THE FIRST AMENDMENT & THE MADISONIAN DILEMMA

Freedom from Persecution for the Cause of Conscience by the State

By

Claudel Louis

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This thesis was prepared under the direction of the candidate's thesis advisor, Dr. Mark E. Tunick, and has been approved by the members of her/his supervisory committee. It was submitted to the faculty of The Honors College and was accepted in partial fulfillment of the requirements for the degree of Bachelor of Arts in Liberal Arts and Sciences.

SUPERVISORY COMMITTEE:

Dr. Mark E. Tunick

Dr. Rachel Corr

Dean Jeffrey Buller, Wilkes Honors College

Date

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ABSTRACT

Author: Claudel Louis

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In health care cases involving children, people are still vulnerable to religious persecution in this country, particularly in the State of Florida, because the public officials responsible for securing and enforcing the laws tend to lend the prestige of their offices to advance the private and special interests of themselves and others at the expense of minority groups. Following a literary review of the laws that provide for the free exercise of religion nationally and in the State of Florida, I apply case law to a hypothetical case, based on true facts concerning parents who are African American, Jehovah's Witness and Muslim, who refused certain medical treatment for their minor child according to their beliefs to show how public officials can abuse their powers and neglect their duties and substantially burden the free exercise of religion by minority groups and address possible remedies.

DEDICATION

To the Omnipresent, Omniscient, Omnipotent Supreme Being and All Mighty Creator. May this work be a testimony of your greatness and holy grace. Amen! And to my loving wife and my children. This one is for you. I love you.

Contents

Introduction: The First Amendment and the "Madisonian Dilemma"

Although sufficient and necessary laws exist to safeguard the free exercise of religion and the freedom of conscience from persecution by the state or the tyranny of the majority, in health care cases involving children, people in this country are still vulnerable to persecution for the cause of conscience and/or religious beliefs today, because the public officials charged with securing such freedoms and enforcing the law tend to lend the prestige of their offices to advance the private and special interests of themselves and others at the expense of minority groups, often due to conflicting religious views, social values and customs. Roger Williams, a Puritan religious leader and the founder of Rhode Island, wrote in the late Seventeenth Century that, "I acknowledge that to molest any person, Jew or Gentile, for either professing doctrine, or practicing worship merely religious or spiritual, it is to persecute him, and such a person (whatever his doctrine or practice be, true or false) suffereth persecution for conscience," (Williams, 2013).

One of the proudest life accomplishments of Thomas Jefferson, the founding father employed by James Madison to author the *Bill of Rights* to the U.S. Constitution, was the *Virginia Statute for Religious Freedom*, which he wrote in 1777. (A+E Television Networks, LLC, 2013). In fact, he had it carved on his tombstone that he was the author of the *Virginia Statute for Religious Freedom*, second to authoring the *Declaration of Independence* and above founding the University of Virginia. The *Virginia Statute for Religious Freedom*, provided that, "[a]lmighty God hath created the mind free, (and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint)" (Jefferson - Enlightenment: Religious Freedom, 2013). It was the basis of the First Amendment of the United States Constitution. (Channel, 1996).

The First Amendment guarantees the following:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The rights of the people to the free exercise of their religion, as interpreted in *Jehovah's Witnesses in State of Wash. v. King County...*, 278 F.Supp. 488 (1967), were made applicable to the states by the Fourteenth Amendment in the case of *Everson v. Board of Educ.*, 330 U.S. 1, 8-18 (1947). In Florida, Fla. Stat. § 761.03 protects free exercise of religion, as follows:

> (1) The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, except that government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:
>
> (a) Is in furtherance of a compelling governmental interest; and
>
> (b) Is the least restrictive means of furthering that compelling governmental interest.
>
> (2) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.

To meaningfully achieve the objectives of this thesis, which is to emphasize the importance of preserving freedom of religion and freedom of conscience and providing a legal remedy to the "Madisonian dilemma" that occurs when free exercise of religion or practicing religious beliefs conflict with state interests, this thesis will specifically revolve around one hypothetical case about a minority family with strong religious and spiritual beliefs facing child protection laws. The case deals with the scope of their rights to rely on spiritual means for healing in accordance with the practices of well-recognized religious organizations and to refuse artificial life-sustaining or life-saving medical treatment, such as blood transfusions and baby formula, in caring for their minor children in the State of Florida, against the states claim that such refusal may violate child protection laws. Child protection laws address three interests: the child's, the parents', and the state's, emphasizing that children have a fundamental interest in being protected from abuse, neglect and abandonment.

Chapter 1: Legal Background

When parental and state interest are in conflict over religious beliefs and the healthcare of minor children it can result in a dependency proceeding and/or even a criminal proceeding in the courts for child neglect, abuse or abandonment depending on the conditions or circumstances. Two major federal laws – The Health Insurance Portability and Accountability Act (HIPAA) of 1996 and Section 1983 of the Civil Rights Act of 1871 – often come into play here. In the State of Florida, Chapters 39 and 827 of the Florida Statutes regarding proceedings involving children must also be considered.

HIPAA "…is a broad federal law that is in part designed to provide national standards for protection of certain health information [PHI]." (UF Privacy Office, 2013). The federal Department of Health and Human Services (HHS) established regulations to implement HIPAA, known as the Privacy Rule. "The Privacy Rule permits the disclosure of PHI to a public authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect. (45 CFR 164.512(b)(1)(ii))." *Id*. However, both state and federal law must be considered to determine whether a health care provider may disclose protected healthcare information (PHI) without the patient's authorization and where state laws provide greater privacy protections or privacy rights, state laws override HIPAA.

Pursuant to Florida law, any person, including health care providers, who knows or has reasonable cause to suspect child abuse, abandonment or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, must report such knowledge or suspicion to the Department of Children and Families (DCF) Central Abuse Hotline. (Fla. Stat. 39.201(1)). Even if the Privacy Rule permits the disclosure of PHI without the patient's authorization for certain purposes, such as for payment for health care services, or to law enforcement officers investigating alleged crimes, Florida law does not:

> Medical records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. (Fla. Stat. 456.057(7)(a)).

Florida law mandates the following for Mandatory reports of child abuse, abandonment, or neglect to the central abuse hotline:

> Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2). Fla. Stat. § 39.201(1)(a)

Accordingly, Subsection (2) of Florida Statutes § 39.201 prescribes the following, when making such reports to the department:

> Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax, web-based chat, or web-based report. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter…

Florida law does not provide any exception for disclosing PHI to law enforcement officials investigating an alleged crime. In fact, health care providers are not even allowed to acknowledge that they have even seen a patient or scheduled a patient for an appointment.

The other major federal law involves Federal Habeas Corpus in Child Custody Cases, codified under 28 U.S.C. §§ 2241, which provides as follows:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

To fully grasp the subject matter of this thesis, a legal definition of the issues at hand is warranted. The Florida Legislature defines abuse and neglect of a child in the following terms:

> "Abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child. Fla. Stat. § 39.01 (2)
>
> "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires:
>
> (a) Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or
>
> (b) Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.
>
> Neglect of a child includes acts or omissions. Fla. Stat. § 39.01 (44)

The Florida Legislature created Chapter 39, Florida Statutes and the Department of Children and Families to recognize that most families desire to be competent caregivers and providers for their children and that children achieve their greatest potential when families are able to support and nurture the growth and development of their children. Therefore, the Legislature finds that policies and procedures that provide for prevention and intervention should intrude as little as possible into the life of the family. See Fla. Stat. § 39.001. Family life is of the utmost privacy to a Floridian (see Fla., Const. Article I Section 23).

Chapter 2: A Hypothetical Case Involving Parents Refusal of Blood Transfusions & Other Artificial Life-Sustaining or Life-saving Medical Treatment in Caring for a Minor Child

Daniel Luciene was born in Ile de La Gonave, Haiti in 1983 to Mary (38) and Samuel (37) Luciene. Three months after he was born, his parents separated. Daniel stayed with his mother, a devoted Evangelical Christian, who indoctrinated him with Christian doctrines and wanted him to grow up to become a preacher. His father moved on to live in Port-au-Prince, Haiti, in pursuit of a college education. His father visited them occasionally and fathered 3 more children with his mother. In his early childhood his mother struggled financially with him, his sister and youngest brother while his second eldest brother lived comfortably with their father in Port-au-Prince, Haiti.

When Hurricane Emily hit Haiti in 1992 his mother's house, which she inherited from her mother's estate when she passed, flooded and Daniel, then 4 years old, drowned in his bed room. However, his mother never gave up hope. She prayed and pleaded to Jesus Christ until Daniel was miraculously revived from death. Daniel's mother always reminded him to thank God for this miracle and that he is marked by God, who gave her his name in a dream. When he was 7 years old Daniel developed a horrible fever and his doctors gave him only 2 weeks to live. His father, who he hadn't seen in a long time, came to visit him. Daniel hadn't gotten out of bed in 2 months since he fell severely ill. However, upon hearing his father's voice outside, he crawled out of bed to everyone's surprise and ran to his father and hugged him. Once again, without any medical intervention he was healed. His father returned to Port-au-Prince and believed Daniel was not as sick as his mother had said. He told everyone that Daniel's mother exaggerated his condition to make him come visit, but the scar from the opening that developed in Daniel's stomach is a permanent mark that reminds him of his incredible triumph over sickness and death. Financially, matters worsened for his mother and she eventually brought Daniel and his siblings to go stay with their father in Port-au-Prince, while she went on missionary work with a local church.

At age 9 his father sent Daniel to America to live with his godfather in Virginia, where he was later converted into the Jehovah's Witness faith. Daniel lived with this Jehovah's Witness family for 7 years until he was 16 years old and was baptized into the faith at 15. He was taught that blood transfusions are against Jehovah's Law.[1] During the summer of 2001 Daniel's father moved Daniel's mother and siblings to America and Daniel was reunited with them in Florida for the first time in 7 years. Soon after returning to Virginia, he decided to go live with his mother to be reunited with his biological family. He made this decision after being told that his mother does not know the country very well and may not even have a place to stay. Remembering the struggles he went through with his mother he could not bear the thought of living a comfortable life in a faraway place while his helpless mother struggles in the new world with no one to help her. He moved to Miami Florida with hopes of honoring his mother to whom he owed his life and strong faith in God. Daniel's father was very disappointed with this decision and told his mother that Daniel would end up caught up in the system as a result and that she would be responsible for it.

Daniel's new Jehovah's Witness customs contradicted the old evangelical customs of his mother so their reunion was not quite as smooth as he'd imagined. They often bickered over religious ideology and practices. One of the requirements of the Jehovah's Witness faith is that one disassociates himself or herself from the world or anyone else who is not a Jehovah's Witness, even family. Since Daniel was just reuniting with his family, he was unable to adhere to this requirement and stayed away from joining any Jehovah's Witness congregations in Florida. At the same time he was not able to join his mother's church either, due to his conscience. Thus, Daniel became more tolerant of religious differences and more open minded about different faiths.

[1] "You must not eat the blood of any sort of flesh." Leviticus 17:14 New World Translation of the Bible

Daniel began to challenge all of the restraints placed on him by his godfather. His curiosity led him to explore the world around him and to try things that were once forbidden. He begin to listen to Bod Marley and to learn about the Rastafarian religion, which was so prominent in the Miami area where he lived, attended school and made new friends. He remembered that after converting to the Jehovah's Witness faith his godfather took down the large portrait, which once hung proudly in their living room, of the face of the man he would come to know as the Reverend Dr. Martin Luther King, Jr. As he learned more about the Civil Rights movement of the 1960's in school Daniel could not understand why anyone would want to deprive him of such rich history. So he dug deeper and discovered Malcolm X, Huey P. Newton and Muhammad Ali, amongst others. He was inspired by these heroes and even started boxing like Ali. His favorite rap group, Wu-Tang Clan, famous for their Islamic laced lyrics, became more than just a band of musicians to him after writing the title of their song, "A Better Tomorrow," on the black board during a class experiment made quite the impression on his Black history teacher and fellow classmates in his high school.

The following class meeting, Daniel's Black history teacher challenged the entire class to compose a rap lyric out of the class lesson and to perform it in front of the class. Daniel did so well that his Black history teacher, who was in charge of the Black History Month talent show his graduation year, recruited him to perform a rap song in the Black History Month concert. His performance of a rap verse he composed, inspired by Wu-Tang Clan's "Triumph," earned him the respect of his schoolmates and a permanent place in the school's yearbook that year. He later went on to perform a song about black unity during the Haitian Flag Day talent show with a Jamaican friend from his school calling for unity amongst Haitian and African American youths, whom were violently at odds with each other at the time.

After graduating high school in 2002, Daniel decided that he was going to join the United States military. He thought he could become a U.S. citizen and help his mother, who came to the United State on a visa to become a permanent resident. He could also send her money to help with the bills, but his father advised him against it and encouraged him to attend college instead. So did the U.S. Army recruiter because he scored so high on the ASVAB test. He was further discouraged by his consciousness of the fact that as a baptized Jehovah's Witness, military service is strictly forbidden. He decided to enroll at the local community college in Miami. He continued to box while attending college, which led to a major acting opportunity, landing him the principle role in a multi-billion dollar music video of a famous international recording Spanish artist. Daniel though, was not interested in becoming an actor and lost interested in a boxing career also due to conflict with his religious beliefs and conscience.

While attending college Daniel ran into a local member of the Afrocentric community on campus, who was distributing a list of Afrocentric books available at a nearby bookstore, a historical African American landmark in Miami. He also joined the Afro Student Union, which invited local Afrocentric guest speakers, associated with the bookstore and a local Afrocentric cultural shop to introduce a different version of African history other than what was typically taught in the schools. Daniel was so intrigued by this new found knowledge of Africa and African people that he went directly to the source. Daniel would go on to attend local gatherings held at the Afrocentric cultural shop and to purchase books from the local Afrocentric book store. The more he learned about Black history and culture the more betrayed he felt by the American school system and the Jehovah's Witness Organization. Daniel completed a year of college, then dropped out to pursue a music career instead, after pondering over a question that one of his professor's posed to the class – "if you don't feel like you belong here then why are you here?"

Daniel went on to attend more meetings that were held at the local Afrocentric cultural shop and to frequent the Afrocentric bookstore. He got to know many of the local Afrocentric elders, who had a wealth of knowledge on Black history, world history and Africa, which he felt he had been deprived of by the school system, his parents and Jehovah's Witness Organization. As he purchased more and more books and learned more and more about Africa and world history he became inspired to improve the living conditions of his community. Daniel also wanted desperately to get his mother out of the impoverished condition they had been living in at the mercy of her church. He met another young African American fellow as motivated as he was and they formed a non-profit organization committed to uplifting and improving the living conditions of the Black community by teaching and showing members of the community how to be self-sufficient and less dependent on welfare and government assistance.

During the summer of 2004 Daniel met Veronica Luciene (no blood relation to Daniel) at the local cultural shop. She was attending the same local community college Daniel dropped out of and was also interested in Africa and improving her community. They started dating and she introduced him to vegetarianism and holistic dieting, based on her Islamic or Muslim faith. Veronica grew up in a Christian household in Miami-Dade County, Florida. Her father, who was Haitian like Daniel died when she was 7 years old. Her maternal grandfather with whom Veronica shares a strong paternal and religious bond, is a devoted Muslim, who has filled the void of her late father and heavily influenced her faith in God. When Daniel and Veronica started dating, she accepted his Jehovah's Witness faith and he agreed to adhere to her natural and holistic diet as prescribed by The Honorable Elijah Muhammad in *How to Eat to Live, Book Nos.1 and 2* and later explained by Nasir Muhammad and Rose Hakim in *The How to Eat to Live Holistic Companion: A comprehensive Holistic How-To-Guide For "Cures" They Don't Want You to Know*.

Daniel found Elijah Muhammad's recommended diet to his followers to be suitable for him as well based on the fact that Elijah Muhammad declared in his book: "the dietary law given to Israel by Moses is true today. Israel was given the proper food to eat Jehovah approved for them," (Muhammad E. , 1967). Elijah Muhammad instructs his followers in *How to Eat to Live* that, "[t]he Christian world commercializes on everything," (Muhammad E. , 1967). and that "if we obey what He has given to us in the way of proper foods and the proper time to partake of these foods, we will never be sick or have to pay hundreds, thousands and millions of dollars for doctor bills and hospitalization." Furthermore, Elijah Muhammad wrote that following God's dietary law, "[w]ill help keep your doctor away from your door" *Id.* Elijah Muhammad also teaches that, ". . . most poor people like us eat the inexpensive food, because we do not have the money to buy expensive foods that rich millionaires eat. So, He prescribed for us dry navy beans and bread and milk" (Muhammad E. , 1967).

In *The How to Eat to Live Holistic Companion*, Nasir Muhammad and Rose Hakim explain Elijah Muhammad's view on the medical industry and medicine, as follows:

> The medical industry and its doctors have paid large sums of money to attend school and are hard pressed to pay back great loans and maintain expensive lifestyles. They become bound to it and have to charge you great sums of money. It likewise tie into perpetuating the system of advising the people to eat "normally," which in affect will keep them coming to the doctors, because there is no cure in medicine. The doctors do[n]'t promote cure; they promote relieving the symptoms with medicine or cutting it off or out. This still leaves you vulnerable to them and the pharmaceutical industry taking pills the rest of your life.
>
> One thing that stands out however, the doctors are victim to the same sickness they treat their patients for. This show us that they don't know as much as we have been made to think they do.
>
> This book is not suggesting that they know nothing. In some cases medicine or surgery may be necessary, but in last resorts. If the people were taught to eat properly at infancy, their fragile organs will be built properly and would be able to withstand the strain when of age… (Muhammad N. , 2008)

With that understanding, Daniel and Veronica adhere to Elijah Muhammad's diet for both religious and financial reasons. They faithfully relied on his natural and holistic methods to care for themselves (and eventually their children). Their parents did not approve of their relationship so they moved out of their parents' homes to rent their own apartment in November 2005.

While Daniel was completing and promoting his first music project, he fathered a Child with Veronica. The underground release of his first record was not as successful as he had hoped, due to misguidance and disunity amongst his music group. Daniel decided to put his dreams on hold to get a stable job, in order to be able to support his family. He ended up working at the Port of Miami as a trailer inspector, making a pretty good salary, and sufficient income to provide for his family. On November 7, 2006 Veronica gave birth to their son Ramses. His Egyptian name was inspired by their beliefs that African people should have African names as taught by Elijah Muhammad; the sound scan image of their son in his mother's womb captured him in what the midwife described as an "Egyptian pose"; and their belief that the ancient Egyptians were Black African people wrongfully depicted as non-black due to racism. In May 2008 Daniel proposed to Veronica at her family reunion during Memorial Day and they were engaged.

On January 6, 2009 Daniel was discharged from work at the Port of Miami, due to no fault of his own. He thought maybe it was time to resume pursuing a music career and founded a marketing company to promote his music. Times were so hard for Daniel and his family during the recession that he had to apply for unemployment and food stamps around June 2009. Soon after Daniel ran into a former African American coworker who encouraged him to filed a charge of discrimination against his former employer with the Equal Opportunity in Employment Commission (EOEC) on June 29, 2009. Although the EOEC is statutorily obligated to investigate a charge within 180 days, it failed to investigate Daniel's case.

On July 12, 2009 Veronica also lost her job, due to constructive discharge. Eventually, Daniel filed a civil lawsuit against his former employers and the EOEC on May 19, 2010, in which he represented himself, *pro se*. The EOEC removed the case to federal court, based on it raising a federal question. On June 22, 2010 Daniel received a final payment of Emergency Unemployment Compensation (EUC) from the Agency of Workforce Innovation (AWI), renamed Department of Economic Opportunity (DEO) under Governor Dick Kropp. Given the state of the economy at the time, they were unable to find work so Veronica had to apply for unemployment, as well. Daniel and Veronica left Miami-Dade County for Broward County in search of better opportunities and later decided to go back to school in the fall of 2010. The couple was admitted into the local community college in August of 2010. They both agreed to study law to assist them with Daniel's ongoing civil lawsuit against Daniel's former employers.

On or around August 20, 2010, Daniel received a lump sum EUC check, backdated from June 6, 2010 to July 3, 2010 (3 weeks). A few days later, on or around August 23, 2010 Daniel received another EUC lump sum check for the same amount, backdated from July 10, 2010 to July 24, 2010 (3 weeks). On or around June 12, 2010, Veronica received her first unemployment check, backdated from April 10, 2010 (9 weeks). On or around December 30, 2010 Daniel received a lump sum emergency unemployment check, backdated from July 31, 2010 to October 2, 2010 (10 weeks) and on or around January 3, 2011 a federal additional compensation (FAC) check, backdated from October 9, 2010 to December 11, 2010 (10 weeks). With the said lump sums of unemployment compensations, on February 9, 2011 Daniel and Veronica with their, then, 4-year-old son Rameses moved into an apartment in Davie, Florida. They relied on unemployment compensation and student grants and loans to cover their living expenses with the goal of acquiring the necessary skills to restore or surpass their previous standard of living.

Things were starting to fall into place and the couple soon discovered that Veronica was pregnant with their second child. Three weeks after moving into their new apartment, however, their SUV was repossessed on March 4, 2011. Daniel and Veronica relied on public transportation to get around, attend school and take their son Ramses to and from preschool. At times, when they could afford it they used the local taxi service and a local car rental service when they really needed to get around but could not do so with public transportation. During the 2011 summer term the couple registered for online classes because they had no means of transportation and needed to attend prenatal visits with a midwife. On July 1, 2011 they registered their son Ramses for religious exemption from vaccinations with the Health Department of Florida to enroll him in Voluntary Pre School (VPK) at a local pre-school. Ramses attended his first visit with his pediatrician at a nearby private university for his annual physical. The future was looking bright for Daniel and his family despite the hardships they had to overcome to get to this point.

During the month of July 2011 their neighbors upstairs moved out. Strangely though, within one week their landlord quickly moved in some new tenants above them, who happened to be a Broward deputy sheriff and his wife. Daniel and Veronica had to wait three to four weeks for maintenance and repair after they were approved by their landlord before they could move into their apartment. Their landlord did not even wait long enough to replace the deputy sheriff's carpet, which was done long after he moved in. Soon after moving in, the deputy sheriff begin blowing leaves onto Daniel and Veronica's patio with a leaf blower. Although he had his own designated area upstairs, occasionally the deputy sheriff would also come down stairs and put his trash into a large black trash bag next to Daniel and Veronica's trash can. This was strange and made Daniel and Veronica concern for their safety and wellbeing. Eventually, the parents reported the deputy sheriff to property management for intentionally blowing leaves onto their patio.

On or around October 9, 2011 Veronica received her last extended benefits unemployment check. On Thursday, December 17, 2011 Veronica gave birth to another healthy baby boy. There were no complications. He was born 8 lbs., 7 ounces. On Monday, December 12, 2011 Daniel applied for cash assistance for himself and family, until he was able to find employment to provide for a larger household. Daniel and Veronica named their newborn Solomon. His name like his older sibling's was inspired by his sound scan image in his mother's womb revealing that he had a very big heart and his parents belief that King Solomon of the Bible, known for his wisdom and kindness was the patriarch from whom Halle Selassie the late Emperor of Ethiopia descended.

On or around December 19, 2011 the Children and Family Department (CFD) sent a correspondence to Daniel directing him to register with workforce and to provide proof of completing the program. On or around February 1, 2012 Daniel received the first payment of cash assistance and a Welfare Transition Appointment Letter from the local Workforce One (WF1) Office for an Orientation Appointment. After 2 and a half months Daniel was only able to find a part-time job at a retail store on April 17, 2012, making about $14,000 per year.

Daniel's and Veronica's hard work and dedication in school was starting to payoff. On March 13, 2012 Daniel was admitted into the honors program at a state university in Palm Beach County, Florida to major in pre-law for his Bachelors of Arts (BA) degree. Veronica was also admitted into the honors program at the same university to major in accounting for her bachelor in science (BS) degree. After being admitted to the university, even though they wanted to attend the university and give their children a fresh start in what they thought would be a safer environment, they did not see how they would be able to afford to move so far away. They requested an extension to accept the scholarship offered by the university until May 1, 2012 to give themselves time to figure things out. They were facing serious financial problems.

When Veronica was nursing Ramses, Daniel was working two jobs and ended up making a handsome salary at the Port of Miami, enough to comfortably take care of the family. So she breastfed Ramses for almost two years. When Veronica was nursing Solomon, though, they were having serious financial problems and he was making less than half of his previous salary, so Veronica had to stop breastfeeding Solomon at 6 months, in order to seek and find employment. Fortunately, she also was able to find employment at a local retail store in July of 2012.

Meanwhile, Daniel's civil lawsuit was dismissed by the US District Court against the EOEC, due to sovereign immunity and remanded to the state court against his former employers. Increasing financial hardship pressured the couple to settle with one of Daniel's former employers on June 20, 2012 and his lawsuit is currently awaiting a final decision against another former employer, which was the staffing agency that placed him to work at the former employer that settled. During this time Daniel and Veronica had to report another more severe incident against the deputy sheriff for blowing hazardous residue from the pipes of their ventilation system onto the walls of their water heater closet with his leaf blower. A property management employee notified the deputy of their complaint and told the parents that the deputy was stubborn with him.

After settling Daniel's lawsuit with the said former employer the parents accepted the honors scholarships from the university and decided to move to Palm Beach County with the money from the settlement. On August 10, 2012 Daniel and Veronica with their sons, Ramses, 5 years old, and Solomon, 10 months old, moved into their new apartment in Palm Beach County, Florida. The following week, the parents took Ramses to his second physical with the same pediatrician at the private university in Broward. They also obtained a new religious exemption from vaccinations for Ramses from Palm Beach County, because his new school would not accept Broward County's. Ramses was registered in August 2012 to attend the local elementary school.

When the family moved to Palm Beach Solomon had already begun to crawl, which he had been doing since he was about 6 months old. He was able to sit up on his own and feed himself. He was also talking, saying words like "mama", "dada", "hey" and "hi". He enjoyed watching television and he used to sing along with the popular television show "Sponge Bob Square Pants". He was very playful and active. At thirteen months he was starting to stand and climb onto the futon in their living room. He liked seasoned foods, such as pizza, vegetable lasagna, and broccoli. Compared to Ramses, Solomon was developing at a faster rate. The primary difference between their upbringings was that Ramses was breastfed longer when Veronica's diet consisted of meats, poultry and dairy. Knowing that Solomon was not breastfed as long as Ramses and knowing that he was introduced to vegetarian foods earlier than Ramses, the parents were not alarmed when Solomon became less aggressive in his development than Ramses later on. As explained by Elijah Muhammad in *How to Eat to Live* the parents find that people who do not eat meat are less aggressive. Initially, Solomon's diet did not include meats. It was later on that he was introduced to meats in March 2013, when he began shedding his baby fat substantially.

On January 15, 2013, Daniel received an unusual letter from (CFD), stating that Solomon was covered for Medicaid for the months of February 2013 through May 31, 2013. On January 9, 2013 Daniel filed his taxes and was scheduled to receive a return of $4,416.00 by February 21, 2013. However, because the previous year Daniel was flagged for identity theft, the Internal Revenue Service (IRS) delayed his return until early May 2013, causing even more financial hardship. On or around April 9, 2013 Daniel received an even more unusual letter from CFD stating that "No household members are eligible for this program." Upon recognizing his children no longer had medical coverage, Daniel applied to enroll into his employer's group health insurance plan to cover them.

During this time of financial hardship Daniel wanted to take Solomon to the doctor, because after giving him meats and fattening foods he was not gaining weight like they would have hoped. However, Veronica assured him that if there was something wrong with her son she would be the first know. Given the outstanding job she has done with Ramses, Daniel trusted her mother's instincts. When Veronica was pregnant with Ramses, the midwife, who no longer wanted to deliver their baby because her license was expired, called them while they were driving on the highway from a prenatal visit with her to tell them that she did not detect their baby's heart beating and that they should go to the hospital. Daniel broke down into tears and Veronica pulled over on the side of the road. Veronica comforted him and told Daniel that the midwife was not telling the truth. Veronica assured him then that if there was something wrong with their child she would be the first to know and that everything was fine. She was right. As with their older child, she recommended that they rely solely on holistic means for healing whatever ailment he may have in accordance with the teachings of the Honorable Elijah Muhammad.

Daniel and Veronica still did not have a reliable means of transportation, sufficient income or family support. While Daniel was able to transfer his retail job to Palm Beach Veronica wasn't. Since CFD denied them Medicaid, the parents relied on the holistic and spiritual methods Elijah Muhammad prescribed for poor people like them to cure their son. Daniel was no stranger to medical miracles. When Daniel finally received his refund check from the IRS he rented a car from a local car rental company in case they needed to get around. On May 8, 2013 Daniel was involved in a car accident with a landscaping company pickup truck, in which the company was at fault. However, he still had to pay a $500.00 deductible to the local car rental company for another rental car. In the weeks that followed, Solomon began showing symptoms of illness. He began coughing and sneezing like a common cold, but it never went away.

As soon as Daniel received the insurance cards from his employer's group health insurance they called the appointed pediatrician for an appointment for Solomon. On May 24, 2013 Veronica and Daniel took Solomon to his pediatrician nearby at 4:30 P.M., after picking up Ramses from after school. The pediatrician examined Solomon and determined he needed breathing treatments. She recommended they take him to the children's hospital in Palm Beach. She said she would call the hospital to notify them they were coming and advised them to get something to eat beforehand.

The parents left the pediatrician's office with their children and went home to eat and pack Solomon a bag of changing clothes and diapers. Solomon vomited the food and the parents became very alarmed as he has never done that before. They rushed to the hospital and arrived around 6:00 P.M. or so. Upon arriving at the hospital they waited in the lobby for approximately 20 to 30 minutes. Later, Solomon was admitted into the emergency room (ER) and the Doctors began doing X-rays and tests to determine Solomon's reasons for coughing, breathing complications and recent vomiting. It was later determined that he had pneumonia. At first, the doctors were unsure as to whether it was viral or bacterial, but later discovered it was bacterial.

After being at the hospital for about six (6) hours, Veronica took Ramses to his maternal grandmother's house in Miami-Dade County and Daniel stayed while Solomon was transferred to the pediatric intensive care unit ("PICU"). After Solomon was admitted into the PICU at around 1:00 A.M. on Saturday, May 25, 2013, his primary physician, who is Venezuelan, asked Daniel to consent to intubate him with a ventilator to help his breathing; insert a peripheral intravenous central catheter ("PICC") in his neck so they don't have to keep poking him with a needle every time the doctors need to draw his blood for labs; and to consent to a blood transfusion in case he needs one later on. Daniel consented to intubate him and to insert the PICC, but objected to a blood transfusion because that was against his faith as a baptized Jehovah's Witness.

Soon after objecting to the blood transfusion, at 1:45 A.M. Daniel and Jessica were reported to Child Protection for child neglect, alleging as follows:

> On 5/25/2013, Solomon was admitted to the hospital totally emaciated. He is unable to sit up or walk because he has no muscle strength. The parents have not ever taken Solomon to a hospital and have been using natural, holistic methods to care for him. The parents have noticed that Solomon has been losing weight since February 2013. Solomon looks like he is wasting away and there are concerns for his wellbeing.

On May 25, 2013 a Palm Beach sheriff deputy came to the hospital along with a child protective investigator from CFD. The doctor on duty at the children's hospital made a formal statement to the deputy that "the child has an infection in his lungs from pneumonia." The deputy took formal statements from Daniel and Jessica and made a police report, without reading them their Miranda rights. The child protective investigator decided not to initiate an onsite protective investigation after speaking with the parents and the doctors and seeing the child. Neither did the sheriff's deputy arrest them nor did the child protective investigator petition the court for abuse, neglect or abandonment by his parents, as required by law if there are grounds to suspect child abuse or neglect. In fact, they told the parents that they were not in any kind of trouble.

Since May 24, 2013, when Solomon was admitted into the PICU, the doctors have been drawing his blood "for labs" every six (6) hours, or four (4) times per day and asking the parents to test him for HIV/AIDS. The parents refused such testing because Veronica already tested negative for HIV/AIDS when she was pregnant with him and Daniel tested negative for HIV/AIDS when he applied for his life insurance policy. They also had very limited coverage under the group health insurance plan with his employer. On June 27, 2013 one of Solomon's physicians, who was Indian came to his room in the PICU to persuade Daniel to consent to a blood transfusion, HIV/AIDS testing and vaccinations for Solomon. Daniel reasoned with the doctor and asked him how could he possibly have HIV/AIDS if both parents have tested negative for HIV/AIDS?

The Doctor; claimed that in India where he is from, mothers sometimes chew their food before giving it to their babies and sometimes transfer the virus to their babies that way. Daniel was deeply disturbed by the doctor's response as he and his fiancée are neither Indian or practice such customs and his response assumes that they themselves have the virus and transferred it to their son, which he knew was not the case. Daniel informed the doctor that as a pre-law major at an honors college, who has taking an honors logic class, his response is not sound and defies logic. He then asked the doctor why doesn't he request their medical records from Tallahassee, which will prove that his fiancée tested negative for HIV/AIDS while she was pregnant with their son and avoid such unnecessary expenses. The doctor insisted that Daniel should still consent to HIV/AIDS testing because nothing is 100 percent and referred to the CDC to support his claim.

Daniel, then, informed the doctor that he is well aware of the CDC's Tuskegee experiment on African Americans with syphilis and that it really disturbs his conscience that after he clearly objected a doctor would continue to insist that he consents to an unreasonable HIV/AIDS test for his child, vaccinations from which he has a religious exemption and an unnecessary blood transfusion against his religious beliefs as a baptized Jehovah's Witness based on the CDC's recommendation. The doctor claimed that it was not the CDC that conducted the Tuskegee experiment. The doctor maintains that even though there may be a 99 % probability that Solomon does not have HIV/AIDS Daniel should still consent to HIV/AIDS testing just in case. Daniel declined and the Indian doctor left. On June 28, 2013 a third-party-doctor from the Health Department of Florida came to the hospital to persuade Daniel to consent to a blood transfusion, HIV/AIDS testing and vaccinations for Solomon. They also discussed the CDC's Tuskegee experiment. The state doctor agreed that the Tuskegee experiment was wrong and racist but said it was a long time ago. After Daniel declined the doctor took photographs of Solomon and left.

On May 29, 2013 when Veronica stayed overnight to watch over Solomon, a Cuban doctor on duty asked her to consent to a blood transfusion because she was certain that by the morning Solomon was going to need a one and again asked her to consent to test him for HIV/AIDS. Veronica called Daniel and told him to come speak with Solomon's doctors because they wanted to give him a blood transfusion and test him for HIV/AIDS. On the morning of May 30, 2013 Daniel came to the hospital and asked the doctor on duty if it isn't the fact that they are drawing Solomon's blood so frequently that's causing him to need a blood transfusion. The female Cuban admitted it was contributing to him needing the blood transfusion. Daniel requested that the doctors refrain from drawing his blood so frequently and to draw his blood at a safe rate and declined to test Solomon for HIV/AIDS once more.

After the doctors finally respected Daniel's parental rights and refrained from drawing Solomon's blood so frequently, his blood hemoglobin level rose back up to a safe level of 11.2, where he no longer needed a blood transfusion. However, the doctors called CFD on the parents again for refusing a blood transfusion, HIV/AIDS testing and vaccinations. Five days after her initial visit the child protective investigator returned to the hospital and confirmed that after consulting with the state doctor and Solomon' doctors at the hospital he did not need a blood transfusion as of May 30, 2013. Soon after, during that week, a male Cuban doctor asked Daniel if they ever did a PKU for Solomon when he was born. Daniel answered that as far as he knew his fiancée and midwife did all of the prenatal and postnatal labs for their son that were necessary for a safe homebirth delivery. The male Cuban doctor later returned and informed Daniel that he contacted Tallahassee and they did not have a PKU for Solomon. The doctor said he would now have to do a PKU since they never did one. Later, the doctor sent a male Cuban nurse to collect Solomon's sweat for the PKU, because Daniel would not consent to any blood products.

When the Cuban nurse tried to collect Solomon's sweat for the PKU he did not have enough fluids in his body. At that point parents became seriously concerned about Solomon's quality of care at the children's hospital in Palm Beach. They began gathering contact information to make a formal report of such unethical violations against the doctors and nurses caring for Solomon for intentionally causing his blood hemoglobin level to drop to an unsafe point where he would need a blood transfusion and to report CFD for failing to fulfill its statutory obligation to protect their child from such harm by the doctors, whom they believe made a false report against them, in order to obtain custody of their child. The parents believed the doctors were simply taking advantage of the fact that they had no medical history to impose their will on them, because they are a poor and vulnerable African American and Haitian American family with strong religious and spiritual beliefs and cultural practices, which the hospital, a Catholic institution, disagrees with.

Yet, this hospital promotes that it is a bloodless institution that could have simply offered a less dangerous alternative, instead of a blood transfusion. A Duke University study found that blood transfusions increase your risk of heart attack and death, according to Jon Barron, founder of the Baseline of Health Foundation. On his foundation's website he states, regarding the Duke University study, as follows:

> According to the study, the problem is that the oxygen-transporting efficacy of stored blood begins to decay almost immediately. This is because stored red blood cells become deficient in nitric oxide, thus limiting their ability to get oxygen to tissues that need it. Nitric oxide opens up blood vessels, which allows oxygen carrying blood to reach the tissues served by those vessels. In vitro studies show that levels of S-nitrohemoglobin (the molecule that carries nitric oxide in the blood) decline rapidly in stored red blood cells. There is a 70% drop in the first day of storage. By the twenty-first day, the molecule was below the level of detectability. In the U.S., red blood cells can legally be stored up to 42 days before blood banks are required to discard them... Not only is transfused blood deficient in nitric oxide, but because it's deficient, it actually sucks nitric oxide out of the surrounding tissue to compensate. This causes that tissue to constrict and become deoxygenated. If that tissue happens to be heart muscle, you have a real problem. (Barron, 2008)

Alternatively, the hospital could have used saline solution, Ringer's solution and dextran, as nonblood plasma expanders, available in nearly all modern hospitals. The *Canadian Anaesthetists' Society Journal* says: "The risks of blood transfusions are the advantages of plasma substitutes: avoidance of bacteria or viral infection, transfusion reactions and Rh sensitization." (Watchtower Society, 2013) In handling the parents' objection to blood products, the hospital failed to follow its own Patient Care Policy Procedural Manual, providing that:

> Patients refusing the administration of blood or blood products should be requested to sign the Consent for Refusal of Blood & Blood Products form … which is to be witnessed, and placed in the medical record. If the patient refused transfusion and refuses to sign the release, such refusal should be witnessed and entered in the patient's chart. The entry should be signed by the witness as well as the person making the entry.

The reason why the doctors did not offer nonblood plasma expanders was not because it was more expensive or wasn't covered by the parents' insurance. They never attempted to administer it under their insurance. Besides, once a court declare a child dependent on the state the department has access to funding that could easily cover whatever services the health of a child requires. A Court can also order treatment be provided in accordance with the tenets and practices of a religious organization. The hospital decided that it would not pursue the matter in court without stating any reason.

Ironically though, on June 2, 2013 the hospital sent a Black physician to Solomon's room. She assured the parents that if Solomon demonstrated that he was ready to be taken off the ventilator, she was going to make a sincere effort to extubate him. The doctor advised them that once he's off the ventilator he may be released from the hospital to go home. Veronica stayed with her son overnight. The doctor stopped supplying Solomon with nutrients at midnight on June 3, 2013 and extubated him at 5:00am. Later that day, when Daniel arrived at the hospital a nurse took several pictures of him holding Solomon while he was extubated from the ventilator.

However, on June 4, 2013 at about 6:00 A.M. another Cuban doctor came to the PICU to again ask Daniel to consent to an HIV/AIDS test for Solomon, acting as though he had no knowledge of them objecting to that previously. At that point, Daniel asked for a supervisor in order to report the actions of Solomon's doctors, but they told him that the department head does not come in until 9:00 A.M. However, they did switch the Cuban doctor for another Hispanic doctor who came and challenged Daniel's objection to HIV/AIDS testing stating, "You have agreed for testing his blood for labs, but you do not want to test him for HIV, that's fishy?" Daniel explained to him what he had been experiencing at the PICU and the doctor acted as though he was not aware of any of it. The doctor did confirm that the oxygen being pumped in Solomon's nostrils could be contributing to his distended stomach in response to a question asked by Daniel and later turned down the amount of oxygen being pumped by Solomon's ventilator and his stomach was no longer as distended.

At about 8:00 A.M. on June 4, 2013 Daniel requested that Solomon be transferred to a hospital in Broward that Veronica was familiar with and later objected to certain treatments that he believed were potentially harmful to Solomon's wellbeing. However, instead of processing the transfer, the Hispanic doctor told Daniel they were going to call CFD first and wait until they came. At this point Daniel called the hospital ethics line to make a formal report against Solomon's doctors. Daniel also reported them to their hospital compliance officer. That same day Daniel and Veronica also mailed their formal complaints to the Agency for Health Care Administration in Tallahassee and the Joint Commission in Illinois. They even mailed a formal complaint against CFD to CFD's office of Civil Rights in Tallahassee and the CFD Palm Beach mail center. The department later notified the hospital that the parents had the right to transfer their child to any hospital they choose because their child was never detained.

The hospital retaliated against the parents for their report against its doctors and request to transfer by having local law enforcement escort Daniel and Veronica out of the hospital under the pretense that they had a court order to do so. The parents, later, contacted the child protective investigator (CPI) from CFD and she informed them that the hospital did not have any court order. They contacted the hospital and informed them that CFD said that the hospital did not have a court order to remove them from the hospital. The hospital personnel admitted that they were wrong for putting them out of the hospital and said that they were welcome to return. The parents feared returning to the hospital without legal representation, so they sought the help of a local nonprofit organization that provides legal assistance to the poor, which Daniel discovered in class at the university. However, the nonprofit organization advised them that they could only represent their child and not the parents.

The department also retaliated against the parents for their report against the department and request to transfer by filing a petition to shelter their child from the religious exercise of his parents on June 5, 2013, twelve days after Solomon was admitted in the hospital and one day after Daniel requested to transfer him to another hospital for better treatment and a second opinion. The department withdrew its petition from the court docket later that day after the parents went to the medical records department of the hospital to request their child's medical records and were overheard talking on the phone with an attorney. The parents had no idea that while they were away the hospital also contacted a deputy sheriff detective to come see the medical condition of Solomon, who has been in their care now for 12 days. Up until this point the hospital has refused to feed Solomon or treat him for pneumonia unless his parents consented to a blood transfusion, HIV/AIDS testing and vaccinations. On June 6, 2013 the parents returned to the hospital. As they entered the PICU the Hispanic doctor stated that every child deserves a father like that.

On June 6, 2013 the Cuban doctor who had previously switched with the other Hispanic doctor the day the parent reported them to the ethics hotline, returned to the hospital and asked Daniel and Veronica a loaded question with the intent of using their response to rationalize re-intubating Solomon to make him dependent again. He claimed that Solomon was struggling to breathe and asked if they had noticed his chest moving at home as it was now at the hospital. Daniel, who was aware of his intensions, answered that there was no way his chest could have been moving as it was at the hospital at their home, because at home he never had tubes in his nostrils inhibiting his airways. Veronica on the other hand, who was unaware of the doctor's intentions and thought that Solomon's chest was moving normally said yes, unwittingly. The doctor claimed he had got the information he was looking for and left.

After the doctor left Daniel explained to Veronica that the doctor just asked them a loaded question as he had studied in his logic class at the university. The female nurse, who was eavesdropping outside of the room tried to divert their conversation by claiming that she thought Solomon might have a fever after feeling his forehead. Daniel had to go home to prepare for a doctor's appointment he had scheduled for later that day for his back injury from the car accident that occurred on May 8, 2013. As he was leaving, the nurse proceeded to inject Solomon with some treatments and tried to explain to Daniel what she was injecting him with as though she wanted him to object. Daniel told her that he did not want to say anything that the hospital was going to use as a reason to call the department or the police again and left. Later that day, the nurse began to show Veronica the medications she was giving to Solomon. Veronica suspected the nurse wanted her consent for some odd reason. She proceeded to insert a tube in Solomon' penis to collect urine and advised her that Solomon needed antibiotics for his fever.

The infectious disease doctor, who is middle-eastern, entered the room and said they needed to test Solomon' urine to ensure he did not have an infection. He claimed an infection would cause them to re-intubate him. Veronica asked him could the medicine the nurse just gave him have any withdrawal symptoms. He said it could but he wanted to test his urine to ensure there's no urinary infection from the previous line inserted in his penis and left. The nurse returned and Veronica asked her to check Solomon's temperature and his temperature read "99," so he did not have a fever. The nurse insisted, "But in his rectum it is 102." Veronica, then, asked her, "Why you would check his rectum if there's no fever under his arm?" The nurse claimed his body was warm. The nurse became defensive stating, "I have no problems with you and now I have to get a new nurse, which is really sad because I have had him for the last couple of days." She tried to explain to Veronica further, but Veronica told her that was not necessary. The nurse walked out and the infectious disease doctor returned and asked Veronica if she had any questions. She told him "no, I already spoke to the nurse. Thank you." The doctor proceeded to explain that, "the rectum is more of a true temperature." The nurse returned with a plastic bag, placed it over Solomon's penis, said that, "I will leave his diaper open. Let me know when he pees," and left.

At about 4:00 P.M. the nurse returned, repeated the same procedure and she claimed that Solomon felt warm at 101 degrees. After watching the doctors and the nurse conspire to claim that Solomon was having trouble breathing and a fever, in order to re-intubate him, Veronica also requested another transfer. A hospital administrative personnel later came to the room after calling the department and asked Veronica to leave. Veronica told her she cannot leave and it's illegal to call the department because she requested a transfer. The personnel left. Shortly thereafter, the personnel returned and said the hospital had a court order. Veronica asked her for a copy. The personnel said the department instructed her not to do that, but she will get her copy in the morning.

Later, a white female police officer came to Solomon's room to escort Veronica and Ramses out of the hospital again under the pretense of a court order. She assured Veronica that there was a court order issued this time and that Veronica would get her copy of it in the morning, which she never received. On June, 6, 2013 the police officer reported the incident, as follows:

> [The hospital personnel] advised me CFD's child protection team had issued an order advising the patient in room [], Solomon, was now in CFD custody. [The hospital personnel] provided me a copy of the order and a letter from CFD investigator []. The letter from CFD investigator [] advised [the] Hospital that the parents of Solomon were not to be allowed in the child's room...
>
> I made contact with Solomon' mother, Veronica, in room []. [The parent] advised she was aware of CFD's custody of her child and was planning on attending court tomorrow (6/7/13) in reference to the custody. [The parent] advised me she was aware that she was no longer allowed to visit her son's room and left the property without incident.
>
> Copies of the custody order and letter from [CFD] were placed into evidence. . .

On June 7, 2013 the department again retaliated against the parents' request to transfer Solomon made by Veronica, this time, by filing another petition in the Palm Beach county court to shelter him from the religious exercise of his parents, fourteen days after Solomon was admitted and one day after Veronica requested to transfer him to another hospital for better treatment and a second opinion, alleging reasonable grounds exist for alleging child neglect against the parents, pursuant to Section 39.402, Florida Statutes. That same day the hospital re-intubated Solomon to make him dependent again. On June 7, 2013 the parents appeared in court as directed by the CPI hoping to be reunified with their child. During the hearing the department requested custody of their older child Ramses as well, but the court denied their request because Ramses' kindergarten teacher said that the parents appeared to be very loving and caring. The court found Ramses to be a bright and well developed child. The court ruled that the parents are entitled to visitation of their sick child in the hospital. After court the CPI told the parents the department will need to visit their home with law enforcement to verify that it is safe for the return of their child.

On Sunday, June 9, 2013 while on a supervised visitation with the CPI, a younger female nurse in the PICU informed the parents that Solomon was re-intubated because his blood level went down to sixty (60) or sixty percent (60%). The Nurse's report did not sound right to Daniel because he was only previously intubated due to his pneumonia infection in his lungs, which the doctors claimed was cured and the numbers they usually used to monitor his blood were given in decimal form. Solomon decided to record the visitation with the CPI and proceeded to advise them that he was recording this interview with his phone. The nurse became very defensive and said she did not want to be recorded, insisting that Daniel delete her comment about Solomon's blood level, which he did. The CPI was also very defensive. She told Daniel he could not do that and to leave his phone outside of the room. Daniel cooperated, but reminded the CPI that the Child Protection: Rights and Responsibilities form she gave them on May 30, 2013 stated that he may record his interviews with her throughout the investigation process. The CPI responded that she has been advised not to discuss the case with them.

A hospital security guard came up to the PICU while on the phone speaking with someone. To clarify any misunderstanding Daniel informed the guard that he was only recording because he has a form from CFD, which states that he may record his interviews with the CPI. The security guard advised Daniel that if he could show him the document that states he could record the interview he would allow it. Daniel asked him if he may go get it and left. While Daniel was at home looking for the form the security officer escorted Veronica and Ramses out of the hospital. Veronica called Daniel and told him what had happened while he was away. When Daniel returned to the hospital he made a police report of the incident with a law enforcement officer working at the hospital. Later that day a hospital administrator called Daniel on his cell phone from her private number to tell him that he and Veronica were banned from ever coming to the hospital again.

On June 10, 2013 the department authorized the hospital to give Solomon a blood transfusion. That morning the CPI called Daniel on his cell phone to inform him that although she did not know how legal it was the hospital was going to give his son a blood transfusion, without a court order in spite of his religious beliefs. Afterwards, the hospital did give Solomon a blood transfusion that day, based merely on a letter from one of his doctors and not a sworn affidavit, affirming under oath that he actually needed it and without a court order, as required by law. Later that night, Daniel answered a knock on his door, expecting a home visit from the department to make sure their home was safe for the return of their child as the parents were misled to believe by the CPI at the courthouse on June 7, 2013.

Daniel got up from his desk and looked outside of his peephole. He saw several law enforcement officers standing outside of his door, whom he thought were with CFD. Confused, stressed and exhausted, Daniel opened the door, stepped outside and closed the door behind him so that he could see what they wanted. A White male detective and a Cuban female detective with two deputy sheriffs behind them claimed that they were not with CFD and that they just wanted to take formal statements from him. The detectives read him his rights and asked if they could come inside. Daniel told them no. The detectives asked him what does he have to hide and why can't they come inside. Daniel answered it's not that he has something to hide but that he feared that his rights are being violated. The detectives asked Daniel for Veronica for whom they had no articulable reason to harbor suspicion or probable cause to arrest. Daniel opened the door to go inside and told his fiancée that law enforcement wanted to talk to them. She went to change clothes. Daniel opened the door, stepped outside and again pulled the door close behind him. He told the officers she was coming, at which point the detectives began aggressively to demand to know what they were hiding inside.

With his hand on his gun, the white male detective asked Daniel where Veronica was and what is she hiding inside. Daniel was very frightened by his tone of voice and threatening posture. Daniel raised his hands up, said they had nothing to hide, pushed the door open behind him to go get his fiancée and the four law enforcement officers followed him into the apartment. None of the officers asked for permission to enter. The two deputies stood by the door of the apartment, blocking the door way. The white male detective trailed behind the female Cuban detective with his hands on his hip and firearm as the female Hispanic detective with a clipboard in her hands proceeded to approach Daniel backtracking to his desk. Veronica walked out of their bedroom frightened by the intimidating presence of the four officers in their living room.

Veronica asked the officers why were they in her home. The Cuban female detective claimed they were just there to get some statement from them, repeated the reported statements of the medical personnel at the hospital and asked them, "What is this natural holistic remedy?" After obtaining no formal statements from the parents, the white male detective read them their *Miranda* rights and the Hispanic detective stated, "I don't know how they do it your country but in America we take our kids to the hospital," and placed Daniel under arrest. All four officers took Daniel outside, put him in handcuffs and the three male officers took him to the police car.

The white male detective and one deputy went back inside the apartment while one deputy stayed in the car with Daniel. Soon after, the officers handcuffed Veronica and brought her over into the same police car as Daniel. As the parents waited in the car together they saw the CPI get out of a vehicle, go upstairs with the officers and take their older child Ramses, who was asleep upstairs out of their apartment, without calling any responsible adult relatives who could care for him even though Veronica had given the CPI her mother's contact information on May 24, 2013. After quite some time the parents were transported to the county jail without incident.

Daniel and Veronica were each charged with child neglect under Section 827.03, Florida Statutes by the arresting officers in separate criminal actions. The department, then, amended its Petition in its dependency action against the parents on June 11, 2013 based on the criminal allegations of law enforcement, thereby rendering the dependency court's initial Order, denying the department custody over Ramses, entered by the pretrial judge, on June 7, 2013, ineffective.

In pertinent parts, the department's June 11, 2013 Amended Petition states the following:

> Law Enforcement (LE) commenced a criminal investigation on the parents of the victim-children, [VERONICA] and [DANIEL]. Law enforcement reports regarding the care and condition of the victim-child [SOLOMON LUCIENE]. On June 5, 2013 Detective . . . responded to the Pediatric Intensive Care Unit of [the Children's Hospital] to review the condition of the victim-child [SOLOMON] who had been admitted on May 24, 2013 due to severe emaciated condition, difficulty breathing, and vomiting.

Further, it states:

> On June 10, 2013 the mother, [Veronica], and the father, [Daniel], were interviewed by LE at their residence regarding the current state of the child Davie. After being advised of their Miranda warnings the parents refused to separate and provide LE with formal statements. The parents stated at the time that they notice that the child Solomon was 'wasting away' in February 2013."

Further still, the Amended Petition states:

> Based on the statements of the parents, medical personnel's statements and the observations of the child Solomon, the mother and father were arrested on charges of aggravated child neglect, in that the parents for reasons other than poverty deprived the child Solomon of care, supervision, and services necessary to maintain the child's physical and mental health including but not limited to food, nutrition, clothing, shelter, supervision, medicine and medical services that a prudent person would consider essential for the well being of the child."

Lastly, it states:

> As a result of the parent's arrest, the older child, [RAMSES], has been left without any adult supervision. This child has been taken into the custody of the [Children and Family Department] (Department) and sheltered due to having no adult to care for the child's needs at the present time."

Chapter 3: The State's Interest or the Lack Thereof

Every state has an interest in safeguarding the wellbeing of its residents or citizens. In *Commonwealth vs. Cyrus Alger,* 7 Cush. 53, 61 Mass. 53March, 1851, Justice Shaw held it is settled that, "every holder of property... holds it under the implied liability that his use of it may be so regulated, that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, not injurious to the rights of the community." In *Jacobson v. Massachusetts,* 197 U.S. 11 (1905) the court held that, "[T]he police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety." In Florida, in cases involving children, legislative enactment provide greater privacy protections with respect to patients' PHI and law enforcement. Florida law requires any person, including a health care provider, who knows or has reasonable cause to suspect child abuse, abandonment or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, to report such knowledge or suspicion to the department's Central Abuse Hotline. (Fla. Stat. 39.201(1)). Here, where the parents took their child to a hospital in good faith, Fla. Stat. § 39.395 further requires the following:

> Any person in charge of a hospital or similar institution, or any physician or licensed health care professional treating a child may detain that child without the consent of the parents, caregiver, or legal custodian, whether or not additional medical treatment is required, if the circumstances are such, or if the condition of the child is such that returning the child to the care or custody of the parents, caregiver, or legal custodian presents an imminent danger to the child's life or physical or mental health. Any such person detaining a child shall immediately notify the department, whereupon the department shall immediately begin a child protective investigation in accordance with the provisions of this chapter and shall make every reasonable effort to immediately notify the parents or legal custodian that such child has been detained. If the department determines, according to the criteria set forth in this chapter, that the child should be detained longer than 24 hours, it shall petition the court through the attorney representing the Department of Children and Family Services as quickly as possible and not to exceed 24 hours, for an order authorizing such custody in the same manner as if the child were placed in a shelter. The department shall attempt to avoid the placement of a child in an institution whenever possible.

According to the facts of the case, neither the pediatrician or the physicians or any licensed health care professional at the hospital detained Solomon, who was seen by his pediatrician and admitted at the hospital on May 24, 2013, until June 5, 2013 after the father requested a transfer and the parents reported the hospital and the department for medical malpractice for the hospital causing and the department allowing the hospital to cause their child to become anemic, in order to give him a blood transfusion against the parents' religious beliefs. This clearly shows that the circumstances were not such, or the condition of the child was not such that returning him to his parents presented an imminent danger to the child's life or physical or mental health. In fact, the pediatrician returned Solomon to Veronica and Daniel to take him to the hospital for breathing treatments, which they discovered he needed at the hospital due to pneumonia.

As a general rule under Florida law, the statute of limitations begins to run when a plaintiff has been put on notice of his right of action. *Drake By and Through Fletcher v. Island Community Church, Inc.*, 462 So.2d 1142, 1143 (Fla. 3d DCA 1984). As stated above, pursuant to Fla. Stat. § 39.395, "If the department determines, according to the criteria set forth in this chapter, that the child should be detained longer than 24 hours, it shall petition the court through the attorney representing the Department of Children and Family Services as quickly as possible and not to exceed 24 hours, for an order authorizing such custody in the same manner as if the child were placed in a shelter." The department was put on notice of its right of action on May 24, 2013, when the hospital reported the parents to the department, but the department did not petition the court for an order to shelter Solomon until June 7, 2013, two (2) weeks after the statute of limitation to do so had ran out, in direct violation of § 39.395, Fla. Stat. In this instant case it is reasonable to conclude that no state interest to protect the public health or safety existed.

What must be considered then, is 1) whether the hospital personnel made a false report against the parents in order to take custody of their child and give him a blood transfusion in violation of their religious beliefs for their personal benefit in other private disputes that they anticipated would arise involving the child, 2) whether the department caused the minor children and their parents to be subject to the deprivation of rights, privileges, or immunities secured by the Constitution and laws, due to their regard for the private or undisclosed interest of the hospital personnel or others, which led them to disregard their public duty or the manifest best interest of the minor children, and 3) whether private or undisclosed interests of the hospital personnel or others caused the hospital personnel to make a false report against the parents to the department, which led the department and law enforcement to disregard their public duty or interest.

The Florida Legislature, under Section 39.01(27), Florida Statutes, defines a false report, as follows:

> "False report" means a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:
>
> (a) Harassing, embarrassing, or harming another person;
>
> (b) Personal financial gain for the reporting person;
>
> (c) Acquiring custody of a child; or
>
> (d) Personal benefit for the reporting person in any other private dispute involving a child.
>
> The term "false report" does not include a report of abuse, neglect, or abandonment of a child made in good faith to the central abuse hotline.

When the CPI and the deputy sheriff came to the hospital on May 25, 2013 in response to the child abuse report made by the hospital against the parents they did not even find probable cause of abuse, neglect, or abandonment against them. The department also failed to immediately begin a child protective investigation, to determine if the child should be detained longer than 24 hours and to petition the court as quickly as possible for an order to a shelter within 24 hours.

However, the department did use the hospital's child abuse report to acquire custody of the parents' sick child on June 7, 2013 to give him an admittedly unnecessary blood transfusion on June 10, 2013, against the religious beliefs of the parents. On June 7, 2013 when the department petitioned the court for an order to shelter, the hospital did re-intubate Solomon to make him dependent. Given that the hospital and its personnel are paid for housing and caring for Solomon during this period of dependency and for administering the blood transfusion, the compensation received for such services are attributable to the personal financial gain of the reporting personnel whom are licensed by the state to receive compensation for such services.

On June 9, 2013 a hospital administrator called Daniel on his cell phone from her private number to tell him that he and Veronica were banned from ever coming to the hospital again. Anyone would find this to be at the very least embarrassing and quite reasonably, harassment. On June 10, 2013 before the hospital gave Solomon a blood transfusion the CPI from the department did call the father's cellphone to tell him that although she did not know how legal it was the hospital was going to give his son a blood transfusion and that they did not need his permission to do so, in spite of his religious belief. The department authorized the hospital to give Solomon a blood transfusion, without an affidavit signed by his doctor(s) or a court order to treat, after acknowledging on May 30, 2013 he did not need one. This is a clear injury to the entire family's First Amendment rights. After giving Solomon a blood transfusion the Sheriff arrested the Parents later that night in their residence based on probable caused derived from protected health information, unlawfully obtained from the hospital personnel in clear violation of HPAA, Florida Statutes and the Fourth Amendment and Five Amendment. Although in their probable cause affidavit they claimed to only have probable cause to arrest the father both the mother and father were arrested and taken to the county jail.

As a result of the parents' arrest their older child was left without a responsible adult to care for him and taken into custody of the department and placed in a shelter. The department was given the children's maternal grandmother's contact information by the mother when the CPI and deputy sheriff interrogated her at the hospital on May 25, 2013. The department made no effort to contact the maternal grandmother so she could care for the older child while the parents were in the sheriff's custody. As mentioned previously, the law, under Fla. Stat. § 39.395 requires that, "[t]he department shall attempt to avoid the placement of a child in an institution whenever possible."

On May 30, 2014, about a year after it all started, the parents filed a Motion For Reunification, claiming amongst other things that, "The Parents' religious exercise has been burdened in violation of Fla. Stat. § 761.03 and assert that violation as a claim or defense in this judicial proceeding and to obtain appropriate relief," and that, "based on the abovementioned grounds, the parents respectfully request this Honorable Court to enter its ORDER to reunify the Parents with their Minor Children." On May 30, 2014 the court agreed with the parents and an "Order Granting Motion For Reunification" was rendered by a resigned Circuit Court Judge of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Juvenile Division, stating as follows:

> **This Cause** came before the Court on the Father's[] and the Mother's[] Motion for Reunification. The Court considered the evidence and applicable laws. Based upon these considerations, it is:
>
> **Ordered and Adjudged** that Father's[] and Mother's[] Motion for Reunification is **GRANTED** if no objections are filed within **ten** days from the date of this order.

This court order established that no competent substantial evidence in the record supported a determination that reunification would have endangered the children's safety, well-being or health. That reunification would have endangered the children's safety, well-being or health[2] is the only valid objection the department could have made to the court's order for reunification.

Since the court did not make factual findings that reunification would endanger the child's safety, health or well-being, rather than filing actual objections to the court's order for reunification, the Attorney *ad Litem* filed a legally insufficient "Joint Notice of Objection" with CFD and Guardian *ad Litem* on June 3, 2014, containing no actual objection or statement clearly stating the reason for their objection and the parts of the order they objected to, to interpose delay, in violation of Fla. R. Juv. P. 8.230 , in order to file an unverified "Petition for Termination of Parental Rights and Permanent Commitment of the Minor Child", under Section 39.806(1)(d)(2), Florida Statutes. According to pertinent parts of the Section 39.806(1), Florida Statutes, grounds for the termination of parental rights may be established under any of the following circumstances:

> (c) When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency.
>
> (d) When the parent of a child is incarcerated and either:

[2] E.I. v. Dep't of Children & Families, 979 So. 2d 378 (Fla. 4th DCA 2008) (reviewing order denying motion for reunification sought by appeal; reversing and remanding for reunification of the children with their mother because no competent substantial evidence in the record supported a determination that reunification would have endangered the children's safety, well-being or health); R.F. v. Dep't of Children & Families, 949 So. 2d 357 (Fla. 4th DCA 2007) (reviewing denial of motion for reunification sought by appeal; reversing and remanding for specific factual finding); H.G. v. Dep't of Children & Families, 916 So. 2d 1006 (Fla. 4th DCA 2006) (reviewing denial of motion for reunification sought by appeal; reversing and remanding for reunification unless the trial court determined on remand, upon sufficient factual findings, that reunification would endanger the child's safety, health or well-being); S.P. v. Dep't of Children & Families, 904 So. 2d 615 (Fla. 4th DCA 2005) (reviewing denial of motion for reunification sought by appeal; reversing and remanding for factual findings)

1. The period of time for which the parent is expected to be incarcerated will constitute a significant portion of the child's minority. When determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child. When determining harm, the court shall consider the following factors:

a. The age of the child.

b. The relationship between the child and the parent.

c. The nature of the parent's current and past provision for the child's developmental, cognitive, psychological, and physical needs.

d. The parent's history of criminal behavior, which may include the frequency of incarceration and the unavailability of the parent to the child due to incarceration.

e. Any other factor the court deems relevant.

(e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parent or parents. The failure of the parent or parents to substantially comply with the case plan for a period of 12 months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever occurs first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child. The 12-month period begins to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the court's

approval of a case plan having the goal of reunification with the parent, whichever occurs first; or

2. The parent or parents have materially breached the case plan. Time is of the essence for permanency of children in the dependency system. In order to prove the parent or parents have materially breached the case plan, the court must find by clear and convincing evidence that the parent or parents are unlikely or unable to substantially comply with the case plan before time to comply with the case plan expires.

3. The child has been in care for any 12 of the last 22 months and the parents have not substantially complied with the case plan so as to permit reunification under s. 39.522(2) unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child.

(f) The parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling. Proof of a nexus between egregious conduct to a child and the potential harm to the child's sibling is not required.

1. As used in this subsection, the term "sibling" means another child who resides with or is cared for by the parent or parents regardless of whether the child is related legally or by consanguinity.

2. As used in this subsection, the term "egregious conduct" means abuse, abandonment, neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

(g) The parent or parents have subjected the child or another child to aggravated child abuse as defined in s. 827.03, sexual battery or sexual abuse as defined in s. 39.01, or chronic abuse.

In Footnote 1 of *In re D.A.D. II*, 903 So.2d 1034 (2005) it states that, "However, section 39.806(1)(d)(2) requires a conviction. Section 39.806(1)(f) should not be used to excuse the conviction requirement of section 39.806(1)(d)(2) absent a sufficient nexus between the conduct and the specific harm to the children." Neither parent has ever been convicted of any crime nor is the consideration of any nexus relevant here. Evidently, the department has not met the legal requirements for termination of parental rights in this case.

Furthermore, a permanency determination is required by the court pursuant to Fla. Sta. § 39.621, as follows:

> (1) Time is of the essence for permanency of children in the dependency system. A permanency hearing must be held no later than 12 months after the date the child was removed from the home or within 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first. The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child. A permanency hearing must be held at least every 12 months for any child who continues to be supervised by the department or awaits adoption.
>
> (2) The permanency goals available under this chapter, listed in order of preference, are:
>
> (a) Reunification;
>
> (b) Adoption, if a petition for termination of parental rights has been or will be filed;
>
> (c) Permanent guardianship of a dependent child under s. 39.6221;
>
> (d) Permanent placement with a fit and willing relative under s. 39.6231; or
>
> (e) Placement in another planned permanent living arrangement under s. 39.6241.

The court's ruling for reunification is based on it's consideration of the evidence and applicable laws. To rule otherwise would constitute a complete disregard of the manifest best interest of the children and a clear violation of the entire family's rights to due process of laws, especially since the alternative would be to rule for termination of parental rights, in addition to permanently placing the children in foster care. The court's ruling for reunification provides a clear remedy to the "Madisonian dilemma" that occurs when free exercise of religion conflicts with state interests. No objection thereto should be sustained by the court absent competent substantial evidence in the record to support a determination by the court that reunification would endanger the children's safety, health or well-being. The legislature's preference that reunification be the first option, Fla. Sta. § 39.621(2)(a), and the court's ruling for reunification must stand.

It is primarily to preserve their own status and the private interest of the hospital personnel in presumed other private disputes that may arise involving these children that the department took custody of the Luciene children from their parents to hold them until the parents plead guilty to a crime and consent to a case plan, which involves them undergoing unwarranted psychological evaluation and therapy to relieve the hospital, department and law enforcement of any wrongdoing. The arresting officer commented that, "I don't know how they do it your country but in America we take our kids to the hospital," when arresting the parents. Michelle Alexander argues that when people of color are disproportionately labeled as "criminals," it allows the unleashing of a whole range of legal discrimination measures involved in this case. This form social control is part of the "stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow." (Alexander, 2012)

The department's and sheriff's disregard of its public duty in regard for the private interest of the hospital and department personnel clearly falls within the Florida Legislature's definition as a "conflict of interest" as in Fla. Stat. § 112.312 (8), providing that, "'Conflict' or 'conflict of interest' means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest." Pursuant to U.S.C.A. Const. Amends. 1, 4, 5, 6; 18 U.S. Code § 242 and 42 U.S. Code § 1983; Fla. Stat. § 761.03, and Fla. Stat. § 768.28, the department, sheriff and hospital personnel are liable to the parents and their minor children injured, under color of statute, ordinance, regulation, custom, or usage, of the State of Florida, in an action *at law*, suit in equity, or other proper proceeding for redress. The state has no real interest in criminally prosecuting the Luciene parents in this case. The state should drop its criminal charges against the parents and the court should dismiss its criminal case against the parents. To approach these matters any other way would be to fortify the "new racial caste" outlined by Michelle Alexander in the *New Jim Crow*.

Chapter 4: The Parent's Interest (Freedom from Persecution for the Cause of Conscience)

The aspect of religious freedom that the parents are most interested in here is that of freedom of conscience and freedom from persecution for the cause of conscience. They share in that Jeffersonian belief that, "[a]lmighty God hath created the mind free, (and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint.)" (Jefferson - Enlightenment: Religious Freedom, 2013). Despite the parents' distinct religious backgrounds, through their similar Afrocentric knowledge and perspective they found a common ground in living a natural and holistic lifestyle. They agreed to faithfully rely on Elijah Muhammad's natural and holistic methods to care for themselves and eventually their children and to restrain from artificial life-sustaining or life-saving medical treatment, such as blood transfusions and vaccinations. However, in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), the U.S. Supreme Court clarified that, while the Free Exercise Clause of the First Amendment protects the right of individuals to believe whatever they wish, it does not necessarily protect the right to act on those beliefs.

Jehovah's Witnesses once brought action in the state of Washington for the District Court to permanently enjoin all defendants from administering blood transfusions to plaintiffs in the future as defendants had allegedly done in the past in violation of constitutional rights of plaintiffs. The three-judge District Court dismissed aspects of the cases relating to giving blood transfusions to adults, but held that it had jurisdiction of infant cases and held that Washington statutes empower superior court judges to declare children to be dependent for purpose of authorizing blood. See *Jehovah's Witnesses in State of Wash. v. King Cnty. Hosp. Unit No. 1 (Harborview)*, 278 F. Supp. 488, 505 (W.D. Wash. 1967); aff'd sub nom. *Jehovah's Witnesses in State of Washington v. King Cnty. Hosp. Unit No. 1*, 390 U.S. 598, 88 S. Ct. 1260, 20 L. Ed. 2d 158 (1968).

While in theory it makes sense for the state to defend the interests of children when the children's parents act in a way that could be objectively harmful, it isn't always the case that the state acts reasonably. The court's holding in *Jehovah's Witnesses* that it has jurisdiction of infant cases to declare children to be dependent upon the state for the purpose of authorizing blood transfusions maintains the recurring dilemma in the treatment of Jehovah's Witnesses and other members of religious organizations that share similar beliefs. This holding leaves families with strong religious beliefs against certain medical treatments vulnerable to persecution and/or prosecution for such beliefs by very powerful professionals who may have biases against their religious beliefs, culture and race, under color of acting in the best interest of their children. Sometimes individuals need protection against an abuse of the use of the state's police power.

In the Lucienes case the parents were billed $9,988,765.76 for their minor child's hospitalization from May 24, 2013 to August 28, 2013. Elijah Muhammad's claim that "The Christian world commercializes on everything," (Muhammad, 1967, p. Loc 835 of 1519) should be considered here. As explained by Nasir Muhammad and Rose Hakim, "The medical industry and its doctors have paid large sums of money to attend school and are hard pressed to pay back great loans and maintain expensive lifestyles. They become bound to it and have to charge you great sums of money. . . This [] leaves you vulnerable to them and the pharmaceutical industry taking pills the rest of your life." It's possible that the hospital personnel made a false report, as defined under Fla. Stat. § 39.01(27), against the parents in order to cause the state to take custody of their child for the personal benefit of the medical personnel, as described by Elijah Muhammad and Nasir Muhammad and Rose Hakim *supra*, and to protect themselves in other disputes that they anticipated would arise involving the child. According to the law, the hospital personnel committed a crime in concert with the state actors lending the prestige of their offices to them.

Furthermore, the medical industry is not free of the institutional racism plaguing America. According to Ebony Magazine, Black patients are more likely to encounter discrimination in medical care. Consider the following:

Between 1929 and 1977

Thousands of Black women were sterilized in North Carolina as part of the state's eugenics program.

Between 1932 and 1972

The Tuskegee Syphilis Study: 400 Black men with the disease were deliberately left untreated.

In 1945

An African-American trucker named Ebb Cade was place into a federal radiation experiment without his consent while treated for injuries from an accident in Tennessee.

In the 1950s

Residents of Florida and Georgia were allegedly exposed to mosquitoes carrying yellow fever in an experiment conducted by the Army and CIA.

In 1951

Medical staff at John Hopkins Hospital secretly harvested the cells of Henrietta Lacks, who died of an aggressive form of cancer. To this day, her cells are still used for research.

Between the 1950s and 60s

Black inmates at Philadelphia's Holmesburg Prison were paid guinea pigs for researcher at the University of Pennsylvania, who used them to test drugs and hygiene products, causing some participants lasting pain and disfiguration.

Between the 1960s and 70s

A University of Mississippi researcher trying to prove brain pathology was the root of hyperactivity tested African-Americans boys with neurosurgery.

In 1996

> The end of a three-year experiment at the New York Psychiatric Institute where 34 Black and Hispanic boys were given the now-banned fenfluramine to check a theory that criminal behavior could be treated with use of the drug. (Bentley, 2014)

Given this Country's history of enslaving, oppressing and discriminating against Blacks in addition to its medical industry's history of despicable medical experimentation on Blacks from slavery until the present, it is no wonder Elijah Muhammad advises his followers that following God's dietary law, "[w]ill help keep your doctor away from your door" (Muhammad E. , 1967). Elijah Muhammad's message to Blacks is addressed by Harriet A. Washington, author of *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present*, who argues in her book that "diverse forms of racial discrimination have shaped both the relationship between white physicians and black patients and the attitude of the latter towards modern medicine in general" (Washington, 2007) .

Strict scrutiny, as articulated in *Korematsu v. United States*, 323 U.S. 214 (1944), *U.S. v. Lee*, 455 U.S. 252 (1982), *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), and *Cutter v. Wilkinson*, 544 U.S. 709 (2005), *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), should be applied in every case involving Black and minority patients, who are reluctant or who refuse to participate in certain medical treatments for religious, cultural and ethnic reasons or skepticism about the medical establishment's discriminatory past against them. To pass strict scrutiny, a law or policy in question must satisfy a three-prong test:

1. It must be justified by an overriding or compelling governmental interest, meaning it must be mandatory or have a broad public interests. For example: social security or national security; (*Lee*, pg. 253)

2. The law or policy must be narrowly tailored to serve substantial and content-neutral governmental interests. "The greater efficacy of the challenged regulation must outweigh the increased burden it places on the protected right" (*Ward*, pg. 805); and

3. The law or policy must be the least restrictive means for achieving that compelling governmental interest. It must be a "compelling interest that cannot be served by less restrictive means." (*Smith*, pg. 907)

The current law does provide the means for substantive justice in requiring that policies and procedures that provide for prevention and intervention through the department "provide a child protection system that is sensitive to the social and cultural diversity of the state," Fla. Stat. § 39.001 (1)(d). African-American skepticism about the medical establishment and reluctance to participate in medical research is an unfortunate result of the abusive medical practices to which African-Americans have been subjected by the federal government and private companies, as explained by Washington in her book. In the Lucienes case, cultural and racial insensitivity and bias colored the state's judgment so that its agents were not always acting in the child's best interest. See Fla. Stat. § 112.312 (8). The United States Supreme Court has long established in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) that, a law that is race-neutral *prima facie*, but is administered in a prejudicial manner, is an infringement of the Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution.

The manner in which the department and the state administered the law and its policies were not the least restrictive means of defending the manifest best interest of the Luciene children. A less restrictive way to effectively achieve the compelling government interest in this case would have been for the hospital or the state to seek an order from the court of appropriate jurisdiction for the services to be provided, as the health of the child so requires. To address the mothers Islamic dietary beliefs, the court could have ordered treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of the Nation of Islam or the teachings of the Honorable Elijah Muhammad. To address the fathers Jehovah's Witness beliefs against blood transfusions, the court could have ordered the use of nonblood plasma expanders instead, in accordance with the tenets and practices of Jehovah's Witnesses. See Fla. Stat. § 39.01 (44).

The Nation of Islam and Jehovah's Witnesses are by no means the only minority religious groups at the forefront of this battle for religious freedom against state interest involving minor children. In Green County, Wisconsin, the Circuit Court, found Amish parents guilty of violating a compulsory education law. They appealed and the Wisconsin Supreme Court, 49 Wis.2d 430, 182 N.W.2d 539, reversed, their conviction. *Writ of Certiorari* was granted to the U.S. Supreme Court. Mr. Chief Justice Burger, held that, "the First and Fourteenth Amendments prevent a state from compelling Amish parents to cause their children, who have graduated from the eighth grade, to attend formal high school to age 16." *Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972).

Although high school attendance as in the *Wisconsin* case is not as sensitive of an issue as medical care in the Lucienes case, both cases ultimately deal with the "Maddisonian dilemma" of free exercise of religion versus the state interest regarding minor children. In *Wisconsin v. Yoder*, "Wisconsin has sought to brand these parents as criminals for following their religious beliefs, and the Court today rightly holds that Wisconsin cannot constitutionally do so." (pg. 237) Similarly, the State of Florida is seeking to brand the parents in the instance case as criminals for following their religious beliefs and the court should hold that Florida cannot constitutionally do so. The Lucienes case is clearly not about whether the parents have endangered the child's safety, well-being or health, or whether the circumstances that caused the parents to bring their child to the hospital were such, or the condition of the child was such that returning the child to them presented an imminent danger to the child's life or physical or mental health. The hospital never detained the child until the parents requested to transfer him to a better hospital for better treatment. The court stated that, "the Court considered the evidence and applicable laws," and it is based upon these considerations that the parents' Motion for Reunification was granted.

No sufficient factual findings, that reunification would endanger the child's safety, health or well-being has been made by the court. Neither neglect nor abuse is at issue here. What is truly at issue here is whether the parents in the instance case have the right to raise their children in accordance with their religious beliefs and whether the state has a compelling interest to burden the parents' exercise of religion, if the state perceives the parents' religious beliefs caused them to act in a way that could be objectively harmful to the child(ren). The law is clear, "A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian," Fla. Stat. § 39.01 (44).

When a medical institution or personnel is detaining a child, the department is required to commence a child protective investigation in accordance with Fla. Stat. § 39.395, requiring 1) making every reasonable effort to immediately notify the parents or legal custodian that their child has been detained, and 2) determining, according to the criteria set forth in Chapter 39, Florida Statutes if the child should be detained longer than 24 hours to petition the court as quickly as possible and not to exceed 24 hours, for an order authorizing such custody as if the child were placed in a shelter. According to CFD's Intake Report, sending Florida Administrative Message to Law Enforcement was not applicable. As the CPI testified in court, the response to the hospital's report of child abuse was downgraded by the department from an immediate to a 24 hour response. According to the Palm Beach County Child Abuse Protective Investigations Protocol, whereas an immediate response requires Law Enforcement to be involved, a 24 hour response requires only CFD to conduct a child protective investigation within 24 hours. Therefore, the Sheriff's deputy's investigation is an infringement of the Fourth Amendment to the U.S. Constitution and HIPAA.

Finally, "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." *Hagans v. Lavine,* 415 U.S. 528, 94 S. Ct. 1372, 39 L. Ed. 2d 577 (1974). Illegitimate factors including cultural and racial insensitivity and bias have colored the state's judgment in the Lucienes case, so that its agents were not always acting in the children's best interest; moreover those acting on behalf of the state may also have an interest in preserving their own status that resulted in them working against the ideal that the state will do the 'right thing'. See Fla. Stat. § 112.312 (8). This conflict of interest amounts to denial of due process of laws and deprivation of rights, privileges, or immunities secured by the Constitution and laws. Therefore, both the dependency court and criminal court are deprived of *juris*, see *Merritt v. Hunter, C.A. Kansas,* 170 F2d. 739, and must dismiss all actions taken against the parents as a result as justice so requires. See *Fontenot v. State*, 932 S.W.2d 185 (1996); *Melo v. United States,* 825 F. Supp. 2d 457 (S.D.N.Y. 2011).

Considering the events that have transpired in the case at hand, the parents have grounds to assert that their religious exercise has been burdened as a claim or defense in the judicial proceedings against them to obtain appropriate relief, in violation of Fla. Stat. § 761.03 on the state level and Section 1983 of the Civil Rights Act of 1871 on the federal level. 'Religious freedom—the freedom to believe and to practice strange and, it may be, foreign creeds—has classically been one of the highest values of our society.' *Braunfeld v. Brown,* 366 U.S. 599, 612, 81 S.Ct. 1144, 1150, 6 L.Ed.2d 563 (1961) (Brennan, J., concurring and dissenting). Therefore, the dependency court and criminal court should not only dismiss the cases against the parents but should upon the parents' request or its judicial discretion for federal question remove the case to federal court, where the federal court may award the Luciene family any further relief the court deems appropriate.

Chapter 5: The Manifest Best Interest of the Children

For the purpose of determining the manifest best interests of children in cases involving children, in Fla. Stat. § 39.810, the Florida Legislature require the courts to consider and evaluate all relevant factors, including, but not limited to the following:

1. Any suitable permanent custody arrangement with a relative of the child. However, the availability of a nonadoptive placement with a relative may not receive greater consideration than any other factor weighing on the manifest best interest of the child and may not be considered as a factor weighing against termination of parental rights. . .

2. The ability and disposition of the parent or parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under state law instead of medical care, and other material needs of the child.

3. The capacity of the parent or parents to care for the child to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered upon the child's return home.

4. The present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child.

5. The love, affection, and other emotional ties existing between the child and the child's parent or parents, siblings, and other relatives, and the degree of harm to the child that would arise from the termination of parental rights and duties.

6. The likelihood of an older child remaining in long-term foster care upon termination of parental rights, due to emotional or behavioral problems or any special needs of the child.

7. The child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties.

8. The length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

9. The depth of the relationship existing between the child and the present custodian.

10. The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

11. The recommendations for the child provided by the child's guardian ad litem or legal representative.

However, "Gov. Rick Scott signed into law Monday a sweeping overhaul of Florida's long-troubled child welfare agency, discarding a decade-old policy that favored the rights of parents over those of neglected and abused children — even as hundreds of infants and toddlers died gruesome and preventable deaths." (Miller, 2014) Furthermore:

> The measure, approved unanimously by the Florida Legislature in May, contains major changes to virtually every facet of Florida child protection policy, and is designed to stanch what had become an epidemic of deaths, particularly among the very young. The new law was written in response to a series of stories in the Miami Herald, called Innocents Lost, that detailed the deaths of 477 children whose families had been known to the state.
>
> The new law is significant, children's advocates say, as much for what it says as what it does: Lawmakers said explicitly that state child welfare administrators can no longer place the rights and wishes of parents above the safety of their children. For a decade, the Department of Children & Families had followed a 'family preservation' policy that sometimes left small children in danger, especially when their parents fought violently or had untreated drug addictions. (Miller, 2014)

The above stated new law is *ex post facto* or inapplicable to the Lucienes' case initiated in 2013, because it was not in effect when the allegations occurred, but given the close proximity of it coming into existence the following year while the case is still unresolved and the fact that it deals with the primary issues involved, it provides a strong contrast in favor of the rights of children over that of parents worthy of discussion here.

Again, in theory the new law may also make sense. However, in practice this new law may cause children, whose loving parents were targeted by the state because they practice "strange" and "foreign creeds", to be separated from their parents. The parents in the Lucienes case were and still are able to provide the children with food, clothing, medical care or other remedial care recognized and permitted under state law instead of medical care, and other material needs of the children. The new law does not apply to the Lucienes case but even if it were it still would fail to pass strict scrutiny it this case, due to the racial and religious aspect involved.

The applicable law, Fla. Stat. § 39.01 (44), does recognize that, "A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian." Thus, the Luciene Parents cannot be considered negligent for not going to the hospital for the birth of their children; for not vaccinating their children; for not given their children unnatural artificial foods and medicines; and for not providing blood transfusions to their children, in accordance with the teachings of Elijah Muhammad or Jehovah's Witnesses. Furthermore, under Fla. Stat. § 39.01 (44)(b), the law also permits "Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization," as prescribed by Elijah Muhammad in *How to Eat to Live, Book Nos.1 and 2* and explained by Nasir Muhammad and Rose Hakim in *The How to Eat to Live Holistic Companion: A comprehensive Holistic How-To-Guide For "Cures" They Don't Want You to Know*.

Despite the recent changes made to the law, of the eleven factors the Florida Legislature requires the courts to consider, the most applicable ones to the Lucienes case are still whether the parents have the capacity to care for the children to the extent that the children's safety, well-being, and physical, mental, and emotional health will not be endangered upon the children's return home; the present mental and physical health needs of the children and such future needs of the children based on the present condition of the children; the love, affection, and other emotional ties existing between the child and the child's parent or parents, siblings, and other relatives, and the degree of harm to the child that would arise from the termination of parental rights and duties; and he likelihood of an older child remaining in long-term foster care upon termination of parental rights, due to emotional or behavioral problems or any special needs of the child.

In the Lucienes case, the department obtained physical custody of Ramses on or around June 10, 2013, only because, "[a]s a result of the parents' arrest, the older child, [Ramses], has been left without any adult supervision." The department made no diligent effort to contact any relatives and failed to return Ramses to his parents after they were bonded out of jail on June 12, 2013. Sometime in August 2013, when he was finally released from the hospital, the department obtained physical custody of Solomon to shelter him from the religious exercise of his parents. The Luciene parents could have pursued this matter in federal court under 28 U.S.C. § 2241 and Art. I, § 9, cl. 2 of the United States Constitution, when their Minor Children were in state custody in pretrial detention, in violation of the Constitution, laws, or treaties of the United States.

However, the dependency court, which would be the court of appropriate jurisdiction over the minor children in the Lucienes case, assuming the due process of laws requirement has been properly adhered to, considered the evidence and applicable laws in the case at hand and based upon these considerations, it granted the parents' Motion for Reunification. This means that the old policy, which is applicable to the Lucienes case, which favored "family preservation" did not leave these small children in danger. Additionally, the Luciene parents do not fight violently or have untreated drug addictions. Thus, reunification would not have in any way endangered the children's safety, well-being or health and is the appropriate resolution required by law.[3]

[3] See Footnote 2, above (Page 40)

Conclusion

There was no compelling state interest in the Lucienes case and no lawful reason to declare the Luciene children dependent upon the state. The department failed to determine probable cause of criminal conduct and to forward allegations of criminal conduct to law enforcement to give law enforcement and the criminal court jurisdiction in this matter. The Luciene parents may not be considered negligent parents for legitimately practicing their religious beliefs by relying solely on holistic methods of healing in accordance with the teachings of Elijah Muhammad and not providing a blood transfusion for their child in accordance with the tenets of Jehovah's Witnesses. Family preservation is in the best interest of the Luciene children because the Luciene parents desire to be competent caregivers and providers for their children and there is no doubt that the Luciene children will achieve their greatest potential if returned to their parents. This is why the dependency court properly granted the parents' motion for reunification, and the state attorney should drop its criminal charges against the parents and the criminal court should dismiss the criminal case against the parents for lack of jurisdiction, as justice so requires.

Ruling in favor of the Lucienes in these actions would provide a much needed legal remedy to the "Madisonian dilemma" and address some of the objections made by Michele Alexander in the *New Jim Crow* to the inequalities in the criminal justice system and her concern that institutional racism be moved to the forefront of the civil rights agenda. Most importantly, it would help African-Americans and other minorities with skepticisms about the medical establishment resulting from its shameful past against them, as explored by Harriet Washington in *Medical Apartheid*, to become less reluctant in seeking medical attention by helping to convince them that participating actively in therapeutic medical treatment will not always lead to medical abuses by the healthcare providers, a broken home or criminal conviction.

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