

*Adoption of Patty*  
&  
Other Leading Due Process Cases

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# WELCOME

- The SJC's decision in Patty
- Patty's future implications
- Other important due process cases
- The Due Process Issue Bank

# Adoption of Patty, 489 Mass. 630 (2022)

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## **The backstory:**

- Covid-19
- Virtual trials only
- Pro se mother
- Mother requested in-person trial



# Adoption of Patty, 489 Mass. 630 (2022)

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## **The problems:**

- No Zoom instructions
- Mother lacked video capacity
- No inquiry as to Mother's ability to participate virtually
- Mother disconnected, missed most of DCF's case against her
- Tech issues impacted all parties
- Mother unable to offer her documentary evidence

*Good grief!*

# Adoption of Patty, 489 Mass. 630 (2022)

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Rule:

Zoom termination trials, in a time of pandemic, do *not* present “a per se violation of due process provided that adequate safeguards are employed.”

But:

*This* trial violated Mother’s right to due process because it lacked sufficient safeguards; it vacated the decree and remanded the case for a new trial.



# Refresher: Core Due Process Principles

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Armstrong v. Manzo, 380 U.S. 545 (1965).

Due process requires:

- (a) right to *notice*, and
- (b) right to be heard *at a meaningful time and in a meaningful manner*.

# Refresher: Core Due Process Principles

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Adoption of Mary, 414 Mass. 705 (1993).

The right to be meaningfully heard means that parents must “have an opportunity effectively to rebut adverse allegations concerning child-rearing capabilities.”

# Refresher: Core Due Process Principles

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Mathews v. Eldridge, 424 U.S. 319 (1976).

Three-part test:

1. Private interests affected,
2. risk of erroneous deprivation of such interest through the procedures used and the probable value of additional safeguards, and
3. the gov't's interest involved.



# What are Adequate Safeguards?

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The SJC looked to its decision in Vazquez Diaz, a criminal case, for guidance.

- Court must help pro se litigants
- Advance explanation of how to connect
- Exhibits exchanged in advance
- Plan for technical difficulties and suspend if they happen (resume when fixed)



# Questions that Patty leaves unanswered

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- Does the SJC's holding in Patty only apply to pandemics and/or states of emergency?
- How are the “safeguards” to be announced and applied?
- What about the use of expert witnesses?
- Does it apply to out-of-state or out-of-country parents?

The background of the slide features a collection of books and a red pen. The books are stacked and scattered, with some showing their pages and others their covers. The colors of the books vary, including shades of blue, brown, and white. A red pen is prominently placed in the center, lying diagonally across the books. The entire scene is overlaid with a semi-transparent dark grey filter, which makes the text stand out clearly.

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# Other Leading Child Welfare Procedural Due Process Cases

Other  
Leading Due  
Process  
Cases

Adoption of Rory,  
80 Mass. App. Ct. 454 (2011).

Judgment void for failure to  
comport with due process  
where the father was  
deprived of his right to  
counsel.

## Other Leading Due Process Cases

Adoption of Jacqui, 80 Mass. App. Ct. 713 (2011).

Termination of incarcerated father's parental rights without notice was a due process violation.

Adoption of Parker, 77 Mass. App. Ct. 619 (2010).

Judge's resolution of disputed facts through counsel proffers rather than by taking evidence – even though the lawyers agreed to the process – deprived mother of the opportunity to be heard meaningfully.

Other  
Leading Due  
Process  
Cases

Adoption of Edmund,  
50 Mass. App. Ct. 526 (2000).

Out-of-state incarcerated  
Father not afforded a  
meaningful opportunity to be  
heard b/c phone participation  
failed and no other procedure  
to was afforded to him to  
participate meaningfully.

Other  
Leading Due  
Process  
Cases

Adoption of Whitney,  
53 Mass. App. Ct. 832 (2002).

Judge must ensure meaningful participation by a parent in a TPR proceeding, although how to do that is largely left to judge's discretion based on circumstances.

# New case!

## Adoption of Arlene

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### **Upside:**

- Adoption *must* be vacated if due process has been violated.
- The Court won't look at the merits if there has been a fundamental due process violation.

### **Downside:**

- Uninvolved parent who knows about child may not be entitled to notice.



# Important Practice Tip

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- Serious due process violation = no need to show harm.
- Serious due process violations should be first argument in brief.
- In the brief, tell the Panel something like this:

"No harm needs to be shown in this case as a result of the deprivation, just as no harm needed to be shown in *Patty*, *Rory*, *Parker*, and the other cases with substantial due process violations cited above."



# The Due Process Issue Bank

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A few examples:

- Notice/service problems
- Delay
- Interpreter problems
- Right to counsel issues
- Out-of-state/out-of-country parents

*Contact us!*





# Open Discussion

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Questions?

Comments?