



## State-sanctioned kidnapping: Violation of a baby's human rights

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### What can a mother do when social workers decide to take her baby?

*Beverley Beech reveals the latest bureaucratic assault on mothers' and babies' rights*

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In 1992, when her son was seven, Susan's marriage ended acrimoniously. In 1995, her husband alleged that she had been abusing her son and a so-called expert on Munchausen syndrome by proxy, Dr Schreier, gave evidence that Susan [not her real name] suffered from this condition, yet he had never met or examined her. Her son vigorously denied that his mother had abused him. Susan was acquitted of the felony, but convicted of a misdemeanor and sentenced to three years' probation.

In 1997, Susan left the USA for England, got married and became pregnant. Her former husband found out and contacted the UK authorities. Susan's GP informed the Rochdale Local Authority and the couple were investigated under Section 47 of the Children Act. Susan was examined by a psychiatrist, who had no concerns about any possible risk Susan might pose to her unborn child.

In 1998, Susan gave birth by caesarean section to a baby girl. Rochdale Social Services obtained an emergency care order and, six hours after the birth, they snatched her baby. Her obstetrician pleaded with them to wait until she had improved physically; her blood pressure was very high and he was worried that any further stress could kill her. Rochdale Social Services, having no concern for the woman's health and the trauma the removal of her baby would cause, ignored this advice and took her baby anyway. Susan had been able to hold her child, but had not been able to breastfeed her. Susan was discharged from hospital some days later and was allowed supervised contact with her daughter four times a week. The social workers who supervised this contact considered her behaviour towards her daughter exemplary.

Despite this, Rochdale started care proceedings. A child psychiatrist, Dr Bentovim, examined Susan and her husband, and concluded that Susan had a 'personality disorder' and was very reluctant to take responsibility for what had happened to her son.

As she had vigorously denied her ex-husband's allegations, this is hardly surprising. Dr Bentovim also noted that Susan's husband did not believe that she would harm her son. Rochdale rushed ahead with

their plans for adoption as Dr Bentovim advised that the baby's future should be sorted out before her first birthday.

The baby was freed for adoption and, as a result, the parents no longer had parental rights. They could not be involved in any decisions about who would adopt the child and they were excluded from contact.

When the care proceedings began, both Susan and her husband had legal aid, but her husband withdrew when he and Susan could not agree on the conduct of the case. Her legal team also withdrew, and the judge refused her application to instruct new lawyers on the grounds that the baby would be prejudiced by the delay. She ended up representing herself in a four-week hearing while everyone else had the benefit of barristers.

Mr Justice Wall ruled against her and, although he accepted that there appeared to be "an element of railroading", he considered that the baby's interests justified this. Susan and her husband were refused leave to appeal, and the baby was placed with her adoptive family in September 1999.

## European Court of Human Rights

Susan and her husband appealed to the European Court of Human Rights, claiming that their rights had been infringed under Article 6 (the right to legal representation) and Article 8. They were represented by barrister Barbara Hewson. The court found that "the complexity of the case, along with the importance of what was at stake and the highly emotive nature of the subject matter, lead this court to conclude that the principles of effective access to court and fairness required that [Susan] received the assistance of a lawyer".

The court also found that it had been "draconian" to proceed so quickly with the freeing application and "the imposition of one year from birth as the deadline appears a somewhat inflexible and blanket approach, applied without particular consideration of the facts to this individual case". They went on to state that "the court is nevertheless of the opinion that the procedures adopted not only gave the appearance of unfairness, but prevented the applicants from putting forward their case in a proper and effective manner on the issues which were important to them".

The court found that Article 8 had been violated by abruptly removing the baby at birth and denying access by the mother, father and her paternal family, and that "the taking of a newborn baby into public care at the moment of its birth is an extremely harsh measure. There must be extraordinarily compelling reasons before a baby can be physically removed from its mother, against her will, immediately after birth, as a consequence of a procedure in which neither she nor her partner has been involved".

The court noted that such a step is "traumatic for the mother and places her own physical and mental health under strain, and it deprives the newborn baby of close contact with its birth mother and... of the advantages of breast-feeding". The court was struck by the absence of an explanation as to why the baby could not have remained in hospital with Susan under supervision. It noted that there was no suspicion of any life-threatening conduct by Susan and that the implementation of the emergency protection order

was unnecessarily harsh.

It is time a comprehensive inquiry was undertaken into the implementation of the Children Act and the activities of the Family Court. This court is extremely secretive. Time and again we have seen examples of parents being railroaded. The secrecy of the Family Court is justified on the grounds of protecting the children but, as the Court does not allow third-party observers or supporters of the parents to attend, it also allows injustices to be carried out without fear of criticism.

Very often, these cases are complex - often because of the misinformation that is written in the case notes- and parents are not equipped to address them. It also appears that there is a very limited number of solicitors to undertake Family Court issues. Trying to replace a solicitor who has dragged his feet, or even find a solicitor who is willing to pick up the pieces, is incredibly difficult and puts even more stress on an anxious and distressed couple.

Susan has won a key ruling from the European Court, but that does not redress the injustice she has suffered. She has been denied contact with her baby at a crucial time of her baby's development, with no evidence that she would be a threat to the child- indeed, any evidence is to the contrary. Her marriage was put under enormous strain and her baby was denied the benefits of breastfeeding. Having been separated from her baby for the last four years, it can now be argued that it is not in the child's best interests to return to her parents as she would, by now, have bonded with her new family.

Unfortunately, it appears that there are no sanctions that can be applied to the Rochdale social workers, who showed little consideration for the wellbeing of this family.

*For further information about the legal implications of this case, see Hewson B, The appearance of fairness, New Law Journal, 2002; August 9: 1245-6; see also Jean Robinson's article, a Plea for more Information, [on page 15](#).*