CONSTITUTIONAL LAW AND FAMILY LAW—THE STATE CANNOT USE THE NEWLY-WON CONSTITUTIONAL RIGHTS OF MINORS TO LIMIT ITS PARENS PATRIAE OBLIGATION TO INSURE THAT A SURRENDER OF A CHILD FOR ADOPTION BY A MINOR MOTHER IS KNOWING, VOLUNTARY AND INFORMED.—*Janet G. v. New York Foundling Hospital* (N.Y. Fam. Ct. 1978).

Janet G., an unmarried seventeen-year-old minor, gave birth to a child, Jennifer, on June 14, 1977.[1] Janet never saw the child and in accordance with her father's wishes,[2] signed papers authorizing foster care for Jennifer on June 16, 1977.[3] Janet had no contact with social workers of the Commissioner of Social Services or the New York Foundling Hospital [hereinafter NYFH] until August, 1977,[4] when she was told that there were more papers to be signed.[5] On August 12, 1977, Janet met with Sister D.S.[6] and signed a properly witnessed and notarized[7] surrender instrument.[8]

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1. Janet's high school boyfriend was the father of the child. He took no part in this action. Janet G. v. New York Foundling Hosp., ___ Misc. 2d ___, ___, 403 N.Y.S.2d 646, 647 (Fam. Ct. 1978).

2. Janet's parents were separated and she was living with her father during the pregnancy. He told her she could not bring the baby home and commanded her to "put up" the baby for adoption. *Id.* at ___, 403 N.Y.S.2d at 647.

3. Unknown to the G. family, on June 20, 1977, Jennifer was placed in the home of Mr. and Mrs. A., the prospective adoptive parents. *Id.* at ___, 403 N.Y.S.2d at 649.

4. Normal NYFH procedure was not followed in this case. A social worker usually counsels the mother regarding adoption procedures, but due to a mix-up in records, Janet G. received no counseling or information regarding the surrender document. *Id.* at ___, 403 N.Y.S.2d at 648. However, all statutory requirements regarding the surrender of custody were followed. *See* notes 7 & 8 *infra*.

5. No mention was made to Janet of the words "surrender" or "adoption." She only knew that she had to sign more papers. ___ Misc. 2d at ___, 403 N.Y.S.2d at 648.

6. Sister D.S., the director of NYFH Mothers' Social Service Department, was alone with Janet during most of the meeting. Sister D.S. assumed that Janet was informed regarding the contents of the surrender document. *See* note 4 *supra*. Sister D.S. read rapidly through the documents and Janet G. signed them without question. ___ Misc. 2d at ___, 403 N.Y.S.2d at 648.

7. All of the required statutory procedures were complied with when Janet G. signed the surrender document. *Id. See* note 8 *infra*. Non-compliance is grounds for revocation of consent. *See In re* Baby Boy P., 86 Misc. 2d 1001, 382 N.Y.S.2d 644 (Fam. Ct. 1976) (surrender revoked because N.Y. SOC. SERV. LAW § 384 (McKinney Supp. 1977) not strictly complied with). Courts in other jurisdictions also demand strict compliance with all adoption statutes. *E.g.*, Sampson v. Holton, 185 N.W.2d 216 (Iowa 1971); *In re* Adoption of Jones, 558 P.2d 422 (Okla. Ct. App. 1976); *In re* D.L.F., 85 S.D. 44, 176 N.W.2d 486 (1970).

8. Adoptions handled by an authorized agency such as NYFH are accomplished by a surrender instrument pursuant to N.Y. SOC. SERV. LAW § 384 (McKinney Supp. 1977) which states in pertinent part:

> 1. Method. The guardianship of the person and the custody of a destitute or dependent child under the age of eighteen years be committed to an authorized agency by a written instrument which shall be known as a surrender, and signed:
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> . . . .
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> (c) if such child is born out of wedlock, by the mother of such child;
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> . . . .
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> 3. Instrument. The instrument herein provided shall be signed and shall be (a) acknowledged or (b) executed in the presence of one or more witnesses and acknowledged

Janet turned eighteen on September 25, 1977, and three days later phoned Sister D.S. to request the return of her baby.[9] Sister D.S. informed Janet that it was too late to regain custody of the child.[10] Janet brought this action[11] for revocation of her consent to the surrender on the grounds that the surrender was not knowing or voluntary.[12] The state[13] relied on the contractual nature of the surrender instrument and the constitutional right of a minor parent to surrender her child.[14] The family court judge *held* that the surrender instrument was null and void as violative of due process. The state cannot use the newly-won constitutional rights of minors to limit its *parens patriae* obligation to insure that the surrender of a child for adoption by a minor mother is voluntary, knowing and informed. *Janet G. v. New York Foundling Hospital*, ___ Misc. 2d ___, 403 N.Y.S.2d 646 (Fam. Ct. 1978).

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by such witness or witnesses, in either case before a notary public or other officer authorized to take proof of deeds and shall be recorded in the office of the county clerk in the county where such instrument is executed, or where the principal office of such authorized agency is located, in a book which such county clerk shall provide and shall keep under seal . . . .

In re Nicky, 81 Misc. 2d 132, ___, 364 N.Y.S. 2d 970, 973-74 (Sur. Ct. 1975) discusses decisions and statutes pertaining to revocation of consent both before and after adoption:

> When the adoption is accomplished through an agency it is accomplished by a "surrender instrument," a term applicable exclusively to agency adoptions. A surrender instrument executed by the natural parents confers care, custody and guardianship . . . . When it is executed for the purpose of adoption, it confers, as do the surrender instruments in issue, upon the authorized agency the authority to consent to the adoption without notice to the surrendering parents. When the surrender instrument is for the purpose of adoption . . . the natural parents in an agency adoption do not appear before the court. As authorized by the surrender, only the agency appears and consents to the adoption.

9. Janet believed that she had six to nine months to regain custody of Jennifer upon request. ___ Misc. 2d at ___, 403 N.Y.S.2d at 649.

10. N.Y. Soc. Serv. Law § 384 (McKinney Supp. 1977) contains a "30 day or placed for adoption provision." It states:

> 5. If a duly executed and acknowledged adoption surrender shall so recite, no action or proceeding may be maintained by the surrendering parent or guardian for the custody of the surrendered child or to revoke or annul such surrender where the child has been placed in the home of adoptive parents and more than thirty days have elapsed since the execution of the surrender . . . . This subdivision shall not bar actions or proceedings brought on the ground of fraud, duress or coercion in the execution or inducement of a surrender.

See also N.Y. Soc. Serv. Law § 384 note Carrieri (McKinney Supp. 1978). Janet signed the surrender document on August 12, 1977. The thirty day period for revocation of consent had elapsed before Janet's request for the return of her baby on September 28, 1977. NYFH recorded Jennifer's placement for adoption on October 13, and postdated the entry to October 12. Foster care payments to Mr. and Mrs. A. (the prospective adoptive parents) were terminated on October 12. The child Jennifer continued to live with Mr. and Mrs. A. during this action. ___ Misc. 2d at ___, 403 N.Y.S.2d at 650.

11. Janet's parents joined with her in this action. By September, both parents had become supportive of Janet's desire to keep the baby. ___ Misc. 2d at ___, 403 N.Y.S. 2d at 649.

12. *Id.* at ___, 403 N.Y.S. 2d at 650.

13. The Commissioner of Social Services was joined by NYFH, and the prospective adoptive parents intervened. *Id.* at ___, 403 N.Y.S. 2d at 647.

14. *Id.* at ___, 403 N.Y.S.2d at 650.

The *Janet G.* case presents an ironic twist to the current debate over the scope of a minor's constitutional rights. Historically, the assumption behind minority status was that children should be subject to the authority of parents and/or the state.[15] The concept of the state acting as *parens patriae*[16] to protect the interests of a minor is a corollary of the assumption of incompetence on the part of minors. The law presumes that the limited capacities of minors justify certain restrictions on their freedom.[17] Among these legal constraints are statutory restrictions on voting,[18] marrying,[19] contracting[20] and in tort.[21]

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15. Children have not always been assumed to be incompetent. Until the 17th century children were thought of as little adults and were expected to behave as such. An unexplained shift in attitudes took place and children came to be regarded as lacking in reason and maturity and hence needing special protection. Like lunatics, children had a right "not to liberty but to custody." *In re* Gault, 387 U.S. 1, 17 (1967); Note, *Parental Consent Requirements and Privacy Rights of Minors: The Contraception Controversy*, 88 HARV. L. REV. 1001, 1005 n.22 (1975). For a general discussion of the history of minority status *see also* P. ARIES, CENTURIES OF CHILDHOOD (1962); Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights,"* 1976 B.Y.U.L. REV. 605.

16. *Parens patriae* is "the power of the state to act *in loco parentis* for the purpose of protecting the property interests and the person of the child." *In re* Gault, 387 U.S. at 16 (citing Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases*, 1966 SUP. CT. REV. 167, 174). *See also* Prince v. Massachusetts, 321 U.S. 158, 166 (1944); West Virginia v. Chas. Phizer & Co., 440 F.2d 1079, 1089 (2d Cir. 1971); Wilson v. Wilson, 172 Colo. 561, ____, 474 P.2d 789, 791 (1970); *In re* Welcher, 243 N.W.2d 841, 843-44 (Iowa 1976); Helton v. Crawley, 241 Iowa 296, 311, 41 N.W.2d 60, 70 (1950); Turner v. Melton, 194 Kan. 732, ____, 402 P.2d 126, 128 (1965); Chandler v. Chandler, 56 Wash. 2d 399, ____, 353 P.2d 417, 420 (1960); Cogan, *Juvenile Law, Before and After the Entrance of "Parens Patriae,"* 22 S.C.L. REV. 147 (1970); Curtis, *The Checkered Career of Parens Patriae: The State As Parent or Tyrant?*, 25 DEPAUL L. REV. 895 (1976).

17. "[T]he law has generally regarded minors as having a lesser capability for making important decisions." ____ Misc. 2d at ____, 403 N.Y.S. 2d at 650 (quoting Carey v. Population Services Int'l, 431 U.S. 678, 693 (1977) (Brennan, J., plurality opinion)).

18. *E.g.*, U.S. CONST. amend. XXVI; IOWA CODE § 47.4 (1977); N.Y. ELEC. LAW § 5-102 (McKinney Supp. 1977). *See generally* Hamann, *Eighteen: The New Age of Majority in Massachusetts—An Analysis of Recent Legislation*, 59 MASS. L.Q. 17 (1974); Kaimowitz, *Legal Emancipation of Minors in Michigan*, 19 WAYNE L. REV. 23 (1972); Comment, *A Survey Of The Statutes Affected by the Reduction of the Age of Majority in New York*, 39 ALB. L. REV. 493 (1975); *Citizenship for Eighteen Year Olds—Age of Majority in Washington—Ch. 291 Washington Laws of 1971*, 47 WASH. L. REV. 367 (1972).

19. *E.g.*, IOWA CODE § 595.3 (1977); N.Y. DOM. REL. LAW § 7 (McKinney 1977). *See generally* Comment, *The Underage Marriage and Parental Consent Problems in Texas—a Look at the Past as Well as the Present*, 22 BAYLOR L. REV. 332 (1970); Note, *Minor's Marriage Contract—Absolute Nullity?* 36 LA. L. REV. 826 (1976).

20. *E.g.*, IOWA CODE § 599.2 (1977); N. Y. GEN. OBLIG. LAW § 3-101 (MCKINNEY 1977). *See generally* Edge, *Voidability of Minors' Contracts: A Feudal Doctrine in a Modern Economy*, 1 GA. L. REV. 205 (1967); 52 MARQ. L. REV. 437 (1969).

21. The intra-family tort immunity rule bars suits by children against parents (and conversely suits by parents against children) in most jurisdictions. *See generally* Katz, Schroeder and Sidman, *Emancipating Our Children—Coming of Legal Age in America, reprinted in* THE YOUNGEST MINORITY: LAWYERS IN DEFENSE OF CHILDREN 287-317 (S. Katz ed. 1974) [hereinafter THE YOUNGEST MINORITY]; W. PROSSER, LAW OF TORTS 864-68 (4th ed. 1971); Note, *Demise of Parent-Child Tort Immunity*, 12 WILLAMETTE L.J. 605 (1976).

Although certain legal disabilities of minors still remain, the scope of minors' constitutional rights has been greatly expanded by recent United States Supreme Court decisions.[22] The landmark decision of *In re Gault*[23] established that minors are entitled to procedural due process in juvenile court proceedings.[24] The holding in *In re Gault* was confined to proceedings in juvenile court, but the language was broad enough to signal an expansion of the rights of minors in other areas.[25] Two recent United States Supreme Court cases have increased the number of constitutionally protected choices that a minor may make to include the right to have an abortion without a blanket parental consent requirement[26] and the right to use contraceptives.[27] Thus, the pattern that emerges in decisions since *In re Gault* is one of greater independence for minors in making important decisions about their lives.[28] However, there are no clear boundaries defining the scope of a minor's constitutional rights. The United States Supreme Court said in *Carey v. Population Services International,*[29] "[w]e have been reluctant to attempt to define 'the totality of the relationship of the juvenile and the state.' "[30]

It is this uncertainty about the current legal status of minors that pervades the decision in *Janet G.* The irony of *Janet G.* lies in the respective positions of the minor and the state. In the face of the expanding scope of minor's rights, Janet argued for greater protection.[31] She contended that the surrender was "violative of due process under all the circumstances,

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22. For a discussion of recent United States Supreme Court decisions concerning minors, *see generally* Burt, *Developing Constitutional Rights Of, In, And For Children,* 39 LAW & CONTEMP. PROB. 118 (1975); Hafen, *Puberty, Privacy, and Protection: The Risks of Children's "Rights,"* 63 A.B.A.J. 1383 (1977) [hereinafter cited as Hafen, *Puberty*]; Hafen, *supra* note 15, at 619-37; Comment, *The Rights of Children: A Trust Model,* 46 FORDHAM L. REV. 669 (1978). For an argument against the perpetuation of minority status in the law *see* Foster and Freed, *A Bill of Rights for Children,* N.Y.L.J. (July 28, August 25, September 22, 1972), *reprinted in* THE YOUNGEST MINORITY, *supra* note 21, at 318.

23. 387 U.S. 1 (1967).

24. The specific due process protections extended to minors by *In re Gault* include notice, right to counsel, right to cross examination and the privilege against self-incrimination. *Id.* at 31-57.

25. "[N]either the 14th Amendment nor the Bill of Rights is for adults alone." *Id.* at 13.

26. Planned Parenthood v. Danforth, 428 U.S. 52 (1976). For discussion about the implications of this case, *see generally* Hafen, *supra* note 22; Comment, *The Validity of Parental Consent Statutes After Planned Parenthood,* 54 U. DET. J. URB. L. 127 (1976); 26 DRAKE L. REV. 716 (1977); 8 TEX. TECH. U.L. REV. 394 (1976).

27. Carey v. Population Services Int'l, 431 U.S. 678 (1977). For discussion of the implications of this case see generally Note, *Juvenile Privacy: A Minor's Right of Access to Contraceptives,* 6 FORDHAM URB. L.J. 371 (1978); Note, *Parental Consent Requirements And Privacy Rights Of Minors: The Contraception Controversy,* 88 HARV. L. REV. 1001 (1975); 16 J. FAM. L. 639 (1977-78).

28. *See, e.g.,* Goss v. Lopez, 419 U.S. 565 (1975) (students facing suspension from public school are entitled to certain due process protections); Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969) (children may exercise their first amendment rights in school, subject to the special characteristics at the school environment). *See also* note 22 *supra.*

29. 431 U.S. 678 (1977).

30. *Id.* at 692 (quoting *In re* Gault, 387 U.S. at 13).

31. ___ Misc. 2d at ___, 403 N.Y.S.2d at 650.

especially her age."[32] The state asserted that a minor has the constitutional right to execute a surrender without parental consent and that minors should be equated with adults for surrender purposes.[33] Thus, the state found itself in the position of arguing for greater autonomy for minors, while Janet requested greater protection because of her minority status.

Faced with the competing interests of the minor mother and the state, the court in *Janet G.* articulated a new standard for determining if a surrender of custody by a minor mother could be revoked: the surrender must be a "voluntary, knowing and informed decision."[34] The court listed both objective and subjective factors which indicated that Janet's consent was not voluntary, knowing or informed. The objective factors were those relating to the procedures and conditions of the surrender itself: (1) Janet was not permitted to have a friend present during the meeting with Sister D.S.; (2) she was not afforded any counseling services regarding adoption; (3) she was not allowed time to reflect on the terms of the instrument; (4) she was not allowed the opportunity to seek legal advice; and (5) her father testified he would not have allowed her to consider signing an instrument of this type in his absence.[35] The subjective factors mentioned by the court concerned Janet's impressions and beliefs about the effect of the surrender document: (1) Janet believed that she had six to nine months to regain custody of her child; (2) Janet never intended to give her child up; and (3) Janet did not understand the legal effect of the surrender document she signed.[36]

Despite the *Janet G.* court's emphasis on the circumstances surrounding the surrender, this was not a decision based solely on its facts. While the court in *Janet G.* stated that its holding declared no part of New York law unconstitutional,[37] application of the "knowing, voluntary and informed" revocation standard for minor mothers is a departure from the express language of the applicable statutes.[38] The *Janet G.* court pointed out that the parental con-

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32. *Id.* (emphasis added).

33. *Id.*

34. *Id.* at ____, 403 N.Y.S.2d at 653.

35. *Id.* at ____, 403 N.Y.S.2d at 649.

36. *Id.* at ____, 403 N.Y.S.2d at 647-49. *See also In re* Ruth J., 55 App. Div. 2d 52, 389 N.Y.S.2d 473 (1976) (mother of 12 year old signed surrender with good faith belief that it was revocable on notice). The Oregon Court of Appeals has listed factors to be considered in an action for revocation of consent to an adoption:

> Circumstances under which consent was given; the length of time elapsing, and the conduct of the parties, between the giving of consent and the attempted withdrawal; whether or not the withdrawal of consent was made before or after the institution of adoption proceedings; the nature of the natural parent's conduct with respect to the child both before and after consenting to its adoption; and the 'vested rights' of the proposed adoptive parents with respect to the child.

In re Adoption of D, 28 Or. App. 887, ____, 561 P.2d 1038, 1039 (1977) (citing Williams v. Capparelli, 180 Or. 41, 45-46, 175 P.2d 153, 155 (1946).

37. ____ Misc. 2d at ____, 403 N.Y.S.2d at 653.

38. N.Y. DOM. REL. LAW § 111 (McKinney 1977) states in pertinent part:

> 1. Subject to the limitations hereinafter set forth consent to adoption shall be required as follows:
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> . . . .

sent provisions in New York adoption laws make no distinction between minor parents and adult parents.[39] New York Service Law section 384 provides that an action may be brought to revoke a surrender in case of "fraud, duress or coercion in the execution or inducement of a surrender."[40] Thus, the "knowing, voluntary and informed" standard differs from existing law in two ways. First, it distinguishes minor mothers as a class,[41] and second, it provides this class with an additional means for revoking consent to a surrender document. The "knowing, voluntary and informed" standard would seem to be easier to meet than the statutory standard of proving "fraud, duress or coercion."[42] By making it easier for minor mothers to revoke their consent to a surrender, the court in *Janet G.* seemed to contradict the judgment of the New York legislature.[43]

The "knowing, voluntary and informed" standard articulated in *Janet G.* was a response to the difficult and complex issue which pervaded the case: the scope of a minor's constitutional rights.[44] One noted author, Professor Bruce C. Hafen,[45] suggests a method of analysis that is quite useful in considering the current legal status of minors. Professor Hafen classifies minor's rights as either rights of protection or rights of choice.[46] "Protection" rights are a minor's rights to property, physical security and the right to due process protection before imprisonment.[47] "Choice" rights are the rights "to make affirmative binding decisions of lasting consequence."[48]

"Choice" rights were not at issue in *Janet G.* The applicable statute

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(b) Of the parents or surviving parent, *whether adult or infant*, of a child born in wedlock;

(c) Of the mother, *whether adult or infant*, of a child born out of wedlock . . . . (emphasis added).

39. "[T]he statutory scheme regarding surrender of parental rights does not distinguish parents-minors as a class." ___ Misc. 2d at ___, 403 N.Y.S.2d at 651. *See also* Jones v. Jones, 215 Kan. 102, 523 P.2d 743 (1974); *In re* Adoption of T.W.C., 38 N.Y.2d 128, 341 N.E.2d 526, 379 N.Y.S.2d 1 (1975); *contra*, Warner v. Ward, 401 S.W.2d 62 (Ky. 1966).

40. N.Y. Soc. Serv. Law § 384(5) (McKinney Supp. 1977).

"It is clear that fraud or duress in the usual meanings of those terms would justify revocation of the consent . . . Once we go beyond that, however, the variety of possible circumstances becomes great and it is extremely difficult to draw any general conclusions from the cases." H. Clark, Law of Domestic Relations § 18.4, at 628 (1968).

41. "The State must provide safeguards to ensure that surrender *by a minor* is a voluntary, knowing and informed decision." ___ Misc. 2d at ___, 403 N.Y.S. 2d at 653 (emphasis added).

42. N.Y. Soc. Serv. Law § 384 (McKinney Supp. 1977).

43. The New York legislature significantly limited the ability of natural parents to revoke their consent to adoption after Scarpetta v. Spence-Chapin Adoption Serv., 28 N.Y.2d 185, 269 N.E.2d 787, 321 N.Y.S.2d 65 (1971). The *Janet G.* court described the terms of surrender document signed by Janet as "fraught with legal technicalities and terminology adverse to parental rights." ___ Misc. 2d at ___, 403 N.Y.S.2d at 653. *See In re* Nicky, 81 Misc. 2d 132, 364 N.Y.S.2d 970 (Sur. Ct. 1975); Dodd, *The Adoption of Baby Lenora: Two Interpretations Of A Child's Best Interests*, 11 J. Fam. Law 285 (1971). *See also* Note, *In the Child's Best Interests: Rights Of The Natural Parents In Child Placement Proceedings*, 51 N.Y.U.L. Rev. 446 (1976).

44. *See* notes 22, 26 and 27 *supra*.

45. Professor of Law, Brigham Young University.

46. Hafen, *Puberty*, *supra* note 22.

47. *Id.* at 1387.

48. *Id.*

clearly gives minor mothers the right to choose to surrender their children.[49] The crux of the dilemma in *Janet G.* was the scope of the protection a minor mother is entitled to. The court in *Janet G.* pointed out that the "fatal deficiency" in the state's position was its assertion that the growing scope of the "choice" rights of minors[50] prohibited the state from treating a minor mother any differently than an adult mother (*i.e.*, requiring the presence of the parents of the minor mother during the signing of the surrender).[51] The logical extension of the state's position is that if minors are allowed to exercise the "choice" rights of an adult they are not entitled to the "protection" rights traditionally accorded minors.[52]

The *Janet G.* court clearly rejected the state's position.[53] The court emphatically cautioned the state to be aware that in fulfilling its *parens patriae* obligation to the infant Jennifer it could not forget its *parens patriae* obligation to Janet, the minor mother.[54] While the *Janet G.* court took note of the expanding sphere of minor's constitutional rights, it stated that "recognition of the constitutional rights of minors does not transmute children into adults."[55] The court stressed language from the United States Supreme Court decisions in *Carey v. Population Services International*[56] and *Planned Parenthood v. Danforth*[57] which indicated that minors were still entitled to protected legal status.[58]

Despite the language in *Carey* and *Danforth* indicating that minors are entitled to some protection, the court in *Janet G.* could not escape the dilemma caused by the holdings of those recent United States Supreme Court cases.[59] The court in *Janet G.* noted that it is clear from those cases that there must be a "significant state interest"[60] before protective measures can restrict

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49. *See* notes 37 and 38 *supra*.

50. For examples of the growing choice rights of minors, see notes 22 and 28 *supra*.

51. ___ Misc. 2d at ___, 403 N.Y.S.2d at 652.

52. Professor Hafen agrees that protection rights and choice rights are mutually exclusive. "The conferring of the full range of the choice rights—essentially, adult legal status—requires a dissolution of the protection rights of childhood." Hafen, *Puberty, supra* note 22, at 1387-88.

53. "[T]he fatal deficiency of the CSS's [Commissioner of Social Services] stance lies in viewing the proclamation of the constitutional rights of the minor as justification for abdication of all *parens patriae* responsibility to minors." ___ Misc. 2d at ___, 403 N.Y.S.2d at 652.

54. "Vindication by the State of its interest in the baby . . . does not, however, relieve the State of its *parens patriae* obligation to the parent who is also under the age of eighteen." *Id.* at ___, 403 N.Y.S.2d at 653.

55. *Id.* at ___, 403 N.Y.S.2d at 650.

56. 431 U.S. 678 (1977).

57. 428 U.S. 52 (1976).

58. "[T]he law has generally regarded minors as having a lesser capability for making important decisions." ___ Misc. 2d at ___, 403 N.Y.S.2d at 650 (citing Carey v. Population Services Int'l, 431 U.S. at 693 n.15 (Brennan, J., plurality opinion)); "The State's interest in the welfare of its young citizens justifies a variety of protective measures." ___ Misc. 2d at ___, 403 N.Y.S.2d at 650 (citing Planned Parenthood v. Danforth, 428 U.S. at 102 (Stevens, J., concurring in part, dissenting in part)).

59. *See* notes 26 and 27 *supra*.

60. ___ Misc.2d at ___, 403 N.Y.S.2d at 654 (citing Carey v. Population Services Int'l, 431 U.S. at 693 (Brennan, J., for plurality opinion)).

a minor's autonomy in making a constitutionally protected decision.[61]

The *Janet G.* court offered two solutions to the dilemma of reconciling the expanding scope of minors' "choice" rights with the "protection" rights the *Janet G.* court so clearly believed that minors should have.[62] As pointed out earlier,[63] the "knowing, voluntary and informed" standard affords more protection to minor mothers attempting to revoke their consent to a surrender because it is an easier standard to meet than the statutory standard of "fraud, duress or coercion."[64] Thus, the standard articulated by the *Janet G.* court in itself provides additional protection to minor mothers.

In addition to the protection inherent in the "knowing, voluntary and informed" standard, the court in *Janet G.* suggested in dicta that independent legal counsel be appointed for minor mothers in a surrender of custody proceeding.[65] New York law now requires a guardian ad litum for minors in most legal proceedings,[66] but not in surrender of custody to an authorized agency.[67] Requiring the appointment of a guardian ad litum for a minor mother would help insure that the mother's consent was "knowing, voluntary and informed,"[68] and such a requirement would fulfill the state's *parens patriae* obligation to the minor mother.[69] Counsel would also prevent undue state or parental interference with a minor's "choice" rights, thus maintaining the minor mother's autonomy in making a constitutionally protected decision.[70]

The court in *Janet G.* was confronted with the difficult problem of dealing with the practical consequences of the current confusion over the scope of a minor's constitutional rights. Both the *Carey* and *Danforth* decisions have raised "serious questions about the assumptions underlying the entire

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61. The *Janet G.* court cited a United States Supreme Court decision to support the proposition that the right involved in a surrender is a constitutionally protected one: "[I]t is now firmly established that 'freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.'" *Id.* at ___, 403 N.Y.S. 2d at 651 (citing Quilloin K. Walcott, 98 S.Ct. 549, 554 (1978)).

62. *Id.* at ___, 403 N.Y.S.2d at 653.

63. *See* text accompanying notes 40-43 *supra.*

64. *See* note 39 *supra.*

65. "Fulfillment of the State's duty to the minor can be achieved by . . . the right to appointed independent counsel for the minor . . . ." ___ Misc. 2d at ___, 403 N.Y.S.2d at 654-55.

66. N.Y. FAM. CT. ACT § 241 (McKinney 1977). "The functions of the guardian ad litem . . . will be to file an appearance on behalf of the infant mother and take such steps, with diligence, as are deemed necessary to represent and protect her interest." *In re* Adoption of X, 84 Misc. 2d 770, ___, 376 N.Y.S.2d 825, 830 (Sur. Ct. 1975).

67. *Id.* at ___, 376 N.Y.S.2d at 831.

68. ___ Misc. 2d at ___, 403 N.Y.S.2d at 653.

69. *Id.*

70. Many current writers have emphasized the need for separate legal representation for minors. *See generally* J. GOLDSTEIN, A. FREUND, AND A. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD 65 (1973); Genden, *Separate Legal Representation For Children: Protecting The Rights And Interests Of Minors In Judicial Proceedings,* 11 HARV. C.R.-C.L.L. REV. 565 (1976); Inker and Perretta, *A Child's Right to Counsel in Custody Cases,* 55 MASS. L.Q. 229 (1970), *reprinted in* THE YOUNGEST MINORITY, *supra* note 21.

concept of minority status." The *Janet G.* suggestion for the appointment[71] of independent legal counsel is a partial solution which other states should consider if confronted with a similar problem.[72]

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71. Hafen, *Puberty, supra* note 22, at 1385.

72. IOWA CODE § 600A (1977) provides the procedures for the termination of parental rights. Section 604.2 states in pertinent part:

> 2. 'Parent' means a father or mother of a child, whether by birth or adoption.
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> . . . .
>
> 9. 'Guardian ad litem' means a person appointed by a court or juvenile court having jurisdiction over the minor child to represent that child in a legal action.
>
> 10. 'Minor' means an unmarried person who is under the age of eighteen years.
>
> 11. 'Adult' means a person who is married or eighteen years of age or older.
>
> . . . .

Section 600A.4 states in pertinent part:

> 2. A release of custody:
>
> a. Shall be accepted only by an agency or a person making an independent placement.
>
> . . . .
>
> c. Shall be in writing.
>
> d. Shall be signed, not less than seventy-two hours after the birth of the child to be released, by all living parents.
>
> e. Shall be witnessed by two persons familiar with the parent-child relationship.
>
> f. Shall name the person who is accepting the release.
>
> g. Shall be followed, within a reasonable time, by the filing of a petition for termination of parental rights under section 600A.5.
>
> h. Shall state the purpose of the release, shall indicate that if it is not revoked it may be grounds for termination, and shall fully inform the signing parent of the manner in which a revocation of the release may be sought.
>
> . . . .
>
> 4. Either a parent who has signed a release of custody, or a nonsigning parent, may, at any time prior to the entry of an order terminating parental rights, request the juvenile court . . . to order the revocation of any release of custody previously executed by either parent.
>
> If such request is by a signing parent, and is within ninety-six hours of the time such parent signed a release of custody, the juvenile court shall order the release revoked. Otherwise, the juvenile court shall order the release . . . revoked only upon clear and convincing evidence that good cause exists for revocation. Good cause for revocation includes but is not limited to a showing that the release was obtained by fraud, coercion, or misrepresentation of law or fact which was material to its execution. In determining whether good cause, other than fraud, coercion or misrepresentation, exists for revocation, the juvenile court shall give paramount consideration to the best interests of the child and due consideration to the interests of the parents of the child and of any person standing in the place of the parents.

It is not clear what the Iowa courts would do if faced with a situation analogous to the one in *Janet G.* The statutory standard for revocation of a release of custody is "clear and convincing evidence of good cause for revocation," which includes fraud, coercion or misrepresentation of law or fact material to its execution. IOWA CODE § 600A.4 (1977). In a *Janet G.* fact situation, the "misrepresentation of law or fact" standard might apply because of the lack of information and counseling given to Janet before she signed the surrender. The Iowa Supreme Court has held that "[t]he equitable principles of fraud, misrepresentation, duress, over-reaching, mistake or corruption constitute 'good cause' upon which a relinquishing party may be permitted to negate an agreement whereby a child is released to a licensed agency for purpose of adoption." Stotler v. Lutheran Social Services of Iowa, 209 N.W.2d 121, 127 (Iowa 1973).

However, appointment of counsel for a minor mother is not the final solution to the problem of defining the scope of a minor's constitutional rights. The "egalitarian" approach to the rights of minors perhaps points toward a gradual erosion of the concept of minority status.[73] As the choice rights of minors expand, must the protections afforded minors diminish? The answer given by the court in *Janet G.* is no, but until the Supreme Court more fully articulates the scope of a minor's constitutional rights, the extent to which *parens patriae* protections must be given to minors is also in question.

Shari Ulery

However, chapter 600A does not appear to address the problem posed in *Janet G.* is a *minor* mother entitled to additional protection? Section 600A.2 does not distinguish minor parents from adult parents. The provision relating to appointment of a guardian ad litem appears to be directed only toward appointment of a guardian ad litem for the minor child in the proceeding, not the minor mother. Other jurisdictions have held that unless the clear language of the statute requires appointment of a guardian ad litem for a minor mother, that her consent to adoption is valid despite lack of counsel. *In re* Adoption of Morrison, 560 P.2d 240, 243 (Okla. Ct. App. 1976). *See also In re* Kerwood, 44 Ill. App. 3d 1040, 359 N.E.2d 183 (1977).

73. Hafen, *Puberty*, *supra* note 22, at 1385.