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ABSTRACT

The National Council for Children's Rights (NCCR) is a Washington-based advocacy group concerned with public policy affecting children of divorced and separated parents. This document contains papers presented at an NCCR conference. (Since publication of these proceedings, the organization has changed its name to the Children's Rights Council.) Papers include: (1) "A Report on New Directions in Family Research," by Anna Keller; (2) "Child Custody and Parental Cooperation," by Frank S. Williams; (3) "What is Happening in the Black Family," by Reggie B. Walton; (4) "Recent Activities of the American Bar Association's Center on Children and the Law," by David W. Lloyd; (5) "The Agenda for The Commission on Interstate Child Support," by Margaret Campbell Haynes; (6) "The Problem with Child Support," by Jed H. Abraham; (7) "How to Avoid Secondary Victimization in Child Sexual Abuse Investigations," by Ralph Underwager and Hollida Wakefield; (8) "The Domestic Mediation Program of the D.C. Superior Court, Washington, D.C. Multi-Door Dispute Resolution Division," by Michael A. Terry; (9) "Children in the Middle: Common Situations and Some Solutions," by Donald A. Gordon and Jack Arbuthnot; (10) "Mediation: Facilitating Shared Parental Responsibilities," by Phyllis B. Simon; (11) "Beyond Joint Custody: Creative Custody Arrangements to Maximize Both Parents' Involvement With Children," by Joseph A. Condo; (12) "Play Therapy for Adults: Healing the Child Within the Grown-up," by June Hutchison; (13) "Changing American Families: How to Raise Healthy Kids Following Divorce," by Sally Brush; (14) "Advocacy in the States for Children's Rights Activists," by Bruce Gillman and Bruce Eden; (15) "Awareness & Wellness: The Four Affirmative Actions for Maximum Health," by Gary Santora; (16) "Mothers Without Custody (MW/OC): Goals of the National Organization," by Angela M. Meese, Sharon May, and Roberta Weilgus; and (17) "Preventing Child Abuse Charges in Divorce Custody," by Dr. Edwin Carlson. (ME)

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**Presentations at  
NCCR's Fifth Annual Conference**  
(submitted by September 25, 1990)

**"New Approaches for Children  
in the Nineties"**

**October 18-21, 1990**

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# Welcome from David L. Levy, Esquire President, NCCR

I would like to welcome everyone to the National Council for Children's Rights (NCCR) Fifth Annual Conference, where we will be having serious discussions about problems affecting children and families.

Spurred on by family instability, violent crime now touches millions of young lives. The control of crime in the streets, in the schools, and in the home ought to be the pre-eminent "children's issue."

So said the cover story in the June, 1990 issue of the prestigious *Atlantic Monthly* magazine.

The article, entitled "Growing Up Scared" by Karl Zinsmeister was so outstanding, the National Council for Children's Rights (NCCR) presented the author with a "Best in Media" award at our Fifth Annual Conference in October, 1990.

When Mr. Zinsmeister said in the article that no established children's defense organization emphasized public order as an issue of extreme importance, he inadvertently overlooked the National Council for Children's Rights.

## Preventing Family Breakdown

We are not as well funded as other children's defense groups whose focus is on welfare programs and social services for the single parent, but since our inception we have focused on preventing family breakdown — the very thing Mr. Zinsmeister cites as the main culprit for the crime and violence that our children face in the streets and in the schools.

We especially emphasize a child's right to two parents and an extended family in the event of separation and divorce, because of the millions of children at risk of suffering from inadequate parenting.

After we sent materials about NCCR to Mr. Zinsmeister, he said he was glad to know about NCCR, because our work fit right into what he was talking about in his article.

The battles for sole custody that our country encourages (100,000 custody battles each year), the Smith-vs-Smith poisonous atmosphere in our custody courts, and the rewards for treating the

children as chattels (you get the children and can move them anywhere in the country that you want, and I get to pay child support even if you leave me 1,000 miles behind from the children), is a neanderthal process that only enriches attorneys.

The process of separating parents from their children because they are divorced, (reducing half the parents to anonymous cash donors with occasional "visitation" rights) is so awful that we have even come across comments made by anthropologist Margaret Mead twenty years ago decrying the entire American court process of separating fathers from their children.

The process would be instantly recognized as barbaric if it separated mothers from their children, but because the process mainly affects fathers, we fail to see the disastrous effect the dysfunctional family has on children.

Our society suffers further — in increased crime, drugs and delinquency, perpetrated by children who do not have parents who are able to teach them values—from very early on. Parents who know where their children are at 10:00 at night, and children who know where their parents are at 10:00 at night.

There is no quick fix to the problems affecting children. There is no quick fix to the problem of drugs and crime. The problem did not arise overnight; it will not disappear overnight.

## A Long-Range Approach

A long-range approach must be adopted. Some of the things that should be emphasized are:

- the responsibilities of parenthood;
- teaching about parenting in the schools;
- teaching prospective and new parents about the developmental needs of children;
- creating more disincentives to divorce, especially where there are children;
- changing attitudes and laws to make clear that children are entitled to the bonding of two parents (and extended family) regardless of the parents marital situation.

This is a long-range approach. Let's begin now, to help our children—and grandchildren.

# Welcome From Stuart Cochran, II Chairman, NCCR Elkhart, Indiana

On behalf of the over 1 million children affected by parental divorce each year in this country, ACT, America's Children Tomorrow, was formed. ACT is a national, not-for-profit foundation dedicated to acting in the best interest of children who come from divorced families and to developing joint custody from the beginning of divorce. It has been said that the stress of parental divorce on children rates second only to parental death. The child of divorcing parents is quite likely to experience devastating feelings of shock, depression, denial, anger, fear, regression, low self-esteem, insecurity, shame, resentment and guilt, to name but a few! Given this information, parental divorce may be a root cause to child drug and alcohol abuse, suicide, academic failure, delinquency and numerous other problems affecting our children. Studies show that it is best to involve both parents to create a co-parenting situation that will minimize conflict so children may lead a happy, healthy life.

## Effects On Children

Experts say that it takes "at least five years" to recover from divorce. These are facts that surround the adults of the situation, but there are other things to consider. The husband and wife are not the only losers in this situation. The costs are tremendous. The children lose their mother and father as they knew them as well as the family unit. The family unit pays for the divorce for the rest of its life. American society and business lose in the divorce with the loss of productivity by more than 35% of the workers going through the divorce. This statistic alone sends the signal that something must be done to mediate the problems of divorce and its effects on the family unit and the cost to business.

ACT intends to encourage pro-family legislation that will mandate divorce out of the overcrowded court system and into private post-divorce mediation/arbitration, where fair and

thoughtful decision making can occur for the whole family. Other ACT objectives include: media productions on the aspects of divorce, establishment of a Family Institute affiliated with a major university and continuation of ACT's long term think tank researching children's issues.

Under the above programs, we believe that the innocent victims of divorce, the children, will be more readily prepared to handle their parents divorce in a positive, less devastating manner. ACT believes this will allow the after effects of negative feelings and behaviors to lessen in intensity, making America the world leader in child and family issues. As T. Berry Brazelton has said, "We are the least family-oriented society in the civilized world." Dr. Karl Menninger who recently passed away, once said, "The greatest natural resource we have is our children. The way we treat them will indicate the future of society." In addition to our children, our nation is failing America's families and our future is at risk.

## A National Resource

We need to start thinking of our children as a national resource, and their academic, emotional and moral health as a national priority. The children need a better chance, and we who talk so much about national "competitiveness" and changing demographics need them to have that better chance.

America's Children Tomorrow and the National Council for Children's Rights have joined forces in pursuing the issues of the family. NCCR has had success in Washington in promoting legislation to address the issues at hand. As the National Chairman of NCCR, more issues will be championed on the subject of divorce. ACT and NCCR will continue to move on the issues of children and the preservation of the family unit.

# A Report on New Directions in Family Research

by Anna Keller  
Vice-President, NCCR

New Child Support Research Targets Access and Visitation; New Research on Family and Work Roles Finds both Men and Women are Feeling Role Conflict.

The August 1990 annual meeting of the American Sociological Association featured a full schedule of presentations on family policies, poverty, gender issues in the workplace and the economics of the family.

At one session, several researchers from the Madison, Wisconsin Institute for Research on Poverty presented their latest findings. Among those there was Irwin Garfinkel, who with Sara McLanahan and others has been an architect of the federal government's approach to child support. Garfinkel takes major credit for the 1984 federal legislation mandating states to adopt child support guidelines, and for the 1988 federal legislation making such guidelines presumptive and prescribing universal wage withholding for payment of child support.

Garfinkel (as of fall 1990, now at Columbia University), is given to economic (and macro) research biases and he has distinguished himself by proposing what he calls "simple," and sweeping, approaches to the redistribution of household resources upon divorce and separation.

While the Garfinkel group congratulates itself on putting money into the hands of impoverished mothers and their children, one can hardly fail to be impressed by the naivete of their science and of their proposed solutions. As an economist in the field of sociology, Garfinkel may perhaps be excused for his lack of concern for the potential impact of his policies on actual men, women, and children; this is, after all, not really his field: he looks at the bottom line, and, in his words, "there is a lot of revenue out there; the question is, can we capture it?"

We at NCCR should perhaps be glad that Garfinkel has not concerned himself more with the human side of dividing a family, and its resources, in two. When sociologists get a crack at this subject, the results may be even less to our liking.

At least one colleague of Garfinkel's, Judith Seltzer, also of Wisconsin (University of Wisconsin—Madison, Department of Sociology) has begun to look beyond the money issue of child support enforcement, to its personal, "non-economic" impacts.

Seltzer's research, preliminarily titled "Child Support Reform and the Welfare of U.S. Children," has been underwritten both directly and indirectly by the

National Institute of Child Health and Human Development. Using the National Survey of Families and Households, and reports from "resident" mothers (but not non-resident fathers) and their children, to the "well-being" of children after divorce, Seltzer "discovers" the global dimension of domestic law that has of course been there all along: child support law has "non-economic impacts of divorce on children."

Unfortunately, Seltzer's interest in this global dimension remains at the global level; also it is uninformed by the rich literature available in the field of psychology that has attempted to get at the non-economic impacts of divorce on children.

She hypothesizes, first, that there is a positive relationship between payment of child support and frequency of visitation between the nonresident parent and their children.

She further assumes that there is a *causal* relationship between the number of visits and the amount of conflict between the parents. (Her words, "I allow a causal relationship between visits and conflict.") Her logic is that all people who divorce or separate are by definition locked in irresolvable conflict; that "visits" offer points of contact between the ex-spouses; and that these in turn lead to conflict. Conflict is measured in her study by the mother's report, not of conflict in general, but of conflict about the child (again, no father's reports were considered in her study).

Seltzer acknowledges that her study attempts to identify causal relationships, yet is cross-sectional, and therefore is not capable of establishing cause and effect sequences, only statistical relationships. Any causal associations pointed to by her model are, she admits, "dubious" for this reason alone.

Seltzer also assumes the direct causal relationship between spousal conflict and (negative) child well-being. While this assumption is partly supported by the literature, the sources of conflict and the ways the conflict is expressed are not distinguished in Seltzer's model; rather, all conflict is reduced to one element in the equation.

The impact of visits on the well-being of children, in her model, is supposed to be independent of the impact of conflict or child support on child well-being; though Seltzer notes that Frank Furstenberg has "shown" that there is "no effect" on child well-being of frequent child-parent visitation.

Finally, child support payments in the families

Seltzer studied are all voluntary (i.e., not court-withheld) payments. Her study therefore is a speculative reflection on the impact of new child support laws (which mandate wage withholding), on family relationships.

Given this research framework, what does Seltzer "discover"? She finds, first, a "persistent association between paternal involvement and the payment of child support." (To give her credit, Seltzer does include non-monetary "payments" as child support—yet by doing so, may be running the risk of a tautological proposition: as any divorced father could have told her, any level of involvement of a father with his child after divorce comes at a cost: the involved father by definition provides for his child, at least directly, if not via monetary payments to the child's mother.)

She finds no statistically significant link between the payment of child support and the level of conflict between the parents. She hypothesizes that "conflict" as reported by the mother may be reduced by the payment of support to her, rather than increasing as the nonresident father attempts to "interfere" in how she spends the support money.

She finds, in fact, no statistical support even using this very simplified and rigid research model for what this research was clearly intended to "discover," namely that the "unintended" consequences of insisting that fathers maintain their financial responsibilities to their children after divorce are that fathers may act more like fathers; that they may want to, and may in fact, spend more time with their children; that more "conflict" about the children (at least from the mother's point of view), may ensue; and because of this conflict, that lower well-being may result for the child.

If Seltzer manages to find some statistically cogent conclusions along these lines, I conjecture that we may soon have tax-funded research advising us that in addition to enforcing child support, we should also resist "visits" by these same fathers. It would then follow that the next task of the policy architects would

be to develop a family policy which deliberately discourages fathers from human contact with their children, while enforcing through a bureaucratic and distant apparatus an enhanced monetary support obligation.

Seltzer concluded her remarks by saying that it is incumbent on researchers to weigh the psychological costs to children of child-support compliance against the economic benefits thereof.

Given the influence of the Wisconsin/Garfinkel school of thought in these matters, it is important that NCCR and all supporters of children's rights, be aware of this new line of research and be prepared to answer its claims with countervailing research and with informed criticism of its assumptions and methods.

At a separate session, a different note was struck by Professor Kathleen Gerson (Sociology, New York University), who sketched out her preliminary findings about the different coping strategies that men and women use to deal with the conflicting demands of work and family life. This insightful research, based on extensive interviews with men and women, provides essentially sympathetic portraits of the different circumstances, assumptions, and beliefs that inform the equally different choices that both men and women are making as they attempt to cope with the contradictory social climate that rewards neither the committed (full-time) worker, the committed (full-time) parent, nor (least of all?) the over-committed parent-worker.

Current (traditional) social policies continue to create barriers to men's equal participation in domestic life and the life of their children, just as they continue to erect barriers to women's fully equal share in the benefits (and hazards) of economic life. As men and women alike seek to resolve within their own lives the dilemmas of gender inequality and work-family conflicts, Gerson points out that the aim of our social policies should be redirected at redressing the time imbalance in men's as well as women's, lives "caused by 'greedy' work institutions."

## Child Custody and Parental Cooperation

Frank S. Williams, M.D.

*Child and Adolescent Psychiatrist and Psychoanalyst for children, adolescents and adults; Director of Family and Child Psychiatry at Cedars-Sinai Medical Center in Los Angeles; director of the Cedars-Sinai Program for Children and Families of Divorce.*

For 22 years, the Cedars-Sinai Family and Child Psychiatry staff has focused on family health and family pathology. During the past 15 years Dr. Frank Williams and his staff have seen a large number of preschool children from families of divorce or separation. Additionally, they have developed special programs and expertise in the area of *custody evaluation*

*and custody counseling.* Most of their custody case referrals are cases of warring, non-cooperative parents. Usually the court, the conciliators and the attorneys involved in these cases have been stymied and have felt helpless and frustrated.

Dr. Williams' experience leads to the conviction that parental identity — if strengthened in both parents

— can increase cooperation and that cooperation alone should not be a criteria for joint custody vs. sole custody schedules for children.

Recognizing that the chronicity of parental uncooperativeness is the principal villain in post-divorce child and adolescent psychological disturbance, the family counseling programs at Cedars-Sinai Medical Center have focused on ways of developing and enhancing cooperation. In their experience the essential minimal cooperation needed to best help children through their post-divorce problems develops more rapidly and is sustained more often when there is joint legal custody, and a *carefully structured* very clearly defined shared or *joint physical custody*.

There appears to be a greater failure of development and growth of parental cooperation in unilateral sole legal and sole physical custody situations.

The parent feeling erased, as a victim of a psychological or legal parentectomy, as traditional, "visiting" non-custodial parents usually do feel, remains enraged over his or her loss of parental identity. In this state of rage, the psychologically erased parent feels powerless and depressed.

Mothers and fathers who feel this rage, depression and powerlessness may adapt to and overcome these feelings by removing themselves from the struggle and giving up the battle. In so doing they *may abandon* their children financially, physically, and psychologically. That is the most devastating consequence possible for children of divorce, and in our experience is highly correlated with the later development in children and adolescents of the most severe emotional disturbances, including suicidal depression.

More frequently the mother or father who feels such rage, depression and powerlessness over being erased as a result of unilateral sole custody being given to the other parent, does not abandon the battle, but instead continues to fight viciously with the other parent.

When parents live in an atmosphere of constant expectation of war, the consequent preparation for self-defense or readying for an offensive attack, does not allow them to easily see the "goodness" in the "enemy." In our experience, sole custody more often than joint custody continues to fan the flames of such war, thus blocking any potential for cooperation.

### **Structured Detailed Custody Orders and Parental Cooperation**

Clear structure and orders framed with detail helps to attain sufficient cooperation by minimizing the need for contacts and negotiation, and clarifying *decision-making* in advance.

*Studies* done to date are deficient in that they have not reviewed different custodial outcomes when *minimal* structure is provided in Court orders, as compared with *maximum detailed* structure provided in Court orders.

As designing a structured custody order requires compulsive attention to details — judges are often mind-boggled by such potential work and may unfortunately give in to providing orders which are loose, and require too much negotiation; or they may give in to a misbelief that if they order *sole custody*, and traditional visitation, such structure and detail is less necessary.

Since parental *judgment* and leadership are weak following divorce, the *Court must* step in and convey the message that parents of divorce are expected to cooperate.

Pre-school children especially require *carefully framed detailed custody plans*.

Our experience is that the *minimal cooperation* necessary for warring parents to work in the best interest of their children can be achieved if we structure joint custody plans to minimize negotiation and maximize clarity.

## **What is Happening in the Black Family**

Judge Reggie B. Walton

*Adapted from comments made by Judge Walton on May 16, 1989  
to the House Select Committee on Children, Youth and Families*

Having been a defense lawyer for two years in Philadelphia, a prosecutor for approximately six years here in Washington, and on the bench for approximately eight years, I have seen a steady increase in the number of young people who are coming before the court and the severity of the offenses that those young people are being charged with.

Already this year, we have approximately 170 homicides committed here in the city, and approxi-

mately 56 committed in Prince George's County, MD, and a significant number of those individuals who were killed were young people. In court, I have seen the age of the individuals committing these offenses go down. It was rare that I saw a situation several years ago where there was a teenager who was charged with a homicide. It obviously happened on occasions, but it wasn't something that is as routine as what we see happening today.



I think that illustrative of the problem is what we saw recently in Central Park: the senseless assault perpetrated by a number of young people, as well as the number of young people who we see committing the homicides and violent assaults that are taking place here in the District of Columbia.

I am also very concerned about what I see in reference to the number of young people who are involving themselves in drug activity. I spoke not too long ago at a junior high school in northeast Washington and was told by the principal that one of her major concerns and difficulties that she deals with on a daily basis is the fact that the older individuals involved in drug activity are recruiting her students to sell drugs. Because of the significant profits that can be made in the drug trade, coupled, unfortunately, with the fact that many of the young people I come in contact with and talk to will tell you that because the consequences of being apprehended are not that significant, it is worth taking the risk to involve themselves in that type of activity.

I think there are a lot of obvious reasons why the situation exists. Unfortunately, there has been a deterioration of the moral fabric of our society. I think to a large degree the deterioration of the family structure has played a significant part in that. We have seen a steady increase in the number of young people who are being raised only by their mother. Obviously, there are many mothers who can successfully raise children by themselves. On Sunday, I believe, there was an article in the *Washington Post* about a woman who had overcome her drug addiction and had raised children very successfully, including some young male children.

Unfortunately, I think that statistically it would suggest that it is a lot harder, though, for a woman to raise children by herself, and especially if you're talking about adolescent males. I know from my upbringing the importance my father played in my life. Unfortunately, a lot of the young people we see coming into the court system have never had a father who played any role in their lives. Fifty-two percent of black children today are being raised only by their mothers.

If you look at the statistics of the number of young men coming into the court system here in the District of Columbia, you will probably find that upward of 90 percent of these young men have never had a father play any role in their lives. The father, I believe, plays a significant role in a young man's life. The father can place certain restrictions on the boy and if he is a strong, positive figure, can give his son some appreciation of the appropriate role of a male in this society.

I also think the number of teenage pregnancies is a factor playing a significant role in what we see taking place in society. Today, one out of four babies born in America to black women are born to teenagers. Obviously, we have to do something about that.

I feel that the situation is not hopeless, however. We are in a crisis. We do have a situation that we have to try and come to grips with if we're going to seek to save a lot of our young people who are salvageable. But there are a lot of things that we need to do.

I think that as far as the court system is concerned, we need a policy that when a young person comes before the court, we seek to work with the entire family, however the family may exist. I think we have to involve the mother if it's only the mother who's involved in the home, and we have to involve that mother in the process so that we can try and work with her and hopefully improve that mother's parenting skills and her ability to cope with the pressures that she has to deal with on a daily basis in trying to raise children by herself.

I think we also have to do whatever we can to get more of our black men involved in working with young black children. As I indicated, a lot of our young black men, unfortunately, do not have strong father or male role models to look up to. I think it is important that we do all we can to encourage men to involve themselves in the Big Brother program. I think it's important that we encourage men to involve themselves in the mentor programs so they come in contact with young men, so that young men have an appreciation that there are success stories other than those who are selling drugs on the street corner.

I think it is also important that, in reference to the inner city, we do something regarding improving the quality of the athletic programs that exist. I rarely find a young man who comes before the court who is actively involved in athletics. It does happen occasionally, but not very often. I served on a panel that looked at the athletic programs here in the District of Columbia and concluded that they were in dismal condition and that something had to be done immediately in order to cause those athletic programs to survive. We made approximately 10 to 12 recommendations to the Superintendent of Schools and to the School Board regarding things that could be done to make involvement in athletics more attractive.

Unfortunately, not one of those recommendations has been adopted, because to a degree they involve money and the School Board indicated that they don't have the money to put into those programs.

I was dismayed to find out that there is, according to what I was told during the course of the hearings that we had and the investigations we did regarding that task force, that there is an underground basketball league apparently that exists, which is financed by the drug dealers. They apparently are recruiting young men to participate on these teams and paying them sums of money to play, and then the various drug dealers bet on these teams and compete against each

other. That was appalling to find that happening. I think to a large degree that may be attributable to the fact that many of our young men are not attracted to participate in the athletic programs in their schools because the athletic fields are in poor condition, the equipment they have is in poor condition, and therefore there is not a significant incentive for them to participate in these programs.

I do think, however, that we have to appreciate the fact that most young people, even those young people who are growing up in the poorest areas of our cities,

are good kids. Most do not involve themselves in criminal activity. It is only a minority that is involving themselves in such activity. We must do something to deter that, because I believe that, as has been indicated, learned behavior can deter criminal activity. I think if we spend the resources on making sure that many of our young people don't come into the court system and don't involve themselves in criminal activity, ultimately the amount of money that we end up spending in the criminal justice system will be decreased.

# Child Sexual Abuse and its Impact on the Family

by David W. Lloyd, Esquire

*Project Director*

*National Resource Center on Child Sexual Abuse  
Wheaton, Maryland*

This is an outline of the talk David W. Lloyd presented at the NCCR conference. Topics include the effects of child sexual abuse on the child, siblings, and parents, particularly the effects of the victimization experience, the therapeutic process, and involvement in legal proceedings. Mr. Lloyd also discussed approaches to prevention, and highlighted three controversies: the process of investigation and "validation," expert testimony, and those who act in violation of court orders.

## I. Effects of child sexual abuse

### A. Impact on the child

1. Psychological effects
  - a. Initial symptoms and asymptomatic victims
  - b. Delayed symptoms
  - c. Chronicity of symptoms
2. Biological effects
3. Addressing the victimization experience in therapy
  - a. Cognitive processing
  - b. Emotional processing
  - c. Addressing dissociation as a coping mechanism
  - d. Effects of the therapeutic process
4. Effects on adult functioning
  - a. Psychological effects
  - b. Biological effects
  - c. Sexuality
  - d. Parenting

### B. Impact on siblings

1. Psychological effects

2. Heightened sexuality and aggression
3. Attribution of blame to the sibling victim

### C. Impact on parents

1. Psychological effects
2. Reduced parental discretion due to increased participation in legal proceedings
  - a. Law enforcement investigation
  - b. Criminal prosecution
  - c. Civil proceedings
    - i. Foster care
    - ii. Restrictions on custody/visitation
    - iii. Civil protection orders
3. Heightened stress on the marital relationship

## II. Efforts in prevention

### A. Primary prevention

1. Child safety education
2. Sex education
3. Screening child care providers
4. Adolescent values clarification

### B. Secondary prevention

1. Reporting laws
2. Legal intervention
3. Therapy of victim to prevent revictimization

### C. Tertiary prevention — Offender Treatment

### D. Results of research and program evaluations

## III. New developments in intervention

- A. Increased emphasis on legal control
- B. Growth of multidisciplinary teams
- C. Legislation to protect interests of the child witness

- D. Emphasis on long-term treatment of children
- E. Growth of treatment of adult survivors
- IV. Current controversies in child sexual abuse
  - A. Issues in investigation and "validation"
    - 1. Do children lie about sexual abuse?
      - a. Fantasy
      - b. Suggestibility
      - c. Susceptibility to coercion
      - d. Transference/counter-transference
    - 2. Do we accurately understand what children say?
    - 3. What corroboration do we expect to find?
      - a. Medical trauma
      - b. Psychological effects
      - c. Behavioral changes
    - 4. What standards do we use in investigation and validation?
      - a. The elusive litmus paper test
      - b. The use of untested checklists
      - c. The use of clinical impressions
  - B. Expert testimony
    - 1. State of the art
      - a. Lack of empirical knowledge
      - b. Lack of statistical validity
      - c. Opinions and "pseudo-science"
    - 2. Qualifications of the proffered expert
      - a. Training and expertise
      - b. Bias
      - c. Financial motive
      - d. Hubris
  - C. Acting on behalf of children without a legally supported right
    - 1. "Underground railroad"
    - 2. Imprisonment for contempt of court

## Recent Activities of the American Bar Association's Center on Children and the Law

by Howard A. Davidson, Esquire  
*Director, Washington, D.C.*

On September 1, 1989, the ABA's National Legal Resource Center for Child Advocacy and Protection changed its name to the ABA Center on Children and the Law. The Center, staffed by over a dozen attorneys and social science researchers, has in the past year conducted a wide range of activities. They include:

1. A new project analyzing the criminal prosecution of child sexual and physical abuse cases, through a national survey of prosecutor offices, new legal research, etc.
2. A new project studying the obstacles to the recovery and return of parentally abducted children, mandated by an act of Congress.
3. A project that is examining the issue of parental substance abuse as it affects newborn children. Laws, policies, practices of courts, etc. are being studied, and a curriculum on this subject is being prepared for juvenile court judges.
4. A project taking an up-to-date look at the use of criminal record screening for people working with children.
5. A project focused on improving laws and agency practices related to deaths of children caused by parental maltreatment.
6. The convening of a special national symposium on child welfare agency liability.
7. The development of state child welfare and child protective agency curricula to help train case workers and attorneys to do a better job handling child abuse and neglect cases in the courts.
8. New publications developed by the Center's Child Support Project (including the books, *Interstate Child Support Remedies*, *The Effective Use of Liens in Child Support Cases*, and the *Child Support Reference Manual for Law Schools*; also, the Center now publishes a bi-monthly *Prosecutor's Child Support Bulletin*).
9. Convening of a national conference with the Harvard Law School Children and Family Rights Project, culminating in the new Center book, *Lawyers for Children*.
10. Planning for the Center's FIFTH NATIONAL CONFERENCE ON CHILDREN AND THE LAW, Nov. 1-3, 1990, Washington, DC.
11. Continued publication of the Center's monthly *ABA JUVENILE AND CHILD WELFARE LAW REPORTER*.
12. Development of a new Center book on the implications for U.S.A. law of the new United Nations Convention on the Rights of the Child.

# The Agenda for The Commission on Interstate Child Support

by Margaret Campbell Haynes, Esquire  
*Chairman of the Commission*  
*Washington, D.C.*

## PURPOSE

The Commission on Interstate Child Support was mandated by the Family Support Act of 1988 (P.L. 100-485) and established to make recommendations to Congress on improvements to the interstate establishment and enforcement of child support awards.

The Commission will sponsor a national conference on interstate child support reform in the spring of 1991 and hold a series of public hearings to receive testimony from as many organizations and individuals as possible. Interacting with the National Conference of Commissioners on Uniform State Laws (NCCUSL), the Commission will study the Uniform Reciprocal Enforcement of Support Act (URESA) and make recommendations to the Congress for revisions to that law and other state and federal laws.

The Commission on Interstate Child Support has developed the following Mission Statement and Goals.

### Mission Statement

To improve the lives of children and families by strengthening parental responsibility for child support and by reporting to Congress recommendations for laws, policies and procedures that promote a uniform, efficient and equitable interstate child support system.

## GOALS

### Legal

1. To examine state and federal laws to identify strengths and weaknesses, and propose alternatives.
2. To explore the extent to which solutions can or should be made uniform or federal.
3. To examine URESA and interact with the National Conference of Commissioners on Uniform State Laws.

### Operations and Funding

1. To effectively expedite the processing of interstate cases by exploring coordination of efforts among government agencies, federal and state data sources, case ownership practices, model programs/best practices, client services, and automation.
2. To examine the existing funding structure.
3. To explore the feasibility and desirability of creating additional incentives for interstate collections.
4. To identify and promote innovative state level funding practices for child support programs.

## Communications

1. To explore the feasibility and desirability of forming a permanent national interstate child support commission.
2. To identify and examine barriers to accessing interstate child support services.
3. To raise the visibility of interstate child support issues and to provide a forum for exchange of ideas on interstate child support by means of a national conference, report to Congress, and other Commission activities.
4. To identify and address the reasons for non-payment of child support.
5. To quantify particular problems.
6. To identify audiences who need training on the issue of child support and the type of training needed.
7. To identify "best practices" used by private sector organizations and government agencies that result in increased child support collections.
8. To foster cooperation and communication.
9. To identify needs for consumer education and the type of education needed.

## Members of the Commission

Ms. Margaret Campbell Haynes, Chair of the Commission  
Director, Child Support Project  
American Bar Association  
Center for Children and the Law  
Washington, DC

Mr. Harry Tindall, Vice Chair of the Commission  
Private Attorney  
Houston, Texas

Mr. Schuyler Baab  
Deputy Under Secretary for Intergovernmental Affairs/Boards  
and Commissions,  
U.S. Department of Health and Human Services  
Washington, D.C.

Mr. Don Chavez  
Licensed Clinical Social Worker  
Albuquerque, New Mexico

The Honorable Lee Daniels  
Minority Leader  
House of Representatives of the State of Illinois  
Chicago, Illinois

Ms. Geraldine Jensen, President  
Association for Children for Enforcement of Support, Inc.  
Toledo, Ohio

Ms. Irma Neal, Chief  
Office of Paternity and Child Support Enforcement  
Washington, DC

The Honorable Bill Bradley  
United States Senate  
Washington, DC

Mr. J.B. McReynolds  
General Counsel  
Texas Department of Human Services  
Austin, Texas

The Honorable Battle Robinson, Judge  
Family Court of the State of Delaware  
Georgetown, Delaware

Ms. Beth Mason  
Private Attorney  
Beaverton, Oregon

The Honorable Barbara B. Kennelly  
House of Representatives  
Washington, D.C.

The Honorable Frances Rothschild  
Supervising Judge Family Law Department  
Los Angeles Superior Court  
Los Angeles, California

The Honorable Marge Roukema  
House of Representatives  
Washington, DC

# The Problem With Child Support

by Jed H. Abraham, Esquire  
*Evanston, Illinois*

The problem with child support is that it perpetuates in the nineties a grotesque caricature of the family of the fifties; the family of the distant dad and the overwhelmed mom living in the all-wise State.

Child support is the wedge which, after divorce, separates emotional parenting from financial parenting. It severs the connection between the human side of parenting and the economic responsibility which is the price of being a parent. Payors are forced by the State to pay the cost of parenting with no expectation of acquiring any benefit from their payments.

Child support is thus like a tax. It is justified solely by its benefit to society — it takes payees off welfare — not by its utility to the individual payor. And like many taxes, child support is a disincentive to productive effort.

A major disincentive provoked by child support is to the payor's involvement with his child. He must pay but he has no say. He must pay but he has no payoff.

Another major disincentive of child support is to the payor's propensity to increase his income. In many states, the more a payor earns, the more he pays regardless of the needs of the children. Moreover, as a tax, child support effectively raises the payor's marginal tax rate. This effect also raises an incentive to avoid documented income — in short, to avoid the tax.

Added to the disincentives created by child support is the fact that the payee is not held accountable for the use of child support received. Legally, there is no requirement that child support be spent on the child. The payee may spend child support for purely personal benefit, even for the benefit of a non-family sexual partner. The payor has no legal recourse against the payee for misappropriation of child support.

From the child's perspective, a payor is ultimately evaluated by his payment record. The child will surely

learn from the payee about a payor's default. However, it is unlikely that the payee will convey a positive evaluation of non-default with the same intensity as a negative evaluation of default. The odds are therefore, that children receiving child support will show little if any appreciation of a payor's contribution to their welfare. Let it not be forgotten that the payors being so evaluated by the children are the children's parents.

Finally, child support opens family budgeting and financial management to the supervision of the State. Payors are not free to choose a lifestyle which might impair their ability to pay court-ordered child support. They are not free to change occupations or even to retire and adjust their support payments accordingly without court approval. In some jurisdictions, the income of a payor's spouse is indirectly reckoned in the child support equation: its availability to the payor frees up more of the payor's own income for support purposes. In other jurisdictions, a payor may be told by the court how much income to allocate among children from successive marriages. Commonly, payors may not even choose their children's college education; the State increasingly dictates to payors its quantity and quality.

Thus, child support fosters an alienation of payors from children and an alienation of children from payors. It does, of course, reduce the welfare rolls somewhat in the near term. But in the far term, its real costs are unknown and probably huge. It facilitates the production of single-parent families — the most problem-ridden and least beneficial family structure known to civilized society. And it invites the State into an increasingly oppressive position of control over what have hitherto been considered the private areas of family life.

# How to Avoid Secondary Victimization in Child Sexual Abuse Investigations

by Ralph Underwager, M.D. & Hollida Wakefield, M.A.  
*psychologists and directors of the Institute for Psychological Therapies*  
Northfield, Minnesota

The investigation and adjudication of cases of alleged sexual abuse of children can cause as much trauma to a child as the sexual abuse itself. Such secondary victimization may occur when children are subjected to repeated interviews, questionable techniques adopted in the absence of factual knowledge, intrusive physical examinations, inappropriate reactions and overreactions by adults, ill-advised sexual abuse therapy, or removal from home and friends. If the child subjected to such procedures has not actually been abused, the potential for damage and the imposition by adults of secondary victimization of the children is much greater.

There is research on the effects of the investigation and adult reactions to abuse. In a study of 8058 sexual abuse victims in Lower Saxony, it was found that "secondary injury to the victim may easily occur, i.e., the child incurs additional injury from the behaviour of persons in the environment, or injury even first results from this behaviour" (Baurmann, 1983, p. 526). In fact, for at least one-fifth of the sample, the *main cause* of the injury was judged by the victims to be the behavior of relatives, friends, or the police.

Since the sexual abuse itself was not judged to be harmful by half of the victims, Baurmann concludes: "Adults who have the opinion that any sexual behavior is traumatic for children and young people have to face the fact that in many cases the young person becomes a victim only because grown-ups expect him or her to become a victim" (p. 529). This process is termed *secondary victimization*.

Tyler and Brassard (1984) report that the abuse investigation can be devastating to families and children. They state that "The entire family is adversely affected, particularly the victim" (p. 51). The victim is often removed from home and placed in foster or shelter care and may become estranged from the family. The family may be permanently disrupted.

If the child has not, in fact, been abused, the family is still seriously traumatized by the disruption. Falsely accused families compare the experience to having a child die. Schultz (1989) surveyed 100 families falsely charged with sexual abuse and almost all reported major trauma and disruption.

If the child has been abused, the disruption and trauma resulting from the disclosure runs the risk of

causing the child to retract the allegations. For example, one 13-year-old girl who spent time in a foster home after telling about the abuse from her stepfather, said that she at one point retracted her original allegations because she wanted to go home and get on with her life. Her complaints at the time we saw her were more about what had happened since the disclosure than about the abuse itself. We have several suggestions as to how to minimize secondary victimization in cases of alleged sexual abuse.

## Minimize the Risk of Identifying a Nonabused Child As Abused

It is necessary to conduct a very careful investigation to minimize the risk of concluding that a non-abused child has been sexually abused. Research suggests that mental health professionals most often come to quick decisions based on minimal data, often one idiosyncratic clue, and then persist in that hasty judgment. Evaluators must keep an open mind, resist a rush to judgment, and try to find all possible factual data, rather than just attempting to get information to substantiate abuse.

Unfortunately, many child interviews are leading, coercive, and suggestive (Underwager & Wakefield, 1989). The child should be carefully interviewed and the interviewer should explore all possible hypotheses in addition to abuse before solidifying an opinion or making a decision. Since 1954, German law has mandated a specific approach to all cases of child sexual abuse. It is called Statement Validity Analysis. Building on the German research and experience, the Criteria-based Content Analysis/Statement Validity Analysis (CBCA/SVA) approach being studied and used by Raskin and Esplin (in press) offers a promising alternative to the way many interviews are conducted in this country.

Common techniques, such as books, drawings, purported play therapy, puppets, and the anatomical dolls can increase the risk of making a mistake. There is no evidence that such techniques are valid or reliable for assessing whether a child has been abused.

The manner of the disclosure is important and the adult reporting the abuse should be carefully interviewed as to how the allegation came about. The person accused should also be interviewed. Often, the

accused is not interviewed until the case is substantiated and criminal charges are brought. In many instances, as a matter of policy, the accused is never interviewed. A careful and properly conducted interrogation of an alleged perpetrator may often assist in either an admission or sufficient information to clarify the specific situation. Either outcome may well save children from potentially harmful involvement in the system.

Certain environmental situations should signal particular caution and discretion. These include allegations of abuse in very young children arising in the midst of a conflicted divorce/custody battle, allegations involving a disturbed adolescent, and allegations arising in day care centers or institutional settings. The use of alleged "behavioral indicators" to initiate an accusation of abuse must be carefully and critically examined. When the initial disclosure is made by an adult who has observed a so-called "behavior indicator" and begins questioning a young child, the adult may inadvertently develop statements about abuse. On the other hand, a disclosure which originates with the child is more likely to be true.

### **Do Not Remove the Child From Home Unless Absolutely Necessary**

Removing the child from home increases the trauma to the child. A well-conducted research project at Tufts New England Medical Center (Gomes-Schwartz, Horowitz, & Cardarelli, 1990) found that children who were removed from home were more distressed than those who remained. Although it is difficult to sort out cause and effect, the authors recommend that the child be removed only when absolutely necessary to ensure personal safety.

Foster care can be harmful to children. Besharov (1985) reviews the effects of foster care and concludes that "long-term foster care can leave lasting psychological scars. Foster care is an emotionally jarring experience; it confuses young children and unsettles older ones." The foster placement may not protect the abused child—studies indicate that a child is at risk of being physically or sexually abused or neglected in a foster home or shelter (Wakefield & Underwager, 1988).

Gomes-Schwartz, et al. (1990) point out that if there is any indication the mother may not fully accept the allegations of abuse, the protective workers are likely to remove the child. This behavior is not justified since most mothers in their study took some action to protect their child. If the issue is the safety of the child, the alleged perpetrator should be removed from home rather than the child. Termination of parental rights and denial to a child of any further contact with their parents, based upon the belief that it is neglecting the

child if the parent does not totally believe an accusation, is a peculiarly Draconian solution to a problem.

### **Do Not Interview the Child in School**

Abuse victims have described to us their embarrassment at having police or social workers come to school unannounced, pull them out of class, and interview them about the abuse. This is sometimes deemed necessary because the parents are not trusted nor are the persons accused. However, particularly for a sensitive, self-conscious preadolescent or adolescent, such an experience can be acutely embarrassing. Although this may be legal in some states, it can contribute to secondary victimization.

### **Do a Careful Assessment of the Child Before Placing the Child in Sexual Abuse Therapy**

Contrary to what is often believed, not all children are seriously damaged by sexual abuse. Gomes-Schwartz, et al. (1990) found that only 27% of their total sample showed clinically significant psychopathology. This varied according to the age of the child, with 17% of the preschool children, 40% of the 7 to 13 year olds, and 8% of the adolescents being classified as seriously disturbed. Baurmann (1983) reported similar percentages: half of his respondents reported no negative effects and 34% reported a high degree of injury from the abuse.

Although most children might benefit from brief counseling, long-term therapy may not only be unnecessary, it could be medically contraindicated for some. The first step should be a careful assessment of the child to determine what therapy, if any, is needed. The therapy should be individually tailored to the needs of the particular child.

Repeated sessions of feeling-expressive therapy where the child is encouraged to talk about the abuse over and over again and express hatred for the perpetrator can be iatrogenic. This technique, which is modeled after therapy for adult rape victims, has no evidence to support its use with sexually abused children (Wakefield & Underwager, 1988). This is particularly true if the child is not, in fact, abused. Therefore, we recommend not placing the child in a therapy group for abused children or in individual sexual abuse play therapy before a determination is made that the abuse is factual. If the child is distressed, appropriate therapeutic intervention can be done without placing the child in a sexual abuse therapy program. Learning theory-based therapy can target behavior problems and solve them without requiring a child to muck about endlessly in feelings about having been abused.

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# The Domestic Mediation Program of the D.C. Superior Court, Washington, D.C. Multi-Door Dispute Resolution Division

by Michael A. Terry, Esquire, Director

## 1) Referrals

To refer a case to mediation, or for further information about the program, contact the program's director:

Michael Terry  
500 Indiana Ave., NW, Room 1235  
Washington, D.C.  
(202) 879-1556

Cases commonly reach mediation via three routes:

- Referred by judge or commissioner, after a complaint has been filed;
- Referred by attorney or other professional, either before or after a complaint has been filed;
- Contact initiated by one party, prior to a complaint being filed.

## 2) Eligibility

A case is eligible for mediation if one or both parties live in the District of Columbia, if there is a dispute about property division, spousal support, child support, child custody and visitation, or other matters incident to separation or divorce, and if no disqualifying factors exist. The parties need not be married. A case will *not* be eligible for mediation if

- a) One party has been seriously injured by the other;
- b) One party has used a weapon (gun or knife) against the other;
- c) There is a history of repeated violence in the relationship;

- d) There is evidence of child abuse or neglect;
- e) For any reason one party is afraid of the other party or feels incapable of negotiating on an equal basis with the other party.

*Note:* Some cases involving violence will be mediated if a civil protection order has been issued, if the issue to be discussed is child visitation or support, and if a judge or commissioner will be reviewing any agreement.

There is no charge for the Mediation Program's services.

## 3) Procedures

Cases are mediated by teams of two mediators. Often, but not always, the teams consist of a male and a female, and one lawyer and one non-lawyer. Sessions are scheduled at the convenience of the parties and mediators, usually on evenings and Saturday mornings.

At the outset of the process the parties and the mediators sign an agreement pledging to protect the confidentiality of the proceedings.

If mediation is successful the mediators will draft a written agreement for the parties' final approval. The agreement is finalized by signature of the parties and often by incorporation or merging into a court decree. There is no other written product of mediation. The mediators do not report to the Court on any aspect of the proceedings.



#### 4) Role of Attorneys

Parties are advised to seek representation at the beginning of mediation, if they have not already done so, and are encouraged to consult with their attorneys throughout the process. There is no rule against both attorneys being present in the mediation sessions, but sessions are not held if a single attorney is present representing one side. It is our experience that mediation is often more effective if the parties attend by themselves, and can negotiate directly together.

The parties are advised not to sign any mediated agreement until each of them has benefitted from an attorney's review of the document

#### 5) Special Needs

Spanish-speaking mediators are available. Translators can be provided for other languages, with advance notice. Mediation sessions can be held at locations other than the Courthouse if one party is not ambulatory. Please contact Michael Terry for information about these or other special needs.

**The Multi-Door Dispute Resolution  
Division of the Superior Court of the  
District of Columbia  
500 Indiana Ave., NW  
Washington, DC 20001 • 202-879-1334**

In 1979, at a national conference concerning public dissatisfaction with the justice system, Harvard Professor Frank E.A. Sander offered an innovative approach to reducing court case backlog. Labeling his concept, the Multi-Door Courthouse, Sander envisioned one large courthouse with multiple dispute resolution "doors". Each individual case would be diagnosed and referred to the appropriate "door," including, but not limited to, litigation, conciliation, mediation, arbitration, and social services.

Sander once stated: "The Multi-Door Courthouse may well be one of those ideas which is easy to describe, but difficult to implement". Regardless, the ABA Standing Committee on Dispute Resolution initiated three experimental programs to investigate whether such a framework would improve the administration of justice. The goals of the Multi-Door Courthouse include easy access to justice, networks that reduce or eliminate citizen frustration, and the development or improvement of programs to make available more "doors" through which disputes may be resolved.

In 1984, the Superior Court, together with organizations in Houston, Texas and Tulsa, Oklahoma, began efforts to implement the Multi-Door Courthouse in their respective jurisdictions. Since that time, a number of dispute resolution programs have been established, and the experimental program was institution-

alized in the Superior Court. In February of 1989, Chief Judge Fred Ugast designated the Multi-Door program as a full operating Division of the Superior Court, under the Office of the Clerk of the Court.

A brief summary is provided of the individual Multi-Door programs. Should you have any questions, please contact Melinda Ostermeyer, Director, Multi-Door Dispute Resolution Division.

#### **Citizen Intake Center**

Specialists located in the Intake Center assist citizens in determining the most appropriate resources available to resolve their problem. They are trained to examine "case type" characteristics by looking at the history and dynamics of the conflict, the existence of physical threat or possible loss of property, questions of principle or of fact and the complexity of issues. The intensity of the relationship between the disputing parties and the number of parties involved are considered, as well as the citizens' financial status. The parties' willingness to participate in the resolution of the problem and any possible consequences relating to action taken are discussed.

The specialist then tries to match the dispute characteristics with those of a referral agency. The specialist considers financial eligibility requirements, immediate availability of services, likelihood of sanctions or financial compensation, protection of rights, and necessity of evidence or witnesses. The specialist and the citizen jointly determine the most appropriate steps to be taken to remedy the problem. If appropriate, the Intake Specialist will contact the other party in an attempt to conciliate the dispute.

The Center was established in January 1985; approximately 2,000 intake interviews are conducted annually. Disputes typically involve landlord/tenant and small claims disputes, and domestic relations problems; however, citizens with all types of disputes are assisted.

#### **Small Claims Day-of-Trial Mediation Program**

Since March 1985 trained volunteers have assisted the Small Claims Court in mediating approximately 2,100 cases per year. Of these cases, 70% are resolved with the help of a neutral third party. Mediators are available in the courtroom on the day-of-trial to assist the parties in reaching a mutually satisfactory solution. Disputes involve claims of monetary compensation under \$2,000.

Mediators are community volunteers who complete approximately 30 to 40 hours of intensive training. They are monitored and evaluated routinely during their length of service with the program. Volunteer mediators typically donate one day per week to the small claims mediation program.

Not only does the court benefit in its effort to efficiently process cases, but the public also benefits. A forum for resolving conflict which keeps relationships intact and allows for creative and positive negotiation is readily available.

### **Domestic Relations Mediation Program**

In matters involving families, continued communication between the parties is a priority concern. The Domestic Relations Program assists in facilitating this communication at a time of greatest crisis. Child support, custody and visitation, spousal support and property division are matters effectively handled by trained mediators. Mediators are both lawyers and non-lawyers who receive approximately 40 hours of training. They are supervised closely by the domestic mediation program coordinator, and typically mediate in pairs.

Cases are mediated prior to the filing of a formal complaint or following the initiation of court action. Additionally, since March of 1989, Judges and Commissioners are able to refer child support cases on their day-of-trial to mediators. Mediation can be conducted during working hours, in the evening, and on Saturday mornings.

Mediators assisted both married and unmarried couples, who care about their children, to reach consensus on their future relationship in 54% of the cases completing mediation. It is anticipated that approximately 600 day-of-trial and non day-of-trial cases will be processed each year.

### **Civil Dispute Resolution Programs**

Since 1987, the court has utilized mediation and arbitration to assist with the resolution of contract and tort civil disputes over \$2,000; below are program summaries of these efforts. Currently, the Multi-Door Dispute Resolution Division is developing a coordinated alternative dispute resolution program for pending civil litigation. The new program (Phase III of the Civil Delay Reduction Project) will build upon the experiences of the existing programs outlined below. The number of civil cases referred to the Multi-Door Division will increase dramatically over the next year, and therefore, a substantial number of volunteer neutrals will be necessary to assist with this program. It is anticipated that shortly after the time of filing, the most appropriate alternative dispute resolution technique, such as mediation, arbitration, and case evaluation, will be recommended by the Multi-Door Division and confirmed at an initial scheduling conference between the assigned judge and counsel.

### **Settlement Week and Voluntary Civil Mediation**

Beginning in 1987 and continuing for three consecutive years, the Court sponsored the highly ac-

claimed Settlement Week. Each year, approximately 700-900 of the oldest pending civil cases were ordered to participate in mediated settlement conferences. The number of cases disposed of during these one week periods ranged from 43-49% of the total cases assigned to Settlement Week. Over 150 volunteer lawyers assisted in mediating contract and tort cases with claims for damages ranging from \$469-41.8 billion; the single largest category of cases were those valued between \$100,000 and \$500,000.

Due to the success of Settlement Week, mediation has been made available to litigants throughout the year. Parties may voluntarily enter mediation. At the request of one party for mediation, the Court will order that all parties participate in at least one mediation session. Typically 47% of the voluntarily requested mediation cases are resolved.

### **Civil I Dispute Resolution**

Various types of dispute resolution processes are used to assist the court with its most complex litigation. Summary jury trials, early neutral evaluation, mediation and arbitration are available processes utilized by the Court. Typically, a volunteer lawyer will meet with the parties and counsel over a period of several months with numerous sessions, until a mutually acceptable settlement agreement is negotiated between the parties in over half of these complex cases.

### **Civil Delay Reduction Project: Phase I**

In late 1989, Chief Judge Fred B. Ugast established a Task Force to oversee the implementation of a comprehensive civil delay reduction program, to include the use of automated case processing, individual calendar assignment, differential case management, and the expanded use of alternative dispute resolution techniques. In order to develop recommended procedures and policies, 800 cases were assigned to two developmental individual calendars. Mediated settlement conferences were scheduled for all of these cases, immediately following assignment to the developmental calendars. As a result, 54% of the cases assigned were disposed of during a 30-day period. Personal tort cases comprised the largest single type (54%) of the mediated cases, followed by contract cases (25%) and property torts (16%). The average claim for damages was approximately \$700,000.

### **Civil Delay Reduction Project: Phase II**

In January 1990, a comprehensive mediation effort was initiated in an attempt to reduce the number of cases pending on the master trial calendar prior to the Court's conversion to an individual calendar assignment system. Approximately 70 cases with trial dates after October 1990 are assigned to the mediation cal-

endar each week. Over 2,000 cases will be processed during 1990. Approximately 180 volunteer lawyer-mediators have assisted in disposing of 46% of the cases scheduled for mediation. The mediators contact the parties prior to the mediation, conduct one to two hour mediation sessions, and in many cases, schedule a second follow-up mediation.

### **Mandatory Non-Binding Arbitration: Phase I**

In 1987, the court initiated an experimental non-binding arbitration program which involved 257 cases. Nearly one-half of all cases in the experiment for which data are available were valued at more than \$50,000. The largest category of cases were breach of contract, collection, negligence and personal injury. Seventy-five percent of the arbitration cases were disposed of within the 120 day period mandated by the Non-Binding Arbitration rules. Attorney surveys

indicated that over 90% of both plaintiff and defense counsel reported that the arbitration was conducted fairly and that a full opportunity was given to present their clients' cases. Most (80%) of the attorneys indicated that they approved of the concept of court-ordered arbitration.

### **Mandatory Non-Binding Arbitration: Phase II**

In late 1989, the court initiated a second phase of the mandatory non-binding arbitration experiment. Based on information gained during Phase I of the experiment, technical rule and administrative changes were incorporated during the second phase. Over 300 cases will be referred to approximately 35 arbitrators who will issue a non-binding award; parties may request a *trial de novo* if they are not satisfied with the arbitrator's award.

## **Children in the Middle: Common Situations and Some Solutions**

by Donald A. Gordon and Jack Arbuthnot  
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The authors describe a public education approach to reducing divorce-related stress on children. Their approach started with collecting data on one of the biggest sources of divorce-related stress on children: being put in the middle of parents' conflict, feeling divided loyalties.

Thirty-two situations where this happens were constructed. Adolescents from both intact and divorced families rated each situation for: a) how frequently this happened to them, and b) how stressful the situation was. Data from more than 400 adolescents of divorce showed which situations were the most common and stressful.

For those adolescents experiencing the most numerous different situations, their self-esteem, interpersonal skills, and mood were impaired. Adolescents from intact families also suffered being put in the middle of parents' conflict, but to a lesser extent.

From this work, the authors developed two intervention approaches to be used on a wide-scale basis through schools, courts, mental health agencies, and other community agencies serving children of divorce and their parents.

One approach was simply to send home to parents the average answers given by adolescents to the thirty-two situations where parents put their children in the middle, usually unknowingly. This produced a significant decrease in the frequency with which parents continued to do this, according to their children's reports. The authors discuss the implications for this extremely inexpensive and simple intervention for school systems.

A second intervention approach was the development of a videotape where the four most common situations where children are put in the middle are enacted by families. The video, which will be shown, also illustrates how children and parents can improve on each situation, and is narrated in a way to both motivate and teach the viewer. The authors describe the results of their field-testing of this video with parents and children of divorce. Both parents and children rate the video as realistic and personally relevant, and they substantially increased their knowledge about various divorce-related stressors and how to lessen them for the children.

# Mediation: Facilitating Shared Parental Responsibilities

by Phyllis B. Simon

*family mediator, Rockville, Maryland*

During separation and divorce, decisions affecting the spouses and their future relationships with their children must be made. The merits of joint custody, or shared parenting responsibilities, as an alternative to single custodial arrangements, argue for structural adjustments in the process of divorce.

In 1986, nearly 1.2 million divorces were granted, involving more than 2 million adults and approximately 1.5 million children (1990 Statistical Abstract). Prior to the 1970's, the traditional divorce was adjudicated on the basis of a broken marriage contract. This improves upon the original grounds for deciding divorce cases on the strength of a "Complaint," which established guilt or innocence and the consequent punishment or restitution. The escalating divorce rate increased the number of divorced parents and single parent homes, and challenged society to recognize divorce as a major, yet normative life stress. The traditional grounds for divorce were no longer applicable, since both parties usually contributed to the marital breakdown. Consequently, most states legislated "no fault" statutes, providing more liberal criteria for the granting of a divorce. Whether or not the parties agree to a divorce, provisions of the law permitted dissolution of the marriage with the passage of time and separate living arrangements.

Divorce, a painful and disorganizing experience with its tradition of adversarial procedures, usually perpetuates or engenders conflict. Rarely can a couple agree on all matters pertaining to a divorce. The adversarial procedure of the court intervenes between the parties, resolving issues of support, custody, and visitation for both the parents and the children. Although laws have been tailored to ease marital dissolution, the way in which a couple effects a divorce, as parties to a courtroom dispute, tends to terminate a relationship rather than transforming it so that spouses can continue to be parents in a newly reorganized family structure (Wheeler, 1980).

Affected by the divorce, familial relationships must be redefined in terms of custody and visitation. We must abandon the traditional connotations attached to such terms as "custody" and "visitation." Custody means possession or care, as well as confinement, detention, or imprisonment. Legally, custodial right create a fiction of a "broken home," wherein one parent cares for the children while the other only visits.

Visitation privileges are not normally extended to family members, but to prisoners held in custody. Consequently, these terms promote the idea that custodial parents have possession of the children and that visiting parents have little, if any, responsibility for them. In a divorce, custody is usually awarded to one parent who is preferred over the other parent. Children are disposed of in a manner similar to that utilized in disputes over the ownership of marital property. In a real sense, custody entitles a parent to possession and authority over the children (Ricci, 1980).

Societal propagandizing of values reinforces the myth of parental custody of children and does so with little regard for the child's best interests. With the adoption of compulsory public education and child labor laws, children lost their economic value to the family. Men, primarily responsible for the family's income, were unavailable to participate in child care. Thus, the customary preference to award custody of children to women presumes that a child of tender years should remain with the nurturing parent, the mother (Polikoff, 1983). Such preference confounds other legal precedents. For example, a 1929 Maryland statute, provides that "...the father and mother are the joint natural guardians of their minor child ... they shall have equal powers and duties, and neither parent has any right superior to the right of the other concerning the child's custody ..." (Ester, 1982).

The conception of custody determinations based on the best interests of the individual child developed while the "tender years doctrine" continued to be applied. The child's needs must be paramount and mothers are generally concluded to be the natural caretakers because of their so-called maternal instincts. Fathers, on the other hand, are considered perhaps "best" to provide material support: therefore, mothers continue to receive custodial preference (Goldstein et al., 1979). Such societal folklore is reflected popularly and especially in movies such as "Kramer vs. Kramer." There the mother suffered much criticism for abdicating her parental responsibilities, whereas the father was heralded for his single parenting. This situation is decidedly not uncommon in our society. In truth, with regard to parenting, mothers, who represent about 90 per cent of the custodial parents are simply expected to provide child care while fathers are "excused" to pursue their careers. A recent study (Blum-

stein & Schwartz, 1983) found sex roles to be stubborn in that working wives are still responsible for the majority of housework even though they may have demanding careers and work the same hours as their husbands.

Custody conflicts and their traumatic effects on the family have pointed to flaws in the judicial process. Specifically, the adversarial nature of the judicial process cannot effectively resolve family dissension, nor can it assist the family in adapting to a reorganized structure following divorce (Milne, 1978). Marital conflict is often escalated by the adversarial system because it protects the rights of each individual parent in opposition to the other parent's rights. Furthermore, judges and attorneys who participate in custodial decisions have little training, if any, in psychology or child development. An understanding of the emotional dilemma which a family experiences during a divorce, a recognition of the need for the continuity of the family, and the need for parenting despite the marriage's dissolution suggest beneficial changes in the process of divorce.

Studies of parent-child relationships during the first year of separation and the subsequent divorce evince a correlation between post-divorce adjustment and the quality of the relationship with the children, especially the children's interaction with both parents (Wallerstein & Kelly, 1980). Although most non-custodial parents express a desire to spend time with their children, indirect influences frequently preclude access of children to both parents. For example, the future visitation pattern of fathers, the majority of non-custodial parents, are often predicated on their reactions to the divorce and attendant living arrangements. If the mother chose the divorce, the father may be depressed, limiting his visits to his children and intensifying his feelings of loss and deprivation. Moreover, his depression may interfere with his ability to interact with his child. Fathers experiencing guilt in choosing to leave the marriage are also less likely to visit frequently.

The anger of parents following separation contributes to decreasing visitation. Embittered parents may severely limit their visits or unpleasantly interrupt those which do occur. Visitation can also be denied for a ransom of increased alimony or child support. Most divorce agreements award sole custody to one parent and "reasonable visitation" rights to the other parent. The agreement often omits a clearly written statement of assumed-to-be-negotiated particulars such as time, place, and frequency of visitation. Thus, the arrangement of visitation may express the rage and disappointment felt by either parent (Kelly, 1982).

The realization that fathers are just as important to children's post-divorce adjustment as are mothers, requires that we look to new and creative ways to

reorganize the families of divorce. The traditional approach to custody has produced "overburdened" mothers and "drop-out" fathers. It has created one parent families, doubled the custodial parent's responsibilities, and the other parent now becomes a "paying" visitor. This lopsided arrangement has "bred distrust, resentment, and acrimony between the parents that did not diminish when one of them remarried" (Ricci, 1980).

Research has shown that the post-divorce family relationship is a key factor in the children's recovery from the divorce trauma (Wallerstein & Kelly, 1980). In a two-parent family, it is expected that both parents will contribute to the children's lives. This contribution would be in the area of influence he or she feels best equipped to handle and considers most important. In the traditional custody arrangement, one parent is omitted from this arrangement and thus deprives the child of that parent's involvement in his/her life. Children, nevertheless, persist in their desire to have both parents actively involved in their daily lives. At the time that they accept the separate home for each parent, they can then begin to relate to each parent as separate. One youngster, when asked what he saw as the ideal life for a child of divorced and/or remarried parents, put it simply: "Two homes with no fighting" (Ricci, 1980).

Shared parenting is based on the assumption that neither parent has "ownership" of the children, rather, that each parent has a shared sense of responsibility. It is an attitude on the part of both parents, that they are intimately connected to one another through their children and that they respect each other's relationship with their children. It is a realization that both mother and father can continue to raise their children and that their parenting functions can be separated from their personal differences.

Shared parenting can mean different kinds of living arrangements. It is predicated on the idea that each family is unique. Both parents must assume a responsibility for sharing the physical, financial, and emotional needs of their children. How they go about this task will be the family's decision. It will depend on the financial resources of the family as well as the proximity of the homes. Shared parenting can be a situation where a family splits the time fifty/fifty between homes, or it may be an eighty/twenty percent split between the homes.

Shared parental rights and responsibilities as opposed to the notion of custody fosters cooperation between the parents. At the time of separation, each parent will acquire his or her home. The children will now have two homes in which they spend time. The length of their stay in each home can vary. In the most common arrangement, the child spends the school year

in the primary home and spends scheduled times during the month and school holidays in the other home. One commentator has noted that when parents come before the judge in a custody case, both parents direct their energies toward proving themselves to be the real parent (Williams, 1982). Cooperative parenting, however, reinforces both parties' parental identity and expects decision-making input from both parents. By acknowledging and creating two real homes for the child, each parent is able to exert his/her individual style and method of child rearing. Both parents can comfortably express their love and care for their children.

Although divorce requires a legal conclusion, the family structure can be contained through a process of dispute resolution such as mediation, which emphasizes the family's needs. Mediation assists the parties to determine their own solutions and agreement through a cooperative process which requires honest and revealing communication, reinforcement of positive bonds and shared goals, and the avoidance of blame (Deutsch, 1973). Under the guidance of a mediator, spouses facilitate the dissolution of their marriage relationship and the rearrangement of their family life. The mediator moderates within the rules and goals to which the parties have agreed. The mediator aids the parties in deciding among a variety of alternatives in order to reach an agreement which will be upheld daily upon conclusion of the mediation sessions.

"Mediation exists, in part because mediation is less bound by the rules of procedure and substantive law, as well as certain assumptions or norms, that dominate the adversary process. The ultimate authority in mediation belongs to the parties themselves and they may fashion a unique solution that will work for them without being governed by precedent nor concerned with the precedent they may set for others (Folberg, 1982)."

During mediation the parties learn to cooperate despite discord or rancor. Parent-child relationships may be improved, easing the child's adjustment. Limiting difficulties with visitation rights and child-support payments, a sharing of responsibility through mediation can effect a freedom from conflict for the children. There is increasing evidence that it is possible that people who were not able to get along as spouses can work together as parents (Ricci, 1980).

Parents frequently avoid one another and thus do not get involved in the process of discussing issues related to the interests of their children during the painful dynamics of the divorce experience. Mediation establishes a neutral, confidential, and non-therapeutic atmosphere which encourages participation (Salus & Maruzo, 1982). Through mediation, the divorcing

parties can safeguard their rights as parents to raise their children as they see fit, free of governmental intrusion. "Family self-determination in divorce means family members making decisions about their own families for the benefit of each individual in it and for the family as a whole and recognizes that parents and families are forever" (Elkin, 1983).

During the 1950's through the 1960's, research depicted the divorce process as a singular event which destroyed the family and resulted in "broken" or single-parent homes. An emerging consensus, which views divorce as a developmental crisis in the life cycle requiring a rearrangement of the interdependent relationships, encouraged the growing acceptance of the post-divorce integrity of the family. Assuming familial self-determination and continuity, fundamental modification of both social policy and judicial practices are required (Koopman, 1983).

An agreement created by the parties is more appropriately suited to the individual family and more likely to be adhered to than those imposed by a distant and detached authority. The adversarial system is inherently unsuitable to a family decision-making process. Judicial imposition and litigation should be offered as an alternative only after non-adversarial means have failed, or where the evidence points to a parental incapacity or damage to the parties. The complex process of divorce must be accommodated so as to ease the adjustment from this difficult experience (Koopman, 1983).

Legislatures must readily define the intent of its policy on post-divorce parenting in its joint custody legislation. As of 1984, over 30 states had legislation which recognized, presumed or mandated shared parenting (Folberg, 1984). In legislation providing for the sharing of parental responsibilities, parent education and conflict resolution mechanisms should be mandated. For example, the Los Angeles Conciliation Court has included education, counseling, and mediation within the court process (McIsaac, 1981).

Shared parenting reflects contemporary and realistic life styles and parental roles, and removes sexual stereotyping from the decision-making process at the time of divorce. The language of our law and legal agreements must now be non-inflammatory and reflect the cooperation that is needed to ensure successful, viable post-divorce relationships. Laws can make it possible, even desirable for responsible parents to determine the post-divorce parenting agreement which best meets the needs of their unique, individual situation. Parents need the opportunity to learn how to accomplish this task within the complex nature of the divorce experience.

In conclusion, mediation and parent education can facilitate a family's adjustment to separation and di-

voice while providing a self-determinating process for agreement. In mediation, the parties can learn to communicate as parents and to separate their parental and spousal roles and reorganize their family structure. As they have done in their pre-divorce families in the past, they can continue to make their own decisions about their family in the post-divorce period.

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# Beyond Joint Custody: Creative Custody Arrangements to Maximize Both Parents' Involvement With Children

by Joseph A. Condo, Esquire  
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Joint custody is increasingly being viewed by both courts and mental-health professionals as unworkable for many divorced couples. Attorneys and other professionals who work with divided families need to develop fresh approaches to co-parenting for divorced parents. This workshop, presented by an experienced family law practitioner, seeks to offer some practical suggestions, including the working of actual agreement provisions, for fashioning workable custody arrangements to maximize the involvement of both separated parents with their children.

## 1. A Brief Examination of The Premise: One Lawyer's Experience In The Land of Joint Custody

In retrospect, the idea of mandating joint custody for every divided family, irrespective of its makeup or level of conflict, sounds absurd. In practice over the past several years, the experience of many families with court- or legislature-imposed joint custody has not been a happy one. Some studies have concluded that, in some families, joint custody has had the (obviously unintended) effect of increasing the number of occasions where the children are exposed to the

disputes of their fractious parents! For judges, to whom joint custody offered the promise of relieving them of one of their most difficult and dreaded types of decisions, it has only postponed the inevitable "day of judgment" in many cases, it perpetuated the war that brought the parents to court in the first place, and the judge ultimately had to do what he or she had hoped to avoid — choosing a primary custodian.

Likewise, I have observed many instances in which joint custody obviously represented a method of satisfying the contended *parents* — perhaps in the hope that this would put an end to their wars, which would ultimately benefit the children. Of course, a determination of custody is not an exercise in parceling out the children to pacify the parents, as most judges have quickly realized.

But if joint custody is not the panacea many hoped it would be, are we then left with no alternative to the old-fashioned sole-custodian/visiting parent scheme it was supposed to replace? I think not.

## 2. A Suggested Starting Point: Avoid the "Labels" Hangup

It has been my experience that, for many parents, the semantics have become more important than their actual role in raising the children.

I have found many fathers walk into my office asking for "joint custody," but are unable to give me a practical description of it when asked. They have just read somewhere that they should have it, and many feel that their dignity as fathers will somehow be diminished if they don't. Likewise, my mother-clients often believe that if they do not insist on sole custody, they will be thought to have "given up" their children. Also, sadly, many of them have found that their ex-husbands have used their status as "joint custodian" to remain inappropriately involved in *their* lives — not the children's.

The first step, then, to practical, constructive custody arrangements is to concentrate on *defining* each parent's roles, rights and responsibilities with respect to the children. Only after these definitions have been agreed upon do you worry about assigning names — if you have to at all!

## 3. Throwing Away The Calendar

I have found that the calendar is a common obstacle to crafting workable custody arrangements; we tend to try to divide time in the units it prescribes. But we need not be slaves to the seven-day week and the two-day weekend. Who says that one parent's time must always begin or end on Friday, Sunday, or any other day? An important ingredient in the process of creating a custody schedule is to persuade the parents to re-examine preconceptions about how time is divided: Parents must find the logical transitions which occur

in their and their children's schedules, unrelated to the calendar, and to consider these as opportunities for the children's transitions from one household to the other.

## 4. Handling the "Control" Issue

A common factor of the thought process of a divorcing parent is to view the other parent's desire for continued involvement with the children as an attempt at continued "control" of his or her own life. Since this "control" issue also plays a part in many marital break-ups, a custody plan which fails to recognize and deal with this issue is probably doomed. This problem most frequently arises in areas like notification of travel plans or whereabouts of the children, and "Babysitter of final resort" provisions. However, it doesn't have to be a deal-breaker. The parents must be made to understand that true independence from one another is a myth, a practical impossibility, as long as they have minor children; and that they may both have to make minor "privacy" concessions in the children's best interest. (Of course, the idea here is to convey the reality that such concessions really are minor.)

## 5. Escaping From the "Decision-Making Trap"

Nowadays, the vast majority of custody disputes revolve around decision-making; all custody arrangements must have as an essential component a scheme for consultation, decision-making, and dispute resolution.

My experience has shown that merely saying that the parents have equal rights of decision-making, and leaving it at that, just does not work. First of all, it is essential to define specifically the areas in which joint decisions are required. (In most kids' lives, the real "biggies" don't come along as often as people might think.)

Once the decision areas are defined, consider these alternative joint decision-making schemes:

A. The parents are joint decision-makers, with a designated third-party arbitrator/mediator who resolves disputes. (Sometimes I have used provisions where the person whose position is not upheld by the arbitrator pays his or her fees.)

B. One parent is the ultimate decision-maker but *must* consult the other and consider his or her position before making a decision. The key here is defining "consultation." It must be genuine, good-faith consultation, and it must be timely, to afford the "consultee" an opportunity to consider and explore alternatives. It is a good idea to mandate for the non-decision-maker the right to obtain second opinions (e.g., for orthodontia or psychotherapy) before a final decision is made.

C. Irrespective of the decision-making scheme, it is a good idea to include a provision for mandatory mediation before either party can initiate court action. The suggested plan here is simple: if a parent believes



an action or decision of the other parent to be contrary to the children's interest, they must first raise the issue with the other parent and try to resolve it directly. Then they must submit to mediation. If mediation fails or does not satisfy the aggrieved party, then — and only then — may that party resort to the court to resolve the problem.

### Conclusion

The keys to all of these suggestions — and, indeed, to concluding any workable custody plan — are realism and practicality.

It is unrealistic to expect that any two people, who have already decided that they don't want to be married to each other, are going to co-parent, from different households, without *some* problems. It is also unrealistic for divorced parents to expect to lead lives which are "hermetically sealed" from one another.

With children to co-parent, it is unavoidable that certain (mostly harmless) details of their respective personal lives will be divulged to one another. Only after the inevitability of these realities is conceded, and a mechanism for addressing them is included, can a successful custody plan be formulated.

Any custody plan must also pass the test of simple practicality and common sense. I know — easy to say, hard to do; the most practical solutions are often the last to suggest themselves. But the idea is to re-examine underlying assumptions and consider fresh approaches, and then to just try to do what is simplest and makes the most sense. Look at the plan you come up with, objectively and from a practical point of view. Does it look like it will work? Is it so complicated that a rocket scientist couldn't figure it out? Could *you* live with it? In other words, does it make sense?

## Play Therapy for Adults: Healing the Child Within the Grownup

by June Hutchison, MMH

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This is an experimental workshop emphasizing child-like playfulness and wisdom in adults as psychological processing methodology.

No one has perfect parents. No one is a perfect parent. It is neither possible nor advisable for parents to meet all the needs of their children after infancy. One mark of maturity is acceptance of the concept of self-parenting which, typically, is more difficult and more crucial in those areas of belief and behavior impacted by unmet childhood needs or wants.

Most adults develop creative and survival strategies for getting on with the process of living despite the idiosyncratic imperfections of their parents. Survival strategies, or those perceived as such, can feel strained, fearful, careful, perfectionistic or inhibited. This workshop defines creative strategies as those enhancing feelings of aliveness, spontaneity, connectedness, trust and playfulness.

The purpose of this workshop is to provide participant adults with playful methods for transforming dysfunctional survival strategies into functional creative ones. A secondary purpose is to increase the awareness to vulnerabilities or biases that may interfere with effective nurturing of real children for whom the adult is responsible.

Putting fun into functional behavioral strategies can

be concomitant with feeling the distress of the dysfunctional. Since participants of this workshop may or may not be familiar with therapeutic processes, the format is designed to focus on the positive, playful experiences. Oppositional feelings, the distressing ones, will be ventilated through expressive therapy techniques. Adults can expect to sit on the floor, sing, dance, draw, make noises, clap, laugh, cry and gain new respect for their inner child's play style.

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# Changing American Families: How To Raise Healthy Kids Following Divorce

by Sally Brush

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We hear of more and more people wringing their hands about the demise of the American family due to the high divorce rate, save that children will be scarred forever by this unfortunate event. Certainly that can happen, but a well-handled divorce can also add to a child's life skills.

In 1978 in Cincinnati a group of people began offering programs for parents so that they could overcome the temporary difficulties caused by divorce and learn how to raise healthy children. Now called The Aring Institute of Beech Acres, the programs continue to expand both in the kinds of programs offered, such as mediation, and in the number of people who attend. The focus of the programs is on education and support for parents and for children.

The initial group most parents attend is the Shared Experience Group — a place where people can learn that their feelings, uncomfortable as they may be, are normal. In this accepting atmosphere many people learn to accept support and to give it to others. The changes made in six short weeks is often astonishing. Parents learn that becoming their own best friend, taking care of their own needs, can be a service to their children, rather than a selfish act. Parents who can accept themselves, and the divorce, are often better able to turn their energies to parenting.

Groups are also offered for children of all ages and their parents. In these groups, parents learn how to encourage their children to talk about their feelings, how to express their own parental concerns in ways the children can hear, how to handle anger non-destructively, and the five things needed by children of divorce:

1. **FACTS** — Most children do not get enough information about their parents' divorce. It is too hard a subject to talk about. Parents have a hard time explaining that will happen, why it is happening, and what will and will not change. Yet this information is vital for children. Books, understanding teachers, friends of the family can help provide some information.

2. **ROLE MODELS** — If children know people who can express feelings without being overwhelmed, who have solved difficult problems, who have lived through changing circumstances and done well, these role models can give them the necessary confidence to express their feelings, look for solutions to problems rather than be paralyzed by them, and believe that their family will survive and do well.

3. **EARS** — Someone to listen, who won't quickly say, "You shouldn't feel that way," or "Everything is going to be all right." In a desire to take away the pain of children, parents and other adults often tell children solutions or quick fixes. Yet this discounting of their feelings encourages them to be silent. People forget that a gift a listening, caring, accepting adult can be.

4. **REASSURANCE** — After children have expressed their fears, reassurance can be very helpful. It may be that children are concerned about having to testify on TV's Divorce Court. They may be worried that an angry parent will leave them just as one of the parents left the marriage. They may be sure that it was their behavior that caused the divorce. Specific reassurance about specific fears can help a lot. However, we need to be careful not to give reassurance about a subject we don't know about, such as "Sure, both your parents will always take care of you."

5. **DECISION MAKING** — Divorce is a time when children have lost a sense of control. Offering them choices about what to put in their personal space, where to keep their bike, whether they want to eat at McDonald's or Wendy's can help them feel important again. It is the choices that are too big for them — like who do they want to live with (unless they have expressed a clear preference without being asked) — that can add to the confusion.

Most parents want to do what is best for their children. Under the best of circumstances, being a parent is not easy. All parents have a lot to learn. Divorce is a time of crisis which can be used to learn skills that will help parents for years to come, in all sorts of personal relationships. Parents can become better parents, if this time of crisis is used to make positive changes.

# Advocacy in the States for Children's Rights Activists

Submitted by Bruce Gillman and Bruce Eden

of the New Jersey Council for Children's Rights (NJCCR), an affiliate chapter of NCCR, Buller, New Jersey

The following are bills which have been introduced in the New Jersey legislature at the urging of the NJCCR.

## Notification Prior to Relocation of Child

Amends the New Jersey Statutes by adding the following section:

In any custody or visitation proceeding, the court shall include as a condition of any custody or visitation order a requirement that advance written notice be made to either the court, the other party, or both, by any party intending to relocate the temporary and/or permanent residence of a child within 60 days prior to the intended relocation. The court may require that such notice be in such form and contain such information as the court may deem necessary and proper under the circumstances of the case.

## Child Enrollment Identification Bill

AN ACT relating to the identification required for enrollment in public schools; providing criminal penalties.

### Be It Enacted by the Legislature of the State of New Jersey:

#### Identification Requirement for Enrollment:

1. No later than the 30th day after a parent or other person with custody of a child enrolls the child in a public school, the parent or other person or the school district in which the child most recently attended school shall furnish to the school district:  
(A) the child's birth certificate or another document suitable as proof of the child's identity; and  
(B) a copy of the child's records from the school the child most recently attended if the child has been previously enrolled in a school in this state or another state.
2. If a child is enrolled under a name other than the child's name as it appears in the identifying document or records, the school district shall notify the missing children and missing persons information clearinghouse of the child's name as shown on the identifying document or records and the name under which the child is enrolled. The information in the notice is confidential and may be released only to a law enforcement agency.

3. If the information required by Subsection 1 of this section is not furnished to the district within the time provided by that subsection, the district shall notify the police department of the city or sheriff's department of the county in which the district is located and request a determination of whether the child has been reported as missing.
4. The State Board of Education may adopt rules necessary to the implementation and enforcement of this section, including rules providing for the types of documents that are suitable for identification purposes under this section.
5. When accepting a child for enrollment, the school district shall inform the parent or other person enrolling the child that presenting a false document or false records under this section is an offense and that enrollment of the child under false documents subjects the person to liability for tuition or costs.
6. A person commits an offense if the person enrolls a child in a public school and fails to furnish an identifying document or record relating to the child on the request of a law enforcement agency conducting an investigation in response to a notification under Subsection 3 of this section. An offense under this subsection is a crime of the fourth degree.

#### A Commission to Study the Law of Divorce

*A JOINT RESOLUTION* creating a commission to study the law of divorce, particularly as it applies to the rights and obligations of noncustodial parents.

WHEREAS, Present State law relating to divorce is based largely on common law and longstanding social practices, as modified in some aspects by statutory and case law; and

WHEREAS, Present law is often inadequate to protect the visitation rights of the noncustodial parent, to provide for equitable rather than equal distribution of marital assets, and to provide the noncustodial parent a decision making role in the upbringing of the child; now, therefore,

BE IT RESOLVED by the Senate and General Assembly of the State of New Jersey:

1. There is created a commission to consist of one member of the Senate to be appointed by the President thereof, one member of the General Assembly to be appointed by the Speaker thereof, and eight citizens to be appointed by the Governor. The citi-

zens appointed by the Governor shall include a retired judge, a probation officer, a divorce mediator, the president of the County Prosecutor's Association, a representative from the New Jersey State Bar Association and three public members. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

2. The commission shall organize as soon as may be after the appointment of its members and shall select a chairman from among its members and a secretary, who need not be a member of the commission.
3. It shall be the duty of the commission to study the present law of divorce in this State and in other states, particularly as it applies to the noncustodial parent, to determine its adequacy in protecting the rights and obligations of the noncustodial parent, and to make recommendations for desirable and appropriate legislation.
4. The commission is entitled to the assistance and services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to its for its purposes, and to employ stenographic and clerical assistants and incur traveling and other miscellaneous expenses necessary to perform its duties within the limits of funds appropriated or otherwise made available to it for its purposes.
5. The commission may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature and shall report its findings and recommendations to the Legislature no later than 18 months following the organization of the commission with any legislative bills it desires to recommend for adoption by the Legislature.
6. This joint resolution shall take effect immediately and shall expire upon the submission of the report required pursuant to section 5 of this act.

## Statement

This Joint Resolution creates a commission of 10 members to study the divorce law of New Jersey and other states to determine whether the rights of noncustodial parents are adequately protected with regard to visitation, parental authority and financial obligation.

The resolution provides that one member each of the commission shall be appointed from the Senate and Assembly; eight members shall be appointed by the Governor; and that the commission shall submit a report within 18 months and shall expire upon the submission of the report. The members to be appointed by the Governor shall include a retired judge, a domestic probation officer, a divorce mediator, the president of the County Prosecutor's Association, a representa-

tive from the New Jersey State Bar Association and three public members.

## Domestic Relations

Creates a study commission to survey law of divorce from the perspective of the noncustodial parent.

### False Statements

Matter underlined thus is new matter.

*AN ACT* concerning false statements in domestic violence cases.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

A law enforcement officer shall disseminate to the victim the following notice, which shall be written in both English and Spanish:

"You have the right to go to the (juvenile and domestic relations court) Family Part of the Chancery Division of the Superior Court and file a complaint requesting relief including but not limited to the following: an order restraining your attacker from abusing you or directing your attacker to leave your household. You may request that the clerk of the court assist you in applying for this order. You also have the right to go to court and file a criminal complaint.

"If you knowingly make a false statement of material fact in your complaint or while testifying in court, you will be guilty of perjury, a crime of the third degree."

"On weekends, holidays and other times when the courts are closed, you may go to the municipal court for an emergency order granting the relief set forth above."

- a. A victim may file a complaint alleging the commission of an act of domestic violence with the Family Part of the Chancery Division of the Superior Court in conformity with the rules of court. The court shall not dismiss any complaint or delay disposition of a case because the victim has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not prevent the filing of a criminal complaint for the same act.
- b. The court shall waive any requirement that the petitioner's place of residence appear on the complaint.
- c. The clerk of the court, or other person designated by the court, shall assist the parties in completing any forms necessary for the filing of a summons, complaint, answer or other pleading.
- d. Summons and complaint forms shall be readily available at the clerk's office and at the municipal courts. Each complaint form shall contain the following notice: "A person who files a com-

plaint containing a knowingly false statement of material fact is guilty of perjury, a crime of the third degree."

- e. As soon as the domestic violence complaint is filed, both the victim and the abuser shall be advised of any programs or services available for advice and counseling.
3. (New section) The Director of the Administrative Office of the Courts shall conduct a study on the incidence of false complaints of domestic violence, and shall report the results of the study to the Legislature no later than December 31, 1989.
4. This act shall take effect on the 90th day following enactment.

### Statement

According to recent reports, many false domestic violence complaints are currently being filed. A spouse contemplating divorce may file a groundless complaint as part of a strategy to get the other spouse out of

the house; or a groundless complaint may be made simply to harass the other party.

This bill would amend the "Prevention of Domestic Violence Act" to provide that the informational forms distributed under current law to alleged domestic violence victims by police officers, as well as the domestic violence complaint forms, carry a warning that a person who makes a knowingly false statement of material fact is guilty of perjury. Perjury is a crime of the third degree, punishable by a fine of up to \$7,500 or a term of imprisonment of between three to five years, or both.

The bill would also require the Administrative Office of the Courts to conduct a study on the incidence of such false complaints, and to report the results back to the Legislature.

### Criminal Justice

Requires domestic violence complaint forms to carry warnings concerning perjury; authorizes study by AOC.

# Awareness & Wellness: The Four Affirmative Actions for Maximum Health

by Dr. Gary Santora  
*Chiropractor, McLean, Virginia*

Chronic disease starts many years before it is recognized. It starts in the beginning with a chemical imbalance in the cells of the body. Disease is cured by correcting these imbalances. The ideal approach is to prevent the disease process from developing into a health emergency crisis which can result in much pain, expense, disability and not infrequently, a fatal ending. Prevention of disease can only be accomplished by early detection and correction of bio-chemical and metabolic cellular dysfunction. Disease can only be cured by eliminating the cause!

To help you understand how your body functions physically, we can compare it to a sophisticated, high performance gasoline engine. In order for the engine to perform at maximum efficiency, the fuel must be of the highest octane, the proper amount of air is necessary, the carburetor must be in proper adjustment, the electrical system must be free of interference, and there must be no obstruction in the exhaust system.

Likewise, your body, in order to function at its maximum ability, must have the best fuel possible (food, water, air, vitamins, minerals). Maximum air consumption is required (oxygenation of tissue cells) and the electrical controls (nervous system) must be in proper adjustment and free of neurological interference. Also, the exhaust system of your body (bowels, kidneys, lungs, skin) must be free of obstruction.

Simply stated, the food that you eat, the water you drink, the air you breathe, makes up your intake of fuel. The life force that travels over the billions of nerve circuits in your body is the controlling electrical system. The waste products of metabolism (combustion) are eliminated largely through the lungs, kidneys, bowels and skin.

Not all engines require the same fuel mixture because they have different requirements; likewise, the perfect fuel formula for your fuel mixture is different than for other people, because the demands you place on your body through your lifestyle are not the same as theirs. The basic fuel formula for all people is similar, but the special additives and restrictions used in each individual case, makes the difference between poor health, mediocre performance, or maximum health efficiency. No two people in the world are alike, and no two fuel formulas are the same.

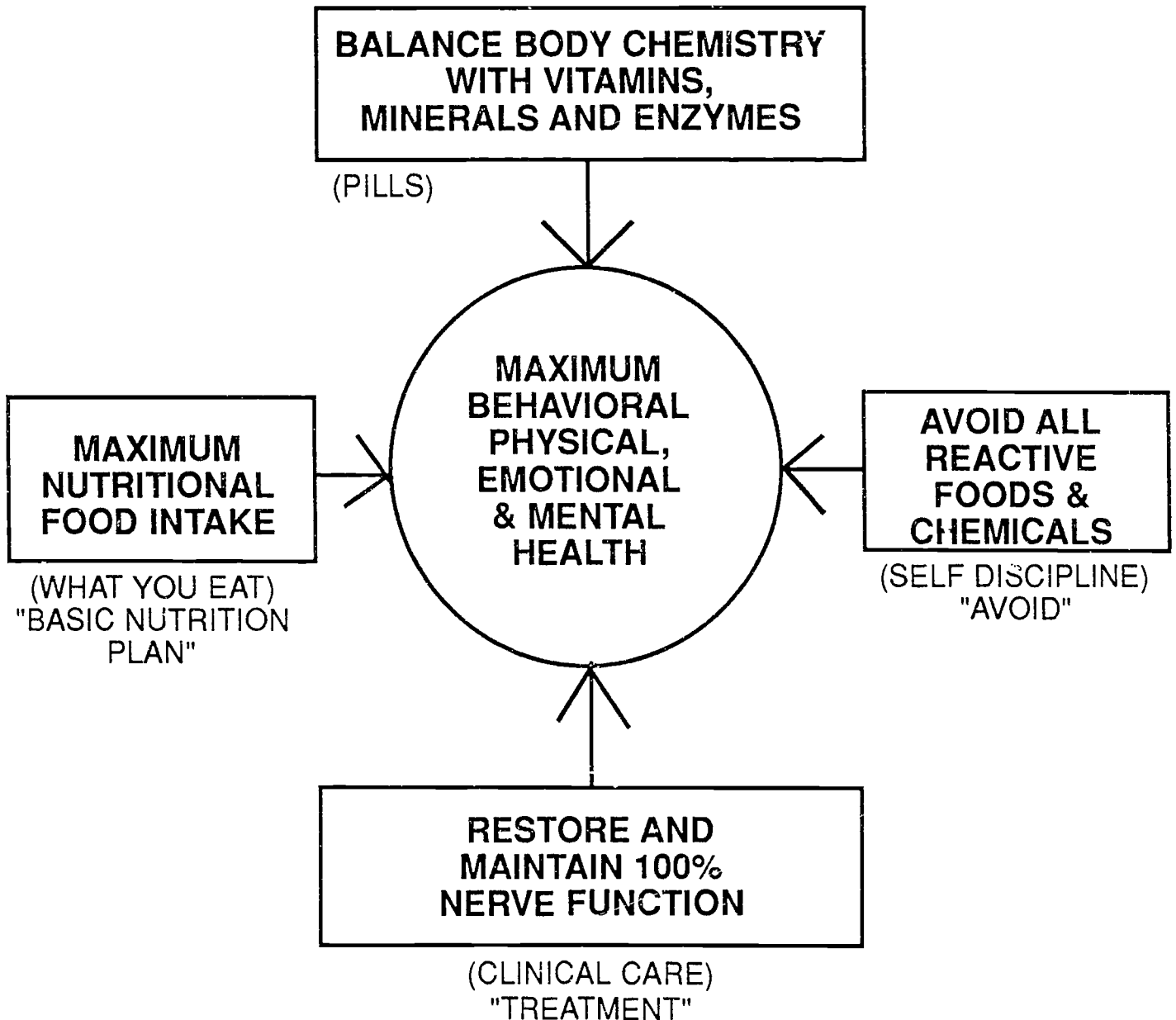
In order to determine the perfect fuel mixture (food, vitamins, minerals) and oxygenation (exercise) for you, it is necessary to have some of the tests which we have listed on the following page. In addition, these tests will give us the information to determine the underlying "cause" of your symptoms and your health problem. Likewise, a physical examination of your spine is vital in order to reveal any nerve conduction problem which might be interfering with the "electri-

cal control systems." Your nervous system controls all of the other systems in your body.

As stated above, in order for the engine to perform to maximum efficiency, the fuel must be perfect and the electrical system must work perfectly. We must

eliminate nerve interference as well as correct the fuel deficiencies for optimum metabolic performance.

We believe that every person we have the privilege to serve deserves the very best health care that science can provide.



## FOUR AFFIRMATIVE ACTIONS

# Mothers Without Custody (MW/OC): Goals of the National Organization

Angela M. Meese  
*Immediate Past President*  
Sharon May and Roberta Weilgus  
*officers, Maryland*

## POLICY STATEMENTS

MOTHERS WITHOUT CUSTODY (MW/OC) is a non-profit, self-directed organization. Our primary purpose is to enhance the quality of life for our children by strengthening the role of non-custodial parents in regard to custody, child support, visitation and parenting.

Non-custodial parents can expect the custodial parent to encourage and afford the non-custodial parent and child(ren) such a relationship, free from duress. Both parents must maintain, at the very least, a bare minimum relationship in order to promote the health, happiness and well-being of their child(ren).

### Shared Parenting/Joint Custody

MW/OC believes that custody should be decided prior to divorce proceedings, with the help of professional mediators. If decided in a court proceeding, we support judges who award custody without sexual prejudice or bias. We believe custody should not be based upon current financial income of either parent, but on the continuation of the on-going parent/child relationship(s). We support joint legal custody when both parties agree since we believe that liberal visitation and/or shared custody can maximize and enhance the quality of life for the child(ren).

Shared parenting shall be encouraged as the preferable custodial arrangement between a child's natural parents and the child, providing both parents equal responsibility and authority for all matters relating to their child(ren) and consultations between both parents must occur in decision-making processes, with the exception of emergency medical attention. Instances of differences of opinion between the parents in relation to the "best interest" of the child(ren) shall be discussed with an objective mediator and if no mutual agreement can be arranged, the children shall be represented by a third party mediator.

### Visitation

Children should have easy access to both parents, free from verbal, non-verbal, or physical interference, in order to continue a loving relationship with both parties and all members of their extended family as well as to grow within new stepfamilies. Visitation between a non-custodial parent and the child(ren) should be encouraged by the custodial parent.

## Custody

Sole custody, an alternative when shared parenting is not feasible, should be awarded after taking into consideration all aspects of the child(ren)'s future quality of life, not just the financial leverage of one parent. MW/OC supports judges who award custody based on the best interest of the child(ren) and who take into consideration which parent will offer most generous visitation rights, not only to the non-resident parent, but to relatives on both sides of the child(ren)'s family.

We believe that custody should be decided without sexual prejudice or bias and should not be based upon the current financial income of either parent, but on the continuation of the on-going parent/child relationship(s). Sole custody arrangements must not preclude the non-custodial parent from gaining access and knowledge of facets of the child(ren)'s life such as medical, school, extra-curricular, and religious activities and records unless such access is waived, in writing, by the non-custodial parent.

## Mediation

We support the use of professional mediators to resolve conflicting issues in order that an objective assessment be made vs. the adversarial process. This process, when there is full cooperation of both parties, can help soothe the conflict and center on what is best for all the family members.

## Child Support

We believe that both parents are responsible for the emotional care, and financial support of their child(ren) should be proportional to their financial ability. When support and visitation become battlegrounds, we believe problems should be negotiated with all parties, including an objective professional mediator.

## Child Abduction

MW/OC does not support child abduction as a means of resolving custody issues.

### A Bill of Rights for Children of Divorce

1. The Right to know that the parents' decision to divorce is solely their decision, and that the child need not feel any responsibility for this decision.

2. The Right to have a relaxed, secure relationship with both parents without feeling a need to manipulate one parent against the other.

3. The Right to have the issue of custody truly and honestly decided without sexual prejudice or bias (permitting a continued parent-child relationship through joint custody equal to that prior to divorce), with the best interest of the child and BOTH parents as the only consideration.

4. The Right to continuing care, guidance and support from both parents, and the freedom to receive and express love for both without guilt.

5. The Right to honest answers to questions about the changing family relationships and living conditions.

6. The Right to be free from physical and mental abuse and pressure from both parents and from judicial abuse by the State.

7. The Right to know that expressions of love from one parent in no way will detract from the love for the other parent. And, the Right to express love and affection for each parent without having to suppress that love because of fear of disapproval by the other parent.

8. The Right to a secure relationship during scheduled times with the non-custodial parent, and to know in advance when these specified times are to be cancelled by either parent for any reason.

9. The Right to know, and be able to visit with grandparents, aunts, uncles, cousins and other relatives on both sides of the family so that a heritage may be conveyed.

10. The Right to be free from any new social class forced upon the child by State Courts which order and decree single parent custody, denying one parent an equal legal and personal relationship with the child and producing a family model which has not been proven to be either psychologically healthier or constitutionally sound.

11. The Right to privacy and protection, justice and fairness in both the custodial and non-custodial homes.

12. The Right to know and appreciate what is good in each parent without one parent degrading the other.

13. The Right to request an increase in the time specified for interaction with the non-custodial parent.

14. The Right to express a preference to live with either of the parents most of the time.

15. The Right to mature to adulthood, secure in the love and respect of both parents, and with confidence in the ability to establish, love and nurture a stable family.

### Membership

Mothers Without Custody is the ONLY national organization for non-custodial mothers. There are local chapters which provide a support group.

We share common concerns with all non-custodial parents. REGULAR members are non-custody or joint custody mothers who live apart from one or more of

their child(ren). ASSOCIATE members are former non/joint custody women who have regained custody of their child(ren) who support the purpose of MW/OC.

Membership dues for the national organization are \$18 per year, which entitles members to six newsletters each year. In those areas where a local support group has been established, members can meet to share concerns. Some local groups also publish a monthly newsletter. For those members living in areas that do not have an active support group, the national newsletter, MOTHER-TO-MOTHER, is their vehicle to use for expressing their feelings and views, to read about the situations of others and how they solve their problems. Once a year there is an Annual Meeting at which women from all over the United States and Canada can come to meet each other and attend workshops on information directed to the women who is dealing with being a "mother apart."

To contact the national organization write to:

MOTHERS WITHOUT CUSTODY, INC.  
P.O. BOX 27418  
HOUSTON, TX 77227-7418  
(713) 840-1622 (taped message).

### Support Group

The purposes of Mothers Without Custody are:

To enhance the quality of life for our children by strengthening the role of the non-custodial parent in regard to custody, child support, visitation and parenting.

To provide a self-directed network and an outlet for the sharing of experiences for mothers without physical custody of their children for any of the following reasons:

- a. voluntary exchange of custody;
- b. coerced voluntary exchange of custody;
- c. court rulings;
- d. child(ren) being abducted by the father;
- e. child(ren) opting to live with the father;
- f. state intervention.

To educate/inform the public in order to dispel biases against children and parents who do not have physical custody.

To serve as liaison between organizations/individuals that promote children's health, happiness, and well-being and that of mothers without custody.

To cooperate with local, state and national officials to further the well-being, health and happiness of children.

To carry out such lawful association activities as a majority of the board of directors may direct.



# Preventing Child Abuse Charges in Divorce Custody

by Dr. Edwin Carlson

St. Petersburg, Florida, President, NASVO  
(National Association of State Vocal Organizations)

Child abuse is a national problem, and children need protection from it. Divorce/Custody battles leading to a false allegation of child abuse have also become a severe national social problem and a bizarre form of child abuse. This has yet to be recognized and effectively handled by social services and the courts. This wave is still rising, and is hurting children, families, social services and courts.

"The least destructive alternative" rather than the best interest of the child becomes the only reality when these cases have progressed too far. To be effective, early recognition and positive resolution are necessary by social services, judges, attorneys and mental health professionals.

Five years of research and study of national cases have provided understanding of the psychodynamics involved and a higher perspective, solution oriented, preventive approach for all the people who become entangled in this devastatingly destructive process.

"The child is sliced up" by false allegations says Dr. Domeena Renshaw, psychiatrist, Loyola University. However, the child may have been abused. The "legal process trauma" is certainly damaging to the child. Genuine or fabricated, the child is hurt. *Either* way, the indication is of dysfunction in one or more of the family—mother, father, child.

In Florida, the Attorney General's ex-wife of 10 years *killed* her son and herself at a phone booth near where he was making a campaign speech two days prior to his election. This is an extreme example of the extent, durability and pathology involved in the Parental Alienation Syndrome.\*

The Parental Alienation Syndrome is a form of mental illness that has yet to be generally recognized or responded to by society and the courts. This syndrome is an addiction to anger and striking out that is more subtle, but as damaging as alcohol and drugs and more malicious because a child is used as a pawn and a weapon (Appendix B).

More and more frequently the Parental Alienation Syndrome is escalating into fabricated allegations of child abuse—a socially acceptable way to "kill" the other person. There are no punitive consequences for this type of killing.

\**The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sex Abuse* by Dr. Richard A. Gardner, Clinical Professor of Child Psychiatry, Columbia University is available for \$22.50. (The book may be ordered through NCCR).

Judges seem to shy away from Divorce/Custody allegations, but the *child needs help* in the situation. Seen as a *special problem* outside the mainstream of Child Protective Services (C.P.S.) a definitive approach can be developed that will face the problem, be positive for the child and reduce the phenomenon of false allegations. This will also reduce the "backlash" that compounds the current simultaneous problems of over reporting and under reporting. The current non-method or running from the problem creates a mess for everyone—C.P.S., the judiciary, child, parents and society.

A growing body of literature and research including standardized test scores shows damage to the child from being separated from either parent. The best interest of the child is to see both parents regardless of abuse or no abuse, in most all cases.

In abuse cases, the true healing comes from healing the child and/or the parent rather than continued separation and "issue making." This can be dealt with in the context of therapeutic visitation.

In fabricated cases, the fabricating parent is dysfunctional and the child is also *abused*. The dysfunction needs to be healed in the parent and/or the child rather than permitting the child to be used as a pawn. Such use destroys the child, relationships, and respect for the judicial and C.P.S. systems. This can be dealt with in the context of therapeutic visitation. The child must also be protected from the emotional abuse of parental alienation during this time. In child fabricated cases, (usually older children) the child and family is dysfunctional and the parents are abused. This is also an indication of need of help.

The judicial presumption of continued therapeutic visitation prohibits the use of the child as a pawn to thwart visitation, punish the other parent or play out angry pathology. Using the following approach, the court has a basis for continuing visitation in a therapeutic milieu, rather than being used to separate a child from a parent based only on current hysteria.

Abuse is occurring in some form, in genuine or fabricated stories. If the child has not been physically sexually abused then there is certainly emotional sexual abuse. However, this is a secondary issue to the primary issue of the best interest, mental and emotional health of the child and healing the dysfunction.

## SUGGESTED APPROACH:

1. The court appoints a *highly qualified* mental health expert as "amicus curiae," friend of the court, in the best interest of the child. This person serves as evaluator only and does not become involved in any treatment, thus university experts can be utilized for this phase. The "amicus curiae" evaluates mother, father, child(ren) in light of developing a visitation schedule. There may be therapeutic aspects to this for the mother, the child, and/or the father.

2. The court appoints an Integrator/Mediator of the visitation plan outlined by the Amicus Curiae. This person acts as ombudsman/mediator for the parents in the future, agreeing to see them within 48 hours to resolve disputes, rather than parents running to attorneys and court.

3. If therapy is needed for any individual, they should have a therapist *separate* from the professionals in 1 and 2 above. Separate therapists for each individual prevents cross contamination and "accommodation" or leading the child.

NOTE: The three categories should be kept separate and distinct to avoid contamination in these difficult cases:

1. Evaluator/Assessor/Plan Developer in the best interest of the child and family.
2. Integrator/Mediator/Ombudsman
3. Therapist (if needed)

4. The child must be protected from emotional abuse by either parent, fabricated or genuine. This necessitates "alternative living arrangements" while the problem is being resolved. Some judges require that the child live with neither parent and a non-influencing person move in as caretaker. If the parent refuses, the child must be placed in another non-influencing alternative living arrangement, progressing to temporary foster care. While difficult short term, this will prevent long term damage, turmoil and "muddying the water." Rapid resolution is also promoted. As a preventive measure, the "benefit/reward" in making a false allegation is removed and will decrease the number of these cases.

5. Suspend the parental rights/visitation of the false accusing/emotionally abusive parent if they will not participate or do not *progress well* in therapy. When they progress well, then they may be permitted *supervised* visitation.

The children must be protected from inept/unskilled, damaging interviews by social services, police and others. Get an attorney for the children and/or a protective order from the court that they may be interviewed only under the courts permission and *direction* of circumstances and questions. (Appendix A)

EMPHASIS: False Allegations are a form of mental illness and are destructive to the child. False allega-

tions are a definite reason to transfer custody—a serious form of child abuse. The false accusing parent becomes locked into "folie a deux" the craziness of two, which is *contagious*. They also suffer from "cognitive dissonance," selectively believing only what fits their plan. The child is emotionally sexually abused even though not physically sexually abused.

Having a definitive, therapeutic, best interest of the child and family approach puts the judge and C.P.S. on firm ground to be a positive help. Rapid resolution is promoted. A strong preventive influence is introduced.

The psychodynamics of false allegation in divorce/custody is essential to understand. You may want qualified psychological/psychiatric input on:

1. Folie a deux—the "craziness of two" which is *contagious*. A psychotic contagion.

2. Cognitive dissonance, when a person refuses to believe all the evidence and selectively limits only to that which supports their cause.

3. Munchausens Syndrome by Proxy or Factitious Illness where someone makes another person ill in order to gain attention for themselves through the other person's fictitious illness. In addition to a parent/grandparent, even doctors and C.P.S. workers can seek their own glory by using a child as a pawn rather than seeking truth.

All three of these are evident in divorce/custody cases.

The child is emotionally sexually abused if not actually physically sexually abused. Either way there is family dysfunction and a need for help.

## APPENDIX A

### Preventing Child Abuse Charges in Divorce Custody

A new tool to protect the children is an automatic motion to restrict access to the children by "professionals" including social services, to those approved by the court. This prevents their being taken from one person to the next until someone "finds/creates something wrong."

The pediatrician can be specified and if necessary, the counselor and/or emergency room. Other professionals only see the child upon referral from the approved pediatrician or approval of both parents or the court.

Eighty-five percent of divorce cases settle finances and custody/visitation relatively amicably. For the remaining 15 percent mediation has a "satisfactory rate" of about 17 and 23 percent in two recent studies. This may mean that about 10 percent of divorces have at least one person who sees it as the good fight "to the bitter end." The pathological few are the ones with whom we are dealing. False allegations become a tool

and children pawns of war in a significant number of cases.

Unfortunately, our current system permits this one person to wreak legal havoc on children, spouse, agencies, courts. Attorneys and courts must elevate their understanding and approach above the adult battles to the true best interest of the child. Otherwise, the child becomes so destroyed/brainwashed that his "best interest" is no longer practical or feasible and the "least destructive" route must be sought. The child is emotionally sexually abused rather than physically sexually abused, and becomes a victim of legal process trauma.

Understanding the psychodynamics of false allegations, and that the accuser is the abuser and wants to be, is essential to prevention, defense and offense of these cases. The depth of mental illness of the accuser and the ineffectiveness of conventional psychotherapy must be respected by attorneys and judges to find a constructive resolution for the children. Otherwise, these people will jerk the system around endlessly all the way to underground railroads and sitting in jail for contempt for years.

## APPENDIX B

### "The Parental Alienation Syndrome" ESCALATING TO FABRICATED ALLEGATIONS OF CHILD SEXUAL ABUSE

Excerpts: Dr. Richard A. Gardner "Distinguishing Genuine from Fabricated Child Sex-Abuse Allegations" 1/87, N.J. Inst. for Continuing Legal Education

"*The Parental Alienation Syndrome.*" For simplicity, I'm going to refer to the father as the hated parent and the mother as the loved parent—80 to 90% of the cases. In the full blown case, we see a situation in which the child hates his father, in a way the family never saw before. There is depreciation and criticism, the guiltless use of profanity, spitting in his face. He is obsessed with vilification. The child develops a litany of complaints about the father and this can be turned on at a moment's notice, especially when interviewed by a person such as myself, or an attorney. This occurs in the context of custody litigation. It is rare to see it outside of that context. The child will be obsessed with minor complaints that would be considered as minor by the observer. (Gives examples)

In the full blown case, the animosity extends to the father's extended family, the grandparents, the father's parents who previously had a loving relationship with the grandchildren, their pride and joy. The grandparents call up and they hang up on the grandparents, they don't want to talk to them ever again. This extends to the whole extended family. Cousins with whom the

child had an important relationship are also viewed as somehow noxious.

One of the things that I have seen in this syndrome is contribution by the Mother—both overt and covert. Mothers are now using their children in order to help them as allies in their war against the father. There are processes going on that are active and overt in terms of brainwashing and the more subtle, covert maneuvers. (Gives examples — notes that fathers can also use the child against the mother).

Three or four years ago, I began to see a new development in the context of the parental alienation syndrome: Fabricating sex abuse allegations. Mothers learned that allege sex abuse and you get quick action from the courts. Otherwise, there are the delays. It goes on and on. It seems endless, yet all you have to say is the father sexually abused the children and suddenly you find yourself in court the next day. The judge is going to take quick action. He is going to interrupt visitation, pending further investigation which can take six months or a year during which time the mother has the opportunity to entrench her position. It was found to be an extremely valuable weapon in the custody conflict. And children being children, being naive, readily lend themselves to being worked over in this regard. The fabricator wants only a hired gun evaluator to exclude the father completely and permanently. (Case studies provided)

**LEGAL PROCESS TRAUMA:** The mother doesn't appreciate the psychological trauma in the child of repeated interrogations by mental health professionals and legal officers. This is called "legal process trauma."

The evaluations cause a lot of psychological trauma. There is a lot of anxiety, a lot of tension, a lot of loyalty complex, harm to family members, and it interferes with the desensitization process. Let's say the child did, indeed, have an actual sex abuse experience, on one occasion. It's a trauma, there is desensitization, and it passes away. You work it through.

But the legal process drags it on, stretches it out and interferes with the normal desensitization process. The more evaluations you have, the more trauma. If the court is going to decide that the mother has her psychiatrist, father has his psychiatrist, and the child has a guardian ad litem, and each one is going to be working on his own independent evaluation, there is more trauma. It's better to have an impartial, one person who sees all the parties and reduces the trauma.

Note from Ed Carlson: We might add "JUDICIAL MOLESTATION" from the court by the sometime incessant granting of delays, long time frames, and lack of understanding and sensitivity.

# About NCCR

The National Council for Children's Rights (NCCR) is a non-profit [IRS 501(c)3] organization, based in Washington, D.C. We are concerned with the healthy development of children of divorced and separated parents. For the child's benefit, we seek means of reducing divorce by strengthening families through divorce and custody reform, minimizing hostilities between parents who are involved in marital disputes, substituting conciliation

and mediation for the adversarial approach, assuring a child's access to both parents, and providing equitable child support.

NCCR was founded in 1985 by concerned parents who have more than 40 years collective experience in divorce reform and early childhood education.

Prominent professionals in the fields of religion, law, social work, psychology, child care, education, business and government comprise

our Advisory Panel.

For further information about membership, publications, cassettes, catalog, and services, write: NCCR, 721 2nd Street, NE, Washington, DC 20002, or call (202) 547-NCCR (6227).

**SPEAK OUR FOR CHILDREN** is published at least four times a year and is sent free to members. Send letters, comments, and articles for publication to Editor, NCCR.

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