OUTAGAMIE COUNTY

401 S. ELM STREET, APPLETON, WI 54911-5985

FAMILY COURT PROGRAM

HUMAN SERVICES BUILDING LEVEL 3

TELEPHONE: (920) 832-5660 FAX NO: (920) 832-5180

April 16, 1999

Senator Gary George
Room 118 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Senator Alice Clausing
Room 319 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Senator Alberta Darling
Room 22 South
State Capitol
P.O. Box 7882
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Senator Joanne Huelsman
Room 5 South
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Senator Fred Risser
Room 220 South
State Capitol
P.O. Box 7882
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Senator Michael Ellis
Room 202 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Senator Robert Cowles
Room 7 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Re: Senate Bill 107 on Shared Placement

Dear Senators:

I am the Director of the Family Court Program for Outagamie County. The purpose of our program is to mediate child custody/placement disputes for divorcing families, post divorce families and children born outside of marriage. Our program also conducts child custody/placement evaluations for the court and makes recommendations on custody, placement and periods of physical placement. It was brought to my attention that there is a hearing regarding SB107 on shared placement. I would like to share my professional opinion regarding this bill and have this letter entered into testimony at the Public Hearing scheduled for April 20, 1999 at 1:00 p.m.

The idea that parents should equally parent their children is a good premise. However, that is not the case in every family nor may it always be best for the children when the relationship ends.

The most important element that would be eliminated with this new bill is the standard of "what is in the best interest of the children." This bill does not protect the children and their rights. This bill protects parents' rights. Issues such as the parents' ability to parent based upon their emotional/mental health, drug or alcohol abuse, domestic violence and child abuse would no longer be issues addressed unless a child is found to be in need of protection (CHIPS). Children would be considered no different than a piece of furniture in the property settlement where everything is divided in half. The proposed bill changes the standards not only for divorcing couples but for parents in a paternity situation.

Children do need a relationship with both parents. A 50-50 placement schedule does not guarantee that the parent-child relationship will be better than a parent-child relationship with

parents who may not have equal periods of placement with their children. It is not the amount of time that makes a good parent-child relationship but what each parent does with the time he/she has with their child(ren).

Not all families are the same. Each family parents differently. Some parents when together choose to have a more traditional style family where one parent stays home with the children and the other parent works. Why, just because the relationship dissolves, would equal shared placement be best in that family when that was not what they agreed to do when they were together? In the more traditional style families, the children are familiar with having one parent being more of a primary parent. Children need consistency in turbulent times, especially when their family unit is changing.

Parents who cannot communicate and work together regarding their children and continually place their children in the middle of their battle are unable to separate what is best for their children from their own needs. Children are used as pawns between parents to gain power or control. A 50/50 shared placement may not always be the best for the children in these situations. Since parents' and children's needs are so diverse, each family should look at a placement schedule that fits the needs of their children.

This bill places the rights of the parents higher than the rights of the children. This bill would put the children on the same level as a piece of property which is divided in the settlement on a 50/50 basis. Children are not and should not be treated as property. The children become the forgotten element in SB107.

In addition to removing the most important component of the existing law, there are many other changes in the proposed legislation that would greatly change the law as we know it today.

- The proposed bill would remove the ability of the courts to make any decision regarding legal custody and physical placement other than shared placement. The court would no longer be able to make a finding on sole legal custody or custody to a 3rd party such as the Department of Health and Human Services. The court would not be able to make a finding on placement to one parent based upon what was in the best interest of the children. This greatly diminishes the power of the judicial system. The court needs to be able to make a finding based upon the "Best Interest" standard in order to protect the children from parents who continue to battle and place their own needs ahead of the needs of their children or from parents who suffer from mental illness, drug/alcohol problems, or are abusive.

- The proposed bill eliminates the use of a GAL except in a CHIPS (Child In Need of Protective Services) or a minor parent in a paternity action. Children need representation for what is best for them. What may be best for each parent, may be

different than what is best for each child. Parents have the ability to hire an attorney to represent their rights. Since it is the children who the battle is centered around, shouldn't their needs and rights be protected?

- The proposed bill excludes decisions of school and religion as a joint custodial decision. Religion and school decisions are key components of joint legal custody today. Why are these decisions being taken out of the joint custodial realm and who will make those decisions? If parents are to have joint custody and share placement, they need to be able to communicate on major decisions. When one parent intimidates or controls another parent, making joint decisions is impossible when one parent is in a one-up position.

- The bill removes the statutory provisions, of making no modifications of custody or placement within the first two years of an order unless both parents agree or the burden of harm is shown. The current law provides some stability to the children so issues of placement can't keep coming up. This bill would allow modifications at any time. Again, this would not be best for children since there would be no stability after a Judgement was made. It appears that SB107 would allow modification for equal shared placement but not the reverse and have placement revert to primary placement unless a child is found to be in need of protection.

- The proposed bill would prohibit a parent from moving out of the child's school district vs. as is now 150 miles or out of state. This would limit the parents' ability to improve oneself through job promotions or schooling. Limiting both parents to remain in the child's school can be detrimental to the parents and the children especially if there is domestic violence. Families who live with constant fear of intimidation, control, emotional, verbal and physical violence should not be forced to have to live in the same community where the cycle of abuse will continue.

- The proposed bill changes the current law regarding paternity actions in that no child support would be paid until paternity is adjudicated. That means there would be no back pay for the birth of the child or back child support.

- The proposed bill changes the existing law for mediating custody/placement disputes. The mediators would no longer be able to determine if mediation is not appropriate based upon the parents' use of chemical substances, mental or emotional health issues, child abuse, or domestic violence. The new law states that the parents' health or safety has to be in danger in order to suspend mediation. The mediators will be limited to mediate parents to a 50-50 shared placement schedule under the proposed bill. This is not mediation but arbitration in that if the parents can not agree to a placement schedule, the court will have to order 50-50 shared placement.

This bill renders the mediators helpless because the needs of the children are not being addressed--only the needs of the parents.

- The proposed bill changes the emphasis of custody/placement evaluations from that of making a recommendation to the court of what is in the best interest of the children to unless a CHIPS is founded, placement is 50/50.

In looking at the historical perspective, in the 1950's and 1960's custody and placement was generally given to the mothers with fathers having visitation on alternate weekends. In the 1980's the current system came into being because there was an outcry that not all families should be categorized in the same manner. It appears we have now regressed to the point that all families should again be categorized in the same manner without any consideration of individual needs, especially the children.

In conclusion, I would like to state that this bill has some merit, especially in the area of educating parents on the effects of children regarding a break in family relationships, co-parenting skills and parenting. However, this bill in its current form is horrendous for children. If parents are fighting so hard to protect their children, then why is this bill only protecting the parents? I am deeply concerned of what may happen if this bill is passed in its current form. The Outagamie County Board passed Resolution No. 53--1997--1998 regarding their concern of Senate Bill 202 of which AB442 and SB107 is almost the identical bill. I am enclosing a copy of the Outagamie County Board Resolution. If you have any questions, please feel free to contact me at (920) 832-5198.

Sincerely,

Barbara Barczak

Barbara Barczak, MSW
Director
Family Court Program

BB/kk

cc: Sherri McNamara, Legislative Aide

David W. Perez, J.D.
9300 North Bethanne Drive
Brown Deer, Wi, 53223

Re: Equal Shared Parenting Bill, SB107

To: Senator Gary George and the members of the Committee on the Judiciary and Consumer Affairs.

I am writing to express my support for the Equal Shared Parenting Bill , SB107.

I went through a divorce in 1992, and I remember my shock and dismay as my lawyer explained item after item of the laws and legal climate in the State of Wisconsin. I could not conceive how the laws in this State with regard to child custody, child support, and child placement could have possibly been written with fairness and justice in mind. Instead, they were so comically and absurdly biased and anti-father that I would have laughed if it did not hurt so much.

Since that time the laws with regard to child support in split placement situations have improved somewhat, but we have a long way to go in this State with regard to custody and placement.

The Equal Shared Parenting Bill would be a wonderful improvement at last. The only thing shocking about this Bill is that it is not yet the law in Wisconsin. In reality what you have before you in the Equal Shared Parenting Bill, SB107, is a piece of egual rights and civil rights legislation. I urge you to support it and do your utmost to bring fairness and justice to family law in Wisconsin.

Sincerely,

David W. Perez

David W. Perez

Laurie Jorgensen

*1909B Church St. * Stevens Point, WI 54481 * (715)342-9302*

April 16, 1999

Senator Gary George
P.O. Box 7882
Madison, WI 53707-7882

Post-it® Fax Note 7671	Date	# of pages ▶
To Sen. Gary George	From Laurie Jorgensen	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # (608) 266-7381	Fax #	

Dear Senator George,

I cannot attend the public hearing on Tuesday, April 20, on Senate Bill 107. Please consider having another hearing in a different part of the state. Statutes related to family law and child custody impact such a broad range of the public. Legislators need to come to other parts of Wisconsin to listen to citizens.

I was distressed to hear the details of Senate Bill 107 which seeks to eliminate the crucially important standard of "best interests of the child" from the statutory language in Wisconsin. As a person who works in the court system, who has observed divorce and custody hearings in six Wisconsin counties, I feel that removing that language from the statute will remove a criteria that reminds judges of what issues of placement are about: WHAT IS BEST FOR THE CHILDREN. Not how the parties feel, or how angry they are at each other, or who can afford to hire the most articulate lawyer.

If the child is fortunate enough to have a loving relationship with both parents, of course it is in that child's best interest to continue that contact. In situations where there has been domestic violence, however, the offending parent has often hit the child's other parent, broken household possessions, killed the family pet and threatened the child's life. The best interests of *this* child may be for the violent parent to have supervised access to the child, or NO access until safety can be established. If a victim of domestic violence tries to leave the violent relationship, access to the children often continues the reign of terror for the family.

Each year, victims of domestic violence are murdered in front of their children or family members. In 1997, a young woman in Neillsville was shot to death, ***as was her three year old son***, by her husband who had no prior convictions for domestic violence. In 1998, in Wisconsin Rapids a young mother was shot to death, ***as was her 10 week old infant son***, by the child's father, who had no prior convictions for domestic violence. Convictions can be one indicator of danger, but for the vast majority of children who are at risk from family violence, convictions do not exist.

Please reconsider the details of this Senate Bill you have introduced. And please, schedule more public hearings than the one you are holding in Madison on April 20. Thousands of families will be effected by this bill. Many of them cannot travel to Madison to tell you their stories, but their voice deserves to be heard!

Sincerely,

Laurie Jorgensen

Laurie Jorgensen

Dorchester man to be tried in deaths of wife, son

By Pat Adamson
Special to the Journal Sentinel

Neillsville — A Dorchester man will be tried on charges he murdered his wife and son just hours after being released from jail in July, a Clark County circuit judge ruled Tuesday.

"I heard her screaming 'Don't do it'" testified Clint Penny, who said he witnessed Dale Hamann, 26, gun down his 22-year-old wife, Marie. "I saw the bullet come out of the gun and her go down."

According to court testimony, Hamann had gone to the trailer of his estranged wife when she called police for help.

Friends and relatives in the courtroom wept as a tape-recording of the call Marie Hamann made to the Clark County Sheriff's Department re-created her screams that her husband was breaking into their trailer home. Seconds later, she told the dispatcher he was in the home with a gun and she was going to flee. The phone then dropped; a few seconds later, more screaming and gunshots were heard.

First responders arrived and found Marie Hamann and the couple's 3-year-old son, Dwayne, dead in front of the home.

"I seen Dale walking out with his son," said Amy Fredrick, who lived near Hamann. "Marie was laying in front of the trailer." She added that her 5-year-old son had been playing with Dwayne that evening.

Experts said Dwayne died from a single gunshot wound to the face and Marie died from three gunshots to her body.

Lonnie Ulrich, a friend and neighbor of the Hamanns, testified that he arrived home at 10 p.m. and found several messages from Dale Hamann on his answering machine. In a message before the shooting, he said he wanted to meet Ulrich at a bar to talk. In a later call, Hamann apologized and said "he couldn't take it anymore," Ulrich said.

Hamann was arrested the next day while walking through a field. Police said after Hamann was questioned in jail, he took them to a wooded area where he had hidden the murder weapon.

Detective Robert Powell said Hamann said he was upset that his wife was seeing another man. It also bothered him that his son had called her boyfriend "Dad."

Clark County Circuit Judge Michael Brennan ruled there was enough evidence for Hamann to be tried on the two charges of first-degree intentional homicide. An arraignment date has not been set.

Hamann remains in jail in lieu of $250,000 bail.

Victims' names released

More tests ordered to determine who pulled the trigger

By TROY LAACK and MARK SCARBOROUGH
Tribune Staff Writers

The community was winding down from a long weekend off when a double homicide and suicide shooting incident began to tragically play out with a hang-up 911 call at 11:37 p.m. Memorial Day.

Travis P. Diercks, 21, Vesper, apparently used a 9 millimeter, semi-automatic handgun to shoot his 2-month-old son, Tanner JayLee O'Shasky; his estranged girlfriend, Jamee L. O'Shasky, 23, and himself in O'Shasky's residence at Timber Trails Apartments, 3211 Franklin St., said Acting Police Chief Michael Rude.

All three victims were shot in the head, Rude said. Police are waiting for the results from a gunshot residue test to determine if Diercks was the shooter. Police also are waiting for the State Crime Laboratory report to indicate the sequence of the shootings. The apartment will remain sealed until the autopsy is completed.

Police found a note in Diercks' car, referencing notes he had left at his residence, Rude said.

"The motive at this time is unclear," Detective Tad Wetterau said. "It will take some time to clearly identify why it happened."

A dispatcher at the department advised that, based on background noise on the line, the call sounded like a domestic dispute, Rude said. The call was traced to O'Shasky's residence.

The officer dispatched to the scene was at the bottom of the stairwell when he was confronted by Diercks, who was at the top of the stairwell, Rude said. The officer saw Diercks with the gun and saw him work the action that makes it ready to fire.

Diercks ordered the police officer to leave the residence, "to get out of the apartment." Instead, the officer "began issuing verbal commands" to Diercks, Rude said. "The officer told him to step out so he could see him. The officer told him he wanted to talk to him."

According to Rude, Diercks responded by telling the officer, "Yeah. Yeah. OK. I'm coming out."

That was when the officer heard a series of shots being fired. "The officer called for

Please see VICTIMS/2A

■ Restraining order/2A

Submitted photo

Jamee O'Shasky holds her son, Tanner JayLee O'Shasky, in a recent photo supplied by her family.

VICTIMS

Continued from 1A

backup, and a special response team was immediately notified by radio," Rude said. "They entered the apartment and found an apparent double homicide/suicide scene."

Police didn't enter the apartment immediately because they didn't know if there were hostages or if Diercks actually shot at the officer, Rude said.

"I don't trade a life for a life," Rude said. "Some people don't like that. My officers don't get up and walk away after being shot. When cops get shot, it's usually in a stairwell or a hallway. It's like shooting fish in a bowl. That was one of the most intense situations I've had since I've been here."

"It's a helpless feeling," Wetterau said. "(The officer) couldn't have done more than what he did."

Officers had to undergo a critical incident debriefing afterward, Rude said. "You don't just send people home after something like that."

He said police wanted to be sensitive to the feelings of all of the victims' families. "We don't want to traumatize others. That's why we're careful of what we say."

This is not the first time the O'Shasky family has known tragedy. Jamee's younger sister, Jenna, died June 5, 1991, of leukemia. "That made Jamee want to be a nurse," said Donald O'Shasky, their father.

TO ROOM 201 SENATE BILL 107
GEORGE-WELCH + DARLING

04.19.99 PAGE 1

TO WHOM IT MAY CONCERN.

ON NOV 19, 1991 TWO DAYS AFTER I GOT OUT OF THE POLICE ACADEMY IN WAUSAU MY THEN WIFE COERCED OUR TWO CHILDREN TO TELL WOOD CO. AUTHORITIES THAT I WAS SEXUALLY ASSAULTING OUR DAUGHTER AND BEATING BOTH OF OUR CHILDREN WITH A BELT. I WAS FACING 1st DEGREE SEXUAL ASSAULT. I WAS GIVEN PAPERS TO GO TO A CHILDREN IN NEED OF PROTECTIVE SERVICES HEARING. I TOOK A LIE DETECTOR TEST IN MADISON AND EVERY THING WAS DROPPED. IN JUNE 1992 OUR TWO CHILDREN WERE RE-INTERVIEWED BY WOOD CO DETECTIVE SAYING DAD NEVER DID THIS MOM MADE US LIE. WOOD CO WOULD NOT AND DID NOT CHARGE MY EX-WIFE. I WAS TOLD JUST RECENTLY BY LT. LEVENDOSKE OF WOOD CO THAT WE DON'T HAVE TO DO ANY THING FOR YOU. THE ORIGINAL GUARDIAN AD LITEM MADE AN APPOINTMENT TO SEE MYSELF AND OUR CHILDREN BEFORE THE HEARING. HE NEVER SHOWED UP. HE RECOMMENDED THAT MY EX GET CUSTODY AND THAT IS USUALLY WHAT THE JUDGE GOES BY. MY EX GOT CUSTODY.

I WAS PHYSICALLY ASSUALTED TWICE IN MY DRIVE WAY BY MY EX'S NEW HUSBAND. WOOD CO WOULD NOT CHARGE HIM. I WAS TOLD TO STAY IN MY HOUSE WHEN HE CAME ON THE YARD BY WOOD CO SHERIFF DEPUTY. I AM THE TOWN CONSTABLE HERE IN THE TOWN OF SIGEL AND I AM STATE CERTIFIED AS A POLICE OFFICER.

IN DEC 1995 I TOOK MY EX BACK TO COURT TO TRY TO GET CUSTODY OF OUR CHILDEN. MY EX HAS A TOWN OF WESTON POLICE OFFICER FROM MARATHON CO COME TO TESTIFY AGAINST ME. I LOST AT THE HEARING.

FREDERICK NEUMANN PAGE 1

TO ROOM 201 SENATE BILL 107
GEORGE-WELCH + DARLING

I SPENT $10,000.00 FOR LAWYER FEES. I WENT AND TALKED TO THE OFFICER AND SHOWED HIM A COPY OF AN INTERVIEW MADE BY THE SCHOOL PRINCIPLE OF OUR SON SHOWING THAT OUR SON WAS COERCED BY MY EX THE OFFICER TOLD ME HE WAS SORRY, THAT THIS WAS A CIVIL MATTER. HE WOULD HAVE NO MORE INVOLUEMENT AND THAT WAS TO I TRY TO STRAIGHTEN THINGS OUT.

IN MAY 1998 I WENT BACK TO COURT TO TRY TO GET MORE VESITATION. I EXPLAINED TO JUDGE ZAPPEN THAT I DIDN'T GET MY COURT ORDERED VESITATION. HE SAID - JUST SOME MISUNDERSTANDING. JUST FORGET IT. ALSO AT THE 95 HEARING THE SOCIAL WORKERS REPORT STATED THAT I DID NOT BEAT OR ASSUALT OUR CHILDREN. JUDGE ZAPPEN TOLD ME TO FORGET IT AND GET ON WITH MY LIFE. THE JUDGE WOULD NOT TALK TO OUR CHILDEN TO FIND OUT THE TRUTH. THE JUDGES RULING IN MAY of 98 WAS - FREE IF YOU WANTED TO SEE YOUR CHILDEN MORE YOU SHOULD HAVE NEVER GOTTEN DIVORCE.

ON FEB 14, 1999 OUR SON IS 15 NOW. HE RAN AWAY FROM HIS MOTHER WHILE IN HER CUSTODY. SHE FINALLY AGREED TO LET OUR SON LIVE WITH MYSELF. AT THE HEARING I WAS GRANTED TEMPORARY CUSTODY of OUR SON. OUR DAUGTER WILL BE 12 ON APRIL 30 AND STILL LIVES WITH HER MOTHER.

WHY WASN'T MY EX EVER CHARGED. AND WHY WASN'T OUR CHILDRE EVER PROTECTED? PLEASE VOTE TO ACCEPT SENATE BILL 107

Frederick J. Newman
CONSTABLE TOWN of SIGEL - WOOD CO.
6381 COUNTY TRUNK S
RUDOLPH WI 54475
(715) 435-3106

April 19, 1999

Testimony of James K. Olson on SB 107

The purpose of my testimony is to try to articulate how Wisconsin Family Law is seriously flawed and outdated with regard to the "best interest" of the children and needs reform.

The first issue I believe that needs reform is the right (under WI law) for a custodial parent to move a child from a non-custodial, involved parent 150 miles away for basically no reason. This is not in the "best interest" of any child unless there is some form of documented abuse. This is, however, in the best interest of the adult who wishes to move. One of the excuses that I have heard is for financial reasons. This reason is an insult to my intelligence. If the State of WI were truly intent in the "best interests of the child" then it wouldn't allow the child to be torn from his/her friends, school, church, stability and father. It's time Legislators and parents reform the Family Law statutes to foster healthy relationships that will benefit the children when they grow to be adults. The latest research shows that when ***BOTH*** parents stay involved with children they do better at school and socially by far. When the parents live close to each other, they can give kids the support they need. The current system is a failure as evidenced by the youth crime rate and the state of our culture. It is the responsibility of BOTH parents to parent a child. The state should get out of the way and let parents parent.

Passing laws that undermine the dignity of the non-custodial parent isn't working. Our laws for divorced parents are a mess. Part of the mess caused is due to the irresponsibility of the parents to divorce rather than do the right thing to raise their children. Even so, the parents are still the best hope for their kids. The State is not. If family law was equal to both parents and enforced visitation and promotes respect for both parents, it will do much for parents to respectfully face their responsibilities. Laws that do not foster equality and dignity for both parents are an insult to our most precious resource, our children.

As the father of our child, I can tell you there isn't one social worker, physcologist, court commissioner, guardian ad-litem or other lawyer or judge that is better equipped to parent our child than her mother and myself. It is easy to recommend, theorize and give opinions while the parents suffer the consequences of professionals being wrong. Psychiatry is not a science. I am keenly aware of the consequences of wrong opinions of these professionals.

As an elected official, I am aware of responding to taxpayers with courtesy, dignity and respect in a timely fashion. I am thoughtful in my responses and always try to explain the truth to anyone who calls me. I don't make deals or mislead anyone. My personal integrity is way to value by me. I only wish I could receive half of the respect from our Judicial System.

I would greatly appreciate having a discussion with any or the entire panel at any time. If Senator George or any of you would like to discuss these issues, please feel free to contact myself or let Senator Rude's office know. I regret not being able to attend today however my public duties do not allow me to.

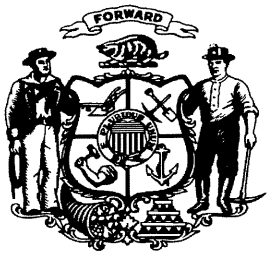
Thank you for your time.

Sincerely,

James K. Olson
515 - 15th Ave. N.
Onalaska, WI 54630
608-781-6028

City Councilman
Onalaska

State of Wisconsin



GARY R. GEORGE
SENATOR

TO: Members, Senate Committee on Judiciary and Consumer Affairs

FROM: Dan Rossmiller, Clerk
Senate Committee on Judiciary and Consumer Affairs

RE: Materials Relating to Items Scheduled for Hearing on March 17th

DATE: April 23, 1999

Attached please find copies of written testimony received by the committee regarding Senate Bill 107, relating to the standard in child custody and placement determinations.

We are still receiving written materials on SB 107 by mail and by fax. I will copy and send those in a separate packet.

I will also send materials on SB 63 in a separate packet to those members who were not present for that portion of the hearing.

Sept. 1-99

Wisconsin Senate Bill 107
"Equal Shared Parenting

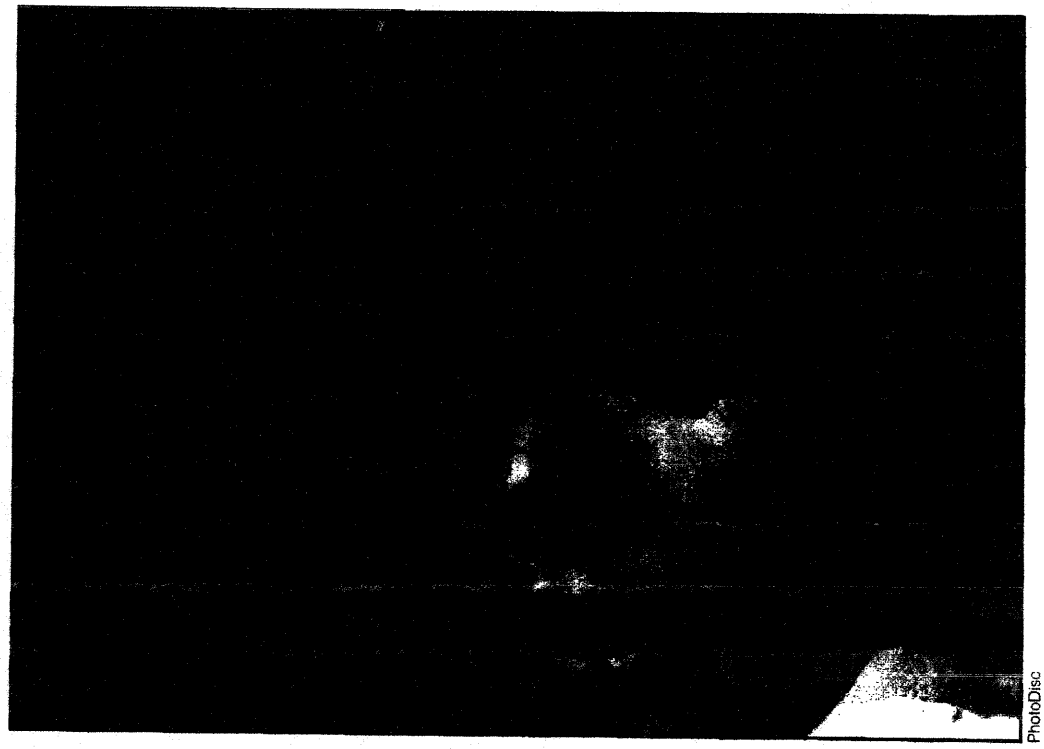
My name is Richard Merton Leistikow. I reside in Friendship, WI. I have attended the public hearing previously, here in Madison, Wisconsin and today I am again here, on Sept. 1, 1999 to deliver 5 pages of "Beware The Child Protectors" It gives examples of what is going on and is happening to families and children in other states like Utah, New York, Alabama, Hawaii, Massachusetts, Arkansaw, and other states.

As I see it, on page 13, J. Study of the guardian ad litem system, paragraph 1, I suggest that the child psychologists, child psychiatrists, child therapists, social services, and their like - be NOT considered for being appointed to act as guardians ad litem.

After you read the 5 page, attached enclosure you'll see why. Our country and our state is being led down the path that Nazi Germany once followed. These socialist, psycho-babalists must be kept out of the family arena. Only parents are the proper two people to raise and control their children's destiny - not the socialist elite.

Sincerely
Richard M. Leistikow

Beware the Child Protectors


PhotoDisc

When Salt Lake City police and caseworkers from the state Division of Child and Family Services (DCFS) surrounded the home of Janet Adolf on June 4th, they were not responding to an accusation of child abuse or neglect. The armed raid had been staged to seize Mrs. Adolf's eight-year-old daughter, who wasn't at home — although her three terrified siblings were. According to Mrs. Adolf's attorney Michael Humiston, the order had been issued because he had advised caseworkers of his intention to monitor their visits to Mrs. Adolf's home in order "to protect Janet's rights."

As the case is described by Humiston, Mrs. Adolf's problems began when her eight-year-old daughter was "intimidated" into making allegations of sexual abuse. Although the family's original caseworker, Kirk Soderquist, "tried to tell the court that there was no basis to the allegations," the youngster was removed from her home and temporarily placed in foster care; Soderquist was removed from the case and replaced with another caseworker.

"What Rights?"

After a month in a foster home, the child was returned to Mrs. Adolf and a second caseworker was assigned to make regular home visits. Humiston left a message with DCFS announcing his intention to "coordinate" the visits, so that he could be present to protect "the family's Fourth and Fifth Amendment rights." According to Humiston, when this was explained to Judge Sharon McCully of Utah's Third District Juvenile Court — who issued the order that led to the June 4th raid — she exclaimed, "What rights?"

Humiston, an attorney from Heber City, Utah, contends that the State of Utah has conducted "a systematic reign of terror." "By law, parents can be anonymously accused, and never get to face their accusers," observes Humiston. "There's no right to a jury, no right to remain silent, and no presumption of innocence. Worst of all, all proceedings are conducted in secret. The State regularly terminates parents' rights without ever showing that the parents are unfit."

In early March, Humiston filed a $500 million class-action suit against Utah Attorney General Janet Graham and several other state officials on behalf of five families whose children had been seized by the DCFS. According to Humiston, the amount of damages sought in the lawsuit is equivalent to the amount of child welfare subsidies received by the state of Utah since 1994.

The situation described by Humiston is by no means unique to Utah. Across the United States, thousands of families have been ripped apart by child "protection" bureaucracies. Parents in such circumstances find that if they have been "hot-lined" — that is, reported anonymously by a dutiful citizen, teacher, or acquaintance — they enjoy none of the rights and immunities associated with due process. Acting in the "best interests of the child," social workers can terminate parental rights on a whim, and order police agencies to enforce those whimsical decisions at gunpoint.

Even more ominously, child "protection" agencies across the nation, following a totalitarian blueprint and fueled with taxpayer dollars, are seeking to create a compulsory "home visitation" system, through which agents of the state will be able to subject parents to regular scrutiny — and determine whether or not children, as "state property," will be permitted to remain with questionable parents. Supporters of this concept have worked stealthily for nearly a quarter of a century to create a national home visitation network. Should they succeed, armed raids similar to the one mounted against the home of Janet Adolf may become quite common.

"Village" Takeover

During her recent "listening tour" of central New York State, Hillary Rodham Clinton had scheduled a visit to Elmira to call attention to that city's "early childhood intervention program" — the Pre-natal and Early Infancy Project (PEIP). Christopher Caldwell of the neo-conservative *Weekly Standard*, who covered the First Lady's Senate campaign swing, explained that PEIP is a child abuse program that "involves sending social workers on regular-

ly scheduled *pre-emptive* visits into the homes of children whose parents are deemed to put them 'at risk' of wrong parenting."

In her ghostwritten manifesto *It Takes a Village*, Mrs. Clinton gushes, "I cannot say enough in support of home visits" by government social workers. After all, she declares, "Keeping children healthy in body and mind is the family's and the village's first obligation," and in those "terrible times when no adequate parenting is available ... the village itself must act in place of parents. It accepts those responsibilities in all our names through the authority we vest in government...."

Insisting that in matters of suspected abuse or neglect of children, "a child's safety must take precedence over the preservation of a family that has allowed abuse to occur," Mrs. Clinton contends that "social workers and courts should make decisions about terminating parental rights of abusive parents more quickly, rather than removing and returning abused children time and again." Government-authorized "home visitors" of the type extolled by the First Lady are authorized to pass judgment on the "adequacy" of parents, and to summon child protection workers should it be decided that the "village" must now "act in place" of inadequate parents.

Like most advocates of home visitation programs, Mrs. Clinton invokes the tragedy of child abuse to justify state intervention within the home. However, as the Physicians Resource Council (PRC), an affiliate of the Alabama Family Alliance, documents in a new study entitled *The Parent Trainers*, "most advocates of home visitation ... clearly state that their goal is to institutionalize home visitation services for *all* new parents." Deborah Daro, a former research director for Prevent Child Abuse America (PCAA), candidly explained that the objective "is to bring home visitation services to *all* new parents." The U.S. Advisory Board on Child Abuse and Neglect, which was empanelled by George Bush in 1991, reached the same conclusion, calling for "the sequential implementation of a universal voluntary neo-natal home visitation system" (which by strict definition could not be at once "universal" and "voluntary").

Home visitors — who are also called Family Support Workers (FSW) — serve three missions, according to the PCAA. First, "being a teacher is central" to the FSW's mission. Second, "the home visitor is also a friend, adviser, and advocate for parents," and is responsible for helping forge links between the family and local "community service" agencies. "Finally," states the PCAA, "the home visitor is a monitor" who is expected to develop a "collaborative relationship" with the local Child Protective Services (CPS) agency, and in that capacity she is expected to "set up regular consultation sessions with CPS to review 'high risk' cases" and to take "appropriate actions ... when abuse or neglect or imminent harm are suspected." One FSW explains that "because so many of our families are at risk of child abuse and neglect, our watchful eye can see the potential for danger before it becomes a real problem and do something about it."

In other words, home visitors/FSWs are the designated "watchful eyes" of the state within the home, empowered to "teach" parents, shepherd them into the suffocating embrace of the welfare state, and arrange for the seizure of children from parents deemed unsuitable. Furthermore, since enrollment in most home visitation programs begins with the birth of the child (and in some, enrollment begins *before* birth), the clear purpose is to make the state, by way of the home visitor, the custodian of first resort for the children involved.

"We must remove the children from the crude influence of families," Soviet Communist Party educators were instructed at a conference in 1918. "We must take them over and, to speak frankly, nationalize them." Dr. C. Henry Kempe, the most influential American advocate of home visitation programs, subscribed wholeheartedly to that concept.

Dr. Kempe was co-author of the groundbreaking 1968 book *The Battered Child*, which inaugurated the contemporary "war on child abuse." Kempe's work was cited as authoritative by the U.S. Advisory Board on Child Abuse and Neglect, and by the American Academy of Pediatrics when it recommended in 1998 that pediatricians should "advocate at the local, state, and national levels for the funding ... of quality home-visitation programs." Not surprisingly, Kempe also earned favorable mention in Hillary Clinton's *It Takes a Village*. What makes Kempe's influence troubling is the fact that he was an unabashed proponent of the totalitarian view that children are "state property," and that home visitation should be "a compulsory, universal service" imposed on American families. In a June 9, 1975 lecture to the Ambulatory Pediatric Association in Toronto, Dr. Kempe set forth his vision of a system intended to enforce "children's rights" within the home — a vision remarkably similar to the one expressed by Hillary Clinton in her law journal writings and in *It Takes a Village*.

"A free society does not want to interfere with the rights of parents to ... raise their children in any way they desire," observed Kempe. "But, far too often, children are considered the property or chattel of their parents, many of whom think that they are entitled to dispose of them at will." Invoking the common-law maxim, "A man's home is his castle," Kempe insisted that "all too often the child is a prisoner in its dungeon. It is a dungeon of constant anger, dislike, aggression, or even hatred."

While most people would acknowledge that such dismal, tragic circumstances do characterize the plight of a relatively small number of children in our country, Kempe insisted that the conditions he described were normative rather than exceptional, and thus justified a "limited intrusion into family privacy by society" in the form of "health visitors." Such visitors would be regarded as "fully capable of determining which children are at risk, whether they are thriving adequately or not doing well," and help to "form a bridge between these families and the health care system." Regular intervention in the home would continue until the child reached school age, at which time "many of the health visitor's duties will be taken over by the teacher, the school nurse, or the school nurse practitioner."

Kempe emphasized that the regime he described would not be limited to troubled families; rather, participation in the home "health visitor" program would be compulsory for all, "similar to the concept of compulsory, universal schooling": "It seems incomprehensible that we have compulsory education, with truancy laws to enforce attendance and, I might add, imprisonment of parents who deny their child an education, and yet we do not establish similar safeguards for the child's very survival between birth and age 6."

Lethal Guardians

It is important to recognize that Kempe, in well-established totalitarian fashion, assumes that parents are more dangerous to children than strangers acting as officers of the state, which is, after all, the most pow-

Reuters

Hillary has been leading champion of government intervention in parental concerns.

erful instrument of organized coercion and lethal violence. Once again, Kempe's priorities are in harmony with instructions given in 1918 to Soviet educators, who were told: "From the first days of their lives [Soviet children] will be under the healthy influence of Communist children's nurseries and schools. There they will grow up to be real Communists."

Kempe also emphasized that a stealthy, incremental approach would be necessary in order to construct a nationwide home visitation system. The program could begin in "any state, or any of our 3,362 counties," he told his audience in Toronto. Furthermore, he admonished advocates to be flexible enough to adjust their proposals to meet local conditions. "If it should turn out that local or state health departments are not very interested or are unwilling to undertake the health visitor program, there may be other approaches for its implementation," he observed. Pointing out that the state of Michigan had "placed the charge on the [state] Department of Education to assure that everyone is 'educable,'" Kempe explained that this mandate "gives the Department the right to provide screening procedures and comprehensive health care to make every child school-ready."

This same approach has been used by the federal government in recent years to justify intervention in the home at ever-earlier stages in the life of a child. The Clinton Administration's Goals 2000 — which was an outgrowth of a national education agenda created by the Bush Administration in 1989 — provides millions of dollars in federal subsidies for state early-intervention programs, all of which are justified by the supposed need to ensure that children arrive at the doorstep of government schools "ready to learn."

State Property

According to Kempe, "those of us who are qualified to assess and correct the problems that produce child abuse and 'failure to thrive' should have the authority to intervene effectively for the good of the suffering child." The range of interventions anticipated by Kempe is limitless, given that he explicitly described the child as the property of the state.

During the 1992 presidential campaign, Hillary Clinton provoked widespread criticism for her suggestion that children should have the right to "divorce" their parents — but, once again, she was merely building upon Dr. Kempe's work. "When marriages fail, we have an institution called divorce, but between parent and child, divorce is not yet socially sanctioned," Kempe commented during his 1975 lecture. For parents deemed unsuitable by the state, "voluntary relinquishment [of parental rights] should be put forth as a desirable social act — to be encouraged for many of these families," Kempe declared. "When that fails, legal termination of parental rights should be attempted."

From Kempe's perspective, parents exercise authority over their children only by the grace of the state, and the state has the right to revoke parental authority at any time: "Where the state is supreme, the particular problem is easily managed; in a dictatorship each child belongs to the state and you may not damage state property. The really first-rate attention paid to the health of all children in less free societies makes you wonder whether one of our cherished democratic freedoms is the right to maim our own children."

Of course, it is nonsense on stilts to say that children who live in "less free societies" have been the beneficiaries of "first-rate attention." When Kempe offered this paean to totalitarianism, the world had not yet beheld the horrifying spectacle of the state-run orphanages in Communist Romania, in which thousands of children lived and died in unimaginable filth and squalor. Nicolae Ceausescu, the Transylvanian despot who ruled Romania until he was murdered by his outraged subjects in 1989, articulated a statist philosophy of child care nearly identical to Kempe's, insisting that the individual Romanian child "is the socialist property of the whole society."

Communist China's child care policies are also in harmony with Kempe's vision of the child as "state property." A Chinese population control commissar explained in 1979: "China is a socialist country. This means that the interests of the individual must be subordinated to the interests of the state.... Socialism should make it possible to regulate the reproduction of human beings so that population growth keeps in step with the growth of material production." Since children are "state property" in Red China, those conceived without authorization by the state are either killed in the womb, murdered through infanticide, or confined in state-run orphanages.

Steven W. Mosher, one of the world's leading experts on Red China's "one-child" policy, describes that nation's gov-

ernment-run orphanages as "killing fields." Human Rights Watch-Asia reported in 1989 that Chinese orphanages have a mortality rate of at least 72 percent, with medical neglect and malnutrition the leading causes of death. Most of the children consigned to this hell are girls; an account recently smuggled out of China described a case in which a starving girl child, desperately seeking surcease from starvation, attempted to eat the flesh from her own arm.

Such is the fate of children blessed by the "first-rate attention" provided by the "less free societies" extolled by Kempe as models for an American child care regime.

Foot in the Door

Dr. Kempe was the founding director of the Kempe National Center for the Prevention and Treatment of Child Abuse and Neglect at the University of Colorado. Kempe's successor, Dr. Richard Krugman, served as chairman of President Bush's U.S. Advisory Board on Child Abuse and Neglect, which recommended "the sequential implementation of a universal voluntary" home visitation system.

In 1985, the state of Hawaii enacted the "Healthy Start" program, a home visitation program that identifies "at risk" families through screening at birth. Healthy Start literature acknowledges that the program "evolved from the work of the Kempe program in Denver."

A recent evaluation of Healthy Start conducted by a panel of Ph.D.s found that for families enrolled in the program, "no overall benefits emerged on child development; the child's home learning environment; parent-child interaction; well-child care; pediatric health use for illness or injury; child maltreatment ... or maternal life skills, mental health, social support, or substance abuse."

However, the program was successful in its chief covert objective: the insinuation of state agents into the private affairs of a majority of Hawaiian families. Healthy Start officials, according to the PRC report *The Parent Trainers*, are now "screening over 52 percent of all new births in the state and provid[ing] services to roughly 20 percent of all newborns and their families."

In 1992, Hawaii's Kempe-inspired Healthy Start program was used as the template for the Healthy Families America (HFA) initiative, which was created by Prevent Child Abuse America (PCAA) in conjunction with the Freddie Mac Corporation and Ronald McDonald Charities. PCAA, it will be recalled, seeks a "universal, voluntary" home visitation program, and the organization boasts that "virtually all 50 states have a public/private sector task force" promoting home visitation services under various program names. "In California," notes the PRC, "programs are called 'Welcome Home Baby,' Georgia's program is known as 'First Steps,' Colorado's 'Bright Beginnings,' Illinois' 'Good Beginnings,' Massachusetts' 'Good Start,' and Arkansas' 'New Beginnings'...."

To those state-level examples, a recent report published by the David and Lucille Packard Foundation (a major corporate supporter of home visitation programs) adds Missouri's "Parents as Teachers" program; the "Nurse Home Visitation Program" — based on Elmira, New York's PEIP program — which has been put in place in Memphis, Tennessee and Denver, Colorado, "and [is] now being replicated nationally"; Arkansas' Home Instruction Program for Preschool Youngsters (HIPPY), "which seeks to prepare 3-year to 5-year-olds for kindergarten and first grade"; and the Comprehensive Child Development Program, "a five-year federal demonstration program that worked with poor families in 24 sites to promote children's development, parents' ability to parent, and family self-sufficiency." Irrespective of the program title, all elaborate on C. Henry Kempe's malignant design of using home visitation programs as an incremental means of nationalizing children as "state property."

The PCAA reports that "Healthy Family" sites, under various names, are operating in 42 states and the District of Columbia. A recent survey by the organization found that one in five parents with children under the age of one received some type of home visitation service in 1997. Furthermore, the organization's effort to make home visitation universal received a tremendous boost in the federal budget for fiscal year 1999: The PCAA received $33 million through the Child Abuse Prevention and Treatment Act, and an additional $14 million for "research and data collection." The organization's 42 state chapters also have access to Children's Trust Funds, which are financed through surcharges on marriage licenses and birth certificates, fees for vanity license plates, and check-offs on individual state income tax returns.

In addition, the PCAA "was instrumental in the reauthorization of the Family Preservation and Support Services Program (renamed the Safe and Stable Families Program)," points out *The Parent Trainers*. Federal funding for that program, which totaled $275 million in fiscal year 1999, is projected to increase to $305 million by 2001 — and a large portion of that amount will be devoted to cultivating and expanding government home visitation efforts.

Testing for Child Abuse

In order to determine which newborn children are "at-risk" and thus qualify for home visitations, observes *The Parent Trainers*, state-based "Healthy Family" groups must "gain access to medical records of women who are pregnant or have just given birth. To complete this phase, HFA programs employ 'Family Assessment Workers' (FAWs) who will screen and assess mothers to determine their risk status." In some cases, an FAW "is designated as a temporary, volunteer employee of the hospital (when she is on hospital grounds) to allow her access to medical records. In other cases, a member of the hospital staff may agree to do the initial record screen and then make referrals to the FAW. Or, the FAW may not have access to medical records, but may be allowed to enter hospital rooms and administer 'verbal screens' by asking postpartum mothers directly to answer the questions on the 15-point initial screen."

The questions in the initial screening deal with the mother's marital status and history, education, socio-economic status, family background, and the like. A "positive score on any two" of the items, notes a PCAA document, will result in a referral for an "in-person interview" involving the "Kempe Family Stress Checklist" (FSC) — ten open-ended, invasive questions presented to both parents. The FSC is supposedly designed to determine a parent's propensity toward child abuse. On each question the parent receives a score from 0 (no risk) to 10 (highest risk). According to Hawaii's Healthy Start training manual (a model for state-level programs nationwide), "a total score of 25 or above for either parent places a family in the high risk category, eligible for Healthy Start home visitor services." However, as *The Parent Trainers* points out, "A score of 25 ... is fairly standard. In other words, if either parent is classified as a 'moderate' risk on

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"At risk" families are tagged for close monitoring by "Family Assessment Workers."

any five of the ten issues listed above, that parent would be considered a high risk and in need of home visitation services."

Among typical FSC questions can be found inquiries regarding "harsh punishment"; PCAA literature emphasizes that spanking is considered a form of abuse. Having been "suspected of abuse" is another risk factor for a parent, as is being "in the midst of multiple crises or stresses," having "unrealistic expectations of the child's behavior," or perceiving a child's behavior as "difficult or provocative." Clearly the FSC is designed to define most — if not all — parents as placing their children "at risk." This is to be expected, given that the objective of "Healthy Start" and its offspring is a *universal* system — based on voluntary enrollment if possible, but employing coercion if necessary.

The FAWs charged with conducting "screenings" and arranging for home visitations are generally volunteers who may have had only a few days of training. No specialized academic background is required to become a FAW; a high school diploma or its equivalent is sufficient. (One PCAA survey found that one-quarter of all FAWs had no college training.) FAWs are encouraged to lure parents into visitation programs by offering bottles, breast pumps, or other helpful gifts to parents as a pretext for a post-hospital visit. "Comments made at a recent HFA national conference indicate 'creative outreach' may also include sending flowers to the reluctant mother on Mother's Day, or even sending flowers to the mother of the mother, if it appears she is the source of resistance," observes *The Parent Trainers*. "It may also include taking the reluctant mother out to the beauty parlor if this may gain her confidence and make her feel obligated to participate in the program."

To illustrate the success of such tactics, an Arizona program reported that "90 percent of mothers offered the program accept HFA services." Furthermore, PCAA urges FAWs to make "persistent outreach efforts" for several months, if necessary, until reluctant families "have explicitly indicated that they do not want the service." Recalcitrant parents, according to PCAA, are "often at greatest risk and, therefore, are in greatest need of the service." Should Kempe's vision of compulsory home visitation to protect children be consummated, it stands to reason that rebellious parents would be the first to have their children taken from them — as the case of Janet Adolf's family in Salt Lake City would seem to illustrate.

Levels of Involvement

As is almost always the case with any grand, malevolent scheme, the Kempe-inspired home visitation campaign makes malicious use of the worthy motives of otherwise decent people. Diana Lightfoot, director of the Physician's Research Council and co-author of *The Parent Trainers*, explained to THE NEW AMERICAN: "There are three levels at which the home visitation scheme is working. At the first, most immediate level, we have the social workers or FAWs themselves, who usually have no agenda beyond doing what they consider to be the right thing — fighting child abuse, helping children get a good start, helping parents who may be overwhelmed. And of course, these are all very commendable motives."

At the second, intermediate level, continued Lightfoot, "we have the state departments of social services and other government officials who know some part of the larger picture and consciously deceive the public about what's going on, but they believe that their noble end justifies the unethical means they employ. For a lot of state officials, the chief motivation is money; there is a lot of taxpayer money being thrown at the states by the federal government for these programs. At the top level we have the ideologues — the Hillary Clinton, Janet Reno, and Donna Shalala types — who have an ideological commitment to create a certain type of society, and are willing to use the power of the government to re-structure the traditional family."

Dr. Sam Watson, Lightfoot's co-author, remarked to THE NEW AMERICAN that "Kempe, despite his reputation as a great humanitarian, praised totalitarian states and urged that we adopt a totalitarian child care policy. This is also very much the mindset of the current administration, and much of the institutionalized anti-child abuse and 'children's rights' movements. The model and demonstration programs that are springing up all over the country are the product of that same mindset as well. In some states, money from the state lottery is underwriting home visitation programs; in others it is money from the tobacco settlement. These sources of revenue have been a real windfall for advocates of home visitation."

"The seed of Kempe's vision has been planted, it has been watered with taxpayer money," Lightfoot stated. "Whether it will grow to fruition depends upon the American public. It is vitally important that we educate families and parents about the dangers of home visitation programs, and the totalitarian nature of the vision behind those programs." ■

RESOLUTION NO. 53--1997-1998

TO THE HONORABLE, THE OUTAGAMIE COUNTY BOARD OF SUPERVISORS

LADIES & GENTLEMEN: *MAJORITY*

Senate Bill 202 proposes changes to the procedures presently used in divorce and paternity actions. The proposed changes include removing the "best interest" of the child as a basis for a court's determination on custody and states that both parents are fit and have the ability to treat their children, making joint legal custody and equal periods of physical placement a requirement of the court. The proposed changes prohibit either parent from establishing a legal residence for the child outside of the child's school district. The bill further prohibits the court from appointing a guardian ad litem for minor children except in certain paternity actions. This resolution, which is similar to Resolution 82--1996-1997 which was passed by this body, opposes the proposed changes in the present statutes which were revised in 1987 by Act 355, which charged the court and the court family services to assist divorcing parents to consider the best interests of the child in issues relating to custody, physical placement, and support and to order conditions relating to the divorce with consideration of the best interests of the child.

NOW, THEREFORE, the undersigned members of the Legislative/Audit Committee recommend adoption of the following resolution.

BE IT RESOLVED, that the Outagamie County Board of Supervisors does oppose Senate Bill 202 in that it reduces the emphasis on the welfare of the child and assumes that both parents are equally capable of care which eliminates the ability of the court to make that determination, and

BE IT FURTHER RESOLVED, that the bill is opposed because it offers changes to the present statute by prohibiting the court from appointing a guardian ad litem under any circumstance in an action affecting the family with the exception of a paternity action, and

BE IT FURTHER RESOLVED, that the bill is opposed because it offers changes that affect the ability of the Family Court Services to facilitate agreements between parties regarding the minor children resulting from the marriage or union, and

BE IT FINALLY RESOLVED, that the Outagamie County Clerk be directed to forward a copy of this resolution to the Senate Committee on Judiciary, Campaign Finance Reform and Consumer Affairs, the State Bar, Family Law Section, and to the Outagamie County Delegation of Legislators.

Dated this 8 day of July, 1997.

Respectfully submitted,
LEGISLATIVE/AUDIT COMMITTEE

Norman Austin

Laurie Sternhagen

Betty Sanders

Cody Splitt

Adam Watkins

Duly and officially adopted by the County Board on: July 8, 1997

Signed: _____ _____
Board Chairperson County Clerk

Approved: 7-9-97 Vetoed: _____

Signed: _____
County Executive

Jan Raz

10120 West Forest Home Avenue
Hales Corners, WI 53130
Telephone: (414) 425-4866
Fax: (414) 425-8405

Re: SB 107 - April 19, 1999 Hearing Testimony

I would like to take this opportunity to address the concern that SB 107 removes "the best interest of the child criteria" and the role of "the guardian ad litem".

What custody and placement arrangement is " in the best interest of the child?". Under current law it is anything a judge or court commissioner wants it to be. It could be sole or joint custody. It could be anywhere between 100% to 0% placement with the mother. It could be anywhere between 100% to 0% placement with the father. A judge or court commissioner makes the ultimate decision but is the most cases he or she who has never met the child or even the parents. In contested custody cases our statutes require the court to appoint a guardian ad litem to advocate for the child's best interest. Since in almost all cases the court approves the recommendations of the guardian ad litem, the best interest of the child thus becomes anything a guardian ad litem wants it to be. The guardian ad litem is not a child psychologist, is not family therapist, and doesn't have to have any parenting experience. The only requirement is that he or she is licenced attorney and has completed just three hours of training in this area of law. For a fee a guardian ad litem will evaluate a family in a very difficult period in their life, and make a recommendation which is presumed to be in the child's best interest for the entire time the child is a minor.

In reality the success of the guardian ad litem is measured by his or her ability to settle the case and prevent the case from going to trial. While this is a desirable goal, it often results in forced compromises which have little to do with the child's best interest, leaves one or both parents bitter at each other, and deprive the child of a significant parental relationship with one parent. After the case is closed, even if the guardian ad litem is deeply concerned for the child, he or she is prohibited from any follow through. If he or she makes a bad decision, they don't have to face the consequences of this decision, its the parents and children who suffer.

Who should be making the decision of "What is in the best interest of the child?". Should it be the judge, a court commissioner, the guardian ad litem, one parent or both parents?

The United States Supreme Court has already answered this question:

In *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). It wrote
"It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."

In *Smith v. Organization of Foster Families*, 432 US 816,862-863 (1977)." it wrote
"*We have little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.*"

Thus the Supreme Court of the United States suggests that unless a parent is unfit, parents should be making decisions regarding their children, not the state.

What about in cases where the two parents don't agree?

The Fourteenth Amendment of the United States Constitution states, "*no State shall ..... deny to any person within its jurisdiction the equal protection of the laws.*" Thus our constitution tells us each parent's responsibility and right must be treated equally.

A parent's ability to make parental choices is directly related to our physical to our children. We can not make the parental decisions in the raising of our children if the other parent or the state deny us access to our children. The only way a parent can exercise this equal responsibility and right is that each must have an opportunity to assume equal physical placement of his or her children.

This bill is not a one size fits all solution. It allows parents to customize their parenting plan. It allows parents the flexibility to modify their decision in the future. It allows each parent the freedom to decide "what is in the best interest of their children?" in satisfying their equal share of the responsibility to care for their children.

SB-107 thus doesn't remove "the best interest of the child" criteria. It allows both parents to make this decision. Not one parent, not a guardian ad litem, a court commissioner or judge acting on behalf of the state. The courts role is to make sure the child has an opportunity to the fullest parental relationship with both parents and to encourage cooperation instead of fighting between the parents. **Isn't this the ultimate best interest of the child and family?**

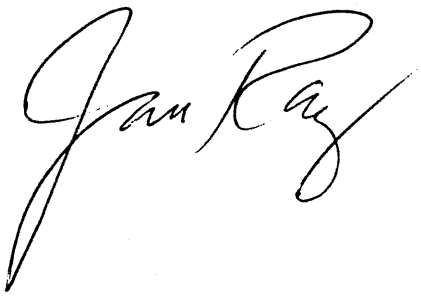
In cases where there is a concern about the fitness of a parent, this bill provides appropriate measures to safeguard children from harm similar to those that are in place for children in intact families.

About 40% of our children will live a part of their life in a family where the parents don't live together. Do we want to promote parental responsibilities in these families or do we want strangers empowered by our government to micro-manage these families and force parents to fight each other in our courts? Do we want children to grow up with both a father and a mother fully involved in their lives or do we want the state to deprive the children of one parent?

In less than three weeks, **Governor Thompson will be holding a Fatherhood Summit** to deal the problems caused by the absence of fathers in the family. More than 200 community leaders will be getting together to discuss how to reverse the trend in which our society and government policies have discouraged responsible fatherhood. While some fathers may have no interest it their children, there are many of us who do, but our role has been obstructed by mothers who do not want us involved and by government policies which force us to wage a battle against the mothers of our children and diminish our parental role. If we want fathers to assume this responsibility for our children, our laws must welcome us, not obstruct us. We must allow those fathers who do want to assume their full responsibility for their children to do so, not only because our children will benefit from our involvement but also to set an example for other fathers to follow.

Lastly it may appear this bill benefits men vs women. Most of the fathers who are being deprived of their full parental role however have girlfriends, second wives, mothers and sisters. Thus when our laws and courts diminish our parental role, this impacts women indirectly not only by having to deal with our pain and frustrations but also in their obstructed role to our children as aunts, step-moms and grandmothers. This bill helps children maintain a relationship not only with their fathers but also with the father's relatives and friends. It is not a bill that benefits only men. **It benefits men, women and our children**!

Please support this bill!



James J. Novak

TESTIMONY

TO: COMMITTEE ON JUDICIARY AND CONSUMER AFFAIRS

FROM: JAMES NOVAK

REGARDING: SB 107-EQUAL SHARED PARENTING BILL-CONCEPT OF THE "BEST INTEREST OF THE CHILD"

DATE: APRIL 20, 1999

The following was published in the **Wisconsin Lawyer** (August 1998). The article addresses the issue of how the "best interest of the child" standard actually works against children as we approach the 20th century.

How can we seriously debate the standard in Child Custody Placement decisions without bringing into the debate fathers or the substantial number of professionals who advocate for joint custody. The July article only included Senator George as a political advocate and left the impression that the professional community stands solidly against the presumption of joint equal placement. Certainly, fathers have an interest and an insight as they are normally the party who suffers from gender discrimination in the courts and from the prejudices of the quoted professionals in the article.

The laws of nature, the Wisconsin Constitution, and the U.S Constitution, and human rights guarantee equal rights to parents of children and form the basis for the presumption of joint custody at divorce.

The "best interest of the child" standard is an extension of the "tender years doctrine." Gender and race bias have disappeared in America in legal and overt formats. The gender bias hidden within the best interest of the child standard is simply that what is considered nurturing is more often than not associated with the traditional gender role of the mother. Under this hidden standard, unless a father is a better Mr. Mom than mom, then his parenting is not considered as being in the best interests of the parent. By example, this would mean that while dad earns the money to buy a baseball uniform, teaches his child how to play baseball, and takes his son to little league games, this does not really count for nurturing as after the game is over mom launders the baseball uniform. What dad has done is fun; what mom has done is nurturing. This type of mind-think by the professionals is representative of today's gender bias in family law.

Never defining the best interest of the child was fine as long as gender roles were rigid in raising children. It was always presumed that what mother did (tender years doctrine) was the child's best interest and this was rarely challenged as only in the cases of an extremely unfit mother did the standard have to be applied. Simply put, dad made the money. Mom did not have an education or job commensurate with mom's societally-defined role to raise the children. These rigid role functions in the marriage were extended into the divorce.

This all worked fine and dandy until the role functions began to change in the 1960's. Young women went to work, entered roles outside the family, and ***demanded*** *that fathers take on a substantial role in raising the children. Fathers hesitatingly entered their new role as a hands-on parent only to find that nurturing ones' children was far more satisfying than the unfulfilling and never ending demands of corporate life. Dad thus became not only involved in the details of but also in the emotional satisfaction of raising of his children . However, at divorce, mom did not want to lose her respectable role as mother, and also was interested in the short term financial benefits that accompany primary placement. But the world had changed! Dads were emotionally involved in the daily events of their children's lives with all its satisfactions and the genie was now out of the bottle. The family law system which we have in Wisconsin never considered that many fathers would actually challenge mothers over placement; the best interest of the child standard simply presumed that mom would have the children.*

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The substantial change in gender roles over 30 years has brought us numerous cases of contested custody cases which the best interest of the child standard never anticipated would arise. The "best interest of the child standard" is not only antiquated but works against the best interest of the child. In the age of two working parents to be a middle class family, our children are not suffering from too much parenting, but from too little parenting. Equal joint parenting is the best means to maintain both parents and keep them fully involved in their children's lives after divorce.

The best interest of the child standard harms children because it draws parents into an adversarial law system which furthers the hurt and disappointments of a failed marriage and even after a trial, or perhaps especially after a trial, leaves both parents so alienated from each other than they are not likely to want to cooperate in parenting their children. The best interest of the child standard harms children by transferring the family' assets from the parents to the parent's attorneys, the guardian ad litem, and the psychological professionals. The best interest of the child standard moves massive number of families into the ranks of the poor class with the commensurate effect that children suffer under poverty. The best interest of the children standard is for many families a transfer of their hard saved assets from there children's college education funds to the college education funds of lawyers, psychologists, and other upper middle class divorce professionals. No one has fought harder against equal joint placement than the family law section of the Wisconsin State Bar.

While the Bar recognizes the need for reform and even want to suggest legislative changes, they remain unable to overcome their conflict-of-interest in remaining the prime financial beneficiaries of adversarial custody conflicts. Lawyers remain in-denial of their role in furthering the conflicts of contested custody and might well need a 12 step process or just sensible family law reform without their conflicted input.

In Wisconsin, we treat property better than children. When the marital property law with its presumption of a 50/50 division of property was passed in Wisconsin, contested divorce cases based upon property division all but dried up. If Wisconsin citizens were sensible enough to treat material possessions outside an adversarial system, why can we not be sensible enough to treat our children much better than our property, recognizing that our children need all the parental involvement that they can get. Our children understand what is the best interest of the child. Ask any of them what they are concerned about in a divorce and they will readily tell you, ' I want my mother and I want my father," They fear losing either one. Our adversarial divorce system normally means that they will have one parent and one visitor, fulfilling the fear of every child of divorce. This adversarial system is fueled by the best interest of the child standard.

The best interest of the children standard motivates each parent to be destructive to each other within the context of an adversarial family law system. At trial's end, neither parent or child are better off. Families are poorer. One parent feels a winner; the other feels a loser. Children are destabilized for years to come-for life in certain ways. Only the attorneys are winners, some becoming well known winning warriors, and the attorneys, winner or loser, each walking to the bank with the hard earned assets of divorcing parents and deprived children.

Wisconsin family law's best interest of the child standard harms most children of divorce. The best interest of the child standard is not civilized behavior; it is barbaric in an age where moms and dads are both physically and emotionally involved in the raising of their children. The presumption of joint custody is good public policy, good constitutional law, and removes most custody issues from the negative aspects of adversarial family law.

Wisconsin for Children Fathers and Families

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TESTIMONY

TO: COMMITTEE ON JUDICIARY AND CONSUMER AFFAIRS

FROM: JAMES NOVAK, Past President

REGARDING: SB 107-EQUAL SHARED PARENTING BILL

DATE: APRIL 20, 1999

I wish to make three short points which I believe are relevant to the discussion of shared custody and how it effects children.

Point 1. The process of a man and a woman with children going from a loving relationship to a termination of their marriage is a personal tragedy. But these divorces are also a public tragedy because society more often than not must pay consequences for the loss of stability in their lives. This is true for both amicable and contested divorces. The studies are done, the results are clear, and the effects are being felt throughout the various social agencies in Wisconsin.

Wisconsin's system of contested custody within an adversarial system is wrong not only because it violates basic human rights of parents and children, but because the adversarial process so divides moms and dads that it makes it more difficult for them to parent their children in the future. However, both parents are needed to raise the children and the one simple truth is that while divorce ends marriages, divorce does not end both the rights and responsibilities of both parents to raise their children to become happy, responsible, and productive adults. Wisconsin needs a system in which parents are rewarded for cooperation at divorce rather than being rewarded for being the more ferocious victor within our adversarial system.

Point 2. Physical violence is often used as the reason why Wisconsin should not have shared joint physical custody. The primary thrust of Wisconsin divorce and custody law should address the vast majority where physical violence or neglect is not an issue. When I was in college, my college president said that rules should first address normal behavior and that aberration behaviors should not be the basis for the norm. Where physical abuse or neglect is proven, the presumption of joint placement can be exempted. Accusations of physical abuse or neglect are the exception not the rule in custody cases, and the laws should not be written so that the majority are facing rules set up for a minority of abusive parents. Not only are accusations the exception to the rule, but of those accusations made within the context of divorce approximately 2/3 are unfounded. Rarely is an

Today's Dads
WFCF Newsletter
Co-Editors
James Luscher
Todd Judkins

accusation of physical abuse or neglect within the context of divorce referred for prosecution which speaks to the manipulative nature of accusations during the divorce process.

Point 3. Fathers, second wives and grandparents commonly report that gender bias exists in family law when 90% of primary physical placement orders are awarded to mothers. Gender bias dies a hard death as women will attest in work situations. This gender bias in the award of primary placement actually promotes the breakdown of the family. Most marriages face times when divorce is justifiable. My 90 year old mother told me that 60 years ago people had sufficient justification for divorce, but that societal pressures kept people in relationships. Most of these people passed from one phase of marriage to another. Societal pressure was the bridge and glue for the possibility of long term marriages in which children had more stable families and a sounder future.

When we have gender bias in the placement of children, we set up a motivation within an adversarial system of winner takes all for the mother to initiate divorce. Approximately 2/3 of divorces are initiated by women, knowing that they will receive physical placement in most cases. With their income and child support they opt for short term gain. In the long term these women lose as they fail to develop their careers and retirement benefits. In the short and long term children lose whenever they lose the daily nurturing of either parent. The presumption of joint placement removes the gains from child support as a motivation or reinforcement for divorce.

We should presume that in most cases divorce harms children and Wisconsin should adopt laws which preserve and reward people for staying married. When divorce is a necessary tragedy, society should put in place laws which protect the right of children to have a meaningful relationship with both parents. Children do not ask for divorce. Most every child will say that they would prefer their mother and father to stay together. We are developing a society in which we have so many defective children that our culture is disintegrating and studies measure that most of the children with special problems are coming from single parent homes. We need to preserve the parent child bond. Children need both parents. The best parent is both parents especially after divorce.

We ask you to support and pass SB 107 as we believe it will alleviate many of the conflicts which presently exist for divorcing parents.

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TRUTH: The attempt to artificially separate two forms of parental support that ordinarily go hand in hand is a distortion of modern society. p.2

MYTH: Political extrapolations have sometimes resulted in the conculsion that where there is conflict at the time of divorce joint custody should be precluded.

TRUTH: When isn't there conflict?! That's why you're getting divorced. If you believed this myth, then it servers as an incentive to promote conflict for those who want joint custody.

MYTH: Psychological abuse is proof that joint custody should be denied.

TRUTH: This is an effective tactic used to confuse judges who cannot distinguish between truly menacing verbal behavior and harmless verbal expressions of anger which flow both ways in marital discord.

Psychological abuse has been elevated to the same level as physical abuse. Where do you draw the line? What if purple is psychologically abusive to me? Or a person's voice?

MYTH: The mother should get custody because she has more experience raising the children.

TRUTH: When married, the most efficient arrangement is to have a bread-winner and a care-provider. Both roles must be fulfilled and neither role should be denigrated. Therefore, pre-divorce roles should not be used as a basis for post-divorce roles.

MYTH: Joint custody is hard on the children when they have to move from one parent's home to another.

TRUTH: No evidence is brought to bear on this situation and indeed ample evidence exists to support the alternate conclusion that developmental capabilities of even young children enable them to make healthy transitions from one environment to another - as in home to day care, home to baby sitters and grandparents.

MYTH: The failure of marriage in American culture is largely the outcome of low wages, unemployment and general economic difficulties.

TRUTH: Several studies (in the US) prove that divorce rates declined in times of economic depression and rose during the time of economic prosperity. The depression of 1932-33 had the lowest rate of divorce and the highest rate in the 1980's during the period of economic achievement. p.8

7.0 Legal Cites, Constitutional issues

The rights of parents to the care, custody and nurturance of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institution and such right is a fundamental right protected by the 1st amendment, amendments 5, 9 and 14. Doe v Irwin 441 F Supp 1247; US DC of Michigan (1985) p.7

A parent's right to care and companionship of his or her children are so fundamental as to be guaranteed protection under the 1st, 5th and 14th amendments. p.7

Federal and State courts under Griswald can protect under the "life, liberty and pursuit of happiness" phrase of the Declaration of Independence, the right of a man to enjoy the mutual care, company, love and affection of his children and this cannot be taken away for him without due process of law. Griswald v Conneticutt

The US Supreme Court has made it clear that a "parent's right to custody and companionship of a natural child has been specifically accorded protection under the Constitution. Smith v Organization of Foster Families, Stanley v Illinios and Caban v Mohammed

NEWS-LEAD

Attorneys battle over Citadel legal fees

CHARLESTON, S.C. — Lawyers who fought to a women to The Citadel now will fight over millions of dolla legal fees run up during the five-year battle.

The lawyers who challenged the state military school's male admissions policy want $6.7 million. But the school the attorneys, most of whom came from out-of-state, are bil for "grossly duplicative and excessive hours" at rates of u $450 an hour.

U.S. District Judge C. Weston Houck opens a hearing to

The Citadel dropped its all-male policy a year ago after U.S. Supreme Court ruled a similar policy at Virginia Mili Institute was unconstitutional.

NOTE →

USA WEEKEND

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WHAT AMERICANS AGREE ON

BY STEPHEN COVEY

A surprising USA WEEKEND poll for the July Fourth holiday

READERS VOTE ON CHILD CUSTODY

"Fathers wrestle for their rights" (May 30-June 1) examined the rights of divorced dads in custody issues. We asked readers for their opinions on which divorced parent generally should get custody of the kids. Nearly 13,000 voted by calling an "800" number, by postcard or online at **www.usaweekend.com.**

In custody battles where both parents are fit, what is best for the child?

- **Mother gets custody: 13%**
- **Father gets custody: 13%**
- **Joint custody: 74%**

Statistically speaking, we can see that "single-parenting" doesn't work. But the term "single parent" epitomizes what the present Family Court System has fostered for the family. Every- other- weekend, and an occasional holiday, is not sufficient time to maintain a parental role. Such "visitation" arrangements are appropriately named "visitation", not parenting.

We know HALF of all marriages end in divorce. Now consider the fact that the vast majority of children comprising problem statistics come from divorced or never-married parents. So many children today are starving for nurturing parental involvement. Juvenile crime, violence, low academic performance, teen pregnancies, drug and alcohol abuse, are all rooted in the fact that parents are not devoting the TIME it takes to nurture children to develop into responsible human beings. These costly and damaging societal ailments are highly correlated with single-parent families, and the absence, or minimal presence, of fathers.

Most legislators hold fast to the "best interest of the child" standard used in Family Court; with the notion that it protects "the best interest of children". What they don't understand is, the present "BIC" paradigm is, quite frankly, ..a farce. The courts have neither the time, ..expertise, ..let alone resources, to determine what the "best interest of the child" really is. The courts guess; usually based upon GAL recommendations. But GAL's are court appointed *ATTORNEYS*. They aren't trained, or accredited, in issues of child psychology or family dynamics. Very rarely is there a home visit, verification of accusations, or consideration of a huge array of issues that have bearing on what is *truly* "best" for the child.

When a child has two, fit, interested, parents that walk into Family Court, the likelihood is that the child will have ONE parent, and ONE visitor, when they walk out. This would be understandable, if one of those parents were abusive, or unfit - but that is usually not the case.

You see, since no-fault divorce went into effect years ago, parents can't fight over property anymore, property must be equitably divided. The children, are the one thing left to fight over - to be "won", or "lost". And fought over, they are.

Note: a presumption of equality, took the <u>battle</u> out of property division. Don't children deserve to be taken out of the position of being <u>battled</u> over as well?

The term "custody battle", is exactly what happens in Family Courts every day, under the present "best interest of the child" standard. Those with the financial means and emotional stamina, proceed to engage in "battle" to protect their role as parent.

Parents are positioned as adversaries (Petitioner & Respondent) - in the adversarial system of Family Court. Cooperation is deterred not fostered. And parents are considered enemies on opposing sides of a struggle with regard to their children. Parents are rallied as opponents - "At war", battling against eachother, in a fight for custody, - a battle to maintain their role as a parent. Deceit, vindictiveness, and mudslinging are standard operating procedures. The Family Court's well-intentioned, but superficial and expeditious analysis of parents, is a tragic means of making life-determining child

placement decisions. Quite frankly, a coin toss might get more fitting and honest results. Again, the courts have neither time, resources, or expertise to determine what the true "best interest of the child" really is.

The "winning parent" is given "primary placement"; the losing parent is granted "visitation rights". The Court says "case closed". But the case doesn't close for the family, and the child is NEVER the winner. When a child starts out with two, fit, interested parents, and ends up with a primary parent, and a visitor - the child is on the losing end; Not to mention the scars they bear from living through the custody battle, and the mudslinging that naturally accompanies it.

The time has come to take the "battle" out of "custody battle", and reform state policy regarding the placement of children. Positioning parents as enemies, having them battle over which parent is "good", "better", or "best" is ridiculous. The time has come to put an end to the harmful standard which is ironically called "the best interest of the child".

SB107 virtually eliminates the custody/placement tug-o-war. There can be no "tug-o-war" if yanking the rope makes it return to the center. SB107 takes children out of the position of being tokens to be fought over, and promotes parental cooperation. Isn't that what is truly in "the best interest of children"?

A "good" father is just as needed as the "best" mother, and visa-versa. Neither parent can replace the role of the other parent. And the fact is, parenting... takes time. Not just quality time, but a quantity of time. Time to provide children with instruction, encouragement, consistency, and example. Just because one parent appears to be "more qualified" in the courts' eyes, doesn't' mean *that* parent will be most effective in reaching that child on an intellectual, moral, or emotional level. Each parent's love is irreplaceable, and there is no substitute. Quite frankly, it takes two, in every sense of parenting.

There are really only two criteria the court should be evaluating - "fitness", and "interest in rearing the child". the ONLY time that the courts should have authority to subvert the role of ANY parent, is when there is evidence of abuse or unfitness. If a child has two parents that are fit, and interested in fulfilling their parental role, that child deserves the opportunity to have significant, and maximized, input from BOTH those parents.

The legislature has made changes to improve, and enforce, child support collection. You've enacted W2, to make both parents in low income families financially responsible for supporting their children. You've tried to improve juvenile justice code.

But the time has come for the legislature to give credence to the fact that children truly NEED BOTH parents. The time has come to address, and take action upon, the issue of child placement in the Family Court system; to ensure children are granted significant/maximized TIME with both parents. The time has come to take the "battle" out of custody battles; to take children out of the position of tokens to be fought over in Family Court. The time has come to pass SB107.

Understanding and Collaboratively Treating Parental Alienation Syndrome

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Parental alienation syndrome (PAS) is a special case of postdivorce conflict in which one parent appears to go to great lengths, at times including making fictitious allegations of physical and/or sexual abuse, to turn a child[1] against the other parent. Dr. Richard Gardner first described PAS in an article and then later in a book and portions of another.[2] Earlier researchers had noted similar processes in families (for example, the "medea complex" described by Wallerstein and Kelly in the late 1970s), and professionals working with divorcing families easily recognized the syndrome, sometimes described as brainwashing, presented by Gardner. That his "syndrome" was so readily adopted is less a testament to Dr. Gardner's "discovery" than to his conceptualizing a familiar type of high-conflict divorcing family problem that is complex, perplexing, very resistant to change, and sometimes tragic.

Gardner's conceptualization of the problem and the dynamics underlying the problem proved at best incomplete, if not simplistic and erroneous. He portrays the alienating parent as virtually solely responsible for the dynamic, turning the vulnerable child against the innocent target parent. More extensive research on the topic[3] has more clearly established the complex involvement and motives of all of the actors in this disastrous family drama. Each of the family members takes a role in the alienation process, which usually begins well before the divorce event. It should be kept in mind that not all instances in which a child is rejecting a parent following a parental separation reflect PAS. In some families, the child rejects a parent based on the child's actual experiences with that parent. There are very likely many children in intact families who wish to avoid or reject one of the parents based on that parent's behavior. A parental separation may simply raise such a wish to the public level.

Contextual factors can be used to detect the presence or absence of PAS. These factors fall on a continuum in the normal curve in all families. The factors that make up PAS may exist in many divorcing families to varying degrees, but they come together and pass a fulcrum point in a few. When PAS becomes the dominant family process, children reject a parent outright and the stage is set for gut-wrenching allegations, extreme resistance, threatened "move-aways," and often a great deal of litigation.

ACTORS IN THE FAMILY DRAMA

In most instances, all of the family members play a role for PAS to take hold. There is an easy temptation

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to place all of the responsibility for the process on the alienating parent, whose maneuvering is the most obvious and appears the most self-serving and malevolent. Gardner points out that even the child usually has some motive for enlisting in the process, although the child's motives may be vague and more defensive than malevolent. The child must play the part, however. The authors have seen instances where both parents appear to be playing their roles in the alienation process, but the child simply won't join in and is able to disengage from the parental battle and maintain independent relationships with each of the parents. When looking at cases of PAS, patterns emerge with the target parent too which suggest that the target parent also must join the process. One exception may be when there is geographic distance between homes and the alienating parent has a good deal of time between visits to work with. If the child has regular and frequent contact with the target parent, and the target parent does not join the process, that is, the target parent is able to maintain an independent and healthy relationship with the child, the process will most often not take hold. Usually, PAS is not just the work of the alienating parent, therefore. It is a family dynamic in which all of the family members play a role, have their own motives, and have their own reasons for resisting the efforts of others at correction.

Exceptions exist, however. In some instances, the alienating parent's efforts at alienating the child will be so ruthless, sophisticated, pervasive, and persistent, playing heavily on the loyalties, fears, and even trust of the child, that the child's ability to maintain an independent relationship with the target parent will slowly be crushed. If the child continues to see the target parent in these cases, the child will often display a split identity (clinically referred to as vertical splitting). That is, when with the alienating parent, the child will appear thoroughly rejecting of the target parent, but when with the target parent, he or she will display affection, attachment, interest, fun, and freedom from the oppressive alignment with the alienating parent.

The Alienating Parent (AP)

In the typical PAS family drama, the AP has the motive to turn the child against the other parent; develops the content themes of the rejection; designs and employs the techniques of programming the child; and has limited insight into the damage caused but not into the motives or goals, which often include eliminating an unwanted parent. The damage caused is not only to the child and the target parent, but it is usually self-defeating and in some instances self-destructive.

(PAS) is a family dynamic in which all of the family members play a role, have their own motives, and have their own reasons for resisting the efforts of others at correction.

The AP's motives will vary from family to family. In some, revenge for felt injustice or for feelings of rejection will dominate, but in others, the fear of loss of or abandonment by the children will be the driving force. Distrust is so high in some divorces that the AP readily will believe the worst about the target parent (TP), especially if the AP has an early family history of abuse, molestation, or betrayal. The AP usually assumes that the child is fragile or in extreme danger in the care of the TP. These assumptions probably are projections, meaning that at the hub of the AP's personality are primitive feelings of anxious vulnerability. By maintaining proprietary control over the child, onto whom these dangers and vulnerability are projected, the AP is externalizing the defenses. The sometimes improbable and unsubstantiated allegations seen in these cases can reflect the AP's actual experiences or childhood fears.

The Target Parent (TP)

In cases of PAS, the TP may have abandoned or may wish to abandon the child. Despite the angry protests of the TP against the AP, the TP may talk of moving away from the area or may be satisfied with and perhaps desirous of a marginal role in the life of the child. The rejection by the child may be a convenient excuse for this way of thinking on the part of the TP. In some cases, there may be geographic distance between the TP and the child. The TP may have substantial weaknesses in parenting abilities or in the parent-child relationship; may have played the family "parent," with the AP joining the child in rebellion; or may have obvious psychological or emotional problems. The TP may have been violent, may be insensitive to the child, and usually has limited insight into his or her own contributions and role in the PAS (for example, failing to counter the alienation theme, focusing on the AP rather than the needs of the child) but good insight into the techniques and damage caused by the AP.

The Child

Children most vulnerable to PAS, due to several converging developmental issues, are in the 8- to 15-year-old range. Typically, the child adopts the content theme (for example, accusing the TP of being abusive); refuses to confront the AP even in the presence of contradictory evidence; employs the AP's techniques (such as spying); has various levels of insight and "real" cooperation with the AP; and fears the AP. While some children seem completely drawn into the themes of the alienation, seemingly believing every word they say, others are very aware of the exaggerations and lies. One of the authors had a case in which two children in their early teens actively participated in the PAS, alleging sexual abuse on the part of their father. Their stories were consistent and believable, and while the father was found not guilty in a criminal trial, due largely to factual inaccuracies in the children's stories, he was nevertheless eliminated from contact with the children. The children refused even supervised contact. The vehemence of the rejection by alienated children is often telling. These children threatened to run away, or worse, "if you make us" even have dinner with their father. Two years later, one of the children surfaced the "lie," which the other child soon admitted. There had been no molestation and no real cause for the rejection. Even then the children had no good explanation as to why they had gone along with the instructions of their mother other than that they were "scared."

In families with multiple children, roles in a PAS drama often are divided up, with the children representing the range of alienation—usually one child completely alienated, one ambivalent, and one still attached to the TP.

The Family System

The PAS is a family system defense mechanism. The function of the defense is not always obvious, but there is often a subtle underlying complicity on the part of the family members in the drama. The research provides clues to some defense functions:

- to protect the AP's self-esteem (for example, when PAS escalates as the TP becomes more "successful" after the separation, including getting on with life and remarriage);
- to help the AP cope with his or her difficulty "letting go" of the marriage (for example, when the AP can't stop thinking about or talking about the other parent; or when PAS escalates around birthdays, holidays, vacations, etc.);
- to maintain the AP's symbiotic dependence on the child (for example, when the AP calls the child every day when he or she is with the TP—one of the authors had a case in which the AP would tell the child that she "couldn't stand to go into your room while you were away, it makes me so sad");
- to deal with anger and revenge (for example, when the AP expresses moral outrage at the exposure of the child to a new romantic partner, when the real issue is anger for an affair, or simply at being so easily replaced);
- to help the AP through what he or she perceives to be a "grown up" version of a childhood experience; and
- to help the family cope with the AP's tendency to turn on the child or anyone else who disagrees, or to abandon the child if there is a change (the child fears having feelings independent of and in opposition to the AP and becoming a target of the rage and rejection he or she has seen the AP direct at others who disagree).

One of the authors has seen other "life and death" causes, such as where the PAS protected a psychologically fragile AP or where the AP was the agent of the AP's family of origin, eliminating the TP from the extended family network. When encountering PAS in a particular family and trying to determine its cause, a good question to ask is what the family would be dealing with if everyone wasn't so preoccupied with the PAS process.

PROGRAMMING STAGES

The programming one sees in situations of PAS is often a longstanding part of the family dynamic that simply escalates after a separation. Although all of the family members play roles, the AP is in charge of the programming of the child, a process that usually follows stages.

Content Theme Identification

The content theme of the alienation is identified early, sometimes by the AP, sometimes by the TP, and sometimes accidentally. One of the authors had a case in which there were two dominant

themes: abandonment, which had been introduced by the TP through an actual abandonment that lasted about seven months; and, paradoxically, an intense fear of kidnapping by the TP, introduced by the AP. The TP was in a difficult situation where any lack of effort to see the children was viewed as abandonment (that is, proof that she did not care), and any effort to see the children was obstructed and set off a panic that it was an effort to kidnap them. In cases of PAS, the belief in the themes becomes delusional. Though there may be some foundation for the themes in an incident or two, the themes essentially are very unrealistic. In the above case, though the mother had abandoned the children for seven months, she had been consistent in her involvements and interest for the five years prior to the separation and six years since the abandonment. The real threat of a kidnapping of the 12- and 8-year-old children was minimal, especially since the children were so schooled in the threat.

Mood Induction

The next stage is mood induction, during which the AP may employ the following strategies:

- guilt (e.g., "I don't know why your father left us; everything seemed okay");
- intimidation (e.g., "Go to your mother's if you want, but you are not to hug her cute little boyfriend anymore. Do you understand?");
- fear (e.g., "I just want you kids to know that I'll be here the whole time you are at your dad's and that you can call if you need me");
- playing the victim (or, "poor me") (e.g., "Jeez, your mom is taking me to court again. When is she gonna leave me alone to just spend time with you?");
- sympathy seeking (e.g., "Look kids, you need to know that I just can't afford to take you the places your dad takes you because he has much more money. I know that's not fair to you but it is just the way it is");
- telling the child the "truth" about past events (e.g., "I hid a lot from you before your mom left us because I didn't want you hurt, or for you to hate your mom, but now you deserve an explanation . . . ");
- overindulgence and permissiveness (e.g., "Of course it is all right for you to own your own hunting rifle. Your mom just doesn't want us to have fun together"); and/or
- threats (e.g., "So, you had a good time. Maybe you'd like to go and just live there. I just want you to know, if you do, you won't see me again").

The theme, with mood induction, is processed over and over until the AP begins to gain the child's compliance, usually with the TP participating by escalating the emotional battle with the AP rather than working directly with the child. Once the child's compliance is gained, the AP begins to back off, letting the child carry the ball, although often there will be tests of the effectiveness of the program. The most powerful method is to tell the child, "It is your choice." The more the child supports the AP in rejecting the TP, the more emphatically the AP wants people to "just listen to the child." This can reach the point of the AP seeing himself or herself as the champion of the child in a world ignoring the child's feelings. Another common test is that the child will consistently report bad experiences at the home of the TP (whether true or not) that usually reflect the theme chosen by the AP. These reports are often recorded in some way by the AP and may not be used in the judicial system for years.

Reward/Punishment

Once tested, the child's complicity is rewarded and any sign of a breakdown in the child's alignment with the AP is punished, sometimes very directly, or in most instances in a re-escalation of the earlier stages of the programming. There are many patterns in this stage. If the child, for example, reports that "Dad never pays attention to me when I am there," the AP might "make up" for the lack of attention by doing special things with the child after visits *if the child reports the visits negatively.* If the child reports a positive visit, the AP might be vaguely inattentive or may say overtly, "Well, I guess you've had your fun, so now we have to get down to the real business of life." Once the program is in place, generalizing begins to occur, leading the child to a loss of ambivalence and to total rejection of the TP. By this time, everything the TP does will be "wrong."

Unfortunately, these cases often reach professionals at the point where the program has been generalized and simply is being maintained. The AP may be doing very little alienating, since it is already in place as a family dynamic. At this stage, the AP simply will watch for slippage in the child's resolve and shore it up when it happens. The AP

role may miss detection at this stage. The AP may say things like, "I tried to encourage the relationship," or, "I really wish he'd visit his father. I could use the break, frankly, but it isn't fair to make him, considering the way he feels," or, "I just can't make her go. I have tried."

TECHNIQUES

The AP's techniques usually are in various combinations:

- *Denying the existence of the TP:* This can be blatant ("I don't ever want to hear her name in this house") or very subtle (refusing to acknowledge that the child has positive experiences in the other house). In one family, the father would play catch with the children and would not look up when the mother drove in, nor would he stop the game. He held the children's attention until the mother was forced to intrude openly, at which point he would walk away from the children and mother, never acknowledging her presence.
- *Pairing good experiences or feelings with bad feelings:* This is displayed by not responding to the child's expressions of love or enthusiasm for the other parent, or pairing these good experiences with bad feelings ("Oh, that's nice. I had a terrible weekend without you").
- *Constantly attacking the TP's character or lifestyle:* Here, the AP creates an illusion of what "might happen." Attacks are on the TP; the TP's extended family ("Your mom can't help the way she is, her parents abused her when she was growing up"); the TP's career, living arrangements, activities, travel, or even religion; and the TP's associates, especially new romantic partners.
- *Putting the child in the middle:* This technique may involve engaging the child in a "spy game," using the child as the principal communicator between the parents; or giving the child subtle "third degrees" (for example, one of the authors had a case in which the mother could reduce the child to a bundle of nerves by saying, "Let's talk about . . . ."—the child had learned that this was a signal to hate something that the father had said, done, chosen, etc.).
- *Generalizing from one or two instances to a global meaning:* An AP using this technique might say, "Remember when your mother was screaming after us when we drove away [not mentioning that he closed the window on her when she was trying to kiss the kids goodbye]? That's what I mean when I say that she is, well, out of control. She just doesn't have control over her emotions. That's why I get scared when you are over there."
- *Taking normal differences and turning them into good/bad and right/wrong problems:* The AP can manipulate circumstances to put the TP into a bad light in the child's eyes or undermine the TP by expressing puzzlement about what is wrong with him or her. "I don't know what's the matter with your father. He knows that kids need to be in bed by eight"). The use of this technique can be very subtle (e.g., a shake of the head and a smirk when the child reports an activity with the TP).
- *Creating alliance in the parental battle:* An obvious use of this technique would be, "Do you think it's fair for your rich father to take your poor mother to court all the time?" A more subtle approach would be, "If you were the mother, what would you do? Would you go to court to try to protect your children?" This can include the powerful tool of the threat of withdrawal of love, or complete abandonment, if the child demonstrates love for or interest in the TP. Another version of this technique is to convince the child that kids need one parent (the primary parent syndrome) or to give the child the illusion that "I am the one who really loves you." The other parent then becomes the threat because "she is trying to take you away from me."
- *Portraying the child as fragile and needing the AP's protection:* This is very common in PAS. The child convincingly will portray his or her life as fragile, about to fall apart if anyone "makes" him or her have contact with the TP. The AP solidifies the relationship with the child by creating an image for the child that he or she is at great risk out of the control and protection of the AP. A frequent twist of this technique is to portray the AP as fragile to the child, requiring the child's presence to maintain balance.

- *Lying:* False or highly suspicious allegations of abuse, neglect, or molestation are examples of this. The blatant nature of some of these lies creates an illusion for the child, and many children simply do not have the nerve to confront or contradict the parent.
- *Brainwashing:* Through a process of rewriting the child's experiences in a way to create reality confusion, the parent incorporates the child into a false view of reality. This can include outright lies ("Your father never enjoyed spending time with you. He complained about that all the time, but not in front of you because he didn't want to hurt your feelings. I wonder why he wants to see you now"), subtly implied rewrites of the child's feelings ("You were scared of her even when you were a baby. You wouldn't even let her hold you"), or implanted memories ("Remember when your father used to hit me, or have you blocked this out of your mind?"). The child resolves the confusion by adopting the AP's view of reality.

UNDERSTANDING PAS DYNAMICS

The motivational factors underlying PAS vary greatly from family to family. In the AP, these can include revenge; self-righteousness; guilt; fear of loss of the child or the role of primary parent; the wish to have proprietary control over the child; jealousy; the desire to obtain sufficient child support; loss of identity; a history with the family of origin of abandonment or alienation; pain avoidance (out of sight/out of mind); self-protection; avoiding scrutiny by pointing the finger; maintaining the marital relationship through conflict, power, and domination; or protecting his or her own precarious self-esteem. The TP's motives may include a desire to abandon, anger at the AP, self-righteousness, a history of problems in the family of origin, stupidity, a personal history of scapegoating, protecting the fragile mental health of the AP, the assumption of a victim stance, or a fear of a relationship with the children. The motivation of the child can include coping with loss, resolving parental conflict for self-preservation, normal developmental pressures, real relational difficulties with the TP, resolution of ambivalence about the AP, or fear of the AP.

As discussed previously, there is also the *family system defense.* The question has to be asked, "What would happen in this family if the alienation issue was resolved?" Usually there is a very serious underlying family problem needing attention. PAS can serve the function of a lot of smoke, covering up other difficulties that defy identification.

DETECTION OF PAS

Detection, especially in the last stages, may seem difficult. The "truth" of the family becomes very relative. However, typical patterns in PAS allow for detection by a professional familiar with this form of family conflict:

1. *Contradictions:* This is relevant especially when the child's own statements are contradictory, or they contradict factual history or the perceptions of unbiased individuals;
2. *Child has inappropriate and unnecessary information* (e.g., "My dad had an affair while my mom was in the hospital having me," or, "My mom wanted me aborted");
3. *Child engages in character assault:* This can include the use of globally negative descriptions for which the child has trouble coming up with specifics sufficient to justify them;
4. *Collusion and one-sided alliance with the AP:* This is often given away by the use of blended pronouns (e.g., "When my dad left *us* . . . ," or, "*We* don't have enough money to live on");
5. *Child parrots themes of the AP,* even using the same words—the child's identity becomes enmeshed with that of the AP;
6. *Child reports on the TP,* even to professionals, the way a spy would;
7. *Child displays a sense of urgency and fragility:* Everything seems to have life-and-death importance (e.g., "If you make me have dinner with him, I'll run away or kill myself");
8. *Child's affiliations* with the TP's associates and family change;
9. *Splitting:* The child cannot come up with any positives about the TP nor with any negatives about the AP;
10. *Marked absence of complex thinking about relationships:* Splitting is one example, and simplistic characterizations of the parents (e.g., "My mom is the homebody and my dad is the entertainer") are another;
11. *Child demonstrates a feeling of restriction* in permission to love or be loved.

PAS IN THE COURTS

PAS must have seemed a boon to lawyers representing fathers (who are most often the target parents) and criminal defense lawyers, since allegations of physical and sexual abuse frequently occur in cases involving PAS. Dr. Richard Gardner has stated:

> Fabricating children [in cases of fabricated allegations of sexual abuse] are more likely to exhibit manifestations of the aforementioned parental alienation syndrome. Children with this disorder typically involve themselves in a campaign of vilification of their fathers and idolization of their mothers. They have been programmed by their mothers to hate their fathers and also contribute their own scenarios of hostility. The fabricated sex-abuse allegations may very well be one manifestation of this disorder. Its presence strongly supports the argument that the sex abuse is fabricated. Children who have been genuinely abused do not usually manifest the signs and symptoms of the parental alienation syndrome. Although there are situations in which a child with parental alienation syndrome has suffered genuine sexual abuse, I suspect that this is rare.[4]

Think of the opportunity here. If a lawyer representing an accused child sex abuser can find a mental health professional who will testify that the children are victims of PAS, the same expert can take the next step to say that it would be rare for a child suffering from PAS to suffer genuine sexual abuse. By simply naming the child's antipathy for the parent as PAS, the lawyer has a defense.

Even absent such extreme allegations, lawyers representing men whose children dislike them in divorce actions can, by labeling the hostility PAS, blame the mother for the child's feelings.

These concerns have been collected and published in the Spring 1994 edition of the *Loyola of Los Angeles Law Review* under the title, "Notes and Comments: The Parental Alienation Syndrome: A Dangerous Aura of Reliability."[5] The comment argues that evidence of PAS should not be admissible in court because the theory has not gained acceptance among experts in the field. The comment does note the "general acceptance" standard promulgated in *Frye v. United States*.[6]

The article attacks Dr. Gardner in strong terms. The commentator points out that the PAS theory is built upon criteria that Dr. Gardner invented and included in his widely discredited sex abuse legitimacy scale. It then goes on to argue that testimony regarding PAS should be excluded from the court both under the *Daubert* test and under the *Frye* analysis. Under *Daubert*, the trier of fact must rule on admissibility based on an expert's opinion as to whether the evidence is reliable and thus relevant. Under Federal Rule of Evidence 104(a), the trial judge must make a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid. In other words, the court may consider whether the theory has been tested, whether it has been subjected to peer review and publication, and whether it has attracted widespread acceptance.[7]

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In spite of the commentator's concerns, PAS has not received an enthusiastic acceptance in the courts, as shown in reported cases. The most frequently cited case showing the dangers of PAS is *Karen "PP" v. Clyde "OO."*[8] In that case, the mother sought a requirement that the father's visits be supervised because of alleged sexual abuse. The experts differed in their opinions as to whether sexual abuse had occurred. In its opinion, the court cited at length from Dr. Gardner's text. It is for this that this decision has been subjected to criticism. However, an examination of the text indicates that the court based its decision on the evidence and the testimony from witnesses rather than Dr. Gardner's theories. In the end, the court transferred custody from the mother to the father and suspended the mother's visitation, with the resumption of contact subject to treatment and monitoring.

In other cases, reviewing courts have similarly made their decisions without making a determination as to whether PAS is a generally accepted diagnostic tool.[9] In *T.M.W.*, a birth father opposed the adoption of his daughter by her stepfather. The court granted an order requiring a psychological evaluation of the child with a view to determining whether PAS was present. The appellate court overturned the order requiring the examination because it failed to meet Florida's technical requirements. It permitted a new order to be issued provided the new order met the requirements of the statute. In this case, the father was contending that the presence of PAS would justify his conceded lack of contact or communication with the child for several years. In a footnote, the

reviewing court noted that no determination was made as to the general professional exceptions of PAS as a diagnostic tool and went on further to recite the cautionary words of other commentators:

> "When considering the theory of expert testimony discussed in this subsection, it is vitally important to avoid confusion engendered by reference to syndromes. . . . [A]t the present time experts have not achieved consensus on the existence of a psychological syndrome that can detect a child's sexual abuse. Use of the word syndrome leads only to confusion and to unwarranted and unworkable comparisons to battered child syndrome. The best course is to avoid any mention of syndromes." citing Myers, *Expert Testimony in Child Sexual Abuse Litigation*, 68 Neb. L. Rev. 69 (1989).

In a 1994 Iowa case,[10] the father brought an appeal challenging the trial court's temporary order transferring custody of his children to their mother. The father contended that the trial court placed too much emphasis on the testimony of a psychologist regarding PAS. The father contended that the theory is not accepted in the field of psychology. The trial court made a modification in the effective date of the transfer but otherwise affirmed, saying:

> We do not pass upon the issue of whether Parental Alienation Syndrome is a reliable theory. Rather we look at the evidence introduced and draw our own conclusion. Because this is a de novo review, we only look at the evidence we deem admissible. We consider the opinions of all the experts as we do the other testimony. We give opinion testimony the weight we consider it deserves after considering, among other things, the expert's education, experience, familiarity with case, reasons given for the opinion, and interests, if any, in the case.

In a 1992 Ohio case,[11] the appellant's expert witness testified in favor of a change of custody, claiming that one of the children exhibited symptoms of PAS. The court affirmed the decision of the trial court, denying the father's motion for change of custody and stating that the appellant's argument was not persuasive. The court said that while evidence had been presented to show that the child was being pressured to distrust and distance herself from her father and there was testimony from a psychologist as to the existence of PAS, there was also evidence indicating that the mother had encouraged the relationship between the father and the daughter, and another psychologist testified that the mother provided a supportive and caring environment for the daughter. The trial court was therefore affirmed in its decision.

The appellant's expert witness testified in favor of a change of custody, claiming that one of the children exhibited symptoms of PAS.

A Wisconsin case directly comments on PAS.[12] The father had petitioned the trial court for a change of primary placement from the mother. His basis was that the children suffered from PAS, the condition was caused by the mother, and the only cure was to transfer primary placement to the father. The trial court found the children were alienated from the father but concluded that it would not be in the children's best interests to transfer primary placement to him to cure the syndrome. The father's expert testified that both children suffered severely from PAS. The psychologist also stated that he was positive that the mother was the cause of the syndrome and the only remedy was to place the children with the father. The trial court rejected the psychologist's recommendations, pointing out that the psychologist had admitted that transferring primary placement involved certain risks. The trial court acknowledged that the long-range negative effects of the alienation would exist but said it was speculative that the degree of harm described by the psychologist would actually occur. Moreover, the trial court pointed out that the transfer could jeopardize the children's progress in school and their relationships with friends. The expert's testimony itself indicated that the cure was controversial and that there was limited research data to support the success of transferring the children to the "hated" parent. The court concluded that the evidence was not strong that the alienation would be cured by placing the children with the father. The trial court also interviewed the children and found that they did not like their father and did not want to live with him. One child told the judge that her feelings came from her own observations. Because the children were adamantly opposed to living with their father, the trial court stated that the potential risk of harm to the children outweighed the questionable benefits of transferring placement. It then concluded that the cure proposed by the father presented too high a risk for harm.

Even though the psychologist who testified on behalf of the father was the only expert who testified, the appellate court found it reasonable for the trial court to reject that testimony, saying that the expert's "testimony indicated that the cure was controversial, bears limited research data, and there are certain risks. Furthermore, the testimony of both parents and the children was other evidence that the cure . . . would not be successful and was not reasonable."

The Wisconsin Court of Appeals took pains to point out in a footnote that the trial court had examined both parents' personalities and roles in the ongoing dispute and that both were blameworthy for the children's alienation. The court disapproved of each party's actions toward the other and of their ongoing tactics to place the children in the middle of their anger toward one another. This footnote was entered so as to stress that the trial court and the appellate court decisions were not to be seen as rewarding one parent over the other.

EFFECTS OF PAS ON THE CHILD

The effect of PAS on the child is never benign; it is malevolent and intense. The degree of severity will depend on the extent of the brainwashing, the amount of time the child spends enmeshed with the AP, the age of the child, the number of healthy support people in the child's life, and the degree to which the child "believes" the delusion. (In many cases of PAS, the child will exhibit all of the signs of absolute rejection of the TP, but in private will disclose that the rejection is just an act.) The effects run across all areas of functioning.

The child's internal psychological and emotional organization becomes centered around the rejection of the TP. The child develops identity and self-concept through a process of identification with both parents, a process that begins very early in the child's life. The rejection of the hated parent becomes an internalized rejection and leads, over time, to self-loathing, fears of rejection, depression, and often suicidal ideation. These developments often are a surprise to the AP and others, since at the time of the alienation, the child will often look mature, assertive, and confident. These are facades, however, often reflecting the feelings of power granted the child in cases of PAS, who is given reign to lie, be manipulative, and be as hostile as he or she wishes without reprimand. The child is also internalizing the rage of the AP as part of the self-concept, which often combines with intense guilt over the harm done to the TP to become chronic feeling states. Sadness and longing often accompany these other feelings.

The child . . . learns that hostile, obnoxious behavior is acceptable in relationships and that deceit and manipulation are a normal part of relationships.

When the PAS includes grave distortions of reality, the child's reality-testing abilities become compromised, and he or she has permission to distort other aspects of life. For example, the child may develop a fantasy relationship with the TP or even with a fantasy parent and begin to relate to that as though it is real. (Remember, the child is relating to the TP as a hated rejection-worthy parent as though that is real, when it is not.) This approach to relationships often generalizes as the child becomes older and continues to relate to his or her fantasy of others rather than reality.

The child's interpersonal functioning is affected even more directly. Often, the enmeshment with the AP inhibits the development of the child in other spheres of functioning. For example, the child may become socially withdrawn, regress in social situations, or be seen by others as immature. Often these won't show up until the child reaches the final stages of individuation in early adulthood. Unable to make the break from the family of origin, the child persists in adolescent types of relationships and often continues to be enmeshed with the AP. The child also learns that hostile, obnoxious behavior is acceptable in relationships and that deceit and manipulation are a normal part of relationships.

A dominant emotion for the child is loss, though this may not show up right away. Worse yet, the effects of the loss of the parent on other aspects of adjustment are pervasive. Children who are raised by one parent and who lose the other have been found to have lower academic performance; increased chance of psychological disturbance; lower self-esteem; cognitive deficiencies; higher impulse-control problems; school adjustment problems; higher fear and anxiety (particularly about abandonment); greater dependency, which interferes with other aspects of development; and impaired sex-role identification.[13] There are generally negative effects on sibling relationships.[14]

Other studies have demonstrated the reverse is true for postdivorce families in which children experience the active involvement of both parents.

Children who maintain continuing relationships with both parents have higher satisfaction with their families, better overall adjustment (including higher self-esteem, better sex-role identification, higher IQ scores and academic performance, better adjustment to the divorce, and better adjustment to adolescence), substantially lower levels of fear and anxiety (again, especially of abandonment), and an increased quality of relationship with *both* parents.[15] No study of which the authors are aware has demonstrated that children are better raised with one parent absent (with the possible exception of cases in which there was severe physical abuse by the absent parent).

FIXING THE PROBLEM

No policy or approach can be applied universally. Each family circumstance, despite the similarities of the symptoms, has its own complex, interacting, underlying dynamics. What can be said about all cases of PAS is that successful intervention requires the collaboration of the professionals involved, particularly between the legal community and the mental health community. There is a danger in PAS cases that the professionals will become as split and contentious as the parents, only further demonstrating to the child the inadequacies and ineptness of the adults in his or her world. Contentious attorneys, battles of the experts, and confused judges will be great obstacles, and perhaps even decisive impediments, to improvement.

Each of the professionals involved can play a constructive role in each family. Each case of suspected PAS must be carefully, thoroughly and collaboratively assessed, a plan developed, and interventions enacted.

Role of the Attorney

The attorney likely is the first to come into contact with a case of PAS, in the initial interview with the AP or the TP. The American court system is inherently adversarial, which does not serve the family in conflict well. The adversarial process further alienates and polarizes. Unfortunately, the charges and countercharges inherent in a PAS-involved family fit tongue-and-groove into the adversarial system.

Nevertheless, the attorneys, including an attorney appointed to represent the interests of the child, each can play constructive roles. The question then is, how are those roles played out against the backdrop of PAS given the certainty that extreme adversarial conduct will almost always result in a poor outcome for the parties and the child? Despite the simultaneous demands to represent the client and to intervene constructively in the PAS, it is possible to be an effective advocate and still deal with the short- and long-term implications of PAS.

There is a danger in PAS cases that the professionals will become as split and contentious as the parents, only further demonstrating to the child the inadequacies and ineptness of the adults in his or her world.

A lawyer for either the husband or the wife who recognizes that his or her client is either the AP or the TP should begin by giving as much information as is available to the client regarding PAS. The attorney for the TP will find a more receptive audience than the attorney for the AP. The next step is to identify the alienating behaviors employed by both the TP and the AP and to tell the client to stop the behaviors. While this may sound sophomoric, clients do listen to their attorneys, whom they are likely to assume have their interests at heart. Obtaining the client's agreement to stop engaging in PAS behaviors is somewhat like obtaining an alcoholic's agreement to stop drinking, since, like drinking, engaging in PAS behavior is ultimately self-defeating for the client. The decision to stop is the first step. Although this may not "cure" the problem, the termination of the destructive behaviors undergirds further progress.

The lawyer for the AP has a difficult role. The AP has collected evidence and invested time and energy in his or her role and has rectitude and certainty on his or her side, or so he or she believes. The AP wants badly for the lawyer, the mental health professional, and the system to agree with him or her.

The lawyer has been hired, however, for his or her knowledge and judgment. Both attorneys should cooperate with each other, with the guardian ad litem or other counsel for the child when one has been appointed, and with mental health professionals working on the case. The interests of the client will be served best when there is a commitment from both parents to the benefits of the children having a healthy relationship with both of them.

When an attorney (or nonattorney ombudsman), such as a guardian ad litem, has been

appointed to represent the interests of the child, a special opportunity arises for coordinating the collaboration among the other professionals. This attorney needs to avoid being swept up in the seductive process of PAS and remain neutral, with a focus on concrete evidence. The AP cannot be rewarded for hysteria or histrionic claims, nor can the TP be permitted to play the role of victim. The child's advocate can serve as the focal point for information, obtaining and disbursing information to the professionals involved and potentially to the court, and can advocate appropriate treatment steps. The lawyer in this role must be active to constructively slow or stop the cancerous growth of the process.

Role of the Psychologist

If the initial interventions of the attorney do not turn the family to a more constructive route, the next step is to involve a mental health professional who is familiar with divorce, custody assessment, and PAS in a family assessment. It is crucial that the attorneys collaborate on the choice of a professional and that efforts be made to avoid bringing in hired guns for each side of the issue. The psychologist must look first to identify whether the case truly is PAS, since in some families, the rejection of a parent by a child is not the result of PAS. The evaluation must go beyond the identification of PAS to the motives of all of the family members, the defense factors or functions of PAS in the family, the specific techniques employed, and the patterns involved.

There are several reasons for so thorough an evaluation. First, progress will not be made without treating the factors and motives underlying the PAS. If the family has organized itself around maintaining the fragile mental health of the AP, for example, pressuring for change likely will lead to more defensiveness, not less, or may put the AP at undue risk of a mental breakdown or even suicide. The AP, in our example, must be given collateral supports and perhaps counseling before pressure for change can be applied. The techniques used to accomplish the alienation can also be good clues as to interventions that are likely to work. For example, if denying the existence of the TP is one of the techniques, a corrective intervention may be for the AP to go to great lengths to acknowledge the importance of the TP to the child.

Collaboration

Once the evaluation is complete, the mental health professional and the attorneys involved must collaborate on a plan. Each plays an important role in this process. This should be an open process, since the process itself models for the family a healthy problem-solving approach. The intervention plan must be based on the factors in the individual case, though in all cases there will be some similarities in approach, including but not limited to the following steps:

1. *Establishing the benefits of ongoing contact between the child and the TP.* Some of these are inherent in the parent/child relationship. Others may be family specific (e.g., "My father may be more willing to contribute to my college expenses if he has ongoing contact with me"). With all family members contributing to the process of identifying the benefits of contact, they begin to incorporate a family culture of valuing the contact rather than disputing it. The family also needs to identify any drawbacks to contact between the child and the TP, but these ought to be reframed as obstacles to be overcome rather than as reasons for elimination.
2. *Establishing structure around the contact.* This may include behavioral contracts regarding concerns and problematic behavior. Frequent telephone calls by the AP to the child, for example, may prevent the child from having an independent experience with the TP. Contracting to a certain number of calls at certain times may reduce the anxiety. If the TP makes bothersome statements to the child, contracting can include limiting these. The structure, particularly initially when the system is fragile, must have a reliable system of reporting and enforcement.
3. *Avoiding the use of placement as a corrective tool.* In most cases, the child's relationship with the AP is important. In many instances, the AP has played the role of primary caregiver, and the threat of breaking that attachment may drive the destruction deeper into the family system. However, frequent contact with the TP provides counterbalancing influences to the PAS process and may also provide the child reliable contact with other people (for example, grandparents) who are respected by and important to the child. If necessary, therefore, placement may be a tool to provide corrective experiences for the child.

4. *Encouraging the TP to have expert counseling in approaching the child with sensitivity, cool patience, and loving persistence.* The TP, often the weak link in the destructive system, may be required to provide delicate explanations of the situation to the child without denigrating the AP. Drawing the TP out of the family process first provides the child with some sense of relief from the pressures.
5. *Eliciting some permission, even if insincere, from the AP for the child to love and be involved with the TP.* If the AP is on record as giving such permission, the child may have the courage to progress. This may also provide some reassurance to the child at times, in that others can point out that while the AP may in part be reluctant, there is at least some wish for the relationship between the child and the TP to be successful.
6. *Having an outside professional take a strong role in protecting the child by giving a powerful message that the TP is not a bad person, directly opposing the message of the AP.* This must fit the real experiences of the child, however. If the TP has misbehaved, this should not be ignored or glossed over.
7. *Conveying a clear, strong message to the family that the alienation process is harmful to the child.* In some instances, it may be wise to identify PAS as a form of psychological abuse and to indicate that the courts will not tolerate its continuance. Not all cases require a court order; in some, this may be counterproductive or an exercise in futility. Some cases absolutely cannot proceed without the external authority of the court order, but only if the court is willing to enforce. The judge or family court commissioner, therefore, must be included in the collaborative assessment of the family and the recommended plan of intervention.
8. *Developing a clear picture of the benefits to the child in maintaining contact with the TP.* These include both the general benefits (e.g., the biological needs of the child for the parent; benefits to the identification process; maintaining a reality foundation for the child's fears [no contact will almost always lead to an irrational increase in the fear level, and the fantasies about the TP almost always become irrational]; and prevention of the loss of a love object [which most often leads to self-resentment by the child and guilt, regardless of the cause of the loss]) and the specific benefits given the AP, the TP, the TP's associates, and family. A clear picture of these benefits will help the collaborating professionals take the unambiguous approach required. Any ambivalence regarding the benefits will feed the polarization in the family. If there are no clear benefits to the child, given the nature of the family, treatment may prove fruitless.
9. *Realizing that confrontation rarely helps.* For example, if the issue is loss, focusing on reducing the loss is more likely to help than confronting the alienation and bringing on the threat of more loss.
10. *Providing emotional support.* The AP may need a great deal of emotional support for correction to take place, as the breakdown of the alienation may bring to the surface serious problems for the AP.

CORRECTION, WHEN POSSIBLE, TAKES TIME

The probability of successful intervention is moderately poor (informal estimates range between a third and a half of these cases resolving well). This may be more of a statement about the state of the art in dealing with the more difficult issues in high-conflict divorces such as those involving PAS, however, than the tenacity of this particular type of conflict. The approaches identified in this article, for example, are relatively new, based on our increasing body of knowledge about high conflict in divorce. It is our responsibility to continue to study and work at these high-conflict cases. Even with the best of approaches, however, the dynamics underlying PAS are resistant to an easy fix and require hard work over a sometimes long period of time to provide the relief all of the family members, including the AP, are likely to experience, and for which each secretly hopes.

ENDNOTES

[1]Throughout this article we will refer to a child in the singular, although in most instances, the same could be applied to the plural, children.

[2]R. Gardner, Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sex Abuse (Cresskill, N.J. 1987).

[3]Clawar & Rivlin, Children Held Hostage: Dealing with Programmed and Brainwashed Children (American Bar Association 1989).

[4]Gardner, *supra* note 2, at 109.

[5]C.L. Wood, *Notes and Comments: The Parental Alienation Syndrome: A Dangerous Aura of Reliability*, 27 Loy. L.A. L. Rev. 1367 (Spring 1994).

[6]**Frye v. United States**, 293 F. 1013 (D.C. Cir. 1923), *superceded by* Fed. R. Evid. 702, *construed in* Daubert v. Merell Dow Pharmaceuticals, Inc., 113 S. Ct. 2786 (1993).

[7]Wood, *supra* note 5, at 1411–12.

[8]Karen "PP" v. Clyde "OO", 574 N.Y.S.2d 267 (Fam. Ct. 1991), *aff'd sub nom.*, Karen "PP" v. Clyde "OO", 602 N.Y.S. 2d 709 (App. Div. 1993).

[9]In the Interest of T.M.W., 533 So. 2d 260 (Fla. Dist. Ct. App. 1989).

[10]*In re* Rosenfeld and Rosenfeld, 524 N.W.2d 212 (Iowa Ct. App. 1994).

[11](Hornsby) Simms v. Hornsby (Ohio Ct. App. 12th Dist., 1992).

[12]*In re* Marriage of Wiederholt v. Fisher, 485 N.W.2d 442 (Wis. Ct. App. 1992).

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The Civil Rights Issue of the 1990's: Children of Divorce

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According to the world almanac, there were 1,175,000 marriages terminated in the U.S. in 1990. Each year, the custody, support and emotional well-being of millions of children are plunged into the quagmire of a judicial system poorly equipped to deal with the problem. Millions of dollars that would be far better spent on the children are squandered battling over custody, support and visitation rights. The present adversarial system for resolving disputes between divorcing parents is incredibly inefficient, extortionately expensive and, worst of all, uncivilized.

The adversarial nature of our legal system is a win-lose proposition. It pits mother against father in a fight to the end. Legal technicalities become more important than justice or rationality. Divorce lawyers develop highly honed skills in blowing insignificant details out of proportion and capitalizing on the slightest weaknesses in the "enemy's" defenses. The objective is to milk the deal for all it's worth. This helps to assure the winning attorney will be handsomely rewarded for leading the attack. The fight rages on until one side collapses from sheer emotional exhaustion or is driven to the brink of financial ruin. The presiding judge then declares the winner. Whatever the outcome, the real losers are always the children. However, we can be assured that the fight was fair and square according to the judicial rules of battle. The judge—acting in the place of God—decrees the winner based on his own values, beliefs and prejudices.

What happens to the rights of parents and children when the marriage is dissolved?

The dissolution of a marriage contract does not require either parent to forfeit their constitutionally protected rights to the care and nurture of their children. The Constitution of the United States was designed to protect the liberty, freedom and independence of the individual citizen. It protects the autonomy of the individual from intentional interference by the state. Parental autonomy is a fundamental right to participate in decisions that affect the life, future and welfare of their children. Each parent enjoys this right and it is not dependent on one's marital status.

Although the right to parental automony is not specifically mentioned in the Constitution, the Supreme Court has on several occasions stated that these rights are so basic that they must be regarded as fundamental. Both parents have a right to decide what values and beliefs will be inculcated in their children.

In 1978, in the *Quilloin v. Walcott* case, the Supreme Court clearly stated, "A parent's rights to participate in the details of a child's upbringing is not diminished by virtue of the dissolution of a marriage." A father who is separated or divorced from the mother and is no longer living with his child could not constitutionally be treated differently from a currently married father living with his child. In another case (*Elrod v. Burns*, 1976) the Supreme Court said the loss of First Amendment rights, even for a minimum period of time, unquestionably constitutes irreparable injury. Though First Amendment rights are not absolute, they may be curtailed only by interests of vital importance and the burden of proof rests with the government. The severance of parent-child relationships caused by the state should occur only with rigorous protection of the individual liberty interests at stake.

The right of parents to the care, custody and nurture of their children is of such a character that it cannot be denied without violating the fundamental principles of liberty and justice which are at the base of all our

civil and political institutions. Such rights are so fundamental they are protected by the First, Fifth, Ninth and Fourteenth Amendments.

The Supreme Court has also found that legislative classifications that distribute benefits and burdens on the basis of gender carry the inherent risk of reinforcing stereotypes about the proper place of women and their need for special protection. Therefore, the state cannot be permitted to classify on the basis of sex.

Notwithstanding all these proclamations of equality, men are routinely deprived of their constitutional rights in the family courts of this country. Mothers are routinely given sole custody of the children. The expense of challenging the court's ability to deprive a father of his constitutional right to joint custody is prohibitive. And the emotional toll would be staggering.

Divorce lawyers develop highly honed skills in blowing insignificant details out of proportion and capitalizing on the slighest weaknesses in the "enemy's" defense.

Support Payments

In too many cases, there is a blatant misuse of judicial power in establishing support payments. Support orders are determined by a set of *Guidelines* that are based on an irrational premise and 20-year-old data. Judges are directed to follow these *Guidelines* and neither judges nor attorneys have any idea how the economists arrived at the amounts of support a non-custodial parent is obligated to pay. Since no one understands where the numbers come from, the non-custodial parent is denied his right to a rebuttable presumption and due process under the law.

The entire energy of the family court system is focused on extracting as much money as possible from the non-custodial parent. The custodial parent can routinely violate visitation orders with impunity, but if the non-custodial parent misses one support payment, his pay is garnished and he is subject to arrest.

The Supreme Court has stated that the state can interfere with a parent's rights only to prevent harm or abuse to a child. It may not interfere on the grounds that, in some judge's opinion, it would simply be in the *child's best interest.* To avoid discriminating against divorced parents, the limitations on judicial power should be present after divorce as well as before the divorce. The court must require proof that a child would be harmed by joint custody, not merely that in the judge's opinion a child's interest *might* be better served without it.

How should custody be determined?

From all that has been stated above, it follows that in divorce cases involving custody of children:

a. The right of each parent must be regarded as equal.

b. The right in question is not a right to total control, but rather a right to share in the control of the upbringing similar to such sharing as takes place in a marriage.

3. The child has a fundamental right to a meaningful relationship with both parents.

What is the legal approach to custody that will secure the rights of both parents equally? The answer is obvious: A presumption in favor of joint custody.

This presumption is the only vehicle available for leaving the rights and obligations of the parents toward the children the same as those that existed during the marriage, and it preserves the right of the child to a meaningful relationship with both parents. Joint custody is a formal recognition of the equality of the rights of both parents and child.

The problems with sole custody

To give sole custody of a child to the mother after divorce is to give her more power and control over the children than she had during the marriage. That power and control reduces the father from a parent with equal rights to a visitor with no rights and an iron clad obligation to provide adequate levels of support to maintain the standard of living the custodial parent had become accustomed to. This obviously is a prescription for continued hostility and conflict when the father attempts to exercise his natural right as a parent. In effect, the courts have criminalized no-fault divorces, but only for the father. He is deprived of his constitutional rights to the custody, care and nurture of his children and, in many cases, forced to make unreasonable payments to the mother whom he has no legal obligation to support. Support payments in excess of those necessary for the reasonable care of the children is alimony. And there is no provision for making an appropriate reduction of income for tax purposes. The judge, in effect, creates a customized welfare program with one taxpayer—the father.

Children Held Hostage, published by Custom House in 1981, summarized a 12-year study of over 1,000 custody cases. It cited techniques that demonstrated how a custodial parent's ability to program (brain-wash) children often has a devastating affect on them and can leave a child depressed and psychologically scarred. Their research found that custodial parents use brainwashing techniques con-

sciously and by design 85 to 90 percent of the time. A typically subtle effort to create a negative image of the absent parent is referred to as the *ally syndrome* where, in an effort to draw the children closer, a mother will appeal to a child's sensitivities. They cited a typical example where the mother will ask the child, "Is it fair that your father has all that money and we don't have enough to buy food?" The book cited other common questions used by custodial parents in an effort to win the child's support, but which can cause distress for the child. Among the most common, with certain variations, are: "If you were me, what would you do?" and "See what I had to live with all of these years." You will never be able to stop a parent, so disposed, from making false and disparaging claims about the other parent, but what can be done is to insure the child has equal access to both parents in order to help them develop a more balanced view of reality. This can only be accomplished with joint custody. Family disputes are not unique to divorced parents. Unfortunately, they are a common occurrence in families living under one roof. However, the constitution prohibits the courts from interfering in normal domestic disputes.

Sole custody provides the custodial parent with a strong motivation to maximize the amount of money that can be collected under the guise of support. Sole custody assures her of a flow of tax-free money without an accountablity as to how it is spent. Sole custody puts the mother in a position to distance the father, as far as possible, from physical and emotional contact with the children. This is in direct conflict with a moral obligation to encourage the children to maintain a loving and wholesome relationship with their father. The subjective nature of this behavior excludes any expectations of a sympathetic ear from the court system. On the other hand, support payments can be measured with precision and courts are very unsympathetic to those who miss support payments, regardless of the reason. The sole custodian can use their position as the only validation necessary for her interpretation of *for the good of the children.*

Sole custody can be used as a tool for harassing and attempting to demoralize the father forcing subservience to her wishes in all matters relating to the children. The father either submits or he engages in a no-win confrontation at the expense of the children's emotions. Sole custody provides the mother with self-justification for the arbitrary and capricious use of her power to control and influence the children. She is in a position to channel the children's thoughts to insure that they do not develop a more realisitic understanding of the father's position.

Sole custody eliminates the need to be accommodating in scheduling, decision making, coordination or cooperation. Self-centered decision making is encouraged when the court grants sole custody. Sole custody encourages and supports a hostile relationship with both parents. Normal communications with the children become difficult. They tend to become secretive and apprehensive about things happening in their life for fear that they might be saying something *their mother doesn't want their father to know.*

Unfortunately, the family court system doesn't attract the best and the brightest to the bench. In fact, deductive reasoning suggests just the opposite. Yet, these judges are called upon to make Solomon-like decisions every day. They have enormous power over the emotional and financial well being of millions of people nationally. Nothing in law school prepares a judge to make the kind of decisions he is called upon to make. A good case could be made for the fact that the adversarial nature of the legal profession makes lawyers a poor choice for resolving family disputes harmoniously. And, there is no systematic way of evaluating a judge's performance and holding them accountable for their decisions. The evidence suggests they do not measure up to the task. The system is dysfunctional. The emotional and financial burden of the present system is staggering both to the victims and the taxpayers. An alternative to the family court system must be found.

The entire energy of the family court system is focused on extracting as much money as possible from the non-custodial parent.

Mediation

The mediation process is far more civilized and less expensive approach for resolving differences than the adversarial approach now being used. Mediation treats people with differences as adults. Mediators work directly and in-depth with the disputants. They encourage discussion but are not concerned with elaborate rules of evidence. Mediators try to help disputants reach their own agreement; they do not decide what the solution ought to be. Finally, mediators help disputants achieve lasting resolutions. Disputants will be far more committed to solutions in which they have actively participated. When adults are treated like children and ordered

to do something unjust, arbitrary or capricious, hostility is a natural reaction. The last thing in the world children of divorce need is hostile parents.

Conclusion

Unless custody, visitation and child support are fairly established, there is no moral authority for enforcement. Custody, visitation and support orders that are objectively unfair or are arbitrarily imposed so as to create the impression of unfairness, will only lead to increased civil disobedience. The aggressive enforcement of support orders creates the impression that only fathers are capable of being derelict in the performance of their parental duties. When custodial parents ignore provisions of a court order, such as visitation rights of the father, if he wishes to go through the time and expense of taking her to court, at best she will receive a modest reprimand. As a practical matter, parents with sole custody can ignore court orders with impunity. However, if the father misses one support payment, they can attach his pay automatically or send him to jail.

The emotional and psychological aspects of raising children are at least as important as the money spent on them. If the courts spent as much time and effort trying to resolve the psychological and emotional problems of children of divorce as they do figuring out how much of the father's income is necessary to provide the mother and children with an adequate standard of living, all parties would be far better served. The family court system causes more problems than it solves and should be replaced with a more civilized method of resolving custody, visitation and support problems. We should start with a presumption of joint custody and mediation as the method of choice in resolving domestic differences arising out of divorce. The civil rights of both the parents and the children would be far better served.

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