

**Third Place  
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## **Motion to Deny the Suppression of Telephone Conversation**

The following will show that the mother's interception of the conversation was not "unlawfully intercepted" and thus admissible in the case against the alleged burglar Jake. The New Mexico statute 30-12-8 states that evidence can only be suppressed if the case in which the evidence was ascertained meets one of three criteria. The second and third restrictions, which are associated with orders of authorization and approvals, have no bearing on this case and are irrelevant. The first restriction is relevant and declares that evidence can only be suppressed if unlawfully intercepted. New Mexico statute 30-12-1 subheading 'B' and 'C' defines unlawful interception.

Subheading 'B' describes the interception as "cutting breaking, tapping or making a connection with a telegraph or telephone in lawful possession or control of another." The mother did not cut, tap, or break any phone line so subheading 'B' is not relevant. Additionally the child Deborah was not in "lawful possession" of the phone line as the mother owns the phone and makes payments for use of the phone line.

Subheading 'C' defines unlawful interception as "reading, interrupting, taking or copying any connection with a telegraph or phone line...". The mother did not interrupt the flow of the conversation, restrict Jake's intended message from getting to Deborah or make any sort of copy of the message. The mother did mentally remember the information, but to use subheading 'C' as a means for suppression is not ethical. In addition, while the mother did not have direct consent from Deborah, she did not have a denial of consent either. The relevance of subheading 'C' is inconclusive and not, by any means, justification for suppression. Further evidence for the admissibility of the mother's testimony is seen in the 4<sup>th</sup> Amendment of the Constitution. Although the defense would argue that the 4<sup>th</sup> Amendment supports the suppression of the testimony, in this case it does not. The 4<sup>th</sup> Amendment states "the right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue but upon probable cause...."

The most important set of words in this amendment are "persons, houses, papers, and effects." Deborah did not have any tangible effect violated or illegally seized. Additionally, the 4<sup>th</sup> Amendment was primarily intended to restrain police conduct and occasionally employers or administrative officials. If the defense is willing to place the mother in the same realm as police and other officials, then exceptions to the Exclusionary Law come into affect. Defense may argue that the Exclusionary Law is relevant in the suppression of the testimony. However, in *United States V. Leon* and *Massachusetts V. Sheppard*, the courts ruled that some evidence ascertained without a warrant was permissible because the cops were acting on "good faith." If the mother were compared to the cops, than case law would deem her search as done on good faith and thus be permissible.

The following will show that by suppressing the evidence, the courts are in direct interference with the mother's rights to parent. First of all, the mother's parental rights are seen in the 14<sup>th</sup> amendment, hi numerous court cases, the Supreme Court has ruled that family privacy was fundamental even without clear constitutional status. Also, the Due Process Clause of the 14<sup>th</sup> amendment protects personal choice in matters of marriage, divorce, and most important in this case, the direct upbringing and education of one's children. Furthermore, rights of the family are seen in the 4<sup>th</sup> amendment. The 4<sup>th</sup> amendment protects the right of a man's house and thus the doings in the house (as long as said doings are not blatantly illegal.)

In *Weimeer V. Bunbury* the Michigan Supreme Court stated that courts should "make sacred the privacy of the citizen's dwelling and person against everything but process issued upon a showing of legal course for invading it." Similarly, an Alabama court has acknowledged the "sanctity and inviolability of one's house", and a Kentucky court has deemed the home "the place of family repose." The family is a special entity outside the constrains of the government. Family is the basis of society and should not be imposed upon unless definite evidence of acts of violence or neglect has been established. Secondly, no law exists which protects the privacy of minors from the control of their parents. Parents have a legal obligation to protect their children and do so by their own ideals or techniques as long as said techniques do not turn violent or neglectful towards the child. Parents have the right to invade privacy when in an effort to protect the interest of the child or to establish rules that will keep the child from making dangerous decisions or developing unwise behaviors. Also, legally the parent has certain responsibilities dealing with the care of the child. Any sort of physical or emotional abuse or neglect on the part of the parent is illegal and commonly concludes in jail time or revoking of parental rights.

Most relevant among the types of neglect is that of physical neglect. Physical neglect is "failure to provide the child with physical necessities." A form of physical neglect is physical endangerment. When a parent is negligent of his or her supervision of the child and injury occurs than the parent can be accused of physical neglect. If Deborah's mother had not intervened in the relationship between Jake and Deborah then it is reasonable to assume that Deborah would have been at risk. Deborah's mother was merely protecting her child and following the parental rules that the government has established to protect the child.

Finally, the parents legal rights can be seen in a common court ruling called *in loco parentis*. *In loco parentis* means "in the place of a parent" and justifies the parental control administrators, principles, and teachers have while a child is at school. In the 1985 Supreme Court decision aided by the idea of *in loco parentis*, the court established that teachers or principles did not need to acquire a search warrant in order to search a student's locker, bag or any other property. If the schools are able to search children with no warrant and are merely **acting in place** of a parent or legal guardian, then inversely, the parent has the legal right to do the same. Therefore, the preceding evidence not only shows that the mother's testimony is permissible and legal, but it also shows that the mother had the legal right and obligation to intervene the phone call, and the courts were in direct violation of the parental rights and duties of the mother.