Vol.) provides:

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[6]There is no allegation of fraud in the case.

> For a period of 30 days after the entry of judgment, or thereafter pursuant to a motion filed within that period, the court has revisory power and control over the judgment. After the expiration of that period the court has revisory power and control over the judgment in the case of fraud, mistake, irregularity, or failure of an employee of the court or the clerk's office to perform a duty required by statute or rule. [Emphasis added].

Similarly, Md. Rule 2-535 indicates in pertinent part:

> **Rule 2-535. Revisory Power**
>
> **(a) Generally.** — On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action it could have taken under Rule 2-534.[7]
>
> **(b) Fraud, Mistake, Irregularity.** — On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity. [Emphasis added].

The "Committee note" to the Rule indicates under subsection (b) that "[t]his section is intended to be as comprehensive as Code, Courts Article § 6-408."

The Court of Appeals in Andresen v. Andresen, 317 Md. 380 (1989), in the context of Md. Rule 2-535, addressed the scope of the revisory power of Maryland's circuit courts. The Court said:

> The law governing the power and control of the circuit court over an enrolled decree is firmly established. In the context of this case in which "newly

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[7] Maryland Rule 2-534, **Motion to Alter or Amend a Judgment — Court Decision**, provides:

> In an action decided by the court, on motion of any party filed within ten days after entry on judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial.

discovered evidence" is not a concern, it is spelled out by rule — former Maryland Rules 625a and 681; by statute — Maryland Code (1974, 1984 Repl. Vol.) § 6-408 of the Courts and Judicial Proceedings Article; and by judicial decision — e.g. Maryland Lumber v. Savoy Constr. Co., 286 Md. 98 ... (1979); Hughes v. Beltway Homes, Inc., 276 Md. 382 ... (1975). Read together, the rules, the statute and our decisions boil down to a dictate that for a period of thirty days from the entry of a law or equity judgment a circuit court shall have "unrestricted discretion" to revise it. Maryland Lumber, 286 Md. at 102....Thereafter, a circuit court has revisory power and control over a judgment only in the case of fraud, mistake, irregularity or clerical error, provided that the person seeking the revision acts with ordinary diligence and in good faith upon a meritorious cause of action or defense. This dictate "embraces all the power the courts of this State have to revise and control enrolled judgments and decrees." Eliason v. Comm'r of Personnel, 230 Md. 56, 59 ... (1962). See also Meyer v. Gyro Transp. Systems, 263 Md. 518, 527 ... (1971). We have narrowly defined and strictly applied the terms fraud, mistake, irregularity, and clerical error, and have set out what constitutes ordinary diligence. See Hughes, supra, 276 Md. at

386-89 ... and cases therein cited;[8] Weitz v. MacKenzie, 273 Md. 628, 631 ... (1975).[9]

Id. at 388-89, citing Platt v. Platt, 302 Md. 9 (1984).

In Hamilos v. Hamilos, 52 Md. App. 488 (1982), aff'd 297 Md. 99 (1983),[10] this Court indicated also the parameters of the application of Md. Rule 625a, the predecessor of current Rule

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[8]In Hughes, the Court indicated that

> [w]e have said that the term "mistake" as used in this rule [625 as predecessor of Md. Rule 2-535] is not applicable to an enrolled decree in a mechanics' lien foreclosure case making reference to the wrong lot ...; to the mistaken belief of out-of-state counsel that the Maryland procedure relative to attachment was similar to that in his state, which belief brought about a judgment by default ...; to the negligence or mistake of the agents and counsel of a complaining party ...; to failure to attach a ledger card to an affidavit with a motion for summary judgment or the failure of counsel to file an appropriate pleading prior to the expiration of the time specified by rule ...; to a finding that a judgment by default was based upon vouchers, some of which were in the name of the defendant, some in the name of a corporation, and some in the name of another person ...; to a mistaken determination that summary judgment should be entered against a defendant ...; or to a failure by parties defendant to inform their attorneys of the defenses that they had....[Citations omitted].

[9]In Weitz, the Court said:

> Under our cases, an irregularity which will permit a court to exercise revisory powers over an enrolled judgment has been consistently defined as the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done....As a consequence, irregularity, in the contemplation of the Rule, usually means irregularity of process or procedure ... and not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a defendant had notice and could have challenged....[Citations omitted].

[10]The case was consolidated for review by this Court with what became Johnston v. Johnston, 297 Md. 48 (1983).

2-535.[11] In Hamilos, Mrs. Hamilos filed in the circuit court a Bill of Complaint for Divorce A Mensa et Thoro. Subsequently, Mr. and Mrs. Hamilos executed a "Voluntary Separation and Property Settlement Agreement," which by express terms was to be incorporated into any divorce decree granted by the court. The parties were eventually divorced. Approximately seventeen months after the divorce decree was entered, Mrs. Hamilos filed a "Petition to Set Aside Divorce Decree and Voluntary Separation and Property Settlement Agreement and Addendum to Same." Mr. Hamilos responded with a demurrer, which was sustained by the court on the basis that Mrs. Hamilos failed to show compliance with Rule 625a. Mrs. Hamilos appealed the Chancellor's decision to this Court.

In her efforts to set aside the divorce decree and agreement, Mrs. Hamilos argued that at the time she signed the agreement "she was using alcohol in combination with prescribed drugs, and required hospitalization for an emotional disorder, and was not possessed of sufficient mental capacity to enter into said Agreement, or knowingly participate in the action for Divorce."

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[11]The Court of Appeals, in affirming the judgment of this Court, expressly adopted the reasoning of then Chief Judge Gilbert on the issues of "jurisdictional mistake" and irregularity, "a defect in process or proceeding," applicable in the present case. Hamilos, 297 Md. at 107. The Court, in addition to addressing the issue of whether the requirements of Rule 625(a) were fulfilled, determined that because the separation and property settlement agreement approved and incorporated but did not merge with the divorce decree it could not be collaterally attacked. Thus, according to the Court, the agreement remained a separate, enforceable contract as part of the decree.

In analyzing Mrs. Hamilos's contention under then Rule 625(a), Chief Judge Gilbert said for the Court:

> Mrs. Hamilos has raised a number of contentions that she says show "fraud, mistake or irregularity." Among her allegations are: (1) she was influenced by a combination of alcohol and prescribed drugs; (2) she was hospitalized for emotional disorders and not possessed of mental capacity; (3) she was subject to coercion, fraud and duress by her then husband; (4) she was misled by expressions of love and promises of reconciliation ... [and] (5) that she was subjected to undue influence by her then husband....
>
> ....
>
> As we read Mrs. Hamilos' averments with regard to her emotional disorder and other problems, the "mistake," if any, was her signing of the agreement. The word "mistake" as employed by Md. Rule 625a does not mean a unilateral error in judgment on the part of one of the parties. "Mistake," as we said in Bernstein v. Kapneck, 46 Md. App. 231 (1980), means a "jurisdictional mistake." [Citations omitted].
>
> ....
>
> The "irregularity" that Mrs. Hamilos perceives in her husband's having been represented in the divorce action by a firm that had represented both the husband and wife in more tranquil times is not the "irregularity" to which Rule 625a is addressed. With respect to the rule, "irregularity" usually means a defect in process or procedure, neither of which is present in this matter. [Footnote omitted].

Id. at 496-98.

Although Hamilos is not directly on point, it is instructive in the case sub judice. The Court was concerned, in that case, with the necessity for finality of judgment in today's litigious society.[12] We believe that Andresen, supra, is a more recent

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[12]Chief Judge Gilbert, in citing Rule 625a, said that "[t]here must, particularly in today's highly litigious society, be some point in time when there is finality of judgment." Hamilos, 52 Md. App. at 496.

reflection of this continuing concern. Appellant, in his brief, essentially claims that he lacked sufficient mental competency or capacity to execute effectively the Notification because he did not possess the necessary English reading and comprehension skills. Even though Hamilos dealt with an emotional disorder, drugs, and alcohol rather than literacy, the reasoning is nonetheless applicable.

Appellant maintains that his failure to comprehend fully the substance of the Notification itself, and the further failure to explain orally the import thereof, constitutes the kind of mistake or irregularity cognizable under the rules, statutes, and case law providing the circuit court the framework for the exercise of its revisory power. It is transpicuous, under Hamilos, that this position is untenable. The "mistake" in this case, if any, appears to us to be a unilateral mistake in judgment which, in Hamilos, we found to be no mistake at all. As the record in this case reveals, there was no evidence of the "jurisdictional" mistake required for the proper exercise of the circuit court's revisory power. See Evans v. Evans, 75 Md. App. 364, 366-67 (1988). Moreover, there was no evidence of an "irregularity" in the sense of "doing or not doing that, in the conduct of a suit at law, which, conformable with the practice of the court ought or ought not to be done." See J.T. Masonry Co. v. Oxford Const., 74 Md. App. 598, 606-07 (1988). The irregularity repeatedly alleged by appellant was in the matter of the waiver of rights and this, as should be manifest, is not the irregularity

recognized by the appellate courts under the circumstances of this case.

Citing Hamilos, supra, and related cases, the trial court in this case found, inter alia, that there was no mistake or irregularity within the narrow meaning of those words. As a consequence, the court refused to strike the enrolled judgment. In so deciding, the court did not abuse its discretion; since it had no authority to strike out the judgment absent fraud, mistake, or irregularity, it had no discretion.

It is significant to note, however, that appellant argues strenuously on appeal, as he has throughout the course of these proceedings, that, because the waiver of rights was allegedly ineffective, he was denied constitutional due process. While we do not ignore or otherwise disregard the requirements of due process implicated in the present case, there is simply nothing which has occurred that amounts to a denial under Maryland law of any constitutional rights cognizable by the circuit court or this Court. Where a judgment has become enrolled, scrutiny will only be upon whether the enrollment was a result of fraud, mistake, or irregularity, as those words have been strictly construed by the appellate courts of this State.

II.

Appellant contends that the trial court erred in refusing to

order that a blood test be conducted in the case.[13] At the hearing on the motion to strike, the court observed that it would advise appellee not to submit to a blood test: "I can understand their reasoning because they would be opening a Pandora's box if every case got an opportunity to be revisited after someone consents to paternity." The court, although it heard further argument on the issue, at no point expressly addressed the issue. The issue of the blood test was not directly addressed and decided by the court in its opinion. It is apparent, however, that the court effectively denied any motion regarding the propriety of or necessity for a blood test by application in the opinion of the law regarding enrolled judgments and constitutional waiver of rights. Our discussion in Part I herein effectively disposes of this issue on appeal. The finding of the court that there was no mistake or irregularity in the enrollment of the Decree was dispostive of this issue, as it was of the preceding one. We elaborate.

In Part I of this opinion, we endorsed the view that, under the applicable statutes, rule, and case law, finality of judgment is desired in our litigious society. This view is supported by

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[13] Maryland Fam. Law Code Ann. § 5-1021 provides:

§ 5-1021. Blood test.

(a) *State's Attorney's request.* — In connection with a pretrial inquiry under this subtitle, the State's Attorney may request any individual summoned to the pretrial inquiry to submit to a blood test.

(b) *Court order.* — If the individual refuses the State's Attorney's request to submit to a blood test, the State's Attorney may apply to the circuit court for an order that directs the individual to submit to the test.

Md. Fam. Law Code Ann. § 5-1038 (1984), which states that "[e]xcept in the manner and to the extent that any order or decree of an equity court is subject to the revisory power of the court under any law, rule, or established principle of practice and procedure in equity, a declaration of paternity in an order is final." Thus, a consent paternity decree is final so long as there is no legitimate reason for the circuit court to exercise its revisory power to alter or amend the order.

As we have indicated in Part I of this opinion, appellant failed to show a sound basis upon which the circuit court should have exercised its revisory power. The consent paternity decree survived as a final determination of the matter. As a consequence, the lower court did not err in effectively determining no blood test was necessary in the instant case.[14]

III.

The following colloquy took place at the hearing on the motion to strike the enrolled judgment:

> [Defense Counsel]: Have you been in Nonsupport Court before ... this?

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[14]We acknowledge appellant's persistence, as evidenced by his Reply Brief, on the issue of the blood test. In this vein, appellant contends, citing Md. Fam. Law Code. Ann. § 5-1029, that "[t]here is nothing in the statute which would suggest that the court does not have the same power either before or after the judgment is enrolled." Section 5-1029 provides, with regard to blood tests and in pertinent part, that "(a) In general. — On the motion of a party to the proceeding or on its own motion, the court shall order the mother, child, and alleged father to submit to blood tests to determine whether the alleged father can be excluded as being the father of the child." While what appellant says may be true, it may be seen that this proposition is directly at odds with § 5-1038 which, as we have indicated, states that in the absence of the proper exercise by the circuit court of its revisory power "a declaration of paternity in an order is final."

[The Witness]: In the Circuit Court?

[Defense Counsel]: Yes.

[The Witness]: No, I haven't been in Circuit Court.

[Assistant State's Attorney]: I object.

The Court: Grounds.

[Assistant State's Attorney]: It's not relevant to this case. I don't even know the answer myself. She could have fifty other children, it doesn't matter. As a matter-of-fact, that isn't the case at all. For the record. It just doesn't matter.

[Defense Counsel]: What isn't the case? Her knowledge of the system?

[Assistant State's Attorney]: That she has fifty other children.

The Court: No fifty other children. Mr. Nance, what is the purpose of the question?

[Defense Counsel]: It's getting to her understanding of the system and utilization of the system and the credibility of her testimony. I didn't ask her in terms of getting to Bureau of Support Enforcement to prove that she had two or three other kids. That isn't the point. The point is whether or not she knew what the system is and gets back to the credibility and truthfulness of this witness....

....

The Court: Well my own opinion at the moment is, frankly, this is not particularly relevant, Mr. Nance. Unless you want to focus on a particular time period.

[Defense Counsel]: Your Honor, I've asked my questions. The court is ruling against it. I'll move on.

Appellant urges that the lower court abused its discretion by "improperly restricting" the cross-examination of appellee regarding whether she had previous experience with the Bureau of Support Enforcement. Appellant indicates in his brief that "[t]he questions posed could have potentially established a

familiarity with the process of acquiring child support and to establish a motive for her testimony against Appellant." Appellee maintains that the evidence to be elicited by the questioning is irrelevant and was therefore properly ruled inadmissible. We agree.

The law is well established that "as a general rule ... a witness may be cross-examined 'on such matters and facts as are likely to affect his credibility, test his memory or knowledge, show his relation to the parties or cause, his bias, or the like.'" State v. Cox, 298 Md. 173, 178 (1983), quoting Kantor v. Ash, 215 Md. 285, 290 (1958). Cross-examination may also be used as a tool to ascertain whether a witness has a motivation for testifying. Waldron v. State, 62 Md. App. 686, 695 (1985), citing Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); State v. Cox, supra; Johnson and Alters v. State, 30 Md. App. 512 (1976). The test for admissiblity of evidence to show possible motivation to testify, however, is limited. In Waldon, 62 Md. App. at 699, the test was stated as "whether the question asked is directed at eliciting from a prosecution witness the fact that he may be under pressure to testify favorably for the State, as when he is under formal accusation, and/or incarceration awaiting trial."

The general exception to the rules of permissible cross-examination is equally well established: that cross-examination will not be permitted on matters that are immaterial or irrelevant to the issue being tried. State v. Cox, 298 Md. at 178; see Harris v. State, 237 Md. 299, 302 (1965). In

addition, the trial court in its discretion may disallow questions on cross-examination, and the exercise of discretion will not be disturbed on appeal in the absence of prejudice. Vitek v. State, 295 Md. 35, 40 (1982); Coleman v. State, 82 Md. App. 247, 252 (1990). In Coleman, we reiterated that "a trial judge retains [wide latitude] to impose limits on cross examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." Coleman, 82 Md. App. at 253, citing Brown v. State, 74 Md. App. 414, 419 (1988).

In the case sub judice, we perceive no abuse of discretion. Appellant asserts that there is a link between appellee's knowledge or use of the services of the Bureau of Support Enforcement in other possible cases and her credibility. The connection escapes us. Whether appellee had obtained the services of or had previous dealings with the Bureau of Support Enforcement in any other case was not marginally relevant to any fact at issue in this case. Any testimony regarding the Bureau was properly limited to the role the Bureau played in the instant case. The fact that appellee may have been familiar with the process of acquiring child support has no logical relevance to her credibility as a witness, nor any bearing on whether she was entitled under the facts of this case to support for Nicole. That appellee's possible familiarity with the process of obtaining child support payments through the Bureau may have motivated her to testify against appellant is, as appellee

describes it in her brief, an assertion which is "nonsensical." Moreover, the inquiry into motivation is not permissible under the circumstances in this case. See Johnson and Walters, supra, 30 Md. App. at 516. Because we hold that no prejudice was suffered by appellant, we will not disturb the lower court's exercise of discretion in ruling the proferred testimony inadmissible.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

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IN THE CIRCUIT COURT FOR BALTIMORE CITY

PD 70-119070

DRD 2121-89.

NOTIFICATION OF RIGHTS

You are advised, that by admitting that you are the father of the child in this case you have stopped the Court process.

Be advised that if you weren't sure, or if you denied you were the child's father the Court process would have continued and you would have had the following rights:

(1) The right to a lawyer, and if you could not afford a lawyer, to be referred to some other agency for possible legal representation.

(2) The right to take a blood test to see if it excluded you, or included you, to a mathematical probability, as the father of the child. If you could not afford the cost of the blood test, to ask the City of Baltimore to advance the cost of the test.

(3) The right to a trial in this case, whether a jury trial or trial before a Judge of the Circuit Court. Testimony would be taken and, the case would be decided by a preponderance of the evidence.

(4) The right to bring witnesses who support you if you were to deny paternity and the right to cross-examine the Plaintiff (mother) in the Court, or any other witnesses she may have.

You are further advised that you have a duty to support this child until he or she reaches the age of eighteen (18) years, dies, or becomes emancipated.

_X_ I received a copy of this Notification and do not want an explanation.

DEFENDANT [signature] DATE 3/6/89

_X_ I want to have this notification explained to me.

J.R.

DEFENDANT [signature] DATE 3/6/89

Apx. 1

FILED OCT 09 1990

ALFRED NANCE

ATTORNEY AT LAW

OFFICE 659-6907
HOME 664-0357

ONE EAST LEXINGTON STREET, SUITE 200
(CORNER OF LEXINGTON & CHARLES STREETS)
BALTIMORE, MARYLAND 21202

#17

October 8, 1990

Clerk
Circuit Court for Baltimore City
Appeals Section
111 N. Calvert Street
Baltimore, MD 21202

Re: Jose' Rodriguez
Case No. - PD70-119070
Judge - Hollander
Trial Dates - 5-24-90, 6-1-90, 6-12-90, 6-20-90
Appeal Filed - 9-28-90
Record Due to be Transmitted - 60 days from 9-28-90 (11-27-90)

Dear Sir/Madam Clerk:

Enclosed please find for immediate filing the letter to Susan Sheldon requesting a copy of the transcript in the above-referenced matter.

Please inlcude this letter in the record on Appeal in accordance with Rule 8-411 (C).

Very truly,

ALFRED NANCE
Attorney at Law

AN/ns

ALFRED NANCE
ATTORNEY AT LAW

OFFICE 659-6907
HOME 664-0357

ONE EAST LEXINGTON STREET, SUITE 200
(CORNER OF LEXINGTON & CHARLES STREETS)
BALTIMORE, MARYLAND 21202

October 4, 1990

Susan Sheldon
Chief Court Reporter
224 East Courthouse
111 N. Calvert Street
Baltimore, MD 21202

Re: Jose' Rodriguez
Case No. - PD70-119070
Judge - Hollander
Trial Dates - 5-24-90, 6-1-90, 6-12-90, and 6-20-90
Appeal Filed - 9-28-90
Record Due to be Transmitted - 60 days from 9-28-90 (11-27-90)

Dear Court Reporter:

Please prepare the transcript of the trial and disposition for the case indicated below and bill our office accordingly. This includes all arguments and statements of counsel as well as instructions to the jury and all evidentiary pretrial hearings. We require an original and two exact copies of your bill and ask that you show thereon each trial date covered. Please also include your social security number.

Please deliver the original of the transcript to the Clerk's Office, one copy to the Attorney General's Office and one copy to this office.

Should you have any questions or need an extension of time, please do not hesitate to contact me.

Very truly,

ALFRED NANCE
Attorney at Law

cc: Clerk, Circuit Court for Baltimore City
Appeals Section

AN/ns

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CSA/PHC Form No. 2 Mailed: October 22, 1990

IN THE COURT OF SPECIAL APPEALS

JOSE' RODRIGUEZ	*	
	*	
vs.	*	PHC No. 771
	*	September Term, 1990
FRANCINA ARRINGTON	*	

O R D E R

The Court of Special Appeals, pursuant to Maryland Rule 8-206(a)(1), orders and directs that the above captioned appeal proceed without a Prehearing Conference.

BY THE COURT

JUDGE

Date: October 22, 1990

cc: *Saundra E. Banks, Clerk
Circuit Court for Baltimore City
Alfred Nance, Esq.
Sandra H. Crain, Esq.

*Mr./Ms. Clerk: Will you kindly place this Order with the record in this cause (Your PD70-119070). The date of this Order establishes commencement of the 10 day period under Md. Rule 8-411(b) and the 60 day period for transmittal of the record under Md. Rule 8-412(a).

Leslie D. Gradet, Clerk

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FRANCINA E. ARRINGTON

Petitioner

VS.

JOSE' D. RODRIGUEZ

Defendant

FILED

SEP 28 1990

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO: PD70-119070

DRD CASE NO: 2121-89

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* * * * * * * * * * * * * * *

NOTICE OF APPEAL

Please note an Appeal to the Court of Special Appeals in the above captioned matter.

ALFRED NANCE, Esquire
1 E. Lexington Street
Suite 200
Baltimore, MD 21202
(301)659-6907

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of the aforegoing Notice of Appeal was mailed this 28th day of September, 1990 to Sandra Craine, Baltimore City office of the State's Attorney, Clarence M. Mitchell, Jr., Courthouse, Calvert & Fayette Streets, Baltimore, MD 21202.

ALFRED NANCE, Esquire

P.D.C. given on 9/28/90 Joi G. Carter

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fd 31-August 1990

FRANCINA E. ARRINGTON,	*	IN THE
Petitioner	*	CIRCUIT COURT
v.	*	FOR
JOSE D. RODRIGUEZ,	*	BALTIMORE CITY
Defendant	*	Case No. PD70-119070
	*	DRD Case No.: 2121-89

* * * * * * * * * * * * * * *

MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Introduction

On March 3, 1989, Francina Evonne Arrington ("Arrington"), a single mother, filed a paternity petition in the Domestic Relations Division (the "DRD") of the Circuit Court for Baltimore City. In the petition, she named Jose DeJesus Rodriguez ("Rodriguez" or "Defendant") as the father of her minor child born on August 9, 1987.

A settlement conference on the issue of paternity was held on March 31, 1989 before a DRD hearing examiner. As a result of this conference, Rodriguez entered a support agreement pursuant to Code, Fam. Law Art., Sec. 5-1016,[1] which settled the paternity complaint made against him.[2] As a result of this settlement, Defendant waived

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[1] All further statutory references will be to the Family Law Article of the Maryland Code unless otherwise noted.

[2] This section provides in full:

> Sec. 5-1016. Voluntary Support Agreement.
>
> (a) Settlement proposals. -- Before or after the filing of a complaint, the alleged father may propose a settlement concerning the child's support whether the alleged father

his rights to a blood test, to counsel, and to a trial on the question of paternity.

Pursuant to Sec. 5-1016, Judge Richard T. Rombro approved the settlement agreement on the same date upon which it was reached, and the terms of the agreement were incorporated in a court Order. Rodriguez challenges the agreement and the Order, and has filed a Motion to Strike the Consent Paternity Decree (the "Motion").

Rodriguez claims that the decree became enrolled as a result of mistake and irregularity, and that his due process rights were violated. He contends that his native tongue is Spanish, and that he was unable to speak or adequately understand the rights communicated to him in English. He also claims he did not understand the consequences of the waiver of his right to a trial on the merits as to paternity, and argues that his waiver was not made voluntarily,

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admits or denies paternity.

(2) The proposed contribution may be in a lump sum, installments, or otherwise.

(b) Conditions for settlement. -- A settlement agreement shall be prepared, executed, and submitted to the court for approval if:

(1) the complainant agrees to accept the settlement;

(2) the State's Attorney is satisfied that the amount and terms of the settlement are fair and reasonable;

(3) the complainant has been advised properly regarding the contents of the settlement; and

(4) the complainant is competent to accept the settlement.

(c) Incorporation in order. -- If the court approves the settlement agreement, the terms of the agreement shall be incorporated in a court order.

(d) Effect of order. -- A court order incorporating a settlement agreement is as enforceable as any order that is passed after a hearing.

knowingly and intelligently. See generally, El Derecho de Aviso: Due Process and Bilingual Notice, 83 YALE. L.J. 385 (1973). Defendant claims that the rights at issue are of constitutional dimension, so that the principles of due process require the court to invoke its revisory power to set aside the judgment of paternity. For the reasons set forth below, Defendant's Motion must be denied.

II. Standard of Review

Maryland law specifically provides that a finding of paternity is a final order. Section 5-1038(a) of the Family Law Article provides:

> Except in the manner and to the extent that any order or decree of an equity court is subject to the revisory power of the court under any law, rule, or established principle of practice and procedure in equity, a declaration of paternity in an order is final.

Defendant essentially concedes that in order to prevail, he must convince this court to invoke its revisory power. Maryland Rule 2-535 circumscribes the limits of that power. It provides that after 30 days: "On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake or irregularity." See also, Code, Sec. 6-408, Cts. & Jud. Proc. Art. Generally, it is the burden of the party challenging a judgment collaterally to show "clear and convincing proof" of fraud, mistake or irregularity before a judgment may be stricken pursuant to the court's revisory power. Billingsley v. Lawson, 43 Md.App. 713, 718 (1979), cert. denied, 286 Md. 743, cert. denied, 446 U.S. 919 (1980).

The courts narrowly define and strictly apply the terms fraud, mistake and irregularity, and "rigorously emphasize the finality of judgments." Andresen v. Andresen, 317 Md. 380, 387-89 (1989). As a result, the limited grounds on which a court can revise or vacate an enrolled judgment are well established.

The term "fraud" requires fraud "extrinsic" to the case, which actually prevents an adversarial trial.[3] Extrinsic fraud arises

> [w]here the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side, -- these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing.

Schwartz v. Merchants Mort. Co., 272 Md. 305, 309 (1974); Accord, Hamilos v. Hamilos, 297 Md. 99, 106 (1983). In order to impeach a decree based on extrinsic fraud, the deception practiced in obtaining it must be clearly established before the propriety of the decree can be investigated. Pinkston v. Swift, 231 Md. 346, 352-53 (1962).

As to mistake, the cases teach that this term embraces only jurisdictional errors. "Mistake" does not apply to a situation of unilateral error of judgment by one of the parties. Hamilos v.

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[3] Unlike extrinsic fraud, "intrinsic" fraud is employed during the course of the hearing. Schwartz v. Merchants Mort. Co., 272 Md. 305, 309 (1983). Intrinsic fraud is insufficient to impeach a decree, so that even if the decree was obtained by perjured testimony or forged documents, it will not be set aside. Id. at 308; Hamilos v. Hamilos, 297 Md. 99, 105 (1983).

Hamilos, 52 Md.App. 488, 497 (1982), aff'd, Hamilos, supra, 297 Md. at 107; Bernstein v. Kapneck, 46 Md.App. 231 (1980), aff'd, 290 Md. 451 (1981).

The term "irregularity" is limited to error which amounts to a defect of process or procedure. See generally, Weitz v. MacKenzie, 273 Md. 628 (1975); Hamilos, supra, 52 Md.App. at 497-98, aff'd, 297 Md. at 107. It has been defined as the doing or not doing of that, in the conduct of a legal action, which is not in conformity with the practice of the court. Berwyn Fuel & Feed Co. v. Kolb, 249 Md. 475, 479 (1968).

Rodriguez argues that the concepts of mistake and irregularity apply because, in effect, he did not waive his rights voluntarily. However, even where a judgment becomes enrolled through a waiver of constitutional due process rights, the party challenging the judgment collaterally must prove that the waiver of his rights was not voluntary, knowing, and intelligent. See County of Los Angeles v. Soto, 35 Cal.App.3d 483, 674 P.2d 750, 198 Cal.Rptr. 779, 785 (1984). Cf. Md. Rule 4-242(f) (court may permit withdrawal of guilty plea where defendant establishes that plea was not voluntary, with understanding of the nature of the charge and the consequences of the plea); United States v. Dabdoub-Diaz, 599 F.2d 96 (5th Cir.), cert. denied, 44 U.S. 878 (1979) (defendant not entitled to withdrawal of guilty plea where did not show that language barrier hindered understanding of consequences); United States v. Sambro, 454 F.2d 918 (D.C.Cir. 1971); Martinez v. United States, 411 F.Supp. 1352 (D.N.J. 1976), aff'd, 547 F.2d 1162 (3d Cir. 1977).

The central question, then, is whether Defendant knowingly, voluntarily, and intelligently waived his rights and settled his paternity dispute at the DRD. If Rodriguez did not have sufficient English speaking and/or reading skills to understand the rights communicated to him, it follows, he argues, that he did not enter an appropriate waiver of rights.

III. Discussion

A) Factual Findings

At the evidentiary hearing, the parties were in sharp disagreement concerning the critical question of whether Rodriguez had the ability to understand and communicate in English.[4] Rodriguez, through an interpreter at the court hearing, maintained that Spanish is the only language he speaks. Although Defendant conceded that he speaks "a little English,"[5] he testified that he lacks sufficient understanding of the English language and did not understand the advice of rights, the proceedings, or the consequences of entering into the consent paternity decree. Arrington vigorously disagrees.

Rodriguez was born in 1938 in the Dominican Republic, where Spanish is the native language. He lived there until 1965, and

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[4] The court's factual determinations in this case must necessarily rest heavily on an assessment of the credibility of the witnesses from whom testimony was taken. This court finds the testimony offered by Arrington and her witnesses to have been more credible and consistent than that of Rodriguez.

[5] In fact, on one occasion at the hearing, he answered a question posed to him in English before it had been translated by his interpreter.

completed his education through the fifth or sixth grade. In 1966, he moved to Venezuela, and then to New York City in 1972. Rodriguez testified that, although he has lived in the United States for 18 years, he has spoken only Spanish at home, as well as in the areas where he lived and worked. Rodriguez's wife, to whom he has been married since 1971, speaks English as well as Spanish, and Rodriguez stated that he has always relied on her to read his mail, handle their correspondence in English, and pay their bills.

Rodriguez reported to the DRD office at the courthouse on March 31, 1989 because he received a letter instructing him to do so. This letter was translated for him by his wife, who accompanied him to the DRD, and remained nearby in the hall. It is undisputed that the parties had been involved in a relationship, and Rodriguez admitted having sexual relations with Arrington on at least one occasion. Moreover, Defendant knew before the DRD hearing that Arrington had given birth. Further, Arrington previously told Defendant he was the father, and Rodriguez stated that he "did not believe it." He also claimed he did not know that he was at the DRD for any reason connected with that accusation.

When Defendant arrived at the DRD office, nobody attempted to speak to him in Spanish. It is undisputed that no interpreter was furnished, and Rodriguez never asked for one. Rodriguez did not remember if he told anybody he did not understand English. Although his wife was waiting in the hallway, no more than 30 feet away, he never requested her presence to act as an interpreter because he feared she would be "embarrassed."

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Jacqueline Blanton ("Blanton"), the DRD hearing examiner involved in this case, testified to the DRD's procedures. Her job is to explain to the putative father his rights to dispute paternity. She also attempts to make sure that the putative father understands all of his rights.

A written notification of rights form ("the Notification") is given to the putative father to read.[4] He then may check off the appropriate blank indicating either that he does or does not understand his rights. In the event both spaces are marked, Blanton testified that she attempts to find out if the putative father genuinely has a question, or is merely not following directions properly. In the latter event, Blanton has the putative father cross out one signature and initial where he has done so. If a person does

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[4] This form is captioned "Notification of Rights" and contains the docket and DRD numbers assigned to the case. At the relevant time, the text of the form read as follows:

"You are advised, that by admitting that you are the father of the child in this case you have stopped the Court process.

Be advised that if you weren't sure, or if you denied you were the child's father the Court process would have continued and you would have had the following rights:

(1) The right to a lawyer, and if you could not afford a lawyer, to be referred to some other agency for possible legal representation.

(2) The right to take a blood test to see if it excluded you, or included you, to a mathematical probability, as the father of the child. If you could not afford the cost of the blood test, to ask the City of Baltimore to advance the cost of the test.

(3) The right to a trial in this case, whether a jury trial or trial before a Judge of the Circuit Court. Testimony would be taken and, the case would be decided by a preponderance of the evidence.

(4) The right to bring witnesses who support you if you were to deny paternity and the right to cross-examine the Plaintiff (mother) in the Court, or any other witnesses she may have.

You are further advised that you have a duty to support this child until he or she reaches the age of eighteen (18) years, dies, or becomes emancipated."

not seem to understand the Notification, Blanton refers the case to court for a hearing so as to attempt to avert confusion concerning the validity of the consent. Blanton testified she does not point to one blank as opposed to another to suggest which should be signed, and that the putative father is not prevented from leaving if he does not wish to stay at the hearing.

Rodriguez was presented with the Notification and was asked to sign the blank under the appropriate space indicating either that he had "received a copy of this Notification and [did] not want an explanation," or indicating that he "want[ed] to have this Notification explained to [him]." Although Rodriguez's signature appears in both blanks, the signature in the latter space was scratched out and initialed by Rodriguez.

Rodriguez admitted that he signed the Notification provided to him by the DRD hearing examiner. Defendant's Exhibit 1. He stated that he was told to sign on both lines, but he claimed he did not know why he was supposed to do so. He read the sheet, he testified, but did not understand it. Again, he never told anybody that he did not understand it, nor ask why he was to sign it. As far as Defendant could recall, nobody said anything to him about a right to a blood test, an attorney, or a trial.

In contrast, Blanton testified that Rodriguez admitted paternity and said he was willing to support the child. His concern was not paternity, but rather the amount of support he would pay. She also stated that Defendant offered to pay $100 per month for child support, but that Arrington requested the sum of $200 per month. The

parties came to an agreement of $25 per week effective April 3, 1989, to increase to $50 per week as of June 8, 1989. Blanton also testified that Defendant corrected his address and date of birth -- in English -- and provided his social security number to her.

Blanton did not attempt to speak to Rodriguez in Spanish. She believed he understood her from his responses, and she stated that she had no reason to think an interpreter was necessary, so she did not suggest one. Blanton specifically testified that Rodriguez responded to her inquiries in English.

Nancy Alexander ("Alexander") of the Bureau of Support Enforcement (the "BOSE") testified that she also had spoken to Rodriguez concerning this case. According to Alexander, Rodriguez had sent in $1250 in child support by April 25, 1990. On May 9, 1990, she received a typed letter from Defendant stating that he was not able to send the money that week because of financial difficulties. Plaintiff's Exhibit 5. Alexander spoke with Defendant by phone on May 21, 1990, because a wage lien had been requested by Arrington, and the BOSE needed to know his place of employment. The man she spoke to stated in accented English that he was Rodriguez, and responded appropriately to the questions she asked.

Arrington testified that she does not speak any Spanish. She vigorously disputed Rodriguez's professed incomprehension of English. Arrington testified that she had known Defendant since 1986, when he first came to her house to do some installation work. They became friends, and always spoke in English on the numerous occasions they talked.

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Arrington stated that Rodriguez was involved in a sexual relationship with her, and that he never denied he was her baby's father until the hearing before this court. According to Arrington, at the DRD hearing, Blanton asked Rodriguez if he was admitting that he was the father of Arrington's baby after advising him of his rights. Defendant turned to Arrington and said, in English, "I never told you she was not mine," Arrington testified. Arrington stated that Rodriguez acknowledged his paternity on other occasions as well and voluntarily gave her monetary support and gifts for the child.

Rodriguez vigorously denied any admission that he was the father of the child. He stated, however, that he knew there was a question as to his paternity even at the time of the DRD hearing. He "had his doubts." Nevertheless, he did not communicate these doubts to anyone at the time of the hearing. Rodriguez also denied having voluntarily given Arrington any support for the child prior to the institution of this action. But he acknowledged that after the hearing, he determined that payments had to be made after March 31, 1989, and he directed his wife to make the payments accordingly. Rodriguez testified that he complied with the order to pay child support for more than a year because "it did not occur to him to ask why he should support a child that wasn't his, because [he] was a bit confused."

Finally, evidence was also presented by Arrington that Rodriguez took and passed a written test to receive a Maryland commercial driver's license. See Plaintiff's Exhibits 1-6. This test, which can be safely characterized as challenging to read, contained fairly complicated questions written in English. The test is answered by

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checking off spaces in a multiple-choice format. Rodriguez admitted that he did not have the test in advance, and that nobody accompanied him to the test to translate it for him. He claimed that he was able to pass the test because his wife helped him study from an English book on the subject.

B. Legal Framework

Clearly, Rodriguez has not established any extrinsic fraud. There is no allegation here that Defendant was purposefully deceived into entering the voluntary support agreement, nor prevented from pursuing any alternative course of action in this case. Nor has Defendant shown any jurisdictional mistake. Moreover, Defendant has not proven the usual type of defect of process or procedure sufficient to constitute an irregularity within the definition of that term. What remains, then, is whether Rodriguez has established that the paternity decree has violated his due process rights, and, if so, whether the court may exercise its revisory power for such an infringement. Rodriguez argues that a violation of his due process righs is a constitutional defect sufficient to constitute mistake or irregularity, or otherwise a permissible basis for this court to invoke its revisory power.

Defendant's contention is based primarily on the case of D.H. Overmyer Co. v. Frick Co., 405 U.S. 174 (1972).[7] In Overmyer, the

[7] Relying on Armstead v. Dandridge, 257 Pa.Super. 415, 390 A.2d 1305 (1978), Arrington argues that Overmyer is not applicable to the instant case, and that a putative father need not be informed of his "rights." In Armstead, there was an admission of paternity, but the court did not consider the applicability of Overmyer in this context.

Court addressed a constitutional challenge to a cognovit note provision, whereby a debtor in advance of default waived service of process and authorized the entry of judgment under an Ohio confession of judgment statute. In its analysis, the Court outlined the considerations relevant to determination of a contractual waiver of due process rights.[8] It recognized that, in the civil area, acquiescence in the loss of fundamental rights will not be presumed. Id. at 186. See Ohio Bell Tel. Co. v. Public Utilities Comm'n, 301 U.S. 292, 304 (1937). Indeed, "courts indulge every reasonable presumption against waiver" in the civil as well as the criminal area. Aetna Ins. Co. v. Kennedy, 301 U.S. 389, 393 (1937). The Court applied the standards governing waiver of constitutional rights in a criminal proceeding, see Brady v. United States, 307 U.S. 742, 748 (1970), although it did not hold that such standards must necessarily apply. See Fuentes v. Shevin, 407 U.S. 67, 94 (1972).

On the particular facts before it, the Court held that the

Instead, the court examined the requirements for the waiver of criminal rights and found them inapposite, since no criminal proceeding had been filed against the putative father at the time he voluntarily appeared before a domestic relations counselor and admitted paternity, he was not the focus of any criminal investigation, and his personal liberty was not restrained in any way. 390 A.2d at 1309-10.

[8] Both parties apparently agree that the analysis of Overmyer dealing with contractual waiver of rights applies to the voluntary support agreement at issue in the instant case. It is well established that "[a] consent judgment, since it is the product of negotiations, is subject to construction as a contract." Ramsey, Inc. v. Davis, 66 Md.App. 717, 727 (1986). See also, Roged, Inc. v. Paylee, 280 Md. 248, 254 (1977); Monticello v. Monticello, 271 Md. 168, 173, cert. denied, 419 U.S. 880 (1974); Dorsey v. Wroten, 35 Md.App. 359, 361 (1977).

contractual waiver of due process rights was made voluntarily, intelligently, and knowingly. 405 U.S. at 187. Overmyer emphasized, however, that the waiver of due process rights is a question of fact to be determined under the particular circumstances present in a given case. See 405 U.S. at 188. See also, Md.-Nat'l Cap. P. & P. v. Wash. Nat'l Arena, 282 Md. 588, 613-14 (1978); Billingsley v. Lincoln Nat's Bank, 271 Md. 683, 687-88 (1974).

County of Ventura v. Castro, 93 Cal.App.3d 462, 156 Cal.Rptr. 66 (1979), cert. denied, 444 U.S. 1098 (1980), applied the principles of Overmyer to strike down the California statute parallel to Sec. 5-1016. The court stated that the positions of the parties in such cases, and the direct and collateral consequences of an execution of an agreement for judgment concerning paternity and child support, "demanded... constitutional scrutiny." 156 Cal.Rptr. at 71. Castro held the statute facially unconstitutional since it provided no protection for the due process notice and hearing rights of the noncustodial parent, and also failed to address the manner in which a defendant was to be permitted to waive those rights. The Court said:

> [T]he mere fact that the defendant read and executed the agreement does not demonstrate that he knowingly and intelligently waived the rights lost by that execution. Absent an express statement in the agreement setting forth the rights to which defendant is entitled and stating that he understands those rights and knowingly waives them, we must "'indulge every reasonable presumption against waiver' of fundamental constitutional rights." Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

Id. at 70.[9]

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[9] Assuming, arguendo, that the standards set forth in Castro apply, Maryland complies. As part of the agreement into which he enters, a putative father in Maryland is presented with a

In County of Los Angeles v. Soto, supra, the court rejected the argument that all agreements for entry of judgment of paternity and child support executed in conformity with the statute as it existed prior to Castro were automatically void. Instead, according to the court, a defendant challenging such an agreement was required to

> establish that he was, in fact, unaware of the consequences of the agreement or of the fact that he waived his rights by executing the agreement, and that he would not have executed the agreement had he been aware of these matters... If the defendant establishes the involuntary nature of the agreement in this manner, and satisfies the court that he has been diligent in his efforts to set aside the judgment, the court must grant a motion to set aside the judgment.

198 Cal.Rptr. at 785.

Since Castro, the Supreme Court has held that the interests of putative fathers in paternity actions are entitled to at least some degree of constitutional protection. See Little v. Streater, 452 U.S. 1, 13 (1981) (Statute providing cost of blood grouping tests in paternity actions to be borne by party requesting them denied due process when applied to deny such tests to indigent defendant). Accord, Williams v. Rappeport, 699 F.Supp. 501 (D.Md. 1988); Soto, supra, 198 Cal.Rptr. at 782; Corra v. Coll, 305 Pa.Super. 179, 451 A.2d 480 (1982). The contours and applicability of the protection due these interests are still evolving, however. See Rivera v. Minnich, 483 U.S. 574 (1987) (Due process satisfied by preponderance of evidence standard in paternity proceedings, which differ significantly from proceedings to terminate parent-child

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Notification of Rights that expressly sets forth his rights, and provides for him to state that he understands those rights and knowingly waives them. See, supra, n.6 and accompanying text.

relationship, in which clear and convincing proof required).[10]

This trend extending constitutional protection to the interest of putative fathers in paternity proceedings further bolsters the validity of the reasoning of Castro. As a result, this court will assume for the purposes of this case the applicability of Overmyer, and examine the validity of the consent paternity decree at issue pursuant to the principles of that case. In doing so, this court is congnizant that the waiver of due process rights is a question of fact to be determined under the particular circumstances present in the instant case. Overmyer, supra, 405 U.S. at 188.

Based on the evidence presented, this court finds that Rodriguez has not carried his burden of establishing that a language barrier hindered his understanding of the consequences of his consent. While Rodriguez is not entirely proficient with the English language, the record demonstrates that he had sufficient English speaking skills to understand why he was at the DRD, to comprehend the rights explained to him, and to understand the consequences of the waiver of these

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[10] In Rivera, the Court stated:

> Resolving the question whether there is a causal connection between an alleged physical act of a putative father and the subsequent birth of the plaintiff's child sufficient to impose financial liability on the father will not trammel any pre-existing rights; the putative father has no legitimate right and certainly no liberty interest in avoiding financial obligations to his natural child that are validly imposed by state law. In the typical contested paternity proceeding, the defendant's nonadmission of paternity represents a disavowal of any interest in providing the training, nurture and loving protection that are at the heart of the parental relationship protected by the Constitution.

483 U.S. at 579-80.

rights. Based on all of the evidence presented, this court is convinced that Rodriguez waived his rights and entered the consent paternity decree voluntarily, knowingly, and intelligently. Accordingly, the consent paternity decree entered in this case did not become enrolled as a result of mistake or irregularity. Moreover, Defendant's due process rights were not infringed upon in any way. Defendant's second thoughts about his decision to admit paternity cannot be addressed here; his Motion must fail.

Based on the foregoing, it is, this 31st day of August, 1990, by the Circuit Court for Baltimore City,

ORDERED that the Motion to Strike the Consent Paternity Decree be, and the same hereby is, DENIED.

Costs to be paid by Defendant.

Ellen L. Hollander

Ellen L. Hollander, Judge

cc: Ms. Francina E. Arrington, Petitioner
Mr. Jose D. Rodriguez, Defendant
Alfred Nance, Esquire
Sondra H. Crain, Esquire

PD 70-119070

CIRCUIT COURT FOR BALTIMORE CITY
EXHIBIT LIST

PLAINTIFF Francina E. Arrington

DEFENDANT José DeJesus Rodriguez

REFERENCE

JUDGE Ellen L. Hollander

CLERK L. J. Edwards **STENO**

COURT Pt 20 Rm 420

PLAINTIFF EXHIBIT

6/1/98

1. Combination Veh. Test Form A
2. Gen. Knowledge Test " B
3. Air Brake Test " B
4. Answer Sheet Commercial Drivers License
5. " " Combination - A
6. " " License - Form B
7. Paternity Complaint Worksheet
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.

DEFENDANT EXHIBIT

5/24/98

1. Notification of Rights
2. Tax Refund Intercept Program
3.
4.
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Maryland Department
of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

COMBINATION VEHICLES TEST
FORM A

DO NOT WRITE
ON THIS
BOOKLET

INSTRUCTIONS

Do *not* start the test until you have read all the instructions.

This is a test of the knowledge required to safely drive combination vehicles. There are 20 questions on the test.

Read each question. Make sure that you read *all* the possible answers. Decide which answer is best. There is only *one* best answer for each question. Then mark that answer on your answer sheet by blackening in the circle with the letter for that answer. You are not to make any marks on the test booklet.

Look at the EXAMPLE box at the top of the answer sheet. It shows how to mark your answers. You must blacken in completely the circle for the answer that you wish to mark. You may change an answer if you wish, but be sure that you completely erase the old answer.

Remember, do not mark more than one answer. If you mark more than one answer to a question, it will be graded as a wrong answer.

If you do not know the answer to a question, you should guess. You should answer all 20 questions on the test.

This test is not timed. You will have as long to work on it as you wish.

You may begin whenever you are ready. If you have any questions either now or as you work through the test, raise your hand.

1. When should you use the hand valve to park a combination vehicle?

   a. To park at loading docks
   b. To park for less than two hours
   c. To park on a grade
   d. Never

2. You have coupled with a semitrailer. Where should you put the front trailer supports before driving away?

   a. Raised 1/2 way with the crank handle secured in its bracket
   b. Raised 3/4 way with the crank handle removed
   c. Fully raised with the crank handle secured in its bracket
   d. 3 turns off the top with the crank handle secured in its bracket

3. You supply air to the trailer tanks by:

   a. pushing in the trailer air supply valve.
   b. pulling out the trailer air supply valve.
   c. connecting the service line glad hand.
   d. applying the trailer hand valve.

4. You are coupling a tractor to a semitrailer and have backed up but are not under it. What should you hook up *before* backing under?

   a. The electrical service cable
   b. The emergency and service air lines
   c. The ground cable
   d. Nothing; back up and lock the fifth wheel

5. If the service air line comes apart while you are driving a combination vehicle but the emergency line stays together, what will happen right away?

   a. The emergency tractor brakes will come on
   b. The trailer's air tank will exhaust through the open line
   c. The emergency trailer brakes will come on
   d. Nothing is likely to happen until you try to apply the brakes

6. A driver crosses the air lines when hooking up to an old trailer. What will happen?

   a. The hand valve will apply the tractor brakes instead of the trailer brakes.
   b. The brake pedal will work the trailer spring brakes instead of the air brakes.
   c. If the trailer has no spring brakes, you could drive away but you wouldn't have trailer brakes.
   d. The brake lights will not come on when the brake pedal is pressed.

7. In normal driving, some drivers use the hand valve before the brake pedal to prevent a jackknife. Which of these statements is true?

   a. It should not be done
   b. It results in less skidding than using the brake pedal alone
   c. It lets the driver steer with both hands
   d. It is the best way to brake and keep the truck in a straight line

8. The air leakage rate for a combination vehicle (engine off, brakes *off*) should be less than _____ psi per minute.

   a. 1/2
   b. 1
   c. 2
   d. 3

9. When you get ready to back under a semitrailer you should line up:

   a. about 12 degrees off the line of the trailer.
   b. the kingpin to engage the driver's side locking jaw first.
   c. directly in front of the trailer.
   d. the left rear outer dual wheel with the kingpin.

10. The fifth wheel locking lever is not locked after the jaws close around the kingpin. This means that:

    a. the trailer will not swivel on the fifth wheel.
    b. you can set the fifth wheel for weight balance.
    c. the parking lock is off and you may drive away.
    d. the coupling is not right and should be fixed before driving the coupled unit.

11. There are two things that a driver can do to prevent a rollover. They are: (1) Keep the cargo as close to the ground as possible; and (2):

    a. Make sure that the brakes are properly adjusted.
    b. Keep both hands firmly on the steering wheel.
    c. Go slow around turns.
    d. Keep the fifth wheel free play tight.

12. Air brake equipped trailers made before 1975:

    a. often do not have spring brakes.
    b. are easier to brake than newer trailers because they are heavier.
    c. usually need a glad hand converter.
    d. cannot be legally operated on interstate highways.

13. You have pushed in the trailer supply valve. You should not move the tractor until the whole air system is:

    a. empty.
    b. at normal pressure.
    c. flushed of all moisture.
    d. between 60 and 80 psi.

14. You are coupling a tractor and semitrailer and have connected the air lines. Before backing under the trailer you should:

    a. pull ahead to test the glad hand connections.
    b. supply air to the trailer system, then pull out the air supply knob to lock the trailer brakes.
    c. make sure that the trailer brakes are off.
    d. apply the brakes twice to alert others.

15. Air lines on a combination vehicle are often colored to keep from getting them mixed up. The emergency line is _____; the service line is _____.

    a. red; blue
    b. black; yellow
    c. blue; red
    d. orange; black

16. You are driving a combination vehicle when the trailer breaks away, pulling apart both air lines. You would expect the trailer brakes to come on and:

    a. the tractor to lose all air pressure.
    b. the tractor protection valve to close.
    c. the trailer supply valve to stay open.
    d. go off about every 2 seconds.

17. How much space should be between the upper and lower fifth wheel after coupling?

    a. At least 1/2 inch
    b. About 1/4 inch
    c. Just enough to see light through it
    d. None

18. After you lock the kingpin into the fifth wheel, you should check the connection by:

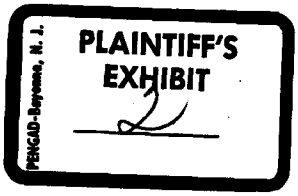
    a. pulling forward 50 feet, turning right and left.
    b. backing up with the trailer brakes released.
    c. pulling the tractor ahead sharply to release the trailer brakes.
    d. pulling the tractor ahead gently with the trailer brakes locked.

19. Why should you lock the tractor glad hands to each other (or dummy couplers) when you are not towing a trailer?

    a. The air circles back, getting cleaner each cycle
    b. The brake circuit becomes a back up air tank
    c. It keeps dirt and water out of the lines
    d. All of the above

20. You are about to back your tractor under a semitrailer. The trailer is at the right height when the:

    a. trailer landing gear are fully extended.
    b. kingpin is about 1 1/4 inches above the fifth wheel.
    c. end of the kingpin is even with the top of the fifth wheel.
    d. trailer will be lifted slightly when the tractor backs under it.



GENERAL KNOWLEDGE TEST
FORM B

DO NOT WRITE
ON THIS
BOOKLET

INSTRUCTIONS

Do not start the test until you have read all the instructions.

This is a test of the knowledge required to safely haul hazardous materials. There are 30 questions on the test.

Read each question. Make sure that you read all the possible answer. Decide which answer is correct. There is only one correct answer for each question. Then mark that answer on your answer sheet by blackening in the circle with the letter for that answer. You are not to make any marks on the test booklet.

Look at the EXAMPLE box at the top of the answer sheet. It shows how to mark your answers. You must blacken in completely the circle for the answer that you wish to mark. You may change an answer if you wish, but be sure that you completely erase the old answer.

Remember, do not mark more than one answer. If you mark more than one answer to a question, it will be graded as a wrong answer.

If you do not know the answer to a question, you should guess. You should answer all 30 questions on the test.

This test is not timed. You will have as long to work on it as you wish.

You may begin whenever you are ready. If you have any questions either now or as you work through the test, raise your hand.

1. When driving through work zones, you should:

   a. turn on your flashers.
   b. drive slowly.
   c. use your brake lights to warn drivers behind you.
   d. do all of the above.

2. You are driving a vehicle at 55 mph on dry pavement. About how much total stopping distance will you need to bring it to a stop?

   a. The length of the vehicle
   b. Twice the length of the vehicle
   c. Half the length of a football field
   d. The length of a football field

3. You must park on the side of a level, straight, *four-lane*, divided highway. Where should you place the reflective triangles?

   a. One within 10 feet of the rear of the vehicle, one about 100 feet to the rear, and one about 200 feet to the rear.
   b. One within 10 feet of the rear of the vehicle, one about 100 feet to the rear, and one about 100 feet to the front of the vehicle.
   c. One about 50 feet to the rear of the vehicle, one about 100 feet to the rear, and one about 100 feet to the front of the vehicle.
   d. One within 10 feet of the front of the vehicle, one about 200 feet to the front, and one about 100 feet to the rear.

4. According to the *Driver's Manual*, why should you limit the use of your horn?

   a. It can startle other drivers
   b. On vehicles with air brakes, it can use air pressure that may be needed to stop
   c. The horn is not a good way to let others know you're there
   d. You should keep both hands tightly gripping the steering wheel at all times

5. Which of these statements about accelerating is true?

   a. When traction is poor, more power should be applied to the accelerator.
   b. Rough acceleration can cause mechanical damage.
   c. You should feel a "jerking" motion if you are accelerating your vehicle properly.
   d. All of the above are true.

6. If a straight vehicle (no trailer or articulation) goes into a front-wheel skid, it will:

   a. slide sideways and spin out.
   b. slide sideways somewhat, but not spin out.
   c. go straight ahead even if the steering wheel is turned.
   d. go straight ahead but will turn if you turn the steering wheel.

7. Which of these statements about certain types of cargo is true?

   a. Unstable loads such as hanging meat or livestock can require extra caution on curves.
   b. Oversize loads can be hauled without special permits during times when the roads are not busy.
   c. Loads that consist of liquids in bulk do not cause handling problems because they are usually very heavy.
   d. When liquids are hauled, the tank should always be loaded totally full.

8. You are driving a heavy vehicle. You must exit a highway using an offramp that curves downhill. You should:

   a. slow down to a safe speed *before* the curve.
   b. slow to the posted speed limit for the offramp.
   c. come to a full stop at the top of the ramp.
   d. wait until you are in the curve before downshifting.

9. Which of these is a proper use of vehicle lights?

   a. Turning on your headlights during the day when visibility is reduced due to rain or snow
   b. Flashing your brake lights to warn someone behind you of a hazard that will require slowing down
   c. Flashing your brake lights to warn someone behind you that you are going to stop on the road
   d. All of the above

10. A key principle to remember about loading cargo is to keep the load:

   a. to the front.
   b. to the rear.
   c. as high as possible.
   d. balanced in the cargo area.

11. You are driving on a straight, level highway at 50 mph. There are no vehicles in front of you. Suddenly a tire blows out on your vehicle. What should you do *first*?

   a. Stay off the brake until the vehicle has slowed down
   b. Quickly steer onto the shoulder
   c. Begin light braking
   d. Begin emergency braking

12. Which of these is a good thing to remember when crossing or entering traffic with a heavy vehicle?

    a. Heavy vehicles need larger gaps in traffic than cars.
    b. The best way to cross traffic is to pull the vehicle partway across the road and block one lane while waiting for the other to clear.
    c. The heavier your load, the smaller the gap needed to cross traffic.
    d. Because heavy vehicles are easy to see, you can count on other drivers to move out of your way or slow down for you.

13. Which of these statements about staying alert to drive is true?

    a. A half-hour break for coffee will do more to keep you alert than a half-hour nap.
    b. There are drugs that can overcome being tired.
    c. If you must stop to take a nap, it should be at a truck stop or other rest area--never on the side of the road.
    d. Sleep is the only thing that can overcome fatigue.

14. Which of these is a good thing to remember about using mirrors?

    a. You should look at a mirror for several seconds at a time.
    b. Convex mirrors make things look larger and closer than they really are.
    c. There are "blind spots" that your mirror cannot show you.
    d. You should check your mirrors twice for a lane change.

15. You are checking your steering and exhaust systems in a pre-trip inspection. Which of these problems, if found, should be fixed before the vehicle is driven?

    a. Steering wheel play of more than 10 degrees (2 inches on a 20-inch steering wheel)
    b. Leaks in the exhaust system
    c. A small leak of power steering fluid
    d. All of the above

16. Your vehicle has hydraulic brakes. While traveling on a level road, you press the brake pedal and find that it goes to the floor. Which of these statements is true?

    a. You should not downshift if you have an automatic transmission.
    b. Pumping the brake pedal may bring the pressure up so you can stop the vehicle.
    c. The parking brake will not work either because it is part of the same hydraulic system.
    d. All of the above are true.

17. You are checking your tires for a pre-trip inspection. Which of these statements is true?

a. Dual tires should be touching each other.
b. Tires of mismatched sizes should not be used on the same axel.
c. Radial and bias-ply tires can be used together on the same vehicle.
d. 2/32 inch tread depth is safe for the front tires.

18. Brake "fade":

a. can be caused by the brakes getting very hot.
b. can be corrected by letting up on the brakes for 1-2 seconds and then reapplying them.
c. is a problem that only occurs with drum brakes.
d. All of the above

19. You are driving on a two-lane road. An oncoming driver drifts into your lane and is headed straight for you. Which of these is most often the best action to take?

a. Hard braking
b. Steer into the oncoming lane
c. Steer to the right
d. Steer onto the left shoulder

20. Which of these statements about engine overheating is true?

a. If your engine overheats within 20 miles of the end of your trip, you should complete the trip and then check the problem.
b. You should never shut off an overheated engine until it cools.
c. You should never remove the radiator cap on a pressurized system until the system has cooled.
d. Antifreeze is not needed when the weather is warm.

21. You are driving a heavy vehicle with a manual transmission. You have to stop the vehicle on the shoulder while driving on an uphill grade. Which of these is a good rule to follow when putting it back in motion up the grade?

a. Keep the clutch slipping while slowly accelerating.
b. Use the parking brake to hold the vehicle until the clutch engages.
c. Let the vehicle roll straight backwards a few feet before you engage the clutch.
d. Let the vehicle roll backwards a few feet before you engage the clutch, but turn the wheel so that the back moves away from the roadway.

22. Which of these is a good thing to do when steering to avoid a crash?

a. Apply the brakes while turning.
b. Steer with one hand so that you can turn the wheel more quickly.
c. Don't turn any more than needed to clear what is in your way.
d. Avoid countersteering.

23. You are checking your wheels and rims for a pre-trip inspection. Which of these statements is true?

a. Rust around wheel nuts may mean that they are loose.
b. Cracked wheels or rims can be used if they have been welded.
c. A vehicle can be safely driven with one missing lug nut on a wheel.
d. Mismatched lock rings can be used on the same vehicle.

24. You do not have a Hazardous Materials Endorsement on your Commercial Driver's License. You are asked to deliver hazardous materials in a placarded vehicle. You should:

a. refuse to haul the load.
b. take the placards off the vehicle.
c. haul the load, but only to the nearest place where a driver with a Hazardous Materials Endorsement can take over.
d. haul the load, but file a report with the Department of Transportation after the trip.

25. As the Blood Alcohol Concentration (BAC) goes up, what happens?

a. The drinker more clearly sees how alcohol is affecting him/her
b. The effects of alcohol decrease
c. Judgment and self control are affected
d. The drinker can sober up in less time

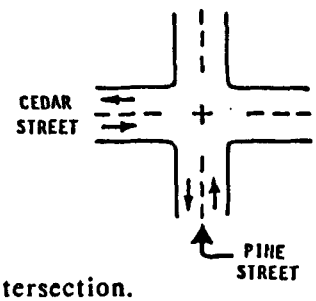
26. If you need to leave the road in a traffic emergency, you should:

a. try to get all wheels off the pavement.
b. brake hard as you leave the road.
c. avoid braking until your speed has dropped to about 20 mph.
d. avoid the shoulder because most shoulders will not support a large vehicle.

27. You should stop driving:

a. after 5 hours.
b. after 7 hours.
c. after 9 hours.
d. whenever you become sleepy.

28. For this item, refer to the figure at the right. You are driving a long vehicle that makes wide turns. You want to turn left from Pine Street onto Cedar Street. Both are two-lane, two-way streets. You should:



a. begin turning your vehicle as soon as you enter the intersection.
b. begin turning your vehicle when you are halfway through the intersection.
c. begin the turn with your vehicle in the left lane of Pine Street.
d. turn into the left lane of Cedar Street and then move to the right lane when the traffic is clear.

29. Which of these statements about drugs is true?

a. A driver can use any *prescription* drug while driving.
b. Amphetamines ("pep pills" or "bennies") can be used to help the driver stay alert.
c. Use of drugs can lead to accidents and/or arrest.
d. All of the above are true.

30. You should avoid driving through deep puddles or flowing water. But if you must, which of these steps can help keep your brakes working?

a. Driving through quickly
b. Gently putting on the brakes while driving through the water
c. Applying hard pressure on both the brake pedal and accelerator after coming out of the water
d. Turning on your brake heaters

31. Escape ramps are:

a. used to stop runaway vehicles.
b. designed to prevent injury to drivers and passengers.
c. designed to prevent damage to vehicles.
d. all of the above.

32. Which of these statements about downshifting is true?

a. When you downshift for a curve, you should do so *before* you enter the curve.
b. When you downshift for a hill, you should do so *after* you start down the hill.
c. When double-clutching, you should let the rpms decrease while the clutch is released and the shift lever is in neutral.
d. All of the above are true.

33. What will help keep an engine cool in hot weather?

a. Avoiding high-speed driving
b. Making sure the engine has the right amount of oil
c. Proper v-belt tightness
d. All of the above

34. When driving at night, you should:

a. look to the left side of the road when a vehicle is coming toward you.
b. drive faster when your low beams are on.
c. adjust your speed to keep your stopping distance within your sight distance.
d. All of the above

35. Which of these items is checked in a pre-trip inspection?

a. Whether all vehicle lights are working and are clean
b. Wiper blades
c. Cargo securement
d. All of the above

36. Which of these statements about backing a heavy vehicle is true?

a. Backing is always dangerous.
b. You should back and turn toward the driver's side whenever possible.
c. You should use a helper and communicate with *hand* signals.
d. All of the above are true.

37. Which of these statements about cold-weather driving is true?

a. An engine cannot overheat when the weather is very cold.
b. Windshield washer antifreeze should be used.
c. Exhaust system leaks are less dangerous in cold weather.
d. In snowstorms, wiper blades should be adjusted so that they do not make direct contact with the windshield.

38. Controlled braking:

a. can be used while you are turning sharply.
b. involves locking the wheels for short periods of time.
c. is used to keep a vehicle in a straight line when braking.
d. All of the above

39. How do you correct a rear-wheel acceleration skid?

a. Apply more power to the wheels
b. Stop accelerating
c. Apply the brakes
d. Downshift

40. Which of these is *not* a good rule to follow when caring for injured at an accident scene?

a. If a qualified person is helping them, stay out of the way unless asked to assist.
b. Stop heavy bleeding by applying direct pressure to the wound.
c. Keep injured persons cool.
d. Move severely injured persons if there is a danger due to fire or passing traffic.

41. For your safety, when setting out reflective triangles you should:

a. carry the triangles at your side.
b. hold the triangles between yourself and oncoming traffic.
c. keep them out of sight while you walk to the spots where you set them out.
d. turn off your flashers.

42. You are driving a *new* truck with a manual transmission. What gear will you probably have to use to take a long, steep downhill grade?

a. The same gear you would use to climb the hill
b. A lower gear than you would use to climb the hill
c. A higher gear than you would use to climb the hill
d. None; newer trucks can coast down hills

43. The purpose of retarders is to:

a. provide emergency brakes.
b. help slow the vehicle while driving and reduce brake wear.
c. apply extra braking power to the non-drive axles.
d. help prevent skids.

44. How far should a driver look ahead of the vehicle while driving?

a. 1-2 seconds
b. 5-8 seconds
c. 12-15 seconds
d. 18-21 seconds

45. Hydroplaning:

a. only occurs when there is a lot of water.
b. only occurs at speeds above 50 mph.
c. cannot occur when driving through a puddle
d. is more likely if tire pressure is low.

46. If you are being tailgated, you should:

a. increase your following distance.
b. flash your brakelights.
c. speed up.
d. signal the tailgater when it is safe to pass you.

47. Which of these statements about overhead clearance is true?

a. You should assume posted clearance signs are correct.
b. The weight of a vehicle changes its height.
c. If the road surface causes your vehicle to tilt toward objects at the edge of the road, you should drive close to the shoulder.
d. Extra speed will cause air to push your vehicle down for extra clearance.

48. You must drive on a slippery road. Which of these is a good thing to do in such a situation?

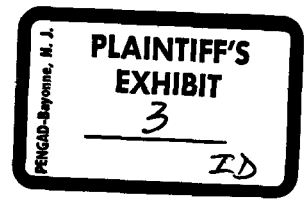
a. Use a smaller following distance
b. Apply the brakes while in curves
c. Slow down gradually
d. All of the above

49. Which of these statements about vehicle fires is true?

a. If cargo in a van or box trailer catches on fire, you should open the cargo doors as soon as you can.
b. If your engine is on fire, you should open the hood as soon as you can.
c. If a trailer is on fire, you should drive fast to put the flames out.
d. A burning tire should be cooled with water.

50. Cargo that is not loaded or secured properly can cause:

a. vehicle damage by overloading.
b. other highway users to hit or be hit by loose cargo.
c. injury to the driver during a quick stop or crash.
d. all of the above.



AIR BRAKE TEST
FORM B

DO NOT WRITE
ON THIS
BOOKLET

DL-136 (6-89)

INSTRUCTIONS

Do not start the test until you have read all the instructions.

This is a test of the knowledge required to safely haul hazardous materials. There are 30 questions on the test.

Read each question. Make sure that you read all the possible answer. Decide which answer is correct. There is only one correct answer for each question. Then mark that answer on your answer sheet by blackening in the circle with the letter for that answer. You are not to make any marks on the test booklet.

Look at the EXAMPLE box at the top of the answer sheet. It shows how to mark your answers. You must blacken in completely the circle for the answer that you wish to mark. You may change an answer if you wish, but be sure that you completely erase the old answer.

Remember, do not mark more than one answer. If you mark more than one answer to a question, it will be graded as a wrong answer.

If you do not know the answer to a question, you should guess. You should answer all 30 questions on the test.

This test is not timed. You will have as long to work on it as you wish.

You may begin whenever you are ready. If you have any questions either now or as you work through the test, raise your hand.

1. The air loss rate for a straight truck or bus with the engine off and the *brakes on* should not be more than:

   a. 1 psi in 60 seconds.
   b. 1 psi in one minute.
   c. 2 psi in 45 seconds.
   d. 2 psi in one minute.

2. Your brakes are fading when:

   a. you have to push harder on the brake pedal to control your speed on a downgrade.
   b. the brake pedal feels spongy when you apply pressure.
   c. you release pressure on the brake pedal and speed increases.
   d. less pressure is needed on the brake pedal for each stop.

3. The supply pressure gauge shows how much pressure:

   a. you have used in this trip.
   b. is in the air tanks.
   c. is going to the brake chambers.
   d. the air can take.

4. The brake system that applies and releases the brakes when the driver uses the brake pedal is the _____ brake system.

   a. emergency
   b. service
   c. parking
   d. none of the above

5. If your vehicle has an alcohol evaporator, every day during cold weather you should:

   a. check and fill the alcohol level.
   b. change the alcohol from a new bottle.
   c. clean the air filter with alcohol.
   d. check the oil for alcohol content.

6. Why should you drain water from compressed air tanks?

   a. The boiling point reduces braking power
   b. Water can freeze in cold weather and cause brake failure
   c. Water cools the compressor too much
   d. To make room for the oil that should be there

7. To test air service brakes, you should brake firmly when moving slowly forward. The brakes are *ok* if you notice:

   a. a delayed stopping action.
   b. an unusual feel.
   c. the vehicle "pulls" to one side.
   d. none of the above.

8. On long downhill grades, experts recommend using a low gear and light, steady pedal pressure instead of on-again, off-again braking. Why?

   a. Air usage is less with light steady pressure
   b. Brake linings do not heat up as much with light pressure
   c. You can keep vehicle speed constant in a low gear with light, steady pressure
   d. All of the above

9. Your truck or bus has a dual air brake system. If a low air pressure warning comes on for only one system, what should you do?

   a. Reduce your speed, and drive to the nearest garage for repairs.
   b. Reduce your speed, and test the remaining system while under way.
   c. Continue at normal speed. No action is needed when only one system fails.
   d. Stop right away and safely park. Continue only after the system is fixed.

10. During normal driving, spring brakes are usually held back by:

    a. air pressure.
    b. spring pressure.
    c. centrifugal force.
    d. bolts or clamps.

11. *Total* stopping distance for air brakes is longer than that for hydraulic brakes due to ___ distance.

    a. perception
    b. reaction
    c. brake lag
    d. effective braking

12. The most common type of foundation brake found on heavy vehicles is the:

    a. Disc.
    b. Wedge drum.
    c. S-cam drum.
    d. None of the above

13. With air brake vehicles, the parking brakes should be used:

a. whenever you leave the vehicle unattended.
b. to hold your speed when going downhill.
c. as little as possible.
d. only during pre- and post-trip inspections.

14. For *emergency* stab braking, you should:

a. pump the brake pedal rapidly and lightly.
b. *press on the brake pedal as hard as you can, release the brakes when the wheels* lock, and when the wheels start rolling put the brakes on fully again.
c. brake hard until the wheels lock, then get off the brakes for as much time as the wheels were locked.
d. press hard on the brake pedal and apply full hand valve until you stop.

15. Parking or emergency brakes of trucks and buses can be legally held on by ____ pressure.

a. spring
b. fluid
c. air
d. atmospheric

16. The driver must be able to see a low air pressure warning which comes on before pressure in the service air tanks falls below _____ psi.

a. 20
b. 40
c. 60
d. 80

17. If your vehicle has an alcohol evaporator, it is there to:

a. rid the wet tank of alcohol that condenses and sits at the bottom.
b. eliminate the need for daily tank draining.
c. boost tank pressure the same way that turbochargers boost engines.
d. reduce the risk of ice in air brake valves in cold weather.

18. The brake pedal in an air brake system:

a. controls the speed of the air compressor.
b. is seldom used, compared to hydraulic systems.
c. controls the air pressure applied to put on the brakes.
d. is connected to slack adjusters by a series of rods and linkages.

19. If your truck or bus has *dual parking control valves*, you can use pressure from a separate tank to:

a. balance the service brake system when you are parked.
b. stay parked twice as long without using up service air pressure.
c. release the spring emergency/ parking brakes to move a short distance.
d. brake harder if the main tank is getting low.

20. To check the free play of manual slack adjusters of S-cam brakes, you should park on:

a. level ground and apply the parking brakes.
b. level ground, chock the wheels, and release the parking brakes.
c. level ground and drain off air pressure before checking the adjustment.
d. a slight grade, release the parking brakes, and apply the service brakes, watching for vehicle movement.

21. The most important thing to do when a low air pressure warning comes on is:

a. upshift.
b. downshift.
c. adjust the brake pedal for more travel.
d. stop and safely park as soon as possible.

22. The air compressor governor controls:

a. the speed of the air compressor.
b. air pressure applied to the brakes.
c. when air is pumped into the air tanks.
d. when the brake chambers release pressure.

23. The braking power of the spring brakes:

a. increases when the service brakes are hot.
b. depends on the service brakes being in adjustment
c. is not affected by the condition of the service brakes.
d. can only be tested by highly-trained brake service people.

24. *All* air brake equipped vehicles have:

a. an air use gauge.
b. a supply pressure gauge.
c. at least one brake heater.
d. a backup hydraulic system.

25. If you must make an *emergency* stop, you should brake so you:

a. use the hand brake before the brake pedal.
b. do not need to worry about steering.
c. can steer and so your vehicle stays in a straight line.
d. use the full power of the brakes to lock them.

PLAINTIFF'S EXHIBIT 4

PENCAD-Bayonne, N. J.

867

COMMERCIAL DRIVER'S LICENSE

GENERAL KNOWLEDGE TEST ANSWER SHEET

FORM: B

NAME: A Joy Rodriguez

LICENSE NUMBER: R-362-440-005-940

TODAY'S DATE: 2-20-90

EXAMPLE

X. (A) ● (C) (D)

1.	A	✗	C	✗	19.	A	B	●	D	37.	A	●	C	D
2.	A	B	C	✗	20.	A	B	●	D	38.	A	●	✗	D
3.	✗	B	C	D	21.	A	●	C	D	39.	A	●	C	D
4.	✗	B	C	D	22.	A	B	●	D	40.	A	B	✗	●
5.	A	✗	C	D	23.	●	B	C	D	41.	A	✗	●	D
6.	A	B	●	D	24.	●	B	C	D	42.	A	●	C	D
7.	●	B	C	D	25.	A	B	●	D	43.	A	●	C	D
8.	●	B	C	D	26.	A	B	●	D	44.	A	B	●	D
9.	A	●	C	✗	27.	A	B	C	●	45.	●	B	C	✗
10.	A	B	C	●	28.	A	●	C	D	46.	●	B	C	D
11.	●	B	C	D	29.	A	B	●	D	47.	A	●	C	D
12.	●	B	C	D	30.	A	●	C	D	48.	A	B	●	D
13.	A	B	C	●	31.	A	B	C	●	49.	A	B	C	●
14.	A	B	●	D	32.	●	B	C	D	50.	A	B	C	●
15.	A	B	C	●	33.	A	B	C	●					
16.	A	✗	C	●	34.	A	B	●	D					
17.	A	●	C	D	35.	A	B	C	●					
18.	●	B	C	D	36.	A	B	C	●					

DL-130 (6-89)

PLAINTIFF'S EXHIBIT 5

COMMERCIAL DRIVER'S LICENSE

TEST: Combination

FORM: 7

NAME: Jose Rodriguez

LICENSE NUMBER: R362.440.005.990

TODAY'S DATE: 22290

EXAMPLE

X. (A) ● (C) (D)

1.	(A)	(B)	(C)	●	16.	(A)	●	(C)	(D)
2.	(A)	(B)	●	(D)	17.	(A)	(B)	(C)	●
3.	●	(B)	(C)	(D)	18.	(A)	(B)	(C)	●
4.	(A)	●	(C)	(D)	19.	(A)	(B)	●	(D)
5.	(A)	(B)	(C)	●	20.	(A)	(B)	(C)	●
6.	●	(B)	(C)	(D)					
7.	●	(B)	(C)	(D)					
8.	(A)	(B)	(C)	●					
9.	(A)	(B)	●	(D)					
10.	(A)	(B)	(C)	●					
11.	(A)	(B)	●	(D)					
12.	●	(B)	(C)	(D)					
13.	(A)	●	(C)	(D)					
14.	(A)	●	(C)	(D)					
15.	●	(B)	(C)	(D)					

DL-133 (6-89)

8870

COMMERCIAL DRIVER'S LICENSE

AIR BRAKE TEST ANSWER SHEET
FORM: B

NAME: JOSE RODRIGUEZ

LICENSE NUMBER: R-362-440-005-990

TODAY'S DATE: 2-21-90

EXAMPLE

X. (A) ● (C) (D)

1.	(A)	(B)	(C)	●	16.	(A)	(B)	●	(D)
2.	●	(B)	(C)	(D)	17.	(A)	(B)	(C)	●
3.	(A)	●	(C)	(D)	18.	(A)	(B)	●	(D)
4.	(A)	●	(C)	(D)	19.	(A)	(B)	●	(D)
5.	●	(B)	(C)	(D)	20.	(A)	●	(C)	(D)
6.	(A)	●	(C)	(D)	21.	(A)	(B)	(C)	●
7.	(A)	●	(C)	✗	22.	(A)	(B)	●	(D)
8.	(A)	●	(C)	✗	23.	(A)	●	(C)	(D)
9.	(A)	(B)	(C)	●	24.	●	✗	(C)	(D)
10.	●	(B)	(C)	(D)	25.	(A)	(B)	●	(D)
11.	(A)	(B)	●	(D)					
12.	(A)	(B)	●	(D)					
13.	●	(B)	(C)	(D)					
14.	(A)	●	(C)	(D)					
15.	●	(B)	(C)	(D)					

DL-131 (6-89)

CIRCUIT COURT FOR [B]ALTIMORE CITY — PATERNITY COMPLAINT

PLAINTIFF'S EXHIBIT 7 — PENCO-Bayonne, N.J.

Date Complaint Taken 2-28-89 By Mari — Division # 2121-89

Referred By Self — Relations

Complainant's Atty. — Phone

Defendant's Atty. — Phone — Prob. Dept. Case No.

	COMPLAINANT	DEFENDANT
532-5632		323-4518
Name	Francina Evonne Arrington	Jose' DeJesus Rodriguez
Address	5201 Ready Ave. #12	660 Dumbarton Ave. #12 ~~504~~ E. 36th St. #18
Age, Race & Birthpl.	37 (B) 5-18-51 Md.	53 (His) 12-28-3[illegible] Dom. Rep.
Dependents	1 other child	6 other children
Health, Disabilities	good	good
Employer	North Wood Elm. School	Self Employed/ owns house
Employer's Address	5201 Lochraven Blvd.	rent payed from DSS $300 mo.
Earnings	$343.00 ~~bi~~-wk.	
Other Income		Automatic Rolls
Ba[illegible] No., S.S. No.	218-56-0692	073-52-4237
Marital Status	Diovrce	single

Complainant's Other Children

Children by the Defendant and by all other men:

Name	Age	Father's Name and Status of Case
1 child by		exhusband Connie Arrington

The Child

Name Nicole Erica Rodriguez — Sex Female — Birthdate 8-9-87

Birthplace — Child Living? Cert # 115-35104

Present Custodian — Where Located

Hospital Sinai — Doctor — Address

Amount of Bill — Paid? — By Whom

Witnesses

Persons competent to testify as to relationship between the parties, Defendant's payments for support of child, and Defendant admissions of paternity.

Name	Address	Relationship

Defendant's Statement

3/31/89. Rts. given JB

Admits Paternity? Admits — Willing to support? Yes.

Comments and Final Action

3/31/89 - Refer to Ct for establishment of support amount. Pltf requests $100.00 month. Def offs. wages. JB

Pay Order 25.00 per w/c for support of 1 child

Eff. 04/3/89. to be increased to 50.00 w/c

Eff. 6/5/89. cc waived

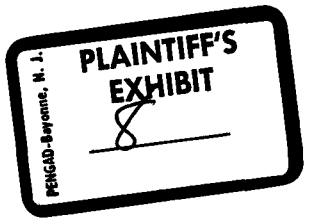
NOTICE SENT 3-30-89 DATE:

CC-80 (1/93)

87

CI

G



May 9, 1989

Bureau of Support Enforcement
P.O. Box 75099
Baltimore, Md 21275

To whom it may concern:

I am not able to send the check for $25 this week (5-9-89) because I don't have money and I have to pay a lot of bills. I also have my own family to support, too.

Thank you for your cooperation.

Sincerely yours,

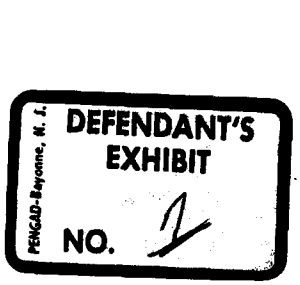
Jose Rodriguez

Jose Rodriguez

CASE #119070

Get a letter or Call.
2.

C



IN THE CIRCUIT COURT FOR BALTIMORE CITY 72-324050

PD 70-11970

DRD 2131-89

NOTIFICATION OF RIGHTS

You are advised, that by admitting that you are the father of the child in this case you have stopped the Court process.

Be advised that if you weren't sure, or if you denied you were the child's father the Court process would have continued and you would have had the following rights:

(1) The right to a lawyer, and if you could not afford a lawyer, to be referred to some other agency for possible legal representation.

(2) The right to take a blood test to see if it excluded you, or included you, to a mathematical probability, as the father of the child. If you could not afford the cost of the blood test, to ask the City of Baltimore to advance the cost of the test.

(3) The right to a trial in this case, whether a jury trial or trial before a Judge of the Circuit Court. Testimony would be taken and, the case would be decided by a preponderance of the evidence.

(4) The right to bring witnesses who support you if you were to deny paternity and the right to cross-examine the Plaintiff (mother) in the Court, or any other witnesses she may have.

You are further advised that you have a duty to support this child until he or she reaches the age of eighteen (18) years, dies, or becomes emancipated.

__X__ I received a copy of this Notification and do not want an explanation.

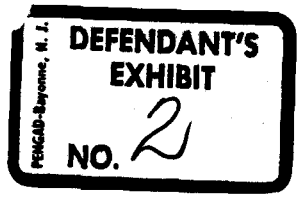
Joe Rodriguez 3/3/89
DEFENDANT DATE

__X__ I want to have this notification explained to me.

J.R.

Joe Rodriguez 3/3/89
DEFENDANT DATE

BALTIMORE CITY BOSE
100 N. EUTAW ST.
BALTIMORE, MD 21201



STATE OF MARYLAND
DEPARTMENT OF HUMAN RESOURCES
CHILD SUPPORT ENFORCEMENT ADMINISTRATION
TAX REFUND INTERCEPT PROGRAM

IN THE BALTIMORE DIALING AREA CALL.....333-0661
ALL OTHER AREAS CALL.....800-492-5676

DATE OF NOTICE	11/20/89
SOCIAL SECURITY NO.	073-52-4237
CASE NUMBER	72324050
CERTIFIED ARREARS	$ 500.00
COUNTY CODE	30
DATE OF CERTIFICATION	10/06/89
CATEGORY	N

JOSE D RODRIGUEZ
660 DUMBARTON AVE
BALTIMORE MD 21212

043145

By the Annotated Code of Maryland, Family Law Article, §10-113, the Child Support Enforcement Administration is charged to certify to the Income Tax Division, Comptroller of the Treasury, the names of persons whose support obligations are in arrears of ***$150.00 or more.*** A review of our records on the DATE OF CERTIFICATION shown above indicates that your court ordered support obligation is in arrears in the amount shown above as CERTIFIED ARREARS. Therefore, we have certified this obligation for collection by the Income Tax Division. If you and your spouse file a joint Maryland tax return, the joint refund, if any, will be applied to your support arrears. However, your spouse's refund will not be intercepted if a separate or a combine-separate Maryland tax return is filed.

UNDER 42 USC 664, THE CHILD SUPPORT ENFORCEMENT ADMINISTRATION IS REQUIRED TO NOTIFY THE INTERNAL REVENUE SERVICE OF ARREARAGES ON CERTAIN SUPPORT OBLIGATIONS. THE IRS IS REQUIRED TO WITHHOLD ANY FEDERAL INCOME TAX REFUND FOR PAYMENT TOWARD THIS OBLIGATION. A REVIEW OF OUR RECORDS ON THE DATE OF CERTIFICATION SHOWN ABOVE INDICATES THAT YOUR COURT ORDERED SUPPORT OBLIGATION IS IN ARREARS IN THE AMOUNT SHOWN ABOVE AS CERTIFIED ARREARS. THEREFORE, THIS ARREARAGE HAS BEEN REFERRED TO THE IRS. IF YOU FILE A FEDERAL JOINT RETURN WITH YOUR SPOUSE, HE OR SHE MAY BE ENTITLED TO RECEIVE HIS OR HER PORTION OF THE JOINT REFUND BY FILING A FORM 8379, INJURED SPOUSE ALLOCATION, AND FORM 1040X, AMENDED FEDERAL INCOME TAX RETURN. ATTACH THESE FORMS TO THE TOP OF FORM 1040 OR 1040A WHEN YOU FILE. MARK 'INJURED SPOUSE' AT THE TOP OF FORM 1040X.

If you believe that you do not owe an arrearage on a support obligation, or that the amount of CERTIFIED ARREARS, above, is incorrect, you have the right to request an investigation within 15 days of the DATE OF NOTICE shown above. ***If you have an interstate case, you have the right to request a review in either state.*** To discuss this notice or to request an investigation you may call the telephone number shown above or write to the above address.

If your income tax refund is intercepted you will be so notified, and you will have 15 days from the date of that notice to appeal the interception if you believe it is wrong.

Failure to fully and promptly pay your support obligation, including arrears, may result in other enforcement actions. Payments of the arrears in full will stop this certification. Make payments at the above address.

fld 27 August 1990

(13)

FRANCINA ARRINGTON	*	
	*	IN THE
Plaintiff	*	CIRCUIT COURT
vs	*	FOR
	*	BALTIMORE CITY
JOSE' RODRIGUEZ	*	CASE NUMBER: PD70-119070
Defendant	*	SAO CASE NUMBER: C 5/90

* * * * * * * * * * * * * * * * * *

PETITION FOR CONTEMPT AND SHOW CAUSE ORDER

Francina Arrington, Plaintiff, by her attorneys, Stuart O. Simms, State's Attorney for Baltimore City and Sondra H. Crain, Assistant State's Attorney for Baltimore City respectfully represents:

1. That a Consent Paternity Decree was entered into by the parties on August 90, 1987.

2. That pursuant to that Decree the Defendant was ordered to pay $25.00 per week through the Bureau of Support Enforcement effective April 3, 1989.

3. That effective June 5, 1989, the payments were to increase to $50.00 per week.

4. That as of May 10, 1990, $1400.00 in arrears have accrued.

5. That Defendant has the means and ability to make the payments.

WHEREFORE the Plaintiff prays:

a. That the Defendant be held in Contempt of Court for failure to comply with the Court Order of August 9, 1987.

b. That the Court place a lien against the earnings of the Defendant.

c. That the Court fix arrearages and order payment thereof.

d. For such other and further relief as the nature of her cause may require.

Stuart O. Simms

STUART O. SIMMS
State's Attorney
for Baltimore City

Sondra H. Crain

SONDRA H. CRAIN
Assistant State's Attorney
Room 418 Mitchell Courthouse
110 N. Calvert Street
Baltimore, Maryland 21202
396-5109

FRANCINA ARRINGTON	*	
	*	IN THE
Plaintiff	*	CIRCUIT COURT
vs	*	FOR
	*	BALTIMORE CITY
JOSE' RODRIGUEZ	*	
	*	CASE NUMBER: PD70-119070
Defendant	*	SAO CASE NUMBER: C 5/90

* * * * * * * * * * * * * * * * * *

SHOW CAUSE ORDER

Upon the aforegoing Petition for Citation of Contempt, it is this 27 day of August 1990, by the CIRCUIT COURT FOR BALTIMORE CITY, ORDERED;

That Jose' D. Rodriguez appear before this court in person, Room 400 Mitchell Courthouse, 110 N. Calvert Street, Baltimore, Maryland 21202, on Oct. 22, 1990, at 9:00 A.M. to Show Cause, if any he may have, why he should not be cited for Contempt for failure to comply with the Order of the Court dated August 9, 1987, provided a copy of the Petition or Show Cause Order be served Jose' D. Rodriguez on or before the 1st day of Oct., 1990.

M. M. Hubbard

JUDGE

PD-70-119070
T.D 10/22/90
Arrington vs Rodriguez

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 28th day of August, 1990, a copy of the agoregoing Petition for Contempt and Show Cause Order was served on: Jose' Rodriguez, 660 Dumbarton Avenue and 504 E. 36th Street, Baltimore, Maryland and also a copy was mailed to: Alfred Nancy, 1 E. Lexington Street, Suite 200, Baltimore, Maryland 21202, attorney for the Defendant.

Sondra H. Crain

SONDRA H. CRAIN
Assistant State's Attorney

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 30th day of August, 1990, a copy of the agoregoing Petition for Contempt and Show Cause Order was served on: Jose' Rodriguez, 660 Dumbarton Avenue and 504 E. 36th Street, Baltimore, Maryland and also a copy was mailed to: Alfred Nancy, 1 E. Lexington Street, Suite 200, Baltimore, Maryland 21202, attorney for the Defendant.

Sondra H. Crain

SONDRA H. CRAIN
Assistant State's Attorney

FRANCINA ARRINGTON

STATE OF MARYLAND	*	IN THE
V.	*	CIRCUIT COURT
JOSE' RODRIGUEZ,	*	FOR
Movant	*	BALTIMORE CITY
	*	CASE NO.: PD 70-119070

FILED
JUN 20 1990
CIRCUIT COURT FOR BALTIMORE CITY

(12)

* *

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO VACATE ENROLLED JUDGMENT

Jose Rodriguez, hereinafter referred to as Movant has, pursuant to the Maryland Rules and Maryland Courts Article, made motion to this Honorable Court to vacate the Judgment in this case. The memorandum herein supplements the previous memorandum filed. The following is not intended to limit the scope of argument previously offered in this matter.

Movant submits that the evidence presented before the Court in this matter establishes that the procedure used by the Child Support Enforcement Administration violated Movant's right to Due Process of Law because those procedures failed to fairly appraise him of his fundamental right to notice.

Adequate and timely notice must precede all due process hearings. Boddie V. Connecticut 401 U.S. 371, 378 (1971). Due process must be reasonably calculated to give actual notice. Milliken V. Meyer, 311 U.S. 457, 463 (1940). For more English speaking persons, notice is a particular problem:

> To the many people in our society who are unable to read English, legal notices sent in English do not inform them of the contents of the notification. The notice has failed in its purpose. The notion that this type of notice satisfies due process requirements

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is a fiction which is permissible only if actual notice-notice in language which the recipient can understand -is not feasible. The societal interest in uniformity of language may be substantial, but basic constitutional rights cannot be abrogated merely to facilitate linguistic assimilation. "[C]ertain fundamental rights are guaranteed "to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution - a desirable end cannot be promoted by prohibited means."

Note, El Derecho de Auiso: Due Process and Bilingual Notice 83 Yale L.J. 385 (1973). Citation omitted (arguments adopted therein incorporated in this memorandum by reference thereto). The procedures used in this case fall far short to providing due process of law. Accordingly, the Judgment should be vacated.

ALFRED NANCE
One East Lexington Street
Suite 200
Baltimore, Maryland 21202
(301) 659-6907
Attorney for Movant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of June, 1990, a copy of the aforegoing Supplemental Memorandum in Support of Motion to Vacate Enrolled Judgment was hand-delivered, first class, postage prepaid to STATE'S ATTORNEYS OFFICE FOR BALTIMORE CITY, Sondra H. Craine Assistant State's Attorney, Room 418 Mitchell Courthouse, 110 N. Calvert Street, Baltimore, Md. 21202

Alfred Nance, Esquire

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El Derecho de Aviso: Due Process and Bilingual Notice

To the many people in our society who are unable to read English, legal notices sent in English do not inform them of the contents of the notification.[1] The notice has failed in its purpose. The notion that this type of notice satisfies due process requirements is a fiction which is permissible only if actual notice—notice in a language which the recipient can understand—is not feasible. The societal interest in uniformity of language may be substantial,[2] but basic constitutional rights cannot be abrogated merely to facilitate linguistic assimilation. "[C]ertain fundamental rights" are guaranteed "to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means."[3]

This Note will argue that, insofar as is administratively feasible, notices subject to due process requirements[4] must generally be written in a language that the recipient can read. This requirement will entail some increased costs. Mere increased cost, however, is not a sufficient reason for failing to render actual notice; rather the costs

1. For a discussion of the present practice of administrative agencies sending notices only in English and the difficulties that are created for the recipient who does not read English, see, *e.g.*, New Haven Register, April 18, 1973, at 6, col. 1 (in the context of the welfare system); letter from Floyd L. Pierce, Regional Civil Rights Director, Department of Health, Education and Welfare, to Mr. Paul M. Allen, Director of Sonoma County Department of Social Service, at 2-4, summarizing field survey of welfare practices regarding non-English speaking clients in Sonoma County, California, to determine whether such practices violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1970), on file with the *Yale Law Journal* [hereinafter cited as Sonoma County HEW Study]; letter from John G. Bynoe, Regional Civil Rights Director for Region I, Department of Health, Education and Welfare, to Mr. Nicholas Norton, Commissioner of Connecticut State Welfare Department, August 31, 1973, at 7-8, summarizing extensive field survey of welfare practices regarding non-English speaking applicants and recipients in Connecticut, prepared for Judge Robert C. Zampano, U.S. District Court, District of Connecticut, on file with the *Yale Law Journal* [hereinafter cited as Connecticut HEW study]; State of Connecticut Welfare Department, Departmental Bull. No. 2795, Delivery of Departmental Services to Non-English Speaking Applicants and Recipients, September 5, 1973, at 1, on file with the *Yale Law Journal* [hereinafter cited as Connecticut Welfare Bulletin]. See note 34 *infra* for the essential findings of these studies.

2. *See* Meyer v. Nebraska, 262 U.S. 390, 412 (1923) (Holmes, J., dissenting); Guerrero v. Carleson, 9 Cal. 3d 808, 812, 512 P.2d 833, 835, 109 Cal. Rptr. 201, 203 (1973); Castro v. California, 2 Cal. 3d 223, 242, 466 P.2d 244, 258, 85 Cal. Rptr. 20, 34 (1970).

3. Meyer v. Nebraska, 262 U.S. 390, 401 (1923). *See* Farrington v. Tokushige, 11 F.2d 710, 714 (9th Cir. 1926), *aff'd*, 273 U.S. 284 (1927).

4. *See* p. 388 & note 16 *infra.*

EXHIBIT A

and administrative burdens imposed must be weighed against the importance of the individual's rights that are at stake.[5] When the costs involved in translating notices or in providing tag lines in the major languages are relatively minor and the individual rights involved are quite substantial, due process requires bilingual or tag line notice for the non-English reader.[6]

I. The Scope of the Problem

Census data show that there are 7.9 million persons over the age of 10 who are unable to read or write English.[7] While no similar data are available for the population below age 10, testimony in connection with congressional consideration of the Bilingual Education Act[8] indicates that English illiteracy is widespread among schoolchildren from non-English speaking families.[9] It is thus apparent that the problem of English illiteracy, widespread among children, will not vanish in the near future.

Language disabilities frequently disadvantage persons facing legal difficulties. The Spanish speaking constituency of one neighborhood office of the New Haven Legal Assistance Association, for example, brought in more than twice as many legal problems as did the numerically larger English speaking clientele.[10] A great many of these

5. *See* p. 389 *infra*.

6. The discussion is concerned with those who are unable to read English, but are literate in another language. The case of the illiterate who is unable to read *any* language presents insurmountable problems for written notice which may be said to approximate impossibility. It is impossible to provide actual notice to an illiterate short of oral notice and this is often impractical. Oral notice is an unacceptable solution in many cases because it is not provable in court. Because of the impossibility of providing effective written notice to an illiterate, due process concepts of notice permit the fiction that notice in English is actual notice, placing the burden on the illiterate to have such notice read to him.

7. UNITED STATES BUREAU OF THE CENSUS, CURRENT POPULATION REPORT, SERIES P-20, NO. 221, CHARACTERISTICS OF THE POPULATION BY ETHNIC ORIGIN: NOVEMBER 1969, at 18 (1971) [hereinafter cited as CURRENT POPULATION REPORT].

8. 20 U.S.C. § 880b (1970).

9. Former Representative Jacob H. Gilbert of New York stated that 90,000 pupils in the New York City schools, including 70,000 Puerto Ricans, had insufficient skills in English to graduate from high school. 113 CONG. REC. 19932-33 (1967). In 1957, a Texas Education Agency survey showed that 80 percent of the non-English speaking students spent two years in the first grade. 113 CONG. REC. 29175-76 (1967), suggesting that many were illiterate in English before beginning school. Dr. Faye Bumpass, Professor of Spanish and Director of Dual Language Workshops, Texas Technological College, Lubbock, Texas, testified that there are at least 1,750,000 schoolchildren with Spanish surnames in the five southwestern states (Texas, New Mexico, Arizona, Colorado and California), many of whom have serious English linguistic handicaps. 113 CONG. REC. 13522 (1967). *See* NATIONAL EDUCATION ASSOCIATION, THE INVISIBLE MINORITY . . . PERO NO VENCIBLES, at IV (1966). In spite of the fact that these schoolchildren are required to attend schools with instruction in English, the problem of English illiteracy has not been eliminated.

10. Spanish speaking people, who comprised approximately one-third of the population in the geographical area of the Howard Avenue office of the New Haven Legal Assistance Association, nevertheless accounted for over two-thirds of the office's cases.

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II. Due Process Requiremen

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In midwinter, Ms. A's gas was shut
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12. *See* notes 32 & 34 *infra*.

13. Mullane v. Central Hanover Ba

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New York City Housing Authority, 42
(1970); Dixon v. Alabama State Bd. of
criminal cases, *see* Pointer v. Texas,
In re Oliver, 333 U.S. 257, 273 (1948) (con

problems had their origin in the language barrier. Non-English speaking clients, ordinarily unable to read notices in English, are often unaware of the nature of their legal problems, many of which could have been resolved by a simple but timely telephone conversation.[11] Persons able to read English could have settled the same problems without legal assistance, but the fact that all communications were in English put the Spanish speakers at a distinct disadvantage.[12]

II. Due Process Requirements

The fundamental requisites of due process are notice and hearing.[13] While the exact nature and extent of the due process safeguards required at a hearing may vary with the nature of the interests involved,[14] adequate and timely notice must precede all due

These clients came to Legal Assistance long after their rights were adversely affected, a fact which may indicate that notice in English did not apprise them of the problem. Cases on file at New Haven Legal Assistance Association, 413 Howard Avenue, New Haven, Conn.

11. The following relatively typical cases that arose at New Haven Legal Assistance serve to illustrate the point:

Ms. R's welfare benefits were terminated for alleged fraud (failure to disclose pertinent information to the welfare department). The communications sent to Ms. R informing her of her obligation to furnish the information were written in English. Ms. R reads Spanish only and never learned of the obligation. She was eventually reinstated on the welfare rolls but, unable to meet her rent obligations during the month in which she was denied welfare benefits, she was evicted from her apartment.

In midwinter, Ms. A's gas was shut off for nonpayment of her bill. She had been paying her gas bills for two years but had fallen behind in her payments. The Legal Assistance Office, however, discovered that the welfare department was supposed to have been paying for her gas directly to the gas company. She had never realized this because her caseworker was unable to communicate with her in Spanish and notification that the welfare department was paying for her gas had been sent in English. Lacking actual notice she had erroneously paid the utility company over $200.

12. *See* notes 32 & 34 *infra*.

13. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).

14. The requirements of a due process hearing are not inflexible, but depend on the substance of the private interest affected and the nature of the government function. *See, e.g.*, Goldberg v. Kelly, 397 U.S. 254, 263 (1970). That a due process hearing is not fixed in form does not affect the basic requirement that an individual be given a meaningful opportunity, "within the limits of practicability," to be heard *before* being deprived of a significant property interest. Boddie v. Connecticut, 401 U.S. 371, 379 (1971), *citing* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). Regardless of the interest affected, due process requires at a minimum that the hearing provide an effective opportunity to answer charges and confront and cross-examine witnesses. *See* Goldberg v. Kelly, *supra* at 267. When factual issues may be in dispute, these safeguards have been held to apply to administrative and regulatory actions, *see* Bell v. Burson, 402 U.S. 535, 539 (1971) (suspension of motor vehicle license for failure to post security for accident damages); Goldberg v. Kelly, *supra* at 267-70; Willner v. Committee on Character & Fitness, 373 U.S. 96, 105 (1963) (exclusion from practice of law); Greene v. McElroy, 360 U.S. 474, 492, 496-97 (1959) (denial of security clearance); Goldsmith v. Board of Tax Appeals, 270 U.S. 117, 123 (1926) (denial of application of CPA petitioning to practice before Board of Tax Appeals); Escalera v. New York City Housing Authority, 425 F.2d 853 (2d Cir.), *cert. denied*, 400 U.S. 853 (1970); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961); as well as criminal cases, *see* Pointer v. Texas, 380 U.S. 400, 405 (1965) (robbery conviction); *In re* Oliver, 333 U.S. 257, 273 (1948) (contempt citation).

process hearings.[15] Not all hearings must be preceded by notice, of course. The operation of the due process clause is limited to instances of state action.[16] Where state action is involved, however, notice adequate to satisfy due process requirements is necessary.

Due process notice must be "reasonably calculated to give . . . actual notice."[17] Actual notice, in turn, is notice by which the person "sought to be affected knows thereby of the existence of the particular fact in question."[18] Due process requires that the notice apprise the recipient not only of the pendency of the action,[19] but also of the reasons for such action in order that he may contest its basis and produce evidence in rebuttal.[20] Considerations of adminis-

15. *See* Boddie v. Connecticut, 401 U.S. 371, 378 (1971); Goldberg v. Kelly, 397 U.S. 254, 266-67 (1970); Armstrong v. Manzo, 380 U.S. 545, 552 (1965) (failure to give petitioner notice of adoption proceedings violates due process—notice of hearing must be delivered at meaningful place and in meaningful manner (dictum)); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

16. In general, state action can be said to include all court actions, initiated either by the government or an individual or business, seeking a state forum to enforce a contract, lease, or other obligation through court adjudication, *see, e.g.*, Boddie v. Connecticut, 401 U.S. 371 (1971) (divorce); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) (garnishment); activities of government administrative and regulatory agencies, *see, e.g.*, Bell v. Burson, 402 U.S. 535, 537 (1971) (suspension of motor vehicle license); Goldberg v. Kelly, 397 U.S. 254 (1970) (welfare agency termination of benefits); actions involving public employment termination, *see, e.g.*, Wilderman v. Nelson, 467 F.2d 1173, 1175 (8th Cir. 1972) (termination of state employees holding contractual rights to continuing state employment under tenure plans as well as for employees having a cognizable property interest in continued employment based on de facto tenure program fostered by the state and relied on by the employees); Ballard v. Laird, 350 F. Supp. 167, 168 (S.D. Cal. 1972) (demotion or dismissal from armed services); Nichols v. Eckert, 504 F.2d 1359, 1366 (Alas. 1973) (summary dismissal of college professor); Madigan v. Police Bd. of City of Chicago, 8 Ill. App. 3d 366, 290 N.E.2d 665 (1972) (suspension of police officer); and other state supported activities and functions, *see, e.g.*, Morrissey v. Brewer, 408 U.S. 471, 489 (1972) (state parole revocation); Willner v. Committee on Character & Fitness, 373 U.S. 96, 105 (1963) (excluding applicant from practicing law); Greene v. McElroy, 360 U.S. 474, 492, 496-97 (1959) (denial of security clearance which denies engineer the ability to follow his chosen profession); Goldsmith v. Board of Tax Appeals, 270 U.S. 117, 123 (1926) (certified public accountant's application to practice before Board of Tax Appeals); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961) (student expulsion); Villani v. New York Stock Exchange, 348 F. Supp. 1185, 1188 n.1 (S.D.N.Y. 1972) (disciplining a member of the stock exchange).

It is presently in dispute whether public utilities fall with the state action rubric. *Compare* Ihrke v. Northern States Power Co., 459 F.2d 566 (8th Cir. 1972) (utility companies are licensed to and act as an agent of the state); Bronson v. Consolidated Edison Co., 350 F. Supp. 443, 446 (S.D.N.Y. 1972) (acts of gas company are state action); *and* Stanford v. Gas Service Co., 346 F. Supp. 717 (D. Kan. 1972) (gas company within state action), *with* Lucas v. Wisconsin Electric Power Co., 466 F.2d 638 (7th Cir. 1972), *cert. denied*, 409 U.S. 1114 (1973) (while public utility commissioners acting in their official capacity in promulgating five day notice rule act under color of state law, action of electric company in giving notice of termination of service does not constitute state action); *and* Palmer v. Columbia Gas Co., 342 F. Supp. 241 (N.D. Ohio 1972) (gas company not within state action).

17. Milliken v. Meyer, 311 U.S. 457, 463 (1940).

18. United States v. Tuteur, 215 F.2d 415, 418 (7th Cir. 1954). *See* Interstate Life & Accident Co. v. Wilson, 52 Ga. App. 171, 178, 183 S.E. 672, 677 (1935); Bowman-Boyer Co. v. Burgett, 195 Iowa 674, 678, 192 N.W. 795, 797 (1923).

19. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

20. *See, e.g.*, Goldberg v. Kelly, 397 U.S. 254, 266-68 (1970) (notice of termination of Aid for Dependent Children benefits must detail reasons for the proposed termina-

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294 F.2d 150, 158 (5th Cir. 1961) (to
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21. Constructive notice is neither
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22. *See, e.g.*, Standard Oil Co v. Ne
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23. 339 U.S. 306 (1950).

24. *Id.* at 313-14.

25. *Id.* at 314. *Cf.* Goldberg v. Kell
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trative feasibility, however, have always tempered the ideal of universal actual notice. Where actual notice is not possible or practical, the fiction of constructive notice imputes notice to the recipient as a matter of law. But a legal fiction such as constructive notice,[21] inasmuch as it departs from the norm of actual notice, can only be justified if actual notice is impossible or so burdensome as to be impractical.[22]

The right to actual notice cannot be abridged simply because less than actual notice is more easily or less expensively rendered in a given situation. The necessity for actual notice must be determined on the basis of a due process balancing test. Thus, in *Mullane v. Central Hanover Bank & Trust Co.*,[23] where notice by publication was found inadequate for trust beneficiaries whose mailing addresses were known, the Supreme Court acknowledged that a "construction of the Due Process Clause which would . . . [make legal notice impossible or impractical] . . . could not be justified."[24] Nevertheless, against the state's interest in ease of notification, said the Court, "we must balance the individual interest sought to be protected by the Fourteenth Amendment."[25] Constructive notice,

tion to inform the recipient of the precise questions raised about his continued eligibility); Willner v. Committee on Character & Fitness, 373 U.S. 96, 104-05 (1963) (in rejecting an applicant to the state Bar, the committee must give notice of the grounds for his rejection for failure to meet "good character" criterion); Goldsmith v. Board of Tax Appeals, 270 U.S. 117, 123 (1926) (denial of CPA's application to practice before the Board of Tax Appeals without notice of reasons for denial and a hearing violates due process); Escalera v. New York City Housing Authority, 425 F.2d 853, 862 (2d Cir.), *cert. denied*, 400 U.S. 853 (1970) (in termination of tenancy in public housing, notice must adequately inform tenant of nature of evidence against him—summary notice of undesirable conduct is insufficient); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150, 158 (5th Cir. 1961) (to expel student from state college or university for misconduct, due process requires notice containing specific charges and grounds for expulsion).

21. Constructive notice is neither notice nor knowledge, but a legal fiction by which the parties are treated as though they had actual notice or knowledge. *See* Brown v. Otesa, 80 N.W.2d 92, 98 (N.D. 1956); Thompson v. Dairyland Mutual Ins. Co., 30 Wis. 2d 187, 192, 140 N.W.2d 200, 202-03 (1966); Schoedel v. State Bank, 245 Wis. 74, 13 N.W.2d 534 (1944). Courts have allowed constructive notice where actual notice is "not reasonably possible or practicable." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 317 (1950).

22. *See, e.g.*, Standard Oil Co v. New Jersey, 341 U.S. 428, 432-34 (1951) (notice by publication in proceeding by New Jersey to escheat certain abandoned property is sufficient because it is impossible to locate the owner for service of actual notice); Ballard v. Hunter, 204 U.S. 241, 254 (1907) (state may require personal service for enforcement of liens for taxes and assessments on real estate for resident owners and allow service by publication for nonresident owners because personal service is not within the state's power where nonresidents are not within the state's borders); Cunnius v. Reading School Dist., 198 U.S. 458, 477 (1905) (Pennsylvania statute providing for administration of property of persons absent and unheard of for seven or more years without giving them actual notice does not violate due process because actual notice is not possible).

23. 339 U.S. 306 (1950).

24. *Id.* at 313-14.

25. *Id.* at 314. *Cf.* Goldberg v. Kelly, 397 U.S. 254 (1970), where an additional financial burden on the government was an insufficient reason for failing to provide due process hearing before terminating welfare benefits. "The interest of the eligible

therefore, has consistently been found wanting where actual notice was feasible.[26]

Moreover, whether notice is adequate to satisfy the due process clause may also depend upon the particular circumstances of the person receiving it.[27] Thus, notice which is physically served upon the person of legal incompetents is not "reasonably calculated to apprise the parties" and is as such constitutionally deficient.[28]

III. Due Process Notice for the Non-English Reader

A court applying the above analysis to the non-English reader would have to determine if notice in English is "reasonably calculated to give . . . actual notice."[29] If it is not, and if a feasible alternative exists which will provide more adequate notice, notification in English to the non-English reader would seem to violate the due process mandate. These standards were applied recently and bilingual no-

recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens." *Id.* at 266.

26. But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.
339 U.S. at 315. *See, e.g.*, Bank of Marin v. England, 385 U.S. 99, 102 (1966); Schroeder v. City of New York, 371 U.S. 208, 211-13 (1962) (publication and posting notices in the vicinity of owner's property is inadequate notice before diverting a river 25 miles upstream from owner's summer home when her name was ascertainable from deed records and actual notice was possible); Walker v. City of Hutchinson, 352 U.S. 112, 116 (1956) (where the name of the property owner is known to the city, notification of condemnation proceedings by publication is inadequate because it is possible to notify by mail); City of New York v. N.Y., N.H. & H. R.R., 344 U.S. 293, 296-97 (1953) (notice by publication to New York City, a creditor under the Bankruptcy Act, violates due process because constructive notice can be justified only when necessary and actual notice was possible in this case); *Wuchter v. Pizzutti*, 276 U.S. 13, 19 (1928); McDonald v. Mabee, 243 U.S. 90, 91 (1917); Priest v. Trustees of Town of Las Vegas, 232 U.S. 604 (1914); Roller v. Holly, 176 U.S. 398 (1900); Burck v. Taylor, 152 U.S. 634, 654 (1894); Pennoyer v. Neff, 95 U.S. 714, 727 (1877) (service by publication is valid in in rem actions where the state has seized the property since such seizure combined with the constructive notice will probably apprise the defendant of the action; but constructive notice on a nonresident in an in personam action involving the personal rights of the defendant is ineffectual for any purpose).

27. "[A] generally valid notice procedure may fail to satisfy due process because of the circumstances of the defendant." Boddie v. Connecticut, 401 U.S. 371, 380 (1971).

28. Covey v. Town of Somers, 351 U.S. 141, 146 (1956). The Court held that the state must appoint a guardian ad litem to receive legal notice before due process standards would be satisfied. *Cf.* Goldberg v. Kelly, 397 U.S. 254, 268-69 (1970) ("the opportunity to be heard must be tailored to the capabilities and circumstances of those who are to be heard"). In applying this hearing standard to non-English speakers, courts have recognized an obligation to provide interpreters in criminal cases. *See, e.g.*, United States *ex rel.* Negron v. New York, 434 F.2d 386, 389 (2d Cir. 1970). To be sure, the rights of the accused in a criminal proceeding are ordinarily greater than those of a party to an administrative proceeding, but the cost to the state of providing courtroom interpreters is also substantially greater than would be necessary in providing bilingual notice as set forth in this Note.

29. Milliken v. Meyer, 311 U.S. 457, 463 (1940).

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tice rejected by the California Supreme Court in *Guerrero v. Carleson.*[30] A group of Spanish speaking citizens petitioned the California Superior Court to enjoin the California state welfare department from reducing or terminating benefits to recipients who read only Spanish until the welfare department provided written notice of such proposed terminations and reductions in Spanish. The California Supreme Court affirmed the trial court's denial of the injunction, holding that due process does not require notice to be provided in Spanish in this case. Its holding was based, *inter alia,* upon a conclusion that the government may reasonably assume that the recipient will have the notice promptly translated; notice in English to the non-English speaker, said the court, can therefore be said to conform to the due process requirement that it be "reasonably calculated to inform the recipient."[31]

It is clear that a non-English reader will not be informed by a notice in English unless he is alerted to the need for translation of the notice and has it translated promptly. For a number of reasons a recipient who is illiterate in English may not in fact have his notice translated immediately. For example, a Spanish speaking recipient who has had all of his previous contact with the welfare department in Spanish will not expect notice in English and thus may not be alerted to the need for translation. In view of the volume of "junk mail," much of it on stationery deliberately made to look "official," which most persons receive continuously, the Spanish speaking recipient may understandably overlook a notice in English from, for instance, the welfare department. Such a recipient would have to obtain a translation of substantially all of his mail to avoid this possibility.

Moreover, the recipients may well be understandably reluctant to engage the help of others in such private matters. Indeed, the wel-

30. 9 Cal. 3d 808, 512 P.2d 833, 109 Cal. Rptr. 201 (1973).

31. We conclude that it is not unreasonable for the state to expect that persons such as those in plaintiffs' position *will promptly arrange to have someone translate* the contents of the notice here challenged. *Accordingly,* prior governmental preparation of that notice in Spanish is not a constitutional imperative under the due process clause.

Id. at 814, 512 P.2d at 837, 109 Cal. Rptr. at 205 (footnote omitted) (emphasis added). This rationale represents a marked departure from the test used by the lower court: "We deem it not unreasonable to require that a person receiving welfare payments *assume the burden* of informing himself concerning the content and meaning of an official notice." 103 Cal. Rptr. 552, 555 (Super. Ct. 1972) (emphasis added). The difference in the two rationales—assuming that non-English speaking persons will obtain translations as opposed to placing a burden of translation upon them—is an important shift in the constitutional standard. The discussion in the text emphasizes the factual questions involved in the translation of English notices since the standard enunciated by the California Supreme Court depends upon such facts.

fare department itself deems such matters confidential.[32] Thus the recipient may object to waiving his right to confidentiality by disclosing all of his communications from the department to a friend or relative who will serve as "translator." The right to confidentiality of communication thus raises serious questions about the propriety of expecting the recipient to have the notices translated by friends or relatives.

More basically, however, Spanish speaking welfare recipients do not in fact have the notices which are sent to them in English translated promptly.[33] Studies conducted by the Department of Health, Education and Welfare regarding welfare department practices as they affect Spanish speaking applicants and recipients in Sonoma County, California, and in Connecticut suggest that many do not obtain translation of English communications that are sent to them.[34] Given this reality, whatever its reasons, s the due process standard that the to apprise the recipient" of its c cision was thus based in part upo

The *Guerrero* court, however, second rationale—that bilingual no The court reasoned that if biling the termination or reduction of w persons, it would also be require agencies with respect to the same have to be extended to members members of which were illiterate staggering, said the court, that it ment to a halt,[36] was beyond the ment.

To be sure, feasibility has alwa plication of due process notice r is not a talisman; it is rather an a balancing test. In this respect the administrative difficulties associat to Spanish speaking persons. Mor notice must in all cases be extend demonstrates a misunderstanding in some cases, to Spanish speaki viding bilingual notice to ethnic graphically concentrated as Span which goes to the remedy to be than the constitutional necessity c ing (and other similarly situate

32. Spanish-speaking clients are . . . told to come back with a child or neighbor who can translate, thereby deterring them from returning because of an understandable reluctance or refusal to have to disclose to children, neighbors and acquaintances private information which the Welfare Department, by its own criteria, rightfully regards as highly personal and confidential. . . . [T]he use by non-Spanish speaking social service workers of children or neighbors as translators creates a barrier to communication with the Spanish-speaking client who, like the English-speaking client, seeks and is entitled to privacy.

Sonoma County HEW study, *supra* note 1, at 4-6. *See* Connecticut HEW study, *supra* note 1, at 6.

33. In Guerrero v. Carleson, 9 Cal. 3d 808, 513 P.2d 833, 109 Cal. Rptr. 201 (1973), Justice Tobriner in dissent correctly observed that an assumption by the court that recipients may have their notices translated "is a far cry from finding that the notices *are* 'reasonably certain to inform' a Spanish-speaking recipient . . . of the reasons for the reduction or termination of his benefits and of his right to a hearing." *Id.* at 821, 512 P.2d at 842, 109 Cal. Rptr. at 210 (Tobriner, J., dissenting) (emphasis in original), *quoting* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 315 (1950).

34. While no available statistics bear directly on the question of how many non-English speaking recipients have notices in English translated, the HEW studies showed serious discrepancies in the treatment of welfare recipients unable to read English when compared with those who can. These discrepancies existed in all areas of application for and provision of benefits and services. The surveys conclude that eligible Spanish speakers were excluded, because of language problems, from assistance and denied services for which they were eligible as a matter of law. *See* Connecticut HEW study, *supra* note 1, at 7-8; Connecticut Welfare Bulletin, *supra* note 1, at 1; Sonoma County HEW study, *supra* note 1, at 2-4. Another significant finding is that a large percentage of all client problems for non-English speaking clients which gave rise to welfare fair hearings were due either to oral or written communication problems. Connecticut HEW study 7-8. Since Spanish speaking caseworkers or translators are often provided for Spanish speaking welfare recipients, it is reasonable to infer from these findings that the written notices in English which were sent to Spanish speaking clients were not translated promptly in many cases and that this resulted in denial of benefits, giving rise to the hearing. *See* text accompanying note 32 *supra* for suggested reasons for failure of translation.

Corroborating evidence for the conclusion that many Spanish speaking recipients did not have notices translated comes from the figures showing that very few (less than 10 percent) of the Spanish speaking recipients brought a friend or relative to act as interpreter at their fair hearings despite the fact that the welfare department did not provide an interpreter in these cases. Sonoma County HEW study 2-4. In a fair hearing the client has specifically applied for some action or benefit. It would seem that such a client, having shown a desire to gain the benefit and fully aware of what is at stake in the fair hearing, would be more likel she would be to have a friend translat are in English.

35. 9 Cal. 3d at 815, 512 P.2d at 837- Sheffield, 325 F. Supp. 1341, 1342 (N.D notice in Spanish of denial of unemployr Clara County, California, who read and missed the petition, holding that the pr "The conduct of official business, includ gress, the Courts and administrative agen Ninth Circuit affirmed, 475 F.2d 738, 73 consider the possibility of distinguishing guage groups in Santa Clara for purpos offered briefs supporting the distinction these arguments should have been consi

36. 9 Cal. 3d at 816, 512 P.2d at 838, 109

37. *See* p. 389 *supra*.

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this reality, whatever its reasons, such notice cannot be said to meet the due process standard that the notice be "reasonably calculated to apprise the recipient" of its contents. The *Guerrero* court's decision was thus based in part upon an erroneous factual assumption.

The *Guerrero* court, however, rested its decision as well upon a second rationale—that bilingual notice is not administratively feasible. The court reasoned that if bilingual notice were required prior to the termination or reduction of welfare benefits to Spanish speaking persons, it would also be required prior to actions of other state agencies with respect to the same persons and, furthermore, would have to be extended to members of any other language group some members of which were illiterate in English.[35] Such a burden, so staggering, said the court, that it would virtually bring the government to a halt,[36] was beyond the mandate of the Fourteenth Amendment.

To be sure, feasibility has always been a limitation upon the application of due process notice requirements.[37] Feasibility, however, is not a talisman; it is rather an aspect of the traditional due process balancing test. In this respect the *Guerrero* court overestimated the administrative difficulties associated with providing bilingual notice to Spanish speaking persons. Moreover, its assumption that bilingual notice must in all cases be extended as well to other language groups demonstrates a misunderstanding of the rationale for extending it, in some cases, to Spanish speaking persons. The feasibility of providing bilingual notice to ethnic language groups not as large or geographically concentrated as Spanish speaking persons is a question which goes to the remedy to be afforded to the other groups rather than the constitutional necessity of bilingual notice to Spanish speaking (and other similarly situated) persons.

in the fair hearing, would be more likely to bring a friend to interpret than he or she would be to have a friend translate all official looking communications which are in English.

35. 9 Cal. 3d at 815, 512 P.2d at 837-38, 109 Cal. Rptr. at 205-06. *See* Carmona v. Sheffield, 325 F. Supp. 1341, 1342 (N.D. Cal. 1971), where the plaintiffs requested notice in Spanish of denial of unemployment benefits for recipients residing in Santa Clara County, California, who read and write only Spanish. The district court dismissed the petition, holding that the provision of such notice would be impossible. "The conduct of official business, including the proceedings and enactments of Congress, the Courts and administrative agencies, would become all but impossible." The Ninth Circuit affirmed. 475 F.2d 738, 739 (9th Cir. 1973). The trial court refused to consider the possibility of distinguishing Spanish speaking recipients from other language groups in Santa Clara for purposes of legal notices. Plaintiffs in the case had offered briefs supporting the distinction of Spanish from other languages in the area; these arguments should have been considered by the court at trial.

36. 9 Cal. 3d at 816, 512 P.2d at 838, 109 Cal. Rptr. at 206.

37. *See* p. 389 *supra*.

A. *Full Bilingual Notice*

Whether full bilingual notice to the members of an ethnic language group is necessary depends upon the outcome of a weighing of the costs to the state of providing such notice against the benefits bestowed by that notice upon individual members of the group.[38] For members of a linguistic group which comprises a substantial minority of the population of a given metropolitan area and has a relatively high rate of English illiteracy, those benefits would be substantial.

Nationwide statistics show that the problem of English illiteracy is substantially more serious for those who speak Spanish than for any other linguistic group.[39] These statistics suggest that Spanish speaking persons have greater need for bilingual notice than any other group nationwide.[40] Moreover, Spanish speaking people tend to live in ethnic concentrations in certain parts of the country.[41] Spanish speaking communities are often largely homogeneous, with newspapers and communication facilities in their own language,[42] insulated from the English speaking population and largely self-contained.[43]

It is thus not surprising that the rights of Spanish speaking persons have been particularly affected b tice.[44] Indeed, in recognition of the s speaking persons face, many states, p tial Spanish speaking populations, ha ligation in connection with the ope cies to provide bilingual services in

Of course, language groups other t small proportion of the population some locales satisfy the criteria—comp the local population and suffering English illiteracy—which suggest that to them as a consequence of the prov the insular Chinese communities in may equally claim that bilingual nc benefits of substantial magnitude.[46]

Against these important benefits rendering bilingual service. While th costs with great apprehension,[47] such least with respect to language group above.

Before the notifier may reasonably notice, of course, he must know th English and what other language, if a most state agencies, plaintiffs in con ties, this should not be a significant dealings with state agencies, *e.g.*, vehicle department, social security c lated utility companies, initial conta application or interview. It would b the agency or utility company to a is able to read and to record this i form. Even if the initial contact is service to a utility company, it wo quire the utility to ask and record requesting service can read. In the there must be some written or oral

38. *See* p. 389 *supra*.

39. Of the 7,902,000 people over 10 years old in the United States who are unable to read English, 4,754,000 reported their ethnic origin to the Census. Over 28 percent (1,336,000) of those illiterate in English were of Spanish origin. The only other linguistic group with more than 250,000 English illiterates is the Italian group (479,000). CURRENT POPULATION REPORT, *supra* note 7, at 18.

40. While over 95 percent of each ethnic group except Italian (92.3 percent) can read English, only 80.2 percent of those of Spanish origin are able to read English. *Id.*

41. Of the 2,293,141 Spanish households in the United States, 81 percent (1,866,955) are located in the nine states of Arizona, California, Colorado, Florida, Illinois, New Jersey, New Mexico, New York, and Texas. UNITED STATES BUREAU OF THE CENSUS, CENSUS OF POPULATION: 1970, SUBJECT REPORTS, FINAL REPORT PC(2)-1C, PERSONS OF SPANISH ORIGIN 136-49 (1973) [hereinafter cited as PERSONS OF SPANISH ORIGIN]. Of the 9,072,602 persons of Spanish origin in the United States, 61 percent (5,561,922) live in the three states of California, Texas, and New York. Another 17 percent (2,388,774) live in the ten states of Pennsylvania, Ohio, Indiana, Illinois, Michigan, Florida, Colorado, New Mexico, Arizona, and New Jersey. *Id.* at 1.

42. *See* Castro v. California, 2 Cal. 3d 223, 238, 466 P.2d 244, 254-55, 85 Cal. Rptr. 20, 30-31 (1970).

43. *See* J. BURMA, SPANISH-SPEAKING GROUPS IN THE UNITED STATES 7-8, 88-90 (1954); N. GLAZER & D. MOYNIHAN, BEYOND THE MELTING POT 100, 300 (1963); O. LEWIS, A STUDY OF SLUM CULTURE 110-11, 139 (1968). Additional support for the proposition that persons of Spanish origin in the United States are isolated from the English speaking community and self-contained is found in the statistics showing the extent to which Spanish speakers, in comparison with other linguistic groups, have continued using Spanish as their language of communication. Of the 11,687,000 Americans who speak a language other than English in their homes, 4,600,000 speak Spanish. The only other group of which more than 500,000 do not speak English at home is the Italian group (658,000). CURRENT POPULATION REPORT, *supra* note 7, at 12. In Connecticut "a substantial percentage of all Spanish-surnamed persons throughout the state speak Spanish, not English, as their language of regular communication." Connecticut HEW study, *supra* note 1, at 3.

44. *See* pp. 386-87 *supra*.

45. *See* pp. 396-97 & notes 48-55 *infra*.

46. Of the 435,062 Chinese in the United Oakland, California, area, and 77,099 live in politan areas with greater than 12,500 Chines Long Beach (41,500). PERSONS OF SPANISH OR

47. *See* p. 393 *supra*.

sons have been particularly affected by the absence of bilingual notice.[44] Indeed, in recognition of the special problems which Spanish speaking persons face, many states, particularly those with substantial Spanish speaking populations, have begun to recognize an obligation in connection with the operations of administrative agencies to provide bilingual services in Spanish.[45]

Of course, language groups other than Spanish, while a relatively small proportion of the population nationally, may nevertheless in some locales satisfy the criteria—comprising a substantial minority of the local population and suffering from a relatively high rate of English illiteracy—which suggest that substantial benefits may flow to them as a consequence of the provision of bilingual notice. Thus, the insular Chinese communities in San Francisco and New York may equally claim that bilingual notice would engender for them benefits of substantial magnitude.[46]

Against these important benefits must be weighed the costs of rendering bilingual service. While the *Guerrero* court viewed these costs with great apprehension,[47] such concern seems unfounded, at least with respect to language groups meeting the criteria set out above.

Before the notifier may reasonably be required to provide bilingual notice, of course, he must know that the recipient does not read English and what other language, if any, the recipient does read. For most state agencies, plaintiffs in consumer credit actions, and utilities, this should not be a significant burden. Where individuals have dealings with state agencies, *e.g.*, the welfare department, motor vehicle department, social security department, and with state-regulated utility companies, initial contact is usually in the form of an application or interview. It would be no undue burden to require the agency or utility company to ask what language the applicant is able to read and to record this information on the initial intake form. Even if the initial contact is by telephone, *e.g.*, a request for service to a utility company, it would not be burdensome to require the utility to ask and record on file what language the person requesting service can read. In the case of consumer credit contracts, there must be some written or oral communication and negotiation.

44. *See* pp. 386-87 *supra.*
45. *See* pp. 396-97 & notes 48-55 *infra.*
46. Of the 435,062 Chinese in the United States, 88,402 live in the San Francisco-Oakland, California, area, and 77,099 live in New York City. The only other metropolitan areas with greater than 12,500 Chinese are Honolulu (48,897) and Los Angeles-Long Beach (41,500). PERSONS OF SPANISH ORIGIN, *supra* note 41, at X, 109.
47. *See* p. 393 *supra.*

It would not be a large burden to require the credit company to ask what language the applicant can read.

Since the language abilities of potential notice recipients are, at least in the above instances, easily ascertained, the inquiry shifts to a consideration of the actual burden which bilingual notice would *impose. In fact, there is widespread and growing provision of notice* and services in Spanish as well as English.[48] Thus, in some jurisdictions state agencies,[49] utility companies,[50] and plaintiffs in consumer credit actions[51] send bilingual notice. Similarly, government pamphlets,[52] examinations,[53] and forms[54] are beginning to appear in Spanish.[55] While such practices may not be dispositive of the issue of feasibility of bilingual notic at least presumptive feasibility.[56]

With respect to a private, noninsti English speaking person, however, t balance may well be different. It is private litigant will be aware of th person he is suing or that, in any eve translate notices. Given these consider vate litigant may be sufficiently great from state agencies, utilities, and c credit.[57]

Thus, the *Guerrero* court's concern is required for a variety of proceedin fore welfare agencies, would prove a founded. That court was also conce in favor of the Spanish speaking litig language—Chinese or Japanese, Russi —in which a non-English speaking r literate, regardless of how small tha

Admittedly, if the force of the ar any language group of any size in wh could read notices in their native t might well be beyond reasonable li

48. *See* Guerrero v. Carleson, 9 Cal. 3d 808, 810, 513 P.2d 833, 834, 109 Cal. Rptr. 201, 202 (1973) (stipulation by parties).

49. In Connecticut and New Jersey, welfare applications, notices, booklets, and most affidavits are prepared in both Spanish and English. *See* Comment, *New Jersey Translates Welfare Forms Into Spanish*, 6 CLEARINGHOUSE REV. 33 (1972); Agreement stipulated in suit seeking to require welfare department to provide bilingual caseworkers and notices, Sanchez v. Norton, Civil No. 15732, before Judge Robert C. Zampano, U.S. District Court, District of Connecticut, June 19, 1973.

50. In New Haven, Connecticut, for example, all bills, requests for meter readings, and termination notices are sent in Spanish and English by the Southern Connecticut Gas Company (copies on file with the *Yale Law Journal*).

51. The Appellate Division of the Supreme Court of New York, First and Second Judicial Departments, has decided, effective September 1, 1973, to require that all summonses in consumer credit actions be bilingual (Spanish and English). OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK tit. 22, §§ 2900.2 (e), (f), (h), (i) (as amended 1973).

52. *See* CAL. UNEMPL. INS. CODE § 316 (1972) (informational pamphlets in Spanish and English).

Other state agencies have made similar accommodations to their non-English speaking populations. In New Haven, Connecticut, for example, the Manpower Area Planning Council has compiled a bilingual directory of federally financed job training programs in Spanish and English. *See* New Haven Register, Nov. 2, 1972, at 76, col. 4.

The Social Security Administration prints most informational pamphlets in Spanish in New York. All social security forms and notices are printed in Spanish for use in Puerto Rico, but these forms are not used in New York. Conversation with Carmen Quiniones, Staff Assistant, BHA Regional Office, Social Security Administration, New York, August 8, 1973. Duplicate sets of all social security documents are available in Spanish in New York. Conversation with Jerome Levy, Deputy Regional Attorney, New York office of HEW, August 3, 1973.

53. Motor vehicle driving examinations are given in Spanish and English in Connecticut. CONN. GEN. STAT. REV. § 14-36 (Supp. 1969).

54. Thus, the Connecticut Welfare Department has instituted a program of ascertaining an individual's ability to communicate in English at the time of his initial interview and utilizing bilingual forms (Spanish and English) for Spanish speaking clients who are unable to read English. *See* Connecticut Welfare Bulletin, *supra* note 1, at 1-3.

55. Indeed, some states go considerably further. Connecticut, for example, provides bilingual services at welfare fair hearings, Conversation with Carolyn Packard, Chief of Policy Development and Staff Services, Department of Welfare, November 13, 1973; motor vehicle hearings, Conversation with Mr. Carl Strauss, Ass't Dir. of Driver Licensing, Connecticut Dep't of Motor Vehicles, November 13, 1973; and unemployment compensation hearings, Conversation with Mr. Richard Ficks, Director of Public Information, Connecticut State Dep't of Labor, November 13, 1973.

In New York, all communications from the Department of Social Services to clients are sent in Spanish and English. Conversation with Bob Carroll, Deputy Administrator, Human Resources Administration, New York City, August 6, 1973. Interpreters are provided at hearings for Spanish speakers in New York by the Department of Social Services. Conversation with Florence Aitchisor partment of Social Services, August 6, 1973. C and Italian interpreters are also available at versation with Shep Shapiro, Assistant Regic and Appeals, Social Security Administration, provided for Spanish speakers in every civil terpreters are used during interviews with c Conversation with Judge Edward Thompsor New York County, August 7, 1973. Interpret tions for New York County for Spanish sp Spanish speaking populations. Conversation w of the Board of Elections, August 2, 1973.

The provision of such bilingual services r sional action. Senator John V. Tunney of Ca that would mandate translation personnel and with 50,000 or more residents whose primary English. N.Y. Times, April 10, 1973, at 26, col. 1

56. Moreover, the difficulty involved in is probably exaggerated by those who do n v. California, 2 Cal. 3d 223, 241 n.32, 466 P.2 (1970) (the burden involved in the translati in Spanish is probably less burdensome than by the state).

57. Perhaps the courts could make some tag line notice in five or six major languages. S

58. 9 Cal. 3d at 815, 512 P.2d at 837-38, 109

59. The resolution of this matter in Gu tiffs' needless stipulation that such broad re P.2d at 837, 109 Cal. Rptr. at 205.

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issue of feasibility of bilingual notice, they seemingly demonstrate at least presumptive feasibility.[56]

With respect to a private, noninstitutional litigant suing a non-English speaking person, however, the outcome of a due process balance may well be different. It is certainly less likely that the private litigant will be aware of the language capabilities of the person he is suing or that, in any event, he will have the facility to translate notices. Given these considerations, the burden on the private litigant may be sufficiently great that he may be distinguished from state agencies, utilities, and companies extending consumer credit.[57]

Thus, the *Guerrero* court's concern that bilingual notice in Spanish, is required for a variety of proceedings other than merely those before welfare agencies, would prove an intolerable burden seems unfounded. That court was also concerned, however, that a decision in favor of the Spanish speaking litigants would apply "to any other language—Chinese or Japanese, Russian or Greek, Filipino or Samoan —in which a non-English speaking recipient . . . was known to be literate, regardless of how small that language group might be."[58]

Admittedly, if the force of the argument carried over as well to any language group of any size in which persons illiterate in English could read notices in their native tongue, the burden on the state might well be beyond reasonable limits.[59] The argument, however,

Services. Conversation with Florence Aitchison, Program Officer, New York City Department of Social Services, August 6, 1973. Chinese, Greek, Russian, German, Spanish, and Italian interpreters are also available at New York social security hearings. Conversation with Shep Shapiro, Assistant Regional Representative, Bureau of Hearings and Appeals, Social Security Administration, August 7, 1973. Similarly, interpreters are provided for Spanish speakers in every civil court in New York City and Spanish interpreters are used during interviews with clients in small claims courts in Harlem. Conversation with Judge Edward Thompson, Administrative Judge, Civil Court of New York County, August 7, 1973. Interpreters were supplied by the Board of Elections for New York County for Spanish speakers at the polls in areas with large Spanish speaking populations. Conversation with James Siket, Administrative Manager of the Board of Elections, August 2, 1973.

The provision of such bilingual services may soon become the subject of congressional action. Senator John V. Tunney of California is drafting a bilingual courts act that would mandate translation personnel and equipment in every Federal court district with 50,000 or more residents whose primary fluency is in some language other than English. N.Y. Times, April 10, 1973, at 26, col. 1.

56. Moreover, the difficulty involved in translating notices into another language is probably exaggerated by those who do not wish to do the translating. *Cf.* Castro v. California, 2 Cal. 3d 223, 241 n.32, 466 P.2d 244, 257 n.32, 85 Cal. Rptr. 20, 33 n.32 (1970) (the burden involved in the translation and distribution of electoral materials in Spanish is probably less burdensome than the administrative difficulties anticipated by the state).

57. Perhaps the courts could make some accommodation in such cases by requiring tag line notice in five or six major languages. *See* p. 399 *infra*.

58. 9 Cal. 3d at 815, 512 P.2d at 837-38, 109 Cal. Rptr. at 205-06.

59. The resolution of this matter in *Guerrero* was further complicated by plaintiffs' needless stipulation that such broad relief would be appropriate. *Id.* at 815, 512 P.2d at 837, 109 Cal. Rptr. at 205.

requires no such extension of relief. The due process rationale offered above is that members of a linguistic group comprising a substantial minority of the population of a given locale and suffering from a high rate of English illiteracy would significantly benefit from a requirement of bilingual notice, while the costs of such notice to the state, utilities, and certain institutional private litigants would not be unreasonable. For each language group in a given area, the balance of interests between the group and the parties required to render notice will be different: each case must be judged upon its own merits. Under this view providing bilingual notice to Spanish speaking recipients does not necessarily require similar treatment for any other particular language group.

What it does require is that a court, when called upon to decide the question of notice for a different language group, make factual inquiries with respect to the group's rate of English illiteracy, the extent to which it is isolated from the surrounding English speaking population, and its proportion of the locale's population. Many language groups may well comprise an important fraction of a locale's population but be well integrated into the English speaking culture and have an English illiteracy rate significantly lower than the Spanish group.[60] Recognizing a distinction between such a language group and the Spanish speaking group would be a rational exercise of judicial authority.

B. *Tag Line Notice*

Full bilingual notice is preferable to any shortened or tag line notice, of course, because only full bilingual notice can apprise the non-English reader of all of the contents required for due process notice. That full bilingual notice is constitutionally mandated for some language groups but not for others does not, however, end the discussion with respect to the due process notice rights of the other groups. The outcome of a due process balance, while less strongly in favor of bilingual notice to them than to more numerous and concentrated groups, may nevertheless require an alteration of notice procedures. In fact, providing some sort of notice which accommodates, at least in part, their lesser interests is not a totally intractable problem.

Where full bilingual notice is not feasible, a less burdensome form of notice which serves some of the same purposes as bilingual notice

60. *See* note 43 *supra*.

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is tag line notice. A tag line, written in five or six major languages,[61] would be affixed to the otherwise all English notice: "This is a legal notice. Have it translated. Re: welfare termination, utility termination, civil suit . . . ." It would be a relatively easy matter for the state to translate the tag line's few words into the five or six languages and make sheets of tag lines available to administrative agencies, utilities, and other parties which may become litigants with non-English speaking persons. The increased cost of providing tag line notice would be minimal and, when affixed to the English notice, would provide some degree of actual notice to almost everyone.[62]

The tag line, of course, does not provide full notice to the recipient in his own language. It provides only notice of notice. But it is clearly preferable to a notice merely in English that may leave the recipient totally unaware that he has received a legal notice which may announce matters of serious consequences for him. While the recipient must depend upon someone, friends or a local agency, to translate the notice in order to be fully apprised of its contents, tag line notice at least informs him of the necessity of translation.

Conclusion

Due process notice must be reasonably calculated to apprise the recipient of the proposed action against him. In fact, many non-English reading persons fail to have legal notices which are sent to them in English translated and may suffer accordingly. For several reasons, this failure to have notices in English translated is not surprising. Such notice accordingly cannot be said to be reasonably calculated to apprise the recipient of the impending action. Whether such notice nevertheless satisfies due process depends upon the outcome of a weighing of the costs to the state of providing a more meaningful notice against the benefits bestowed upon the individual by that more meaningful notice.

Full bilingual notice to members of language ethnic groups which comprise a substantial part of the population of a locality and which

61. The six non-English linguistic groups with the largest English illiteracy populations are Spanish, Italian, German, Polish, Irish, and Russian. CURRENT POPULATION REPORT, *supra* note 7, at 18.

62. There are 2,150,000 people in the United States unable to read English whose ethnic origins are other than German, Italian, Polish, Irish, Spanish, or Russian. *Id.* This is probably an overestimate of the number of persons who would be unable to read a tag line in one of those six languages because many people who speak other languages are able to read at least one of the six major languages.

are characterized by a high English illiteracy rate is required by the due process clause because members of those groups would enjoy significant advantages while the cost to the state is not such as to render bilingual notice unfeasible. Providing such notice to all language groups in all locales might indeed impose an intolerable burden upon the state, but due process does not require a broadening of such bilingual relief to all language groups. For the larger and more locally concentrated of these lesser language groups, however, due process may require a form of notice—tag line notice—which, while not fully bilingual, nevertheless at least calls attention to the necessity of obtaining a translation. The combination of bilingual and tag line notice would thus significantly improve the quality of notice to all but a small fraction of non-English reading persons.

Congressional Prov
under the Seventh

For almost two centuries t
preted to preserve the right to
law in England in 1791,[2] the
the past fifteen years, howeve
a broad expansion of the ri
has sought to limit the scope
pansive reading of the Sevent
legislative will. One such con
juries hearing such suits may
and because the delay[5] and c
of such actions, Congress ir
should be tried to the court
erally ruled against the dem

1. "In suits at common law, wh
dollars, the right of trial by jury s
2. *See* Baltimore & Carolina Line,
v. Schiedt, 293 U.S. 474, 476 (1935);
377-78 (1913). *See generally* F. JAMES
PRACTICE ¶ 38.08[5], at 79 (2d ed. 1971
3. The key cases have been Ross
Inc. v. Wood, 369 U.S. 469 (1962); Bea
For explanations of the nature of
¶ 38.11[9], at 128.20-.23 (2d ed. 197
AND PROCEDURE § 2302, at 21-22 (1971
Right to Jury Trial in a Civil Actio
4. Goldfarb & Kurzman, *Civil Rig*
U.C.L.A. L. REV. 486, 487 (1965); Con
of the Civil Rights Act of 1964, 37 U
The Thirteenth Amendment and the
REV. 1019, 1051 (1969).
5. *See* Zeisel, *The Jury and Court*
Bernhard: *The Uncertain Future of t*
(1971).
6. *See* p. 417 *infra*.
7. Many courts have held the ju
U.S.C. §§ 2000e *et seq.* (1970), *as am*
Title VII of the 1964 Civil Rights
F.2d 791, 802 (4th Cir. 1971), *cert. deni*
way Exp., Inc., 417 F.2d 1122, 1125
318 F. Supp. 202, 209 n.3 (W.D. Mo.
RULES SERV. 2d 607 (D. Mass. 1971); C
386 (D. Conn. 1970). *But cf.* King v.
1971) (trial court granted motion for
Courts have also held there is no
actions for reinstatement and lost wa
Civil Rights Act of 1871). *See, e.g.*, M
202, 204 (6th Cir.), *cert. denied*, 407
School Dist., 427 F.2d 319, 323-24 (5
Smith v. Hampton Training School fe
One district court has gone so fa
equitable. Lawton v. Nightingale, 345

FILED

JUN 20 1990

CIRCUIT COURT FOR
BALTIMORE CITY

FRANCINA ARRINGTON	*	
	*	IN THE
Plaintiff	*	CIRCUIT COURT
vs	*	FOR
	*	BALTIMORE CITY
JOSE RODRIGUEZ	*	
	*	CASE NUMBER: PD70-119070
Defendant	*	DRD CASE NUMBER: 2121-89
	*	SAO NUMBER: C 5/90

* * * * * * * * * * * * * * * * * *

POST-TRIAL MEMORANDUM
AGAINST MOTION TO SET ASIDE
AN ENROLLED JUDGMENT

Now comes the Plaintiff, Francina Arrington and the Bureau of Support Enforcement by her attorneys, Stuart O. Simms, State's Attorney for Baltimore City and Sondra H. Crain, Assistant State's Attorney for Baltimore City, and submits this Memorandum:

This case involves an enrolled paternity decree which is a final order pursuant to Family Law Article 5-1038(a). In order to set aside this decree, fraud, mistake, or irregularity must be proven. This was not accomplished by the Defendant. Thus, the Plaintiff requests the Motion be denied.

The Defendant alleges that he did not voluntarily enter into a Paternity Consent Decree, because he is non-English speaking and no interpreter was provided to enable him to understand the proceedings. He alleges that his understanding of the proceedings were insufficient to "establish a knowing and intelligent waiver of his right to a full adjudication of the actual question in this case." Memorandum in Support of Motion to Vacate Judgment. However, testimony in this case clearly shows that the Defendant does in fact understand and communicate in English and did so prior to March 31, 1990, on that date, and subsequent to it. Consequently, he voluntarily and intelligently waived any and all rights applicable.

First, the Defendant testified that he has lived in the United States for eighteen (18) years. After he responded to a question asked on the record in open court prior to the interpreter's translating it, he admitted to knowing many English words. The Plaintiff testified that she has personal knowledge that the Defendant speaks and understands English. She further testified that her relationship with the Defendant began in 1986 with a sharing of confidences in English. To corroborate the fact that the couple communicated in English, the Defendant admitted that he knew about the paternity case because Ms. Arrington told him about it. Ms. Arrington does not speak Spanish.

Other testimony which shows that the Defendant speaks and understands English includes the testimony of Nancy Alexander, a Bureau of Support Enforcement Agent, who had personal recollection of a telephone conversation with the Defendant in English. In this conversation, Mr. Rodriguez indicated that he was enrolled in the New York Tractor School, a school which conducts classes only in English. In addition, the Defendant made payments under the order and initially reported to the Bureau of Support Enforcement when he missed a payment in accordance with the procedures explained to him. The Defendant admitted that he instructed his wife to make the payments on his behalf.

Paul Merryman of the Motor Vehicle Administration testified that the Defendant passed with high scores several portions of the test to obtain a commercial driver's license in Maryland. The instructions for these tests were given to Mr. Rodriguez by Mr. Merryman in English. The tests and study manual are printed only in English. A perusal of these articles reveals that the ability to read and comprehend English would be a prerequisite to achieving a passing grade.

Although the underlying issue of paternity is not before the court, it behooves the Plaintiff to state that the testimony of a mother standing alone is sufficient to support a finding of paternity if she is credible.

Dorsey v English, 283 Md. 522, 390 A2d 1133 (1978). Ms. Arrington was a credible, consistent witness. On the other hand, the Defendant was simply not credible. We submit that his motivation in bringing this case was triggered when he received notification regarding the onset of a wage lien for support payments. However, testimony given before this Honorable Court is totally contrary to this allegation.

In his Memorandum, the Defendant cites D.H. Overmyer Co., Inc. of Ohio et al vs. Frick Co., 174 U.S. 406 and Fuentes v Shevin, 67 U.S. 407 to support this argument regarding the necessity of due process of law. In both these cases, hearings were not conducted prior to the seizure of property. In the instant case, a hearing as proscribed under Family Law Article 5-1016 was conducted. Testimony by John Selby, director of the Domestic Relations Division for the Circuit Court for Baltimore City, revealed that specific, rigid procedures are routinely followed with regard to these hearings. Alleged fathers are apprised of their rights both orally and in writing. Although such requests are not made often, interpreters for those speaking a foreign language can readily be obtained if necessary.

Jacqueline Blanton, the hearing examiner for the instant case, testified that she follows a specific routine in regard to informing alleged fathers of their rights and obtaining voluntary and intelligent waivers. She described herself as a "tape recorder", because of the same manner in which she advises each and every client of his rights. She added that questions could be asked following her litany. Ms. Blanton testified that her years experience in dealing with the public would enable her to determine if a client did not understand any part of the procedure.

Furthermore, Family Law Article 5-1013 requires that "any person who has knowledge of a party's legal disability shall advise the court of the disability." This applies particularly to counsel. However, in the absence of counsel, surely the Defendant himself would be under this obligation to inform

the court of his lack of understanding, both legally and as a matter of common sense. In the instant case, Mr. Rodriguez by his own testimony did nothing to indicate to Ms. Blanton any lack of understanding. He did not ask to speak to his wife who was "30 feet" away and who allegedly understands English better than he. He did nothing to cause the proceeding to stop. On the contrary, he provided Ms. Blanton with information regarding his address and Social Security number

If, arguendo, the Defendant did not understand the Domestic Relations Division proceedings, he was under an obligation to do something about it, and common sense tells us he would have done so. The Defendant is a mature fifty-one (51) year old man. If he did not understand something he certainly would know to question it. As stated, Family Law Article 5-1013 (c) requires a party with a legal disability to inform the court. Secondly, we compared the Consent Decree in the instant case to a contract, contract law is clear in this matter. If a person cannot read the language in which a contract is written, he has the same duty to procure a person to read it to him as the duty to read it himself before signing it. Failure to do so is negligence which will stop him from avoiding the contract avoiding the contract. 17 CJS Contracts 139 p. 885, 886.

In conclusion, he who seeks equity must do equity. He must come to the court with clean hands. This Defendant's request for relief was based on an untruth. This was revealed not only by the testimony of others, but by his own testimony as well.

WHEREFORE, the Plaintiff respectfully requests this Honorable Court to:

a. Dismiss the Motion to Set Aside an Enrolled Judgment.

b. Order the Defendant to comply with the Decree.

c. Fix arrearages and order payments thereof.

d. Require that payments be made by wage lien.

e. And for such other and further relief as the nature of its cause may require.

Stuart O. Simms

STUART O. SIMMS
State's Attorney
for Baltimore City

Sondra H Crain

SONDRA H. CRAIN
Assistant State's Attorney
Room 418 Mitchell Courthouse
110 N. Calvert Street
Baltimore, Maryland 21202
396-5109

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 20th day of June, 1990, a copy of the aforegoing Post-Trial Memorandum Against Motion to Set Aside an Enrolled Judgment was mailed, postage prepaid to: Alfred Nance, Esquire, 1 E. Lexington Street, Suite 209, Baltimore, Maryland 21202, attorney for the Defendant.

Sondra H Crain

SONDRA H. CRAIN
Assistant State's Attorney

FILED

MAY 24 1990

CIRCUIT COURT FOR
BALTIMORE CITY

(10B)

STATE OF MARYLAND	*	IN THE	
Plaintiff	*	CIRCUIT COURT	
V.	*	FOR	
JOSE' DEJESUS RODRIGUEZ	*	BALTIMORE CITY	
Defendant	*	CASE NO.:	

* *

MEMORANDUM IN SUPPORT OF MOTION TO VACATE JUDGMENT

Jose' Rodriguez, hereinafter referred to as "movant", has pursuant to the Maryland Rule and Maryland Courts and Judicial Article made motion to this honorable Court to vacate the enrolled judgment in the above captioned case.

Section 6-408 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland provides:

> For a period of 30 days after the entry of a Judgment, or thereafter pursuant to motion filed within that period, the court has revisory power and control over the Judgment. After the expiration of that period, the court has revisory power and control over the Judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk's office to perform a duty required by statute or rule. (1977, ch. 271).

Md.Cts. & Jud.Proc.Code Ann. Section 6-408 (1984 Repl. Vol., 1987 Cum.Supp.).

Similarly, Maryland Rule 2-535(b) provides that a trial court has continuing revisory power over judgments. It provides:

> **(b)Fraud, Mistake, Irregularity. -** On motion of any party filed at any time, the court may exercise revisory power and control over the Judgment in case of fraud, mistake, or irregularity.

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The power to set aside a Judgment upon a motion is a power incident to all courts of record as a power based on equitable grounds and the exercise of a quasi - equitable power. Tasea Inv. Corp. v. Dole 222 Md. 474, 160 A.2d 920 (1960). Whether a Judgment properly entered should be vacated is subject to the sound discretion of the Court. Clarke Baridon v. Union Co. 218 Md. 480, 174 A.2d 221 (1958). "If the case were one of default or similar technical deficiency, that discretion of course, must be exercised liberally". Government Employees Ins. v. Popka, 74 Md. App. 249, 261, 536 A.2d 1214 (1987).

The substance of movant's claim in the instant case is that the Judgment, because enrolled, is a result of mistake and irregularity. Movant denied paternity ans wishes to litigate that issue on the merits. Allegedly movant entered into the alleged consent agreement in this paternity case. Being unable to speak or adequately understand the English language, movant was unable to understand and appreciate the consequences of the waiver of his right to an ajudication of the issue of paternity on the merits including, but not limited to his right to a jury trial on the issue of paternity.

Movant is entitled to fairly litigate the issue of his inability to understand the alleged agreement at this proceeding to vacate the enrolled judgement since his alleged waiver of a prodeedings on the merits was a result of mistake, irregularity and misundertanding. The proferred language deficiencies are legally adequate for this court to set aside the Judgment and

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permit adjudication on the merits under Maryland law. The failure of this court to permit movant to offer and discover evidence as to his defense of misunderstanding (because of his language deficiencies) would be a violation of movant's right not to be deprived of life, liberty or property without due process of law as guaranteed by the 14th Amendment of the United States Constitution and the corresponding provisions of the Maryland Declaration of Rights. See Article 24 Maryland Declaration of Rights.

Plaintiff maintains that its Consent Decree must stand because it was voluntarily entered into. Movant is entitled to attack that assumption and Plaintiff's reliance upon it in this hearing.

Although due process protections may be waived under appropriate circumstances the Supreme Court has sought to minimize the possibility of any waiver that is not knowing and voluntary by declaring that courts and other decisionmaker must "indulge every reasonable presumption against waiver." Aetna Insurance Co. v. Kennedy, 301 U.S. 389, 393 (1937). The Supreme Court has concluded that the same standard for review of a valid waiver is applicable in both criminal and civil proceedings. See D. H. Overmyer Co., Inc. v. Frick Co. 405 U.S. 174, 185 (1972). That is "not only must [a waiver] be voluntary but must be knowing, intelligent [and] done with sufficient awareness of the relevant circumstances and likely consequences". Brady v. United States, 397 U.S. 742, 748 (1970) See also Fuentes v. Shevin, 407 U.S. 64, 95 (1972) (finding that right to notice and

a hearing in advance of repossession is not waived by signing contracts which "simply provided that upon a default the seller 'may take back', 'may retake' or 'may repossess' since the contract failed to indicate what process would be used").

Within its administrative procedures to provide child support, the state has an obligation to insure that its agreements and decrees are understood by all persons who enter into them whether they are non-english speaking, illiterate or mentally infirm.

It is of course fundemental that:

> In virtually all instances where the government agency knows that its action will deprive an individual of life, liberty or property it must notify that person prior to the deprivation. This notice may be required to include statements "reasonably calculated to inform the private persons of the availability of a process by which he might contest the proposed government action," see Memphis Gas and Light v. Craft, 436 U.S. 1 (1978).

In the instant case movant was provided no interpreter prior to entering into the alleged agreement. The standard waiver forms and explanations were not sufficient to fairly inform Movant of the important constitutional rights he was forfieting. Accordingly, his misunderstanding provides him with the mistake or irregularity required as the threshold to vacate the enrolled Judgment.

The procedures and circumstances under which he allegedly agreed to the paternity decree in this case were not sufficient to insure that he either received his day in court or had an adequate

understanding of the proceedings sufficient to establish a knowing and intellegent waiver of his right to a full adjudication of the actual question in this case.

> The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the constitution recognizes higher values than speed and efficiency. Indeed, one might fairly be said of the Bill of Rights in Particular, that they are designed to protect the fragile values of a vulnerable citzenry from the over bearing concern for efficiency and efficacy that may characterize praise worthy government officials no less, and perhaps more than medicare ones". Stanley v. Illinois, 405 U.S. 645 (1972).

In sum, movant was denied adequate notice.

The haste of the State child support officials created the situation where an alleged consent decree was unknowingly obtained from movant. It is the purpose of the due process clause notice requirement to prevent "speed and efficiency" from overcoming " a vulnerable citizenry." Constitutional and equitable principles require movant be granted the relief sought.

CONCLUSION

Wherefore, movant pray this Honorable Court to vacate the enrolled Judgment entered against him and for such other and further relief that justice may require.

ALFRED NANCE
One East Lexington Street
Suite 200
Baltimore, Maryland 21202
(301) 659-6907
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of May, 1990 a copy of the aforegoing Memorandum in Support of Motion to Vacate Judgment was hand-delivered to Sondra Craine, State's Attorneys Office, 111 North Calvert Street, Baltimore, Maryland 212j02, Attorney for Maryland.

Alfred Nance, Esquire

FILED

MAY 24 1990

FRANCINA EVONNE ARRINGTON	*	IN THE
Plaintiff	*	CIRCUIT COURT FOR BALTIMORE CITY
V.	*	FOR
JOSE' DEJESUS RODRIGUEZ	*	BALTIMORE CITY (10A)
Defendant	*	CASE NO.: 119070
	*	DOCKET NO.: 70
	*	DOMESTIC RELATIONS NO.: 2121-89
	*	

* *

AFFIDAVIT OF SERVICE

1. I, Nathaniel H. Hoff, Jr., Esquire, am at least 18 years of age, competent to testify, and not a party to this action.

2. On May 23, 1990 at 3:40 p.m., I personally served Joseph Selby, Director by delivering into his hands the original of the attached process at Clarence Mitchell Courthouse West, Room 419, 100 North Calvert Street, Baltimore, Maryland 21202.

3. I solemnly affirm under the penalties of perjury that the contents of the foregoing affidavit are true to the best of my knowledge, information and belief.

Nathaniel H. Hoff, Jr.

Nathaniel H. Hoff, Jr., Esquire
One East Lexington Street
Suite 200
Baltimore, Maryland 21202
(301) 659-6907

24

Circuit Court for Baltimore City
Saundra E. Banks, *Clerk*
111 N. Calvert St. - Room 462
Baltimore, Md. 21202

DOCKET 70
DOMESTIC
RELATIONS NO.: 2121-89

Case Number 119070

FRANCINA EVONNE ARRINGTON

PLAINTIFF

Vs.

JOSE' DEJESUS RODRIGUEZ

DEFENDANT

(X) **Civil**

SUBPOENA

TO: JOSEPH SELBY, DIRECTOR
DOMESTIC RELATIONS DIVISON
CLARENCE MITCHELL COURTHOUSE WEST, ROOM 419, 100 NORTH CALVERT STREET
BALTIMORE, MARYLAND 21202

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear; ( ) Produce documents and or objects only; (X) Personally appear and produce documents or objects;

at CLARENCE MITCHELL COURTHOUSE WEST, ROOM 420, 100 NORTH CALVERT STREET, BALTIMORE, MARYLAND 21202
(Place where attendance is required)

on THURSDAY **the** 24TH **day of** MAY , 19 90 . **at** 2:30 ~~XX~~**p.m.**

YOU ARE COMMANDED TO produce the following documents or objects:
ANY AND ALL INFORMATION, FOR THE YEARS 1988, 1989 AND 1990, INCLUDING BUT NOT LIMITED TO THE NUMBER OF CASES, CASE LOAD, STATISTICS AND OPERATIONS OF THE DOMESTIC RELATIONS DIVISION OF THE CIRCUIT COURT FOR BALTIMORE CITY.

Subpoena requested by ( ) Plaintiff; (X) Defendant; and any questions should be referred to:

ALFRED NANCE, ESQUIRE, ONE EAST LEXINGTON STREET, SUITE 200, BALTIMORE, MARYALND 21202
(301) 659-6907
(Name of Party or Attorney, Address and Phone Number)

TRUE COPY
TEST

Date Issued 5/24/90

CLERK Saundra E. Banks **(Signature & Seal)**

SAUNDRA E. BANKS, CLERK

NOTICE:

(1) **YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.**
(2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.
(3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d).

SHERIFF'S RETURN

( ) - Served and copy delivered on date indicated below.
( ) - Unserved, by reason of _____

Date: _____ Fee: $_____ _____
Sheriff

* Original and one copy needed for each witness

filed 21 May 1990

(10)

FRANCINA ARRINGTON	*	
	*	IN THE
Plaintiff	*	CIRCUIT COURT
vs	*	FOR
	*	BALTIMORE CITY
JOSE' RODRIGUEZ	*	CASE NUMBER: PD70-119070
Defendant	*	SAO CASE NUMBER: C 5/90

* * * * * * * * * * * * * * * * * *

MEMORANDUM
AGAINST MOTION TO SET ASIDE
AN ENROLLED JUDGMENT

Now comes the Plaintiff, Francina Arrington, and the Bureau of Support Enforcement by her attorneys, Stuart O. Simms, State's Attorney for Baltimore City and Sondra H. Crain, Assistant State's Attorney for Baltimore City and submits this Memorandum:

The facts in this case are that a settlement conference on the issue of paternity took place on March 31, 1989. This conference was held accordance with the Annotated Code of Maryland Family Law Article, Section 5-1016 before a hearing analyst of the Domestic Relations Division for the Circuit Court for Baltimore City. The hearing analyst was Ms. Jacqueline Blanton, who has thirteen (13) years experience in her position. At this hearing, the Defendant was afforded the opportunity to settle the paternity complaint prior to court scheduling. Ms. Blanton orally advised him of his right to a jury or court trial, right to a blood test, and right to obtain an attorney. He was also given a written notification of rights and asked to sign the blank under either "I received a copy of this Notification and do not want an explanation." or "I want to have this Notification explained to me." The Defendant's signature appears in both blanks. However, the latter is scratched out and initialed.

Pursuant to procedure established in Domestic Relations Division, if there is any confusion regarding any of the issues at the settlement, the case is set in to court. Also, if the analyst is under the slightest impression that there is a lack of understanding, an Assistant State's Attorney is summonsed, or the case is scheduled for a court hearing. If the lack of understanding is a language problem, an interpreter is called.

Maryland Law specifically provides that a finding of paternity is a final order. Family Law Article 5-1038 (a) of the Annotated Code of Maryland States; "(a) Declaration of Paternity Final - Except in the manner and to the extent that any Order or Decree of an Equity Court is subject to the revisory power of the Court under any law, rule, or established principle of practice and procedure in equity, a declaration of paternity in an Order is final." Subsection (b) of the same article provides, "Other orders subject to modification - Except for a declaration of paternity, the court may modify or set aside any order or part of an order under this subtitle as the court considers just and proper in light of the circumstances and in the best interests of the child."

Maryland Rule of Procedure 2-535 (b) limits the revisory power of a court over an enrolled judgement. This Rule states "(b) Fraud, Mistake, Irregularity - On motion of any party filed at any time, the court may exercise revisory power and control over the judgement in case of fraud, mistake, or irregularity." Himes v. Day, 254 Md. 197, describes the standards that a Defendant needs to prove before a Court may revise the judgement. It holds that the trial Court, not only requiring the party who moves to set aside an enrolled Judgement prove that he has a meritorious defense, also require a showing of such facts and circumstances that will establish the fraud, mistake, or irregularity allegedly used to obtain the judgement sought to be vacated. In Pellegrino v. Maloof, 56 Md. App. 338 at P 347, the Court of Special Appeals defines the type of fraud necessary to revise a Decree by stating, "Extrinsic

fraud necessary to set aside an enrolled decree and anologously to permit the caveat of a will, arises where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from Court, a false promise of compromise, or where the Defendant never had knowledge of the suit, being kept in ignorance by the acts of the Plaintiff..." Furthermore, in order to impeach a decree for fraud, the deception practiced must be clearly established by proof before the propriety of the decree can be investigated. Pinkston v. Swift, 231 Md. 346.

Mistake is confined to a jurisdictional mistake. Thus, in those cases permitting a judgment to be set aside on the basis of "mistake", the mistake must necessarily be confined to those instances where there is a jurisdictional mistake involved. Bernstein v. Kapneck, 46 Md. App. 231, 417 A.2d 456 (1980), aff'd, 290 Md. 451, 430 A.2d 602 (1981). Accordingly, the word "mistake" as employed in this Rule does not mean a unilateral error of judgment on the part of one of the parties. Hamilos v.Hamilos, 52 Md. App. 488, 450 A.2d 1316 (1982), aff'd, 297 Md. 99 465 A.2d 445 (1983).

Irregularity has been consistently defined as the doing or not doing of that, in the conduct of a suit at law, which conformable with the practice of the Court, ought to be done. Bowen v. Romance, 15 Md. App. 280, 290 A.2d 560 (1971); Weitz v. MacKenzie, 273 Md. 628, 331 A.2d 291 (1975). In this context, irregularity is usually of process or procedure. Weitz v. MacKenzie, 273 Md. 628, 331 A.2d 291 (1975); Hamilos v. Hamilos, 52 Md. App. 488, 450 A.2d 1316 (1982); aff'd, 297 Md. 99, 465 A.2d 445 (1983); Pellegrino v Maloof, 56 Md. App. 338, 467 A.2d 1046 (1983).

In the instant case, the Defendant alleges that he did not understand the paternity procedure because his primary language is Spanish. The Plaintiff would argue that she lived with the Defendant for a lengthy period of time and can attest to his ability to comprehend English. In addition, if Ms. Blanton,

the analyst felt that the Defendant did not fully understand the proceedings, as part of her commitment to public service, she would have taken the steps necessary to insure that understanding.

In the instant case, the Plaintiff adamantly contends that the Defendant not only understood the nature of the proceedings, he also understood the rights to which he was entitled. He was given his rights orally and in writing, and intelligently waived them. But arguendo, if this were not the case, the issue of formal waiver of rights is not required under the statute. A Pennsylvania Court held that there should be no requirement that a father be informed of his rights prior to his admission of paternity. The court said:

Appellee was not the focus of a criminal investigation,his personal liberty was not restrained in any way an the record indicates that no deceptive or coercive tactics were employed to secure his admission. We can discern no reason to impose criminal waiver requirements and demand Miranda type warnings in this situation. Aarmstead v. Dandridge, Pa. Super., 390A 2d 1305, p1309.

The power to revise its judgment at any time as to an enrolled decree even where fraud is asserted and proven is subject to the rights of innocent third parties. Kline v. Chase Manhattan Bank, 43 Md. App. 133, 403 A3d 395 (1979). Accordingly, the Plaintiff argues against any blood test order in this case. The innocent party, the child, will be injured. The Defendant admitted to the child and to the community that he was the father of the child. To deny paternity after this admission could cause trauma to the innocent party. " The relationship of father and child is too sacred to be thrown off like an old clock, used and unwanted." Clevenger v. Clevenger, 189 C.A. 2d. 658, 674 (1961). Second, this case involves an enrolled decree which should not be set aside as no fraud, mistake, or irregularity has been asserted or cn be proven. Furthermore, if despite the Plaintiff's most strenuous arguments, a blood test were ordered, the case would not be resolved. The Maryland Court of Appeals has upheld the validity of a judgment for child support arrearage after the

Defendant was found not to be the child's father due to a blood test exclusion in Fieqa v. Boehn, 210 Md. 353 (1955). Other jurisdictions have also upheld the finding of paternity despite new evidence purporting to show the impossibility of the Defendant's being the father of the child. In Watson v. State of Oregon, 694 P.2d 560 (1985), the Defendant was found to be the father of the child born in 1980 after he consented to the terms of a paternity judgement. In 1982, a blood test between the parties and the child excluded the Defendant as a possible father. Using the evidence and the fact that Plaintiff committed perjury in a pretrial deposition, the Defendant sued to vacate the paternity judgement. The Court held on page 563:

"We hold that the circuit Court did not err in Dismissing Plaintiff's complaint for failure to state a claim for relief. The fraud of which Plaintiff complains, perjured desposition testimony, was intrinsic to the proceedings below, because it concerned the very issue in dispute, and cannot provide the basis for setting aside the Judgement. Although Plaintiff may have been induced by the mother's deposition to stipulate to a judgement, he was not prevented from disputing her testimony and attempting to disprove his paternity. The strong policy favoring the finality of litigation dissuades us from allowing Plaintiff to upset a Judgement to which he consented without seeking to present evidence on the issue" (Dissent filed).

In Hackley v. Hackley, 395 NW 2d. 906 (1986). The Michigan Supreme Court held on page 913, 914.

"At issue is Travis status in relation to Antoine and the rights and obligations that flow therefrom. A finding of fact in a Divorce Decree that a child was born of the marriage of the parties establishes the child's paternity. Such a determination, if unappealed, is to be given conclusive effect. This rule must hold true even where th rules of evidence have changed between the prior and subsequent suits so as to allow the admission of testimon which could conclusively establish that the issue of paternity should have been decided

otherwise. See Thompson,Supra; Johnson v. Johnson, 395 So 2d. 640, 641 (Fla App. 1981) CF. United States v. Moser, Supra. See also 50 CJS; Judgements 734 P. 224; Ashley v. Ashley 118 Ohio App. 155, 193 N.E. 2d 535 (1961).

"There is no area of law requiring more finality and stability than Family Law; Public Policy demands finality of litigation in this area to preserve surviving Family structure." Exparte Hoverman, 636 S.W. 2d 828, 836 (Tex. Civ. App., 1982) McGinn v. McGinn, 125 Mich. App. 689, 693, 337 N.W. 2d 632 (1983). There is no more forceful example of the rationale underlying the requirements of finality of judgements than the chaos and humiliation which would follow from allowing former husbands to challenge, long after a final Judgement has been entered, the legitimacy of children born during their marriages.

In conclusion, the Plaintiff argues that there was an enrolled decree, that there was no fraud, irregularity, or mistake and that no meritorious defense has been alleged. furthermore, there is no area of law in which finality is more important.

WHEREFORE the Plaintiff respectfully requests this Honorable Court to:

a. Dismiss the Motion to Set Aside an Enrolled Judgment.

b. Order the Defendant to comply with the decree.

c. Fix arrearages and order payments thereof.

d. Require that payments be made by wage lien.

e. And for such other and further relief as the nature of its cause may require.

Stuart O. Simms

STUART O. SIMMS
State's Attorney
for Baltimore City

Sondra H. Crain

SONDRA H. CRAIN
Assistant State's Attorney
Room 418 Mitchell Courthouse
110 N. Calvert Street
Baltimore, Maryland 21202
396-5109

CERTIFICATION

I HEREBY CERTIFY that on this 21ST day of May, 1990, a copy of the aforegoing Memorandum was mailed, postage prepaid to; Alfred Nance, Esquire, 1 E. Lexington Street, Suite 200, Baltimore, Maryland 21202, attorney for the Defendant.

Sondra H. Crain

SONDRA H. CRAIN
Assistant State's Attorney

Circuit Court for Baltimore City
Saundra E. Banks, *Clerk*
111 N. Calvert St. - Room 462
Baltimore, Md. 21202

(9)

FRANCINA ARRINGTON

Case Number PD70-119070
SAO No.: C 5/90
(X) Civil

Vs.

JOSE RODRIGUEZ

To be Served private Process

SUBPOENA

TO: Major Phillip Brown
Department of Motor Vehicles
Glen Burnie, Maryland 21061

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear; ( ) Produce documents and or objects only; (X) Personally appear and produce documents or objects;

at Part 20, Room 420 Mitchell Courthouse, 110 N. Calvert Street, Baltimore, Maryland 21202
(Place where attendance is required)

on Thursday the 24th day of May, 19 90 . at 2:30 xx.m./p.m.

YOU ARE COMMANDED TO produce the following documents or objects: pertaining to applications and test papers for CDL Test administered to: JOSE' Rodriguez, d.o.b. 12/28/38, Soundex #362 440005990 on 2/20/90 and 2/21/90.

Subpoena requested by (X Plaintiff; ( ) Defendant; and any questions should be referred to:

Sondra H. Crain, Assistant State's Attorney, Room 418 Mitchell Courthouse
396-5109
(Name of Party or Attorney, Address and Phone Number)

PLEASE TELEPHONE ME UPON RECEIPT OF THIS SUBPOENA. THANK YOU.

Date Issued 5-16-90

Saundra E. Banks
CLERK (Signature & Seal)

NOTICE:

(1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.
(2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.
(3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d).

SHERIFF'S RETURN

( ) - Served and copy delivered on date indicated below.
( ) - Unserved, by reason of _____

Date: _____ Fee: $_____

_____
Sheriff

Original and one copy needed for each witness
CC–30

14

PATERNITY

AFDC

...Court for Baltimore City
...E. Bair, Clerk
...Calvert St., Room 462
...Baltimore, Md. 21202

FRANCINA E. ARRINGTON

Case Number PD70-119070

(X) Civil

Vs.

JOSE D. RODRIGUEZ

SUBPOENA

TO: Francina E. Arrington
5201 Ready Avenue
Baltimore, Maryland 21212

YOU ARE HEREBY COMMANDED TO: (X) Personally appear; ( ) Produce documents and or obj only; ( ) Personally appear and produce documents or objects;

at Part 20, Room 420 Mitchell Courthouse, 110 N. Calvert Street, Baltimore,
(Place where attendance is required)
Maryland 21202

on Friday the 27 day of April, 1990, at 9:00 a.m./~~p.m.~~

YOU ARE COMMANDED TO produce the following documents or objects:

Subpoena requested by (X) Plaintiff; ( ) Defendant; and any questions should be referred to:

C in/Salsbury, Assistant State"s Attorneys, Room 418 Mitchell Courthouse
396-5109
(Name of Party or Attorney, Address and Phone Number)

Date Issued 3/27/90

CLERK (Signature & Seal)

...Balto. City

NOTICE:

(1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.
(2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.
(3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d).

SHERIFF'S RETURN

(✓) - Served and copy delivered on date indicated below.
( ) - Unserved, by reason of _____

Date: 4/2/90 Fee: $15.00

Sheriff

Original and one copy needed for each witness
CC-30

PATERNITY

Circuit Court for Baltimore City
Sandra A. Banks, *Clerk*
111 N. Calvert St. - Room 462
Baltimore, Md. 21202

AFDC

FRANCINA E. ARRINGTON

Case Number PD70-119070

(X) Civil

Vs.

35 C 1

JOSE D. RODRIGUEZ

SUBPOENA

TO: Jose D. Rodriguez
6600 Dumbarton Avenue
Baltimore, Maryland 21212

YOU ARE HEREBY COMMANDED TO: (X) Personally appear; ( ) Produce documents and or objects only; ( ) Personally appear and produce documents or objects;

at Part 20, Room 420 Mitchell Courthouse, 110 N. Calvert Street, Baltimore, Maryland 21202
(Place where attendance is required)

on Friday the 27 day of April, 1990, at 9:00 a.m./~~p.m.~~

YOU ARE COMMANDED TO produce the following documents or objects:

Subpoena requested by (X) Plaintiff; ( ) Defendant; and any questions should be referred to:

Crain/Salsbury, Assistant State"s Attorneys, Room 418 Mitchell Courthouse 396-5109
(Name of Party or Attorney, Address and Phone Number)

Date Issued 3/27/90

CLERK _____ (Signature & Seal)

NOTICE:

(1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.
(2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.
(3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d).

SHERIFF'S RETURN

(✓) - Served and copy delivered on date indicated below.
( ) - Unserved, by reason of _____

Date: 3/29/90 Fee: $ 10

J. Anderson
Sheriff
J. Bass

Original and one copy needed for each witness
CC—30

16

FILED

FRANCINA E. ARRINGTON
5201 Ready Avenue
Baltimore, Maryland 21212

Plaintiff

vs

JOSE D. RODRIGUEZ
6600 Dumbarton Avenue
Baltimore, Maryland 21212

Defendant

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

CASE NUMBER: PD70-119070
DRD CASE NUMBER: 2121-89

8

ANSWER TO MOTION TO SET ASIDE PATERNITY DECREE

Now comes the Plaintiff, Francina D. Rodriguez by Stuart O. Simms, State's Attorney for Baltimore City and Sondra H. Crain, Assistant State's Attorney for Baltimore City and in Answer to the Motion to Set Aside Paternity Decree says as follows:

1. That she admits the allegations in paragraph one.

2. That she denies the allegations in paragraph two.

3. That she admits the allegations in paragraph three.

4. That she can neither admit nor deny the allegations in paragraph four as to the Defendant's confusion.

5. That she admits allegation in paragraph five regarding no interpreter being present but emphatically denies that it was apparent that an interpreter was required and as further answer states that the Hearing Examiner, Jacqueline Blanton has had thirteen (13) years experience in her position. Thus, if there was even the slightest indication of the Defendant's difficulty in understanding, the proper procedure to insure the Defendant's comprehension would have been taken.

6. That she can neither admit or deny the allegation in paragraph six and as further answer states that the Defendant has never denied paternity of the child to her.

AND IN FURTHER answer states:

7. That the Decree in question is an enrolled Decree and can be set aside only in case of fraud, mistake or irregularity.

8. That no fraud, mistake, or irregularity can be found in this case.

9. That this case be set for a hearing on April 27, 1990, 9:00 A.M., Room 420 Mitchell Courthouse, 110 N. Calvert Street, Baltimore, Maryland 21202.

WHEREFORE, your Plaintiff prays that the Motion to Set Aside Paternity Decree be denied.

Stuart O. Simms

STUART O. SIMMS
State's Attorney
for Baltimore City

Sondra H. Crain

SONDRA H. CRAIN
Assistant State's Attorney
Room 418 Mitchell Courthouse
110 N. Calvert Street
Baltimore, Maryland 21202
396-5109

CERTIFICATION

I hereby certify that on this 26th day of March, 1990, a copy of the Answer to Motion to Set Aside Paternity Decree was mailed to Alfred Nance, Esquire, One E. Lexington Street, Suite 200, Baltimore, Maryland 21202.

Sondra H. Crain

SONDRA H. CRAIN
Assistant State's Attorney

FILED

FEB 23 1990

CIRCUIT COURT FOR
BALTIMORE CITY

FRANCINA EVONNE ARRINGTON	*	IN THE
Petitioner	*	CIRCUIT COURT
V.	*	FOR
JOSE' DEJESUS RODRIGUEZ	*	BALTIMORE CITY
Defendant	*	DOCKET 70
	*	CASE NO.: 119070
	*	DOMESTIC RELATIONS
	*	NUMBER: 2121-89

* *

SECOND REQUEST FOR HEARING

Please schedule the above referenced matter for hearing on Defendant's Motion to Strike Consent Paternity Decree of March 31, 1989.

ALFRED NANCE
One East Lexington Street
Suite 200
Baltimore, Maryland 21202
(301) 659-6907
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of February, 1990, a copy of the aforegoing Second Request for Hearing was mailed, first class, postage prepaid to Francina Evonne Arrington, 5201 Ready Avenue, Baltimore, Maryland 21212, Attorney for Petitioner.

Alfred Nance, Esquire

Note:

Copy of pleadings
to McGuire 2/14/90.

He will schedule case
in Domed. - Misc.
Court.

FILED

JAN 24 199

CIRCUIT COURT FOR BALTIMORE CITY

FRANCINA EVONNE ARRINGTON,	*	IN THE	
Petitioner	*	CIRCUIT COURT	
vs.	*	FOR	
JOSÉ DEJESUS RODRIGUEZ,	*	BALTIMORE CITY	
Defendant	*	CASE NO: 119070 70/2121-89	

* * * * * * * * * * * * * *

PETITIONER'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE PATERNITY DECREE OF MARCH 31, 1989

(6) 1-29-90 (8) (5)

TO THE HONORABLE, JUDGE OF DOMESTIC COURT:

Francina Arrington, Petitioner, hereby files this Opposition to the Defendant, José de Jesus Rodriguez's motion to strike consent of Paternity of March 31, 1989 and in support thereof states as follows:

1. The Defendant, José de Jesus Rodriguez, is in fact the father of our child, Nicole Erica Rodriguez, born August 9, 1987.

2. The Defendant, José de Jesus Rodriguez, held himself out to the petitioner, to the child, and to the community, to be the father of the child, Nicole Erica Rodriguez.

3. The Defendant's, José de Jesus Rodriguez's, sole purpose in filing this motion is to avoid payments of child support.

I do solemnly declare and affirm under the penalties of perjury that the contents of this Opposition are true to the best of my knowledge, information and belief.

Francina Evonne Arrington

FRANCINA EVONNE ARRINGTON
PETITIONER

I hereby certify that on 29th day of January 1990 a copy of the aforeing motion was send to Alfred Nance, attorney for Defendant José de Jesus Rodriguez, One East Lexington St. Balto., Md. 21202

Francina Evonne Arrington
Petitioner

CIRCUIT COURT FOR BALTIMORE CITY
PATERNITY DIVISION
Room 441
Clarence M. Mitchell, Jr. Courthouse
110 North Calvert Street
Baltimore, Maryland 21202
(301) 333-3738

TO: Francina Covington
5201 Ready Ave
21212

DATE: 1/25/90

The enclosed papers are being returned for the following reason(s):

Filing fee of $_____ required. ___

No Certificate of Service pursuant to Md. Rule 1-321. ✓

Need ____ additional copies of papers. ___

Case number missing/ Incorrect case number. ___

Sent to wrong Court. ___

Failure to comply with Md. Rule _____. ___

Other:

Saundra E. Banks

Saundra E. Banks, Clerk

Circuit Court for Baltimore City
Saundra E. Banks, *Clerk*
111 N. Calvert St. - Room 462
Baltimore, Md. 21202

AFDC

WRIT OF SUMMONS

Case Number 70-119070

STATE OF MARYLAND, **CITY OF BALTIMORE TO WIT:**

TO: FRANCINE EVONNE ARRINGTON
5201 READY AVENUE
BALTIMORE, MARYLAND 21212

You are hereby summoned to file a written response by pleading or motion in this Court to the attached

Complaint filed by JOSE DEJESUS RODRIGUEZ 660 DUMBARTON AVENUE
(Name & Address)
BALTIMORE, MARYLAND 21212

within 30 days after service of this summons upon you.

WITNESS the Honorable Chief Judge of the Eighth Judicial Circuit of Maryland.

Date Issued January 2, 1990

Saundra E Banks
CLERK

TO THE PERSON SUMMONED:

1. PERSONAL ATTENDANCE IN COURT ON THE DAY NAMED IS NOT REQUIRED.
2. FAILURE TO FILE A RESPONSE WITHIN THE TIME ALLOWED MAY RESULT IN A JUDGMENT BY DEFAULT OR THE GRANTING OF THE RELIEF SOUGHT AGAINST YOU.

SHERIFF'S RETURN

Person Served FRANCINE ARRINGTON Time _____ Date 1/5/90

Person Served _____ Time _____ Date _____

Non Est (Reason) _____

Fee $ 15.00 Sheriff John Anderson
D/S Richard Stankiewicz

NOTE:

1. This summons is effective for service only if served within 60 days after the date it is issued
2. Proof of service shall set out the name of the person served, date and the particular place and manner of service. If service is not made, please state the reasons.
3. Return of served or unserved process shall be made promptly and in accordance with Rule 2-126.
4. If this summons is served by private process, Process server shall file a seperate affidavit as required by Rule 2-126 (a).

FILED

DEC 20 1989

CIRCUIT COURT FOR
BALTIMORE CITY

FRANCINA EVONNE ARRINGTON 5201 Ready Avenue Baltimore, Maryland 21212	*	IN THE
	*	CIRCUIT COURT
Petitioner	*	FOR
V.	*	BALTIMORE CITY
JOSE´ DEJESUS RODRIGUEZ 660 Dumbarton Avenue Baltimore, Maryland 21212	*	DOCKET 70
	*	CASE NO.: 119070
Defendant	*	DOMESTIC RELATIONS
	*	NUMBER: 2121-89

* *

MOTION TO STRIKE CONSENT PATERNITY
DECREE ORDER OF MARCH 31, 1989

TO THE HONORABLE, JUDGE OF SAID COURT:

Now comes Defendant, Jose´ DeJesus Rodriguez, by his attorney, Alfred Nance, Esquire pursuant to Rule 2-535 (b) and moves to strike Consent Paternity Decree Order of March 31, 1989 and in support thereof, respectfully states:

1. On March 31, 1989 this Court issued a Consent Paternity Decree Order establishing Defendant as the father of the child known as Nicole Erica Rodriguez born to Francina Evonne Arrington on Augst 8, 1987.

2. Defendant's consent to the Paternity Decree Order, supra, was not voluntarily, knowingly and intelligently made in that Defendant has difficulty communicating in and understanding the English language.

3. Defendant is originally from the Dominican Republic, where his native language was Spanish.

4. The Court file shows that the Notification of Rights Form was signed and initialed by Defendant in both the "I received a copy of this Notification and do not want an explanation"; and "I want to have this notification explained to me" sections, which is evidence of Defendant's confusion and lack of understanding as to what his consent in this matter entailed.

5. No interpreter was made available to Defendant to explain the contents of the Notification of Rights Form, supra, when it was or should have been apparent that an interpreter was required.

6. Defendant contests that he is the father of the child, supra.

7. Defendant believes that a valid blood test will prove that he is not the father of the child, supra.

WHEREFORE, Defendant prays this Honorable Court to:

A. Strike Consent Paternity Decree Order of March 31, 1989.

B. Order all wages, earnings, income and property of Defendant that was attached as a result of this action be returned to Defendant.

C. Set this case in for trial on the merits at the earliest possible date.

D. Order a blood test of the parties and the said child.

E. Grant Defendant such other and further relief as the nature of this cause may require.

ALFRED NANCE
One East Lexington Street
Suite 200
Baltimore, Maryland 21202
(301) 659-6907
Attorney for Defendant

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING MOTION TO STRIKE CONSENT PATERNITY DECREE ORDER OF MARCH 31, 1989 ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

JOSE' DEJESUS RODRIGUEZ
DEFENDANT

REQUEST FOR HEARING

Defendant requests a Hearing on the Motion to Strike Consent Paternity Decree Order of March 31, 1989.

Alfred Nance
Attorney for Defendant

FRANCINA EVONNE ARRINGTON	*	IN THE
Petitioner	*	CIRCUIT COURT
V.	*	FOR
JOSE´ DEJESUS RODRIGUEZ	*	BALTIMORE CITY
Defendant	*	DOCKET 70
	*	CASE NO.: 119070
	*	DOMESTIC RELATIONS NUMBER: 2121-89
	*	

* *

ORDER

Upon due consideration of the Motion to Strike Consent Paternity Decree Order of March 31, 1989, filed by Defendant, Jose' DeJesus Rodriguez, testimony having been taken, review of the court file and the evidence presented, it is this _____ day of _____, 1990 hereby ORDERED that Defendant's Motion to Strike Consent Paternity Decree Order of March 31, 1989 is granted. And,

It is furhter ORDERED that the Consent Paternity Decree Order of March 31, 1989 is stricken in its entirety. And,

It is ORDERED that all wages, earnings, income and property of Defendant that was attached as a result of this action be returned to Defendant. And,

It is further ORDERED that this matter be set on the docket for trial on the merits at the earliest possible date.

_____
JUDGE

7

3

IN THE CIRCUIT COURT FOR BALTIMORE CITY

PD 70-119070

DRD 2121-89

NOTIFICATION OF RIGHTS

You are advised, that by admitting that you are the father of the child in this case you have stopped the Court process.

Be advised that if you weren't sure, or if you denied you were the child's father the Court process would have continued and you would have had the following rights:

(1) The right to a lawyer, and if you could not afford a lawyer, to be referred to some other agency for possible legal representation.

(2) The right to take a blood test to see if it excluded you, or included you, to a mathematical probability, as the father of the child. If you could not afford the cost of the blood test, to ask the City of Baltimore to advance the cost of the test.

(3) The right to a trial in this case, whether a jury trial or trial before a Judge of the Circuit Court. Testimony would be taken and, the case would be decided by a preponderance of the evidence.

(4) The right to bring witnesses who support you if you were to deny paternity and the right to cross-examine the Plaintiff (mother) in the Court, or any other witnesses she may have.

You are further advised that you have a duty to support this child until he or she reaches the age of eighteen (18) years, dies, or becomes emancipated.

X I received a copy of this Notification and do not want an explanation.

Joe Rodriguez 3/3/89
DEFENDANT DATE

X I want to have this notification explained to me.

J.R.

Joe Rodriguez 3/3/89
DEFENDANT DATE

Francina Evonne Arrington
Petitioner

5201 Ready Avenue #21212
Address

VS.

Jose' DeJesus Rodrigues
Defendant

660 Dumbarton Avenue #21212
Address

FILED

APR 6 1989

Copy

CIRCUIT COURT FOR BALTIMORE CITY.

IN THE CIRCUIT COURT FOR BALTIMORE CITY

Domestic Relations Division

Docket 30 Case No. 119070

Domestic Relations No. 2121-89

CONSENT PATERNITY DECREE

The Defendant, Jose' DeJesus Rodriguez, having entered into agreement with the Petitioner concerning the support, guardianship and custody of the child known as Nicole Erica Rodriguez born to Francina Evonne Arrington, on August 9, 19 87, and having admitted being the father of said child; and the parties having joined in consenting to the passage of the following order; it is this 31st day of March, 19 89, by the Circuit Court for Baltimore City, adjudged, ordered and decreed,

1. THAT Jose' DeJesus Rodriguez, is the father of the child known as, Nicole Erica Rodriguez born to Francina Evonne Arrington on August 8, 19 87.

2. THAT custody and guardianship of said child is hereby given to Mother

3. THAT the Defendant shall pay, through the Bureau of Support Enforcement, the sum of $ 25.00 per week for the support of the said child until said child reaches the age of eighteen (18) years, dies, marries or becomes self-supporting, whichever event first occurs. That payments shall be by lien, if the Payor accumulates support payments arrears amounting to more than thirty (30) days of support. Effective April 3, 1989. To be increased to $50.00 per week effective 6-5-89.

4. Payments under this order shall be remitted by the Bureau of Support Enforcement to the person, institution or agency determined by the Court or the Master, Domestic Relations Division, to have the legal or actual custody of said child.

5. THAT the Defendant shall pay ordinary medical expenses incurred by the mother of the child during her confinement, and reasonable funeral expenses of the child if he/she shall die under the age of eighteen (18) years. Defendant to pay medical expenses at the rate of $ _____ per _____.

6. THAT the Defendant shall report to the Bureau of Support Enforcement as directed; shall immediately notify the Bureau of Support Enforcement of any changes affecting his ability to make payments under this Order; shall not leave the State of Maryland without the consent of the Court, nor change his residence without first reporting such change to the Bureau of Support Enforcement; and shall appear in Court in response to any Notice served upon him by mail or any Peace Officer in connection with this order.

7. Defendant will provide medical coverage if it does not affect the ability to pay the agreed amount of support.

8. THAT the Cost of this proceeding shall be ~~paid by~~ Waived

Provisions of this Decree pertaining to **GUARDIANSHIP, CUSTODY, SUPPORT, BOND** and **RELATIONSHIP** with **BUREAU of SUPPORT ENFORCEMENT** remain subject to the further Order of the Court.

Judge

I, hereby assent to the passage of this Order:

Petitioner: Francina Arrington

Defendant: Jose' Rodriguez

Witness:

Attest:

Clerk,
Circuit Court for Baltimore City

CC - 89 (Rev. 7/87)

2

P-204

Francina Evonne Arrington Petitioner

5201 Ready Ave. #12 Address

VS.

Jose' DeJesus Rodriguez Defendant

660 Dumbarton Ave. #12 Address

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Domestic Relations Division

Docket 70 Case No. 114070

DRD No. 2121-89

PATERNITY PETITION

(1)

MAR 3 1989

To the Honorable, the Judge of Said Court:

Your Petitioner respectfully shows

1. That Francina Evonne Arrington became pregnant on or about ..... 19....., that the child ~~is expected~~ was born on August 9 19 87, and is known as Nicole Erica Rodriguez.

2. That Francina Evonne Arrington was unmarried at the time the child was conceived, that the paternity of the child has not been determined by any Court, and that Jose' DeJesus Rodriguez is in fact the child's father.

3. That ..... was a married woman at the time the child was conceived, but that she and her husband, ..., were then living separately and apart and not as husband and wife, and that ..... is in fact the child's father.

4. That the child was delivered in Sinai Hospital in Balto., and is now in the care of mother at 5201 Ready Ave. in the City of Balto.

WHEREFORE, your Petitioner requests this Court to pass an order

1. Declaring Jose' DeJesus Rodriguez to be the father of the child named herein.
2. Determining who shall have custody and guardianship of said child, the amount to be paid, toward the child's support and to whom it shall be paid.
3. For such other and further relief as the nature of this case may require.

Filed by

Complainant's Solicitor State's Attorney

Petitioner Francina Arrington

Relationship to child mother

State of Maryland, City of Baltimore, Sct.

On February 28th 1989, The Petitioner herein personally appeared before me and made oath in due form of law that the facts stated in the Petition are true to the best of Petitioner's knowledge and belief.

JOANNE E. ALLEN NOTARY PUBLIC BALTIMORE COUNTY MD

Clerk Circuit Court for Baltimore City, Notary

Notice To Defendant

This petition charges you with being the father of an illegitimate child. You may have this case tried before a jury, but unless you notify this court of your desire to have a jury trial, it will be set for trial before a Judge. You may be represented by an attorney and you may summon witnesses in your behalf. This is not a criminal charge.

CC-85 (1/83)

Docket No. ..... Case No. .....

DRD No. 2121-89 Filed .....

Francina Evonne Arrington Petitioner

5201 Ready Ave. #12 Address

VS.

Jose' DeJesus Rodriguez Defendant

660 Dumbarton Ave. #13 Address

CIRCUIT COURT

FOR BALTIMORE CITY

PATERNITY PETITION

I hereby authorize the filing of the within petition

.....

State's Attorney
for Baltimore City

I hereby waive my right to jury trial in this case

.....

Defendant

SUMMONS

JOSE' RODRIGUEZ	*	IN THE
PLAINTIFF	*	CIRCUIT COURT
vs.	*	FOR
FRANCINA ARRINGTON	*	BALTIMORE CITY
DEFENDANT	*	Case No. 70/119070

****

INDEX

Jose' Rodriquex vs. Francina Arrington

Index (Continued)

Vol 1 of 2

Civil Paternity

No. 1690 (LEAVE BLANK) SEPTEMBER TERM, 19 90

TRANSCRIPT OF RECORD

FF

FROM THE

CIRCUIT COURT FOR BALTIMORE CITY

Judge: HONORABLE ELLEN L. HOLLANDER

IN THE CASE OF

JOSE' RODRIGUEZ

Appellant

VS.

FRANCINA E. ARRINGTON

Appellee

TO THE

COURT OF SPECIAL APPEALS

FOR APPELLANT

ALFRED NANCE, ESQUIRE
1 EAST LEXINGTON STREET, SUITE 200
BALTIMORE, MARYLAND 21202
(301) 659-6907

R-50.00
S-722.50

FOR APPELLEE

STUART SIMMS, STATE'S ATTORNEY OF MARYLAND
SANDRA CRAINE, ASSISTANT STATE'S ATTORNEY
CLARENCE M. MITCHELL, JR. COURTHOUSE WEST
CALVERT & FAYETTE STREETS
BALTIMORE, MARYLAND 21202
(301) 396-5109

CK# 724023196
12/20/90

J. Joseph Curran, Jr.

Filed 12/21/90 (LEAVE BLANK)

1/30

6/91

No. 70/119070

RLC 7/11/90
NC

Start 3/3/89
grnt 8/31/90
APP 9/28/90

CC-155

CIRCUIT COURT FOR BALTIMORE CITY

CALVERT & FAYETTE STS.
BALTIMORE, MD. 21202

CASE NO. 119070

STATE OF MARYLAND

VS.

Jose D. Rodriguez

IN PART _____ ROOM 420 CLARENCE M. MITCHELL, JR. COURTHOUSE

IN PART _____ ROOM _____ COURT HOUSE EAST

WITNESS FOR STATE ☐ DEFENSE ☐ AT 3:30 ON 6-25-90

RECEIVED BY Jose Rodriguez DATE _____

YOU ARE HEREBY SUMMONED TO APPEAR IN COURT DAILY UNTIL DULY DISCHARGED. FAILURE TO APPEAR ON TIME MAY CAUSE YOU TO BE CHARGED WITH CONTEMPT OF COURT OR A WARRANT TO BE ISSUED FOR YOUR ARREST.

BRING THIS SUMMONS WITH YOU TO COURT.

BY ORDER OF COURT

Saundra E. Banks

SAUNDRA E. BANKS
CLERK, CIRCUIT COURT FOR BALTIMORE CITY

CIRCUIT COURT FOR BALTIMORE CITY 1983

DATE ISSUED _____

CC-155

CIRCUIT COURT FOR BALTIMORE CITY

CALVERT & FAYETTE STS.
BALTIMORE, MD. 21202

CASE NO. 119070

STATE OF MARYLAND

VS. Jose D. Rodriguez

IN PART _____ ROOM 420 CLARENCE M. MITCHELL, JR. COURTHOUSE

IN PART _____ ROOM _____ COURT HOUSE EAST

WITNESS FOR STATE ☒ DEFENSE ☐ AT 3:30 ON 6-25-90

RECEIVED BY Francina Carrington DATE _____

YOU ARE HEREBY SUMMONED TO APPEAR IN COURT DAILY UNTIL DULY DISCHARGED. FAILURE TO APPEAR ON TIME MAY CAUSE YOU TO BE CHARGED WITH CONTEMPT OF COURT OR A WARRANT TO BE ISSUED FOR YOUR ARREST.

BRING THIS SUMMONS WITH YOU TO COURT.

BY ORDER OF COURT

Saundra E. Banks

SAUNDRA E. BANKS
CLERK, CIRCUIT COURT FOR BALTIMORE CITY

CIRCUIT COURT FOR BALTIMORE CITY 1983

DATE ISSUED _____

CC-155

CIRCUIT COURT FOR BALTIMORE CITY

CALVERT & FAYETTE STS.
BALTIMORE, MD. 21202

CASE NO. 90-119078 Arrington

~~STATE OF MARYLAND~~

VS. Rodriguez

IN PART _____ ROOM 420 CLARENCE M. MITCHELL, JR. COURTHOUSE

IN PART _____ ROOM _____ COURT HOUSE EAST

WITNESS FOR STATE ☑ DEFENSE ☐ AT 9:30 am ON June 12

RECEIVED BY Jerry Travers DATE _____

Nancy Alexander
BSP

DATE ISSUED 6/5/90

YOU ARE HEREBY SUMMONED TO APPEAR IN COURT DAILY UNTIL DULY DISCHARGED. FAILURE TO APPEAR ON TIME MAY CAUSE YOU TO BE CHARGED WITH CONTEMPT OF COURT OR A WARRANT TO BE ISSUED FOR YOUR ARREST.

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CC-155

CIRCUIT COURT FOR BALTIMORE CITY

CALVERT & FAYETTE STS.
BALTIMORE, MD. 21202

CASE NO. 119070

STATE OF MARYLAND

VS. Jose D. Rodriguez

IN PART _____ ROOM 420 CLARENCE M. MITCHELL, JR. COURTHOUSE

IN PART _____ ROOM _____ COURT HOUSE EAST

WITNESS FOR STATE ☐ DEFENSE ☐ AT 10AM ON 6-12-90

RECEIVED BY Paul J. Merryman DATE _____

YOU ARE HEREBY SUMMONED TO APPEAR IN COURT DAILY UNTIL DULY DISCHARGED. FAILURE TO APPEAR ON TIME MAY CAUSE YOU TO BE CHARGED WITH CONTEMPT OF COURT OR A WARRANT TO BE ISSUED FOR YOUR ARREST.

BRING THIS SUMMONS WITH YOU TO COURT.

BY ORDER OF COURT

Saundra E. Banks

SAUNDRA E. BANKS
CLERK, CIRCUIT COURT FOR BALTIMORE CITY

CIRCUIT COURT FOR BALTIMORE CITY 1983

DATE ISSUED _____

CC-155

CIRCUIT COURT FOR BALTIMORE CITY

CALVERT & FAYETTE STS.
BALTIMORE, MD. 21202

CASE NO. 119070

STATE OF MARYLAND

VS. Jose D. Rodriguez

IN PART _____ ROOM 420 CLARENCE M. MITCHELL, JR. COURTHOUSE

IN PART _____ ROOM _____ COURT HOUSE EAST

WITNESS FOR STATE ☐ DEFENSE ☐ AT 10Am ON 6-12-90

RECEIVED BY Jose Rodriguez DATE _____

DATE ISSUED _____

CIRCUIT COURT FOR BALTIMORE CITY 1983

YOU ARE HEREBY SUMMONED TO APPEAR IN COURT DAILY UNTIL DULY DISCHARGED. FAILURE TO APPEAR ON TIME MAY CAUSE YOU TO BE CHARGED WITH CONTEMPT OF COURT OR A WARRANT TO BE ISSUED FOR YOUR ARREST.

BRING THIS SUMMONS WITH YOU TO COURT.

BY ORDER OF COURT

Saundra E. Banks

SAUNDRA E. BANKS
CLERK, CIRCUIT COURT FOR BALTIMORE CITY

CC-155

CIRCUIT COURT FOR BALTIMORE CITY

CALVERT & FAYETTE STS.
BALTIMORE, MD. 21202

CASE NO. 1190.70

STATE OF MARYLAND

VS.

Jose D. Rodriguez

IN PART _____ ROOM 420 CLARENCE M. MITCHELL, JR. COURTHOUSE

IN PART _____ ROOM _____ COURT HOUSE EAST

WITNESS FOR STATE ☐ DEFENSE ☐ AT 10 AM ON 6-12-90

RECEIVED BY Francena Arrington DATE _____

YOU ARE HEREBY SUMMONED TO APPEAR IN COURT DAILY UNTIL DULY DISCHARGED. FAILURE TO APPEAR ON TIME MAY CAUSE YOU TO BE CHARGED WITH CONTEMPT OF COURT OR A WARRANT TO BE ISSUED FOR YOUR ARREST.

BRING THIS SUMMONS WITH YOU TO COURT.

BY ORDER OF COURT

Saundra E. Banks

SAUNDRA E. BANKS
CLERK, CIRCUIT COURT FOR BALTIMORE CITY

CIRCUIT COURT FOR BALTIMORE CITY 1983

DATE ISSUED _____

CC-155

CIRCUIT COURT FOR BALTIMORE CITY

CALVERT & FAYETTE STS.
BALTIMORE, MD. 21202

CASE NO. 90 70 /119070

~~STATE OF MARYLAND~~ Arrington

VS. Rodriguez

IN PART _____ ROOM 420 CLARENCE M. MITCHELL, JR. COURTHOUSE

IN PART _____ ROOM _____ COURT HOUSE EAST

WITNESS FOR STATE ☑ DEFENSE ☐ AT 2:00 ON June 1, 1990

RECEIVED BY Marian Snowden DATE 5/23/90

Nancy Alexander
BSE

DATE ISSUED 5/25/90

CIRCUIT COURT FOR BALTIMORE CITY 1983

YOU ARE HEREBY SUMMONED TO APPEAR IN COURT DAILY UNTIL DULY DISCHARGED. FAILURE TO APPEAR ON TIME MAY CAUSE YOU TO BE CHARGED WITH CONTEMPT OF COURT OR A WARRANT TO BE ISSUED FOR YOUR ARREST.

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BY ORDER OF COURT

Saundra E. Banks

SAUNDRA E. BANKS
CLERK, CIRCUIT COURT FOR BALTIMORE CITY

CC-155

CIRCUIT COURT FOR BALTIMORE CITY

CALVERT & FAYETTE STS.
BALTIMORE, MD. 21202

CASE NO. 119070

STATE OF MARYLAND

VS. Jose Rodriguez

IN PART _____ ROOM 420 CLARENCE M. MITCHELL, JR. COURTHOUSE

IN PART _____ ROOM _____ COURT HOUSE EAST

WITNESS FOR STATE ☐ DEFENSE ☐ AT 2PM ON 6-1-90

RECEIVED BY Paul J. Merryman DATE _____

YOU ARE HEREBY SUMMONED TO APPEAR IN COURT DAILY UNTIL DULY DISCHARGED. FAILURE TO APPEAR ON TIME MAY CAUSE YOU TO BE CHARGED WITH CONTEMPT OF COURT OR A WARRANT TO BE ISSUED FOR YOUR ARREST.

BRING THIS SUMMONS WITH YOU TO COURT.

BY ORDER OF COURT

Saundra E. Banks

SAUNDRA E. BANKS
CLERK, CIRCUIT COURT FOR BALTIMORE CITY

DATE ISSUED _____

CC-155

CIRCUIT COURT FOR BALTIMORE CITY

CALVERT & FAYETTE STS.
BALTIMORE, MD. 21202

CASE NO. 119070

STATE OF MARYLAND
VS. Jose Rodriguez

IN PART _____ ROOM 420 CLARENCE M. MITCHELL, JR. COURTHOUSE

IN PART _____ ROOM _____ COURT HOUSE EAST

WITNESS FOR STATE ☐ DEFENSE ☐ AT 2 PM ON 6-1-90

RECEIVED BY Jose Rodriguez DATE _____

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BY ORDER OF COURT

Saundra E. Banks

SAUNDRA E. BANKS
CLERK, CIRCUIT COURT FOR BALTIMORE CITY

CIRCUIT COURT FOR BALTIMORE CITY 1983

DATE ISSUED _____

CC-155

CIRCUIT COURT FOR BALTIMORE CITY

CALVERT & FAYETTE STS.
BALTIMORE, MD. 21202

CASE NO. 119070

STATE OF MARYLAND
VS.
Jose Rodriguez

IN PART _____ ROOM 420 CLARENCE M. MITCHELL, JR. COURTHOUSE

IN PART _____ ROOM _____ COURT HOUSE EAST

WITNESS FOR STATE ☐ DEFENSE ☐ AT 2PM ON 6-1-90

RECEIVED BY Francina Carrington DATE _____

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BY ORDER OF COURT

Saundra E. Banks

SAUNDRA E. BANKS
CLERK, CIRCUIT COURT FOR BALTIMORE CITY

CIRCUIT COURT FOR BALTIMORE CITY 1983

DATE ISSUED _____

CIRCUIT COURT FOR BALTIMORE CITY
CIVIL DIVISION
Room 462 Court House East
111 N. Calvert Street
Baltimore, Md. 21202

SAUNDRA E. BANKS,
Clerk

General Information (301)333-37
Law (301)333-37
Equity (301)333-37
Habeas (301)333-37
Appeals & 2-507's(301)333-371

Dec. 20, 1990

Leslie Gradet, Clerk
Court of Special Appeals
Courts of Appeals Bldg.
P.O. Box 431
Annapolis, MD. 21401

Re: Jose Rodriguez vs. Francenia Arrington

Dear Ms. Gradet;

The above entitled case is an Appeal filed in the Circuit Court for Baltimore City.

Enclosed please find check no. 2202 in the amount of Fifty Dollars ($50.00) dollars to defray the costs in this case.

Attorney (s) for the appellant and/or appellee (appellant) did not wish to peruse the record in this matter.

Very truly yours,

Saundra E. Banks

Saundra E. Banks, Clerk

JOSE' RODRIGUEZ

PLAINTIFF

VS.

FRANCINA ARRINGTON

DEFENDANT

NO. 70/119070

PAGE:

DOCKET:

IN THE CIRCUIT COURT FOR BALTIMORE CITY

Saundra E. Banks, Clerk

CERTIFICATE BY CLERK OF THE COURT, TO TRANSCRIPT OF RECORD.

State of Maryland, Baltimore City, Set.:

I, Saundra E. Banks, Clerk of the Circuit Court for Baltimore City, hereby certify that the foregoing is a true transcript, taken from the record and proceedings of the said Court, in the Therein entitled cause.

I further certify that all counsel of record, heretofore, have been notified to inspect the foregoing transcript of record, prior to its transmission, and that said counsel have had ample opportunity for such inspection.

In testimony whereof, I hereunto set my hand and affix the seal of the Circuit Court for Baltimore City aforesaid, on this day of 6th. day of December, 1990 .

COSTS PAID IN THE CIRCUIT COURT FOR BALTIMORE CITY:

Transcript of Record	$ 50.00
Open Court Costs	0.00
Total Costs	$ 50.00

SEAL OF THE COURT

Stenographic Testimony - $722.50

Court Reporter(s) Kenneth Norris, Brenda Trowbridge, Christopher Metcalf & Lisa Bankins

Saundra E. Banks

Clerk of the Circuit Court for Baltimore City

CC-192

Subject: Re: MSA SC 5458-82-152
From: Jennifer Hafner <jenh@mdsa.net>
Date: Wed, 17 Feb 2010 15:06:50 -0500
To: Doris Byrne <dorisb@mdsa.net>, Sheila Simms <sheilas@mdsa.net>, Ray Connor <rayc@mdsa.net>
CC: Edward Papenfuse <edp@msa.md.gov>

I have added the following case to this work order.

BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Johnson (or Johnson-Bey), 1987, Box 11 Case No. 28701917 [MSA T3372-853, CW/2/20/26]

Jennifer Hafner wrote:

> Below are additional cases which need to be pulled and scanned for Judge Hollander's request.
>
> *MSA SC 5458-82-152*
>
> *Dates:* 2010/02/17
> *Description:* Case numbers received from J. Hollander -
>
> BALTIMORE CITY CIRCUIT COURT (Paternity Papers) Arrington v. Rodriguez, 1989, Box 169 Case No. 119070 [MSA T3351-923, CW/16/31/25]
> File should be named msa_sc5458_82_152_[full case number]-####
>
> BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Rolnik v. Union Labor Life Ins. Co., 1987, Case No. 87313071
> Case is split between 2 boxes:
> Box 387 [MSA T2691-2026, HF/8/35/8]
> Box 388 [MSA T2691-2027, HF/8/35/9]
> File should be named msa_sc5458_82_152_[full case number]-####
>
> BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Shofer v.The Stuart Hack Co., Box 128 Case No. 88102069 [MSA T2691-2232, HF/11/30/3]
> See also for "brick binders":
> Box 527 [MSA T2691-2631, HF/11/38/18]
> Box 528 [MSA T2691-2632, HF/11/38/19]
> File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Attorney Grievance Commission v. Yacono, 1992, Box 1953 Case No. 92024055 [MSA T2691-4591, OR/12/14/65]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Feldmann v. Coleman, 1993, Box 391 Case No. 93203022 [MSA T2691-5466, OR/22/08/037]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Jefferson v. Ford Motor Credit Corp., 1993, Box 470 Case No. 93251040 [MSA T2691-5545, OR/22/10/20]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Shofer v. The Stuart Hack Co. and Blum, Yumkas, Mailman, 1993, Box 518 Case No. 93285087 [MSA T2691-5593, OR/22/11/20]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Booth v. Board of Appeals, 1993, Box 589 Case No. 93330026 [MSA T2691-5665, OR/22/12/45]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Scott v. Dept. of Public Safety, 1993, Box 603 Case No. 93342002 [MSA T2691-5679, OR/22/13/11]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Stubbins v. Md. Parole Comm'n., 1993, Box 616 Case No. 93354003 [MSA T2691-5692, OR/22/13/24]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Civil Papers, Equity and Law) Fitch v. DeJong, 1994, Box 109 Case No. 94077005 [MSA T2691-5817, OR/28/9/2]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Bowden, 1987, Box 142 Case No. 18721501 [MSA T3372-984, CW/2/23/13]
File should be named msa_sc5458_82_152_[full case number]-####

BCCC OUT 10-21-? AGENT C. JOHNSON

BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Redmond, 1988, Box 191 Case No. 48828071 [MSA T3372-1282, HF/11/23/43]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Criminal Papers) State v. Parker, 1990
Box 100 Case Nos. 290213034,35 [MSA T3372-1476, OR/16/16/8]
Box 104 Case Nos. 290221060,61 [MSA T3372-1480, OR/16/16/12]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CIRCUIT COURT (Criminal Transcripts) State v. Monk, 1991, Box 78 Case No. 591277019 [MSA T3657-403, OR/17/11/21]
File should be named msa_sc5458_82_152_[full case number]-####

BALTIMORE CITY CRIMINAL COURT (Transcripts) Eraina Pretty, 1978, Box 43 Case Nos. 57811846, 57811847, 57811848, 57811858, 57811859, 57811860 [MSA T496-3990, OR/18/22/41]
File should be named msa_sc5458_82_152_[full case number]-####