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## Senate Task Force on Family Relations Court - Public Hearing, October 6, 1989

Senate Task Force on Family Relations Court

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**SR 7**

**SENATE TASK FORCE ON FAMILY RELATIONS COURT**

**PUBLIC HEARING  
SACRAMENTO  
OCTOBER 6, 1989**

Prepared by: Rebecca Gonzales  
Senate Office of Research

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Requested by:

Senator Bill Lockyer, Co-chair  
Justice Donald King, Co-Chair

December, 1989

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Senator Bill Lockyer, Co-Chair  
Justice Donald King, Co-Chair

PUBLIC HEARING

SACRAMENTO, CA

OCTOBER 6, 1989

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SENATE TASK FORCE HEARING

SACRAMENTO, CA

OCTOBER 6, 1989

JUSTICE DONALD KING convened the hearing: The Task Force has taken no position and has studiously avoided taking any position on whether or not the restructuring of the courts should occur. The Task Force has agreed that it was inappropriate to take a position until we had public hearings and had an opportunity to hear from the public about the idea.

MS. CHARLOTTE KEELEY, ATTORNEY AT LAW, C.F.L.S.

-- Attorney in private practice for ten years.

-- Disturbed by the judicial system's treatment of family related litigation. Family caseload is an unwanted nuisance and is not afforded respect that it should be.

- o Sacramento's three family and law and motion courtrooms serve as training ground for all judges newly appointed to Superior Court bench.
- o New family law judges serve anywhere from four months to a year or less on bench and most are not shy in expressing their desire to quickly rotate out of family law court.
- o New judges have little or no experience in family law matters, civil litigation or private practice. Have no training in dealing with stress, emotional unhappiness families experience.
- o Administration of family law has become extremely sophisticated. New judges are required to immediately understand and use a computer software program for calculation of mandatory support levels.
- o A judge, on first day in courtroom, was required to hear contested custody matter that lasted approximately 14 hours. Was required to hear cross-examination of two expert witnesses, both psychologists, who had written reports in excess of 20 pages, relating to sexual molestation of child. Although he did a good job, he was obviously floundering with task of reviewing reports and placing case in context of family law rather than criminal law setting.

-- Sophisticated assets before court. Calculation of community property interest, deferred compensation plans, evaluation of businesses or private practices come before law and motion judges who must deal with very sophisticated economic analysis and expert witnesses, frequently without having training to do so.

-- Employment history of judicial appointees gives them little insight into practicalities of managing a private law practice. I initially practiced in juvenile system but I have curtailed that practice.

- o Frustration of sitting four or more hours waiting for a case to be called in a room crowded with screaming children and then being told that the matter would be continued. Your client is least able to afford to have you sit there for three to four hours only to come back for the second date. Frustrations of that system far outweigh any kind of satisfaction one would derive from the practice.

-- Sacramento's family court allows three to three and a half hours to argue and conclude something as complicated as child custody modification proceedings or support matters which involve expert testimony.

-- Has long advocated the consolidation of the Family Law Probate and Juvenile departments of Superior Court.

- o Recommend separated from civil and criminal caseload administratively and geographically
- o Recommend separate facility with adequate room for support staff, Family Court Services, Juvenile's Social Services and Probate Examiner's Office.
- o Recommend matters be consolidated since generally involve families and guardianship, conservatorship petitions are initiated there.

-- Only necessary overlap might be criminal prosecution relating to abuse of children or other family members.

- o Recommend liaison officer or department to ensure child is not traumatized by multiple interviews.

-- Need to make initial contact more satisfying to cut down on repeat business. Family problems are not being solved by present system.

- o Recommend expanding Family Court Services so they could provide counseling for six to eight months to ease familial situation.
- o Recommend better support enforcement - a staff office, with trained clerks to assist individuals in completion of forms.



-- Within a separate Family Law Division, recommend:

- o Judges agree to a minimum of three years on the bench.
- o Have a presiding judge.
- o Prior to assignment, judges attend training in family law and in dealing with stresses and emotions of the families.
- o Strong consideration of use of commissioners.

-- Boils down to need for more funding - more judges, support staff and more room in which to house them.

-- Increase in family law cases -- if we don't take steps now, thinks the problem will overrun us.

-- Also practices in Yolo county which has three judges. Some consideration must be given to smaller counties that must operate on an ad hoc basis. In smaller counties, implementation of a mandatory program that segregates these departments would not serve justice. Without appropriate funding, would be a setback.

ANN CHONG: With regard to Family Court Services - Counseling is often referred out to agencies. How is that working?

A: Courts are unable to require counseling of families as a condition of a custody order. But frequently done in the guise of other remedies. Only mandatory counseling is when there is allegations and proof of sexual molestation. Counseling is helpful but a somewhat expensive alternative for families. Situation is quickly becoming too many customers, not enough time and we're going to have to have another agency available to provide those services.

JUSTICE KING: Legislation enacted this year to require counseling when its in the best interest of the child. Limited to six months, though. Suggestion that Family Court Services do it is wonderful, except for the problem of resources.

KERRY MARTIN, ATTORNEY AT LAW

-- Program Coordinator for Sacramento County Victim Witness Program, attorney with a master degree in social work. Worked in Yolo County. Comments will be directed to problems seen with children and families when they get involved in the criminal justice system.

-- Sees some overlap. Helps battered women get restraining orders and gets referrals from Child Protective Services. Clients get restraining orders and they also testify later in Criminal Court.

-- Need confidentiality and communication between different courts that have jurisdiction over the same families in order to help these families.

- o In a small county, had an informal network system. May have broken some confidentiality rules, but would talk about cases so everyone knew what was going on with other jurisdictions. It was very helpful.
- o In large county like Sacramento, that doesn't happen. There is a gap.
- o Recommend coordination between all agencies that are dealing with the same people. Borrow from social services outlook on cases and appoint a case manager every time a child is physically or sexually abused and sucked into system. One agency or one person that's coordinating all efforts and has access to all information.

-- Courts are issuing overlapping orders. See it in DA's office. An existing Juvenile Court order. CPS will send somebody over and tell them to get a temporary restraining order for same service. Law enforcement doesn't know which order to enforce and it becomes very confusing for families and for people trying to help families.

-- Child interview specialists.

- o Need to be specially trained to interview children.
- o Yolo County used a team approach - Victim Witness Program was teamed up with a deputy D.A. to interview a child.
- o Team approach works well because you get two different people asking different types of questions and can elicit more information than just a single interview.

-- Trained specialist in the courtroom is essential. The Evidence Code makes provisions to protect a witness under age 14:

...from undue harassment or embarrassment and to restrict the unnecessary repetition of questions. The Court shall also take special care to insure that the questions are stated in a form which is appropriate to the age of the witness. The Court may, in the interest of justice, on objection by a party, forbid the asking of a question which is in a form that is not reasonably likely to be understood by a person of the age of the witness.

- o Typifies what is well intentioned legislation but it fails to take into account that Court has to be able to understand when a child doesn't understand question being asked.
- o Assumes that parties involved (public defender, D.A.,

defense attorney) are going to understand when a question is being asked, "which is in a form that is not reasonably likely to be understood by a person of the age of the witness."

- o Parties have not been trained to recognize questions or words children can't understand.
- o For example, a five and half year old, developmentally slow child, involved in a molest case, stated that she had been molested under the bed. Defendant did not fit under the bed and defense maintained that incident could not have happened.

Child was repeatedly asked where the incident took place. I knew what she meant but I had no standing to jump up and say, "Excuse me, your Honor, can we rephrase that question?" I had to wait until a recess at which point I said to the child, "When you say under the bed, do you mean under the bed on the floor, or do you mean under the sheets and blankets?" And she said, "Under the sheets and blankets."

There was a real language barrier there but there was no one to see it. The judge must be alert and trained to those issues. No one has any standing to alert the judge.

JUSTICE KING: What type of person are you suggesting?

A: Someone with interdisciplinary training. A child developmental specialist who is also trained in the law.

JUSTICE KING: How would the child developmental specialist participate in the proceeding?

A: I'm not sure what would be the best way for that to work. They could operate as a consultant to the court or if they actually had standing to object and act sort of as a translator or an interpreter for the child, just as a foreign language interpreter. Should be a neutral officer of the court - not someone hired by the defense or the prosecution.

-- Alot of changes in the last five or six years in area of victims rights and have sometimes failed to provide appropriate remedies.

- o If judge fails to direct parties to address a child in language a child can understand, prosecution can object but nothing really happens other than it goes on record that prosecution objected.
- o Victims have right to speak at sentencing hearing and probation department has duty to inform victim if they have that right. But no remedy if Department fails to inform victim.

-- Recommend mandatory education for judges and attorneys in family law, family dynamics, child molestation, child development. Social workers should be trained in law.

JUSTICE KING: Was your experience limited to criminal courts or were you also involved in dependency proceedings?

A: We would sometimes be involved in dependency proceedings.

JUSTICE KING: Isn't suggestion of someone being in the courtroom to assist the court if something is happening which the child witness does not comprehend more easily attained in a dependency type of proceeding?

A: Yes.

JUSTICE KING: It might have to be someone different than attorney for child and it would be more difficult in a criminal proceeding.

A: Difficult, but necessary. Would be a radical change in way criminal justice system operates with a child witness. Many judges have no idea what a five-year-old's mind thinks like. Not helpful to have this Evidence Code section when judge has no clue as to what kind of decision to make or what kind of question to ask.

JOSEPH SYLVESTER - PRINCIPAL, MILLS JUNIOR HIGH SCHOOL

-- Mills is in Sacramento and received distinguished school status in 1986. In 1988, was fully accredited to maximum number of years with Western Association of Schools and Colleges, receiving seven commendations. Population diverse - 13% Asian, 11% Black, 67% White, 3% Hispanic and 6% other. School is 32 years old and has had only two principals.

-- Not a lawyer and know little about legal system. But during the course of the day, I do come into contact with the results of what lawyers and the legal system do to my boys and girls.

-- And in speaking to several people, I have decided that there is a need for greater coordination between courts and school.

- o Youngsters that are in court system - school system does not know why they were there.
- o For example, had a child who was sexually molested during summer months. Only knew about molest because teacher happened to be living in child's complex. Child starts crying at school. We're wondering what's going on. It would be wonderful if someone told school so at least her counselor knows so we could follow-up.

-- Recommends a person to intervene with schools.

- o Recommends a person trained in social work.
- o Person needs to come to schools and say, "You know Johnny Jones has a problem. This is his problem. How can you help him in terms of setting aside curriculum or setting aside teachers." The schools can do this.

-- Schools teach children about various high courts, California Supreme Court or the United State Supreme Court. But there is very little information about other courts.

- o Half of my kids come from divorced families, so one way or other, half student population is dealing with courts and lawyers and at an early age.
- o Recommend that schools start talking about lower courts. What happens when someone goes to get divorced, gets busted for pot, gets beaten up at home, gets molested. What happens when schools have to go to Child Protective Services and what happens after that.
- o Recommend we look into Social Studies framework and ask, "Why don't we teach more about the court system below the Supreme Court."

-- Need to be cognizant about child development. You simply cannot speak to a child the same way you speak to an adult or a fourth grade child the way you speak to an eighth grade child or a twelfth grade child.

- o Vocabulary that we use as adults not understood by children - not because ill-educated but because they are children.
- o Not yet ready to receive these kinds of very abstract notions that words we use portray.
- o Someone must understand how to question a child.

-- Child interview specialist. Would be terrific if the child would only have to meet with one person.

- o Thinking of girl that was sexually molested. Had to tell her story to police, district attorney and to defense attorney. And when the child was speaking to the defense attorney, it was absolutely horrible. Here's a little 13 year-old girl being interrogated in such a manner that one would think that the child had been in business for herself. This kind of thing we just simply cannot have.

-- Child has to deal with too many agencies. Should simply be one person that child has to deal with. A single person. A single person who stays with the child as they go through the system. And a single judge to see them through entire process.

JOHN PAULSEN -- ATTORNEY AT LAW

-- Attorney at law, Certified Family Law Specialist, practicing in Placer, Nevada, El Dorado and sometimes in Sacramento County. In practice 15 years. Sub-speciality in interstate custody and was deputy public defender for Placer County assigned to Juvenile Court for two and a half to three years.

-- Must say that Principal Joseph Sylvester -- who said, "what lawyers do to his children," had an impact on me. And I think that those of us who are lawyers should think about that. What are lawyers doing to his children?

-- Is in favor of consolidating several matters within a Family Law Court. Attorney General's Report started out with a factual scenario. Take this scenario - a young boy or girl from a broken family with a stepparent and allegations of abuse from a visiting parent. What various areas of law could child be involved with?

- o Child may have run away from home, or could be a 601 status offender, or subject to a 232 petition filed by custodial parent if there hasn't been visitation or contact for a period of a year or no support. Or child could be a subject of stepparent adoption, or subject of a 300 petition or subject of a family law divorce litigation with regards to visitation and custody.
- o These could all be occurring at same time. Child could also have contact with:
  - Probation Department under 232 petition,
  - Social Services under the Welfare and Institutions Code
  - Child Protective Services
  - a court mediator
  - maybe a Family Court Services evaluator
  - maybe an expert for the father
  - maybe an expert for the mother
  - maybe an expert appointed by Court under Evidence Code 730.
- o This scenario is not uncommon. The child is being subjected to overlapping, multiple interviews.

-- Exception to consolidation - 602 petitions. 602 is really a hybrid criminal law speciality.

-- Also a problem of expediting matters. If have a civil case involving divorcing parents or litigation over custody or visitation, may have allegations of child abuse and parent may get a temporary restraining order, suspending all visitation immediately, ex parte.

- o Judge will take conservative route and suspend visitation and set matter for early hearing. If set on an order to show cause calendar allocated maybe 15-20 minutes. It's impossible to put on a factual presentation in that amount of time.
- o Matter will then get kicked over to long cause or short cause, depending on which county you're in. If you have expert testimony and evaluations you can't take care of matter in one day.
- o If you can get two to three days in a civil court within a twelve month period, you're awfully lucky. Placer County had a tremendous calendar crunch and were only able to get one civil case out in a calendar year.

-- What has happened during this period of time? Alleged abuser has no contact with the child or very limited contact.

- o Assume you get a contested hearing and evidence is equivocal. Alleged abuser has been estranged for twelve months and there will be competent, forensic testimony that, because of the estrangement alone, there must be a gradual process to rehabilitate relationship. This is a two year, 36 month travesty.

JUSTICE KING: How do you see the consolidation as helping that? If you're having problems getting a hearing when you're competing against civil cases, which have no greater preference, how are you going to do it in a system where you're competing against delinquency and dependency cases?

A: The benefit is that under the statute, delinquency and dependency cases must be handled in a statutory period of time. My recollection is 45 days.

JUSTICE KING: Your family law cases don't have that kind of statute?

A: No. But you see, because the other cases are essentially fast-tracked it should free up more calendar time. Obviously there's another solution -- appropriate funding.

JUSTICE KING: You're touching a problem that's not unique to your county.

A: Absolutely.

JUSTICE KING: To my knowledge, Marin, San Mateo and Sonoma counties, if you have a two day or more family law matter, it's at least two years to a hearing.

A: Yes.

JUSTICE KING: And if you're competing against cases like delinquency or dependency that have statutory preference, I don't know how you compete.

A: Maybe you're correct and only answer is add more judicial officers, either commissioners or judges. Even in cases where allegations are unfounded, impact upon the family and relationships is substantial.

-- Consolidation of codes dealing with children. Although has some problems with that, are some areas that could be consolidated.

- o Under a W & I 300 case, Court is required, even after a finding that there's a dependency because child has been abused, to do a reunification plan.
- o Under Civil Code 4600 reunification is expressly prohibited. This is nonsensical.

-- In a small county, don't have same problems tracking individual cases as larger counties.

- o Generally speaking, one judge hears all Juvenile and Dependency matters and our judge also hears family law law and motion.
- o Notorious cases, chronic cases do get picked up and you get a judge who's seen history of case. Informal policy.
- o In small counties, if it's left up to county to budget and fund it, it won't happen - will merely get a skeletal outline of what law requires and that will do more harm than good.

-- Some recommendations are funding sensitive while others are non-funding sensitive.

- o I will provide you a written synopsis of those recommendations I see as non-funding sensitive.

-- Other projects, such as creation of a court appointed child development expert will be financially heady because will want a well-trained individual. Legislature must face its responsibilities in funding or will do more harm than good.

-- Sometimes a Ford is better than a Mercedes -- if a Ford is all you need then that's what you can pay for and that's what you should have.

-- It does a disservice to community as a whole where officers and judges are appointed primarily from district attorney's office. It's not to denigrate the skills of these lawyers. It's to say that many of them have not seen a family law book or family law case in ten to twenty years.



They have never handled a family law case or been in private practice. Put in an untenable position - asked to try complex cases without skills to do it.

Presume I were appointed to the bench. Would presiding judge consider for one minute assigning me to a capital death penalty case tomorrow? Absolutely not. Would be insane! And I would be required to say I won't take assignment because I wouldn't be competent.

-- Recommend a judge dedicate five years to bench. I've been doing family law exclusively for ten years and I'm still here and alive and have a fairly good, intact sense of humor. I think it requires that sort of attention.

JUSTICE KING: You suggested that delinquency matters not be consolidated within Family Law Division but be attached in some fashion to the criminal court process?

A: Yes. Because they are essentially criminal in nature. I think its a sub-specialty within criminal law.

DIANE WASZNICKY: In Placer, you have a judge doing juvenile as well as family law. Your judges rotate on a regular basis so you don't have the same judge hearing that caseload for more than...how long?

A: They rotate on an annual basis. Now, you only have four judges so time lapse between being on and off bench is not great. Rotation should be - three years is short. You've done family law for ten fifteen years and you're still doing it and have a good sense of humor. Certainly a judge could do the same.

DIANE WASZNICKY: One would hope.

JUSTICE KING: I'm not here to defend the Governor, but in urban counties, he's getting virtually no applicants for appointments from private practice and economics of the situation are such that next governor is going to be in same boat. Because of resources, we will be faced with people who come out of public offices and have no private practice background.

A: No question about it. In Placer County, a panel attorney receives about \$40 an hour. Had to stop doing that work and I enjoyed being in Juvenile Court. At \$40, I'm subsidizing County of Placer \$45 for every hour. The cost of my overhead - paying my secretarial staff and what not - was approximately \$85 to \$90 for each hour I was working. You can't make it.

JUSTICE KING: It's possible that system has collapsed and we just don't know it. The judicial arbitration program, which has been very successful in handling smaller civil cases, pays arbitrators \$150 dollars a day. That means that every lawyer who is working in the program is subsidizing system because that will not cover their overhead.

I think our view is we can't be too concerned about the request of resources. We have to call shots as we see them and so I appreciate your suggestions. What we're trying to look at is how to improve the system.

SYLVIA VELEZ: What's your opinion of the use of commissioners if a Family Law Division were established?

A: Sat pro tem on several occasions. It's perfectly acceptable. Commissioner system solves alot of problems in terms of experience because usually commissioners come from family law field. Favors it.

JUSTICE KING: Judge Edwards has commented use of commissioners tends to re-enforce perception that this is a second class assignment. Commissioners don't attend judges meetings or vote on local rules.

A: He's correct. From a district attorney's standpoint -- if working in family support is hell, working juvenile court is certainly purgatory. From a judge's standpoint, with certain notable exceptions, they really can't wait to get out of it. Maybe because they don't practice in the field to start out with. Use of commissioners tends to promote that status. But if had to choose between a commissioner who is knowledgeable and a judge who is not, would take commissioner.

ANN CHONG: Has experienced a child in the 300 level in dependency and will be family reunification. If child is in foster home not unusual for child to commit crime. If then becomes 602 petition, would you still recommend child go to a 602 trial in the criminal court?

A: Yes, provided implement recommendation to have good communication between judges who are handling various aspects of the case. But difficult issue.

**CAROL VOYLES -- LICENSED CLINICAL SOCIAL WORKER**  
(Submitted written testimony -- See Attachment B)

-- Licensed clinical social worker in private psychotherapy practice since 1978. Significant portion of work is with child victim witnesses and their families.

-- Issues relating to hearing have been a source of great concern for colleagues and me.

- o Impressed, encouraged by recommended changes in court system.
- o Difficult task of minimizing frequently destructive, stressful nature of participating in judicial system.
- o Responsibility of participating too burdensome for a child.

-- Perpetrators of tomorrow are victims of today.

- o Child victim - failed by parents, society's inability to protect.
- o If child further mistreated by institutions that are to protect, child will feel alienated, hostile towards society.
- o Will contribute to child's future behavior.

-- Suggests that children under 12 not be subjected to traditional form of adult testimony. Court designed for adults.

- o Subjects child to public shame, extreme levels of stress, anxiety, increased guilt.
- o Leads to clinical symptoms of sleep disturbance, excessive fears, mental confusion, separation anxiety, depression, runaway and suicide ideation.
- o Child interview specialist could be expanded to meet judicial needs of victim and defendant.

-- Recommends courts be combined. Advantages:

- o More comprehensive understanding of case dynamics.
- o More consistency in rulings, preventing conflicting court orders - A civil court ruling that a perpetrator be given visitation, when custodial parent's been warned by juvenile court that dependent child will be put in an out-of-home placement if contact's allowed with perpetrator.
- o Reduce possibility that subsequent hearing would misinterpret intent of prior ruling.

-- Disadvantage of combined court: loss of balance sometimes obtained by having more than one judge review a case.

-- Now, victims must testify before at least two judges, make disclosures to a minimum of eight people. Numbers escalate if perpetrator is a family member.

- o Danger of numerous disclosures - possibility of doing so with untrained or insensitive people.
- o Inappropriate interview errors can cause significant damage.

-- Court system does not serve children or victims well.

- o Recommends frequent postponement of hearings involving witnesses cease; taking child out of school, arranging care, time off work, overwhelms already fragile family system.
- o Couldn't acceptance of plea bargain be limited to 24 hours prior to court date?
- o Possible for attorney to submit written request for more time before a hearing or trial date?

-- Recommends judges and attorneys have special training in area child victims.

- o All professionals should demonstrate ability to apply services to cases which involve children.
- o Judges should be trained to understand impact of child abuse -- how willing a child is to accept blame for wrongdoing of adult and how any such implication by a judge is devastating.
- o For example, had client who had been raped. Victim induced by promises of alcohol and opportunity to drive expensive car. Youth worked very hard in treatment to understand that in spite of his poor judgment to join this adult, he had no blame for forced rape that followed.

Youth invited by court to make a statement at sentencing hearing. Imagine what this task would be like for a child of yours. When he finished his very moving statement, judge's response was, "I hope you've learned your lesson!"

-- Recommend interview specialist be assigned to interview child as soon as need for an investigation has been identified.

- o Interviews should be videotaped.
- o If more information is needed, child should be re-interviewed by the same specialist.
- o Use of two-way mirrors and a bug in ear of interviewer could facilitate need for further clarification.
- o Should be a licensed mental health professional with extensive postgraduate and clinical training in area of child abuse and relevant training in area of court system and admissible evidence and testimony.

JUSTICE KING: We have Assemblywoman Mojonier with us who has indicated a desire to address us.

Assemblywoman Sunny Mojonier

One of my major concerns has been in the area of child abuse. Put together a Task Force on child abuse. I have been listening to testimony that has taken place and I wanted to address those of you that are speaking on some concerns in particular because there are several laws that are available right now. I think what's happening is because of our world where we deal with communication we don't communicate. Courts are not using what's available to them in the way of laws.

Not using vertical prosecution. Have child advocacy - a child can have a person appointed by the court or ask for people that they want to be with. Have closed circuit contemporaneous television testimony.

Have a judges' college that provides special training for dealing with children in the courtroom. Now if this isn't happening, why isn't it happening? More and more children are in the courtroom now. And we have to be cognizant of that.

Have legislation to have children's waiting rooms in every single courtroom in California. So there are things available. Why aren't we using them? I'm mortified to hear some of the things that I've heard this morning.

JUSTICE KING: System under-resourced. Appropriate to provide for children where new court facilities are constructed, but what if there's no plan for constructing new facilities. Laws are very important but need a lot more than what we have.

Our judicial training and education is the best program of any state in the country. But judges often can't go because court pressures are so great that their presiding judges won't let them leave.

Need a more expanded program, especially with the subject matter we're talking about. Judge's College is a two-week program. One afternoon is spent on this whole area - not just children, but on all of the family law, juvenile law area.

Tremendous rise in criminal prosecution, statutory preference given to asbestos cases or to people over seventy - can't get family law cases out. Problem of continuances inevitable because of statutory preferences - family law cases have no preferences and they're at the bottom of the barrel. Cases called up for trial three, four five different times and put \*-over.

Agree - some laws not being used. Not able to attract people to the bench from private practice so get people from district attorney's office who have never dealt with these problems and are not interested in dealing with them. Courts we are talking about -- family law, juvenile, mental health, probate -- with the possible exception of probate, they tend to be least desired assignments by judicial officers, tend to have the heaviest workloads and greatest burnout levels. Have greatest stress level because buck always stops with the judge. Not cases where the jury makes decision and judge acts as referee. Judge has to pick person's brain.

Killing people in these roles and the lack of resources to adequately handle the cases results in a lot of the dissatisfaction. Judicial system may have already collapsed and we don't know it. Works now because people volunteer to act pro tem. Bakersfield - seventeen superior court judges - they don't have a family law judge. Their family law department is run by twelve lawyers. Every twelfth day a lawyer comes in and handles the family law cases. The system's not handling them.

In Marin County and San Mateo County, if you have a family law trial that will take two days, it's at least two years to get trial and probably going to hire a private lawyer to act as the judge.

We are now losing some of our best judges. Reaching retirement age. In their place, getting people with no civil practice experience whatsoever. System will deteriorate more. Depend on lawyers acting as pro tem judges, arbitrators, settlement conference conductors and that's the only thing keeping system afloat. Rely on lawyers as appointed counsel and then pay them only half of what their overhead cost is.

May not make a difference if we restructure system if it doesn't attract top flight people and resources are not made available

DR. MARY DURYEE: Let me reassure you on one point. The child witness waiting room has been very important in my county where we've done two remodels in the last year or so. Without that bill, it would have been impossible for me to convince court or Board of Supervisors to provide that kind of space. Problem is getting family law to have any credence in the court. Getting resources to children is very difficult. Need a substantial attitude change to occur and law like that very useful for someone like me to go and argue for that kind of resource.

Two of three of our branch courts have a child waiting room because of it. Makes a difference but it's an uphill struggle and it doesn't turn things around like that. Talking about a two-year struggle for those changes.

ASSEMBLYWOMAN MOJONNIER: I understand judicial system terribly under-resourced. But at the same time, some of these programs, particularly the programs that I worked very hard to put into being, were done with the full intent of being cost-saving such as vertical prosecution. I mean that is definitely a cost-saving factor. And I can't imagine that it's not being used in every courtroom that deals with family law.

Waiting rooms were another thing. Children were being disqualified because they'd get so nervous they couldn't answer a question intelligently. Children take things very literally. When a child is disqualified on the basis that the question was improperly asked by an ignorant individual that doesn't know how to deal with a child, it just shouldn't be that way. Those things are what waste the money of the Court. That's what's happening to our resources. And not in every case, but that's a good portion of it. We can't just go on screaming that we're under-resourced if we're not going to use the programs that are available to save money.

I'm not here to put all the blame on the justice system. But I am saying that we have to all work together. We're all short of finances. We have a budget bigger than any we've ever had before but we also have 28 million people in the state of California. Our systems are not growing with our population. We are not funding them properly and I'm the first one to say that. But which do we fund first? We have to do better with what we have. We can't keep throwing money at things and think it's going to get better. We have to do better with the money we're spending now in order to be able to generate new revenues.

JUSTICE KING: I agree with that. What's going to happen with the public civil justice system is -- its like the Post Office -- we're going to have a federal express private system. Probably be less expensive, faster than anything the public system could provide.

ASSEMBLYWOMAN MOJONNIER: And probably more efficient.

JUSTICE KING: Maybe it will relieve some of these problems by taking those cases out of the courts. We require that attorneys be appointed in Juvenile Court and then we pay them half of what their overhead is. We do the same thing in the Court of Appeal in death penalty cases. We don't have a first class system. We have about a fifth class system and as each day goes by and our best judges retire our system deteriorates that much more. It's not just the money, I agree with that. I guess our task is whether, by some restructuring, we can do something to help keep it afloat.

ASSEMBLYWOMAN MOJONNIER: Well, let me say to you that I am available to help in any way, shape or form that I possibly can. This has been my main priority since I've been in the Legislature. It remains my main priority and will always remain

my main priority because I know that it has to stop. And so I want to make myself available to you in any way that I can. And to any of you out there, if you have a problem, come and talk to me. That's how I get these bills. People come and say this is what's wrong, this is what's happening, this is what happened to me in court. Well, come and talk to me if you have a problem. I really mean that. We'll change it. We can change it. You can change it. You and I together can change it, but if we're not going to work together and talk and communicate, we're not going to change anything.

JUSTICE KING: Remind speakers of Task Force's role and position on Family Relations Court.

JUSTICE ARTHUR SCOTLAND -- THIRD APPELLATE COURT

Associate Justice of the Court of Appeal, Third Appellate District in Sacramento. Formerly served as Superior Court Judge in Sacramento County. Year and a half as Law and Motion judge in family law.

-- Focus on two areas: proposal to create a Family Relations Division and experiences while a Family Law judge. Believe there is need to foster better cooperation and sharing of information among agencies dealing with children. Thought could best describe concerns by telling you about examples of actual cases that have occurred in Sacramento County.

-- First case deals with sharing of information. Arose within context of a domestic violence case in Family Law Court:

- o Couple having marital difficulties and had separated. Had a baby. Domestic violence petition or OSC and request for a Temporary Restraining Order brought by husband who alleged mother physically abused baby. Mother denied allegation and accused father of physically abusing her.

Matter referred to Family Court Services (FCS) for immediate evaluation -- both parties are sent to FCS and mediator speaks with parties and investigates in limited amount of time. In Sacramento, a worker has, at maximum, three hours to work with couple, contact any sources they provide and, if parties are unable to reach agreement on custody and parenting time, then worker reports back to Court. Court then makes some sort of a temporary order, pending additional investigation by FCS.



In this case, husband informed FCS that an investigation had been undertaken by Child Protective Services (CPS). FCS contacted CPS to ask about that investigation but CPS flatly refused to share any information with FCS, citing confidentiality rules. FCS was unable to confirm husband's accusations through any other sources. Only had clinical observation of FCS evaluator during interview with parents. FCS recommended Superior Court keep baby in custody of mother, pending additional investigation. Superior Court followed recommendation and, regrettably, within a matter of days, mother severely shook baby and caused massive brain damage, head injuries and irreparable injury.

I believe that CPS had information about mother which it refused to disclose to FCS. If that information had been shared, quite possible a different recommendation would have been made, a different order would have been made and harm to child might have been averted.

-- Not only incident of failure to share information. Don't know if this is representative of other counties, but other FCS workers and judges in Sacramento tell me that CPS repeatedly has refused to share information with FCS and with Family Law Court, citing confidentiality.

- o Even made a blanket order that would issue in every case compelling CPS to provide FCS with any information that CPS might have.
- o Understand now there has been a relaxation among some CPS workers and now sharing some information on a voluntary basis.
- o Recommends immediate access to that information --adherence to confidentiality laws or at least interpretation of those laws to preclude immediate sharing of information is simply intolerable.

JUSTICE KING: Is this a problem of law or interpretation?

A: Sense that it's probably interpretation by CPS in Sacramento. Has discussed this with at least one other commissioner in another county who indicates that there's not a problem. But was juvenile commissioner and Juvenile Courts deal more closely with CPS. I was Family Law judge and this was a family action and perhaps just a perception on CPS' part that more closely aligned with Juvenile Court.

-- Another example relates to an overall lack of assistance or by CPS to family law actions. Don't know if its of other counties but has happened in Sacramento. Ms. Wasznicky and Ms. Chong are familiar with this case. I appointed Wasznicky to represent the minors in this case.

- o Was a motion to set aside a judgment of dissolution that had been entered by default. Were ten and three year old children from a previous marriage. Were allegations by ex-wife that ex-husband had committed spousal rape, was out of custody and was continuing to break into home and assault ex-wife, often in presence of children.

Issued a restraining order against husband and referred matter to FCS for investigation. FCS learned that mother had history of relationships with men with some very serious psychological problems. First marriage was to a man convicted of child molestation. Second marriage to a man convicted of rape and who during course of that marriage had committed suicide. This was her third marriage and ex-husband also had some serious problems. He was convinced he was a werewolf and she was convinced he was a werewolf.

Also convinced he was possessed by devil and acknowledged assault but felt wasn't responsible because he was possessed by devil. FCS learned this person had assaulted ex-wife and also used excessive force against ten year old. He was observed in welfare office using excessive discipline against the ten year old.

FCS interviews ten year old and found that young boy was very, very disturbed -- very emotionally disturbed. He made threats and had desire to kill stepfather. He'd indicated that there was routine conversation over dinner with mother about repeated times that she had been raped or assaulted by her various spouses. Incredible discussions about suicide of her ex-husband -- graphic details about how he had blown his brains out, size of hole in his head -- graphic, graphic details. Child was manifesting some serious symptoms of emotional disturbance.

FCS concerned about mother's ability to protect child and came to my chambers and told me about investigation. I was alarmed and immediately called CPS to commence investigation to determine whether or not children should be taken away, at least pending some investigation to determine what's in best interests of children.

CPS intake supervisor told me there was insufficient facts to commence investigation. Intake supervisor's belief was that mother had not personally assaulted children and restraining order against ex-husband was sufficient, even though clear to me mother was not able to enforce restraining order. Reason man out on bail

was that mother went down and bailed him out and recanted accusation of spousal rape. Nonetheless, CPS intake worker felt there wasn't sufficient cause or facts to justify investigation.

As family law judge, I made order that CPS commence investigation. FCS followed up but CPS just did nothing with order. Ended up appointing Ms. Wasznicky and, through efforts of Ms. Wasznicky and FCS, CPS ultimately did decide to go out and do a home visit.

Unfortunately, this was literally months later. Mother had taken ten year old out of school and she and the children were gone. To this day, no one knows where woman is. She had married again -- this time to convicted child molester and there were allegations he was assaulting her.

-- Not only judge in Sacramento to have problems with CPS.

- o One judge so concerned over facts of a case ordered his bailiff to take children to receiving home pending investigation by CPS. Much to his dismay, children were released to parents next day.
- o Another judge twice called CPS to ask them to commence investigation and both times was told wasn't sufficient information to justify investigation.

-- Don't know what CPS guidelines are. Does know they are overworked and may be attributable to that, but something needs to be done to insure CPS is responsive to needs of Family Law Court.

- o Recommend Task Force look into modification of confidentiality laws or CPS guidelines to ensure that it properly fulfills duty to children and courts.

-- I question the premise that consolidation will raise status of family relations actions, better protect interest of children and make assignment desirable and require judges to serve 3 to 5 years in that capacity.

- o Believe the times are changing and there is greater recognition of importance and complexity of family law, more judges interested in assignment.
- o Assets involved in family law are significant and feel it's an important area - lack of status is based upon misinformation and lack of experience in family law.
- o Concurs with Justice King's remarks that there is alot of stress in family law, workload is horrendous so judges aren't interested in family or juvenile law.
- o Creation of a Family Law Division will not change those attitudes in judges that don't want to accept burden.

-- Creation of new Division will make it less desirable for those who do want to take assignment.

- o Area is work intense, complicated -- if make judges become experts in juvenile, probate, guardianships, conservatorships, etc., will make it less desirable.
- o Three to five year commitment -- personally think have to be there a year or longer but five years too high because of burnout rate.
- o A lot of judges don't want to be pigeonholed into particular area of law, want to rotate and maybe come back to family law.
- o Practically, location -- Sacramento has one courthouse except for Juvenile Hall which is quite a ways away and don't want to be separated from mainstream and judicial colleagues.

-- Real problem is that family relation work is viewed as insignificant.

- o Workload, not enough resources. Way to improve status is to increase number of judicial positions.

**MICHAEL JETT -- CHAIRMAN OF CHILDREN'S AGENDA**

Chair of the Sacramento County Children's Agenda -- a community wide advocacy effort to address the needs of children and families that appear in family and juvenile court.

-- 2 years ago, group who dealt with child abuse began to realize that we were fighting a losing battle. Many families so overwhelmed and children's services so inadequate, would need to mount an intensive advocacy effort if there was to be any hope of turning tide.

- o 1987 Child Abuse Council cosponsored conference called Sacramento Cares. Beginning of coalition that now has over 200 agencies and individuals.
- o Developed Children's Agenda and approached Board of Supervisors for support in funding -- they approved \$50,000 for first six months.
- o Released fact book for education purposes to help define problems. (See Attachment C.)
- o First year's children's agenda had one recommendation in each of nine topical areas looked at in fact book.

-- General themes emerged:

- o Emphasize prevention and early intervention services for children.
- o Children's services should be client based -- now services are organized to meet needs of delivering

agency rather than family and there is little coordination.

- o Client based services means multi-service centers, outreach services and service coordination.
- o Continuing advocacy for needs of children.

-- Body of report focuses on nine areas identified as most pressing.

- o Economy -- enhancement of aid programs, establish group health insurance program for small businesses.
- o Health -- a three year pilot project to reduce barriers to prenatal care.
- o Mental Health -- 50% of all new monies allocated for children's mental health services.
- o Child Care -- establish a local child care trust fund.
- o Substance Abuse -- Implement a comprehensive, multifaceted, continuum of care system for perinatal substance abusers.
- o Housing -- adoption of a housing trust fund.
- o Child safety and protection -- intensive in-home prevention services for parents and children.
- o Education -- establish school-based, multi-disciplinary service centers to provide accessible services to children and families.

-- Last area was Justice. Two concerns in this area: victims of child abuse often re-victimized by repeated interviews, medical exams, multiple civil and criminal hearings and status offenders -- runaways or beyond control.

- o Recommend establishing a multi-disciplinary interview center where professionals can coordinate investigations.
- o Recommend establishing a Child and Family Court
- o Recommend separating Neighborhood Alternative Center from delinquency programs and expand services to runaways, both in public and private sectors.

#### JUDGE RICHARD COUZENS -- PLACER COUNTY SUPERIOR COURT

Judge of the Superior Court in Placer County. Superior Court bench for about ten years, half that time in direct connection with Juvenile Court. Also had to do domestic relations, LPS, adoptions, probate and other kind of matters that we all do in a small county.

-- Past year, our county has operated under exactly system that is being considered by this Task Force -- combined duties of Juvenile Court judge and Domestic Court judge. I was that judge.

- o Had benefit of cross training in both areas of law and had cross connection with several families.
- o Felt overall I was able to render a lot better service to families because of this broad base.

-- Two illustrations. One involved a child that started out principally in 602 category of Juvenile Court.

- o He was charged with the cultivation of marijuana. During disposition phase learned mother had helped him with a bank account and some equipment. Also learned mother and father getting a divorce. Became aware of divorce action on domestic side. Divorce was very acrimonious with lots of cross allegations about being an unfit parent.

In juvenile context, had to make decision about punishment but also about placement. Had I only had exposure to Juvenile Court case, might have said, "Well, mother's helped him with the crime, therefore she is obviously unfit and placement should be with father." But because I had contact on domestic side, I realized that was not the simple answer.

Were a lot of problems that we saw only symptoms of so I determined after reviewing both aspects that I would use 602 process to deal with punishment and expressly reserved my order to my other half as domestic judge on question of placement. Then allowed mediator and professionals involved with us to help work on relationships within family.

Still pending but hopeful this process will be more effective in getting appropriate information than I would have gotten had I simply relied on probation investigation of Juvenile Court.

-- Another example of where cross training came into play was where child was taken into custody and placed in receiving home under Penal Code Section 279, which allows police to detain child if there's a potential parent will flee with child thus depriving other parent of contact.

- o DA's investigator learned mother was in town and seized child and placed child in receiving home. I was notified and because of some problems in the family, I notified CPS.

Initial concern was whether there was basis for 300 dependency proceeding. Immediately satisfied there was not. Child well-cared for. Learned more information about parties, attorneys were retained by both and I quickly set up a combined approach.

Able to order release of child and got family into mediation. Set up some protective TRO's to prevent removal of child and make sure both parents were advised of location and arranged for contact.

Had we not had joint responsibility under one court we could have done same thing but would have taken much longer, more involved and child would have to stay in receiving home for much longer period of time. But because I had contact with all parties, was able to bring them together very quickly, informally.

-- In course of our practice in Placer County can't think of one reason not to combine services. Only one footnote:

- o Task Force and Legislature has to be very sensitive to fact that while certain practices are good, they can't necessarily be mandatory because to make them mandatory could work a hardship, particularly in smaller counties.
- o Specialization on bench time-honored practice in larger courts; common for judges to have long and specialized assignments.
- o In small county, do all different things and are comfortable with it.
- o If you force us to combine, though, it could work a hardship in smaller counties where we do need flexibility and ability to deal with lots of different areas at different times.

-- Placer County has 4 judges. Over past year have had three trial departments. Found that Juvenile Court caseload was about 50% of a full time judge. Add it all together, adult criminal, domestic and other things filled out my day.

- o Next year will have to open a fourth trial department and I will have to shed some responsibilities -- will have to give up domestic calendar because of lack of time.
- o Will keep juvenile calendar because I feel there's a need for continuity because you are dealing with families over time in transition, plus I enjoy the calendar.
- o Need to be sensitive to fact that smaller counties need to maintain some degree of flexibility -- 56% of counties in our state have four judges or less.

-- Recommendations:

- o Mandatory meet and confer requirements -- have been very comfortable under Uniform Child Custody Jurisdiction Act and see no reason not to have same system in California.
- o Multi-disciplinary team approach -- In Placer County have SMART -- the Special Multi-discipline Assessment and Referral Team. Found had children with

multi-discipline problems. As a result, had a lot of agencies spending a lot of time, perhaps duplicative effort on particular family. Also turf wars began to develop.

SMART recognizes concept that sometimes there's need to share and to designate lead agencies and to have unitized system for dealing with problems that are particularly complex.

Memorandum of Understanding. (See Attachment D.) Have agreement between Probation Department, Welfare Department, Mental Health Division and Juvenile Court. Created to deal with child with cross-discipline problems.

See Memorandum I have handed out. (Attachment D, Page 2, Paragraph C.) That is the key. All departments agreed to abrogate a certain degree of responsibility, discretion. Everyone agreed to abide by the decision of SMART as to who would handle case and particular case plan.

Two levels in SMART. A resource team made up of department heads plus juvenile court judge responsible for setting policy and facilitating operation, such as providing inservice training, regular meeting spaces, help in financial need, staffing. All decisions made by majority vote.

Assessment and referral team represent department heads in trenches. Have a facilitator who's sort of a tie-breaker or a person to encourage discussion. Found a person in Department of Education to act as facilitator.

This team receives referrals from agencies and sets up an exchange of information. Files brought in. Have sort of pseudo-subpoena power. Can order into this group parents, other case workers who are involved -- anyone they feel might have some important information can be brought in.

Case is discussed and decide if a lead agency should be designated. That agency is responsible for carrying case through. Sub-assignments can be made to other agencies and then they set up tracking so can follow a case to make sure that it's carried out.



Last section deals with appeals process. If a department head feels aggrieved or if there's a dispute that can't be resolved, can be appealed to resource team for decision. Juvenile court judge would not be involved but other department heads would decide by majority vote how to proceed.

SMART in operation for year and a half. Dealt with over a hundred children. Never had appeal or unresolved dispute.

Found that because it has brought players together so well, virtually resolved and focused on all extremely complex cases.

Start SMART process before Juvenile Court. I am told that it has been a SMART reviewed case and is recommended approach, people are automatically on track and we get services a lot sooner.

-- Used SMART to get grant applications. Everyone is together with common goals and interests.

- o Didn't have a shelter in Placer county. With SMART team in place, got a shelter from concept to opening doors in less than four months.
- o Got cooperation of all county departments -- made unified presentation to Board of Supervisors.

-- Other counties are picking SMART up. Sonoma County had me make a presentation. With diminishing resources, we have to use what we have a lot better. Not necessarily have to add judges or resources but use what we have more effectively. Encourage legislation that would facilitate the use of multi-discipline teams.

-- Share Justice Scotland's concern about exchanging information and have had situations where CPS was reluctant to share information but since I'm in a joint position have been able to resolve that with a phone call.

JUSTICE KING: How do you think combination would work in larger counties?

A: Very hard for me to address since I've never been in that milieu. Vast majority of cases not going to be overlap. A lot could be handled with computer or calendar control where names appear together. Then effort should be made to assign to one judge. Rest of time could be division of responsibilities.

JUSTICE KING: What was germination of SMART?

A: Frustration over turf wars. Had lunch one day with players and was a lot of anger and resentment between various agencies. Took a year to get through this process and to get each other's trust -- to point where everyone is willing to give in and surrender some turf control.

JUSTICE KING: A lot of what we have heard is that substantial part of problem is getting agencies dealing with same family, cooperating with each other and communicating freely with each other.

A: Absolutely.

ANN CHONG: Out of the 100 cases, how many overlapped with family law?

A: Actually very few. Most problems were whether should be a 300 or 602 child. Still problem of what to do with a 601 child, the beyond care and control child that does not fit either category clearly. Another purpose of SMART was to deal with that because two agencies involved were having trouble with that and wanted to come up with a more unified approach. Sometimes I don't even get a case because it's gone through SMART and they deal with it in-house with informal arrangements reached with probation office or family maintenance agreements with Welfare. Don't have to file a petition because have short circuited problem and gotten resources early enough. Some could have involved domestic matters and I'm not aware of it.

ANN CHONG: So treatment and coordination occurs before actually going to court?

A: Most of it. Are times where I get a case that slipped through cracks and will see dysfunctional family and will refer it back to SMART for review.

JUSTICE KING: Attorney General's report recommended that dependency function and dissolution should be grouped together but not delinquency function. What are your comments?

A: I would strongly disagree with that recommendation. Certain segment of Juvenile Court deals with children committing extremely violent crimes -- a criminal case. But that's small percentage.

Huge variety of cases where child will steal from a parent. Has roots in dysfunctional family and that's what juvenile court is all about in my view is to try and avoid automatic knee jerk response of a criminal system. You want to work with the family to get him out of system. If automatically assume that all minors who commit a violation are in criminal category and thus

should be tied with adults, is a gross disservice. If deal with kids, family problems early enough, make family strong enough to deal with their own problems, chances are we're not going to have to deal with them later on.

ASSEMBLYWOMAN MOJONNIER: How is SMART funded?

A: Each department coughs in a little bit in spirit of cooperation. The facilitator from Department of Education, who spends about 20% of his time in SMART, his services are being donated because Superintendent of Public Instruction believes in this program and wants to do it as a matter of inter-agency cooperation. We don't have it specifically identified as a budget unit.

ASSEMBLYWOMAN MOJONNIER: Do you find it to be a cost-savings in each of those departments that are putting money into it?

A: We have no statistics to back it up, but instincts and comments are that it would be because if we can get services earlier and avoid duplication, bound to solve problems and be less expensive.

ASSEMBLYWOMAN MOJONNIER: That would be material for a good piece of legislation.

PUBLIC COMMENT:

NANCY PRIDDIS: Ms. Priddis commented on her case, Marriage of Priddis, and the ineffectual representation coupled with over-zealous advocacy, amounting to a kind of conspiracy, of lawyers and the judicial system in general, in dealing with women and divorce. A woman has no opportunity for discovery in the present system. Everything is done to back up the husband. And the husband has had complete record keeping or management for a full ten and half years before the separation and he has possession of the property for another eleven years.

Ms. Priddis requested that the Legislature investigate Marriage of Priddis, as it is an excessive case. She also recommended that books on family law be put in the public library where the public can read them instead of in locking them up in libraries that don't fit our working day world. She submitted a copy of the case's court transcript to the Task Force. (This transcript is available on request from the Senate Office of Research.)

ANITA BRANMAN -- CHIEF PROBATE DIVISION

Chief of the Probate of Sacramento Superior Court. Handles all investigation on guardianships and conservatorships. A licensed clinician and has spent 13 years previously in Child Protective Services, some of that time in juvenile court.

-- Existing systems for families, child victims often results in fragmentation and confusion for families. Problems relating to children in Sacramento addressed in 3 separate court systems and screened by two separate county departments. When a family's looking for help, not always sure which way they should go.

-- Department of Social Services, through CPS does all screening for dependent intake.

- o A relative can call, say, "I have a problem with my daughter. She is on drugs. She leaves her child with me and I'm worried about child and think child needs protection."
- o Because of CPS workload, will often say to relative, who might be looking for a Not In Custody Petition, "Hire an attorney and go for a probate guardianship."
- o Probate guardianship becoming an alternative to dependency and I feel it's inappropriate because is child custody issue.
- o Parent may not be represented by attorney, though they object to child being removed and nothing in Probate Code that provides for attorney.
- o Nothing in Code that provides for a closed hearing so sit in Probate Court and hear a grandmother allege her daughter has been shooting up heroin or that child's been molested and all open to public.
- o A tremendous abuse yet law does not provide for protection in area.

-- Law does not provide for interstate agreement so that guardian in California not recognized in Nevada.

- o If you're a guardian in Oregon and come to California and child needs major surgery at Med Center, they can't help you because you have no power in California.

-- Even if have combined courts, law is not fitting needs of system as it exists today. 50% of all petitions for guardianship of minors are really dependency petitions and I would have heard them in juvenile court 10 years ago. Because of limited resources, denying anything but most serious cases so people look for alternative and come for probate guardianship.

- o Probate guardianship provides nothing which will help in family reunification.
- o No one to work with parent.
- o No one to supervise child because Code doesn't require that you ever see child again.
- o Probate is no substitute for dependency if looking for protection of children and family reunification.

-- Similar patterns with status offenders -- young teen-agers are having problems and parent or relative can't handle it anymore. They try and get someone else to assume responsibility.

- o If try and get another relative to petition for guardianship, we try to make relative understand if they can't handle child, can't come back to court and say, "Hey, terminate guardianship; I don't want the kid anymore."
- o That happens -- acting out children who often need a great deal of help, status offender type of youngsters who may run away, maybe into some minor illegal activity.
- o Often well meaning parents need the muscle of a 601 petition to say, "Hey, kid, you shape up."
- o Need more than guardianship which says, "You're the parent, you have all the responsibility and it's your problem." That's what probate guardianship does. No real help for relative dealing with an acting out child.
- o Often the relative didn't raise child, hasn't been part of problem, but inherits it.

-- Looking at two ends of the system -- the younger child who doesn't come under dependency because of limitation of resources and criminally acting out status offender who, in Sacramento county, are rarely filed on by Probation Department because of staff requirements to supervise these kids.

- o Families caught in these situations try for probate guardianship and it's no solution.
- o In a unified court a judge still will not have power to appoint attorney for a mother or, if it's a change in custody, to get child away from parent under family law, unless there's a change in law, too.
- o Just changing system will not solve problems -- there's a problem of resources for agencies that are supposed to be doing the job and are not.

-- Adults under conservatorship experience same kind of abuse and neglect and will see more.

- o Same skills, sensitivity, understanding, awareness of family dynamics that well-trained family court judge would need also needed to help in these families.
- o Family where child abuse occurred often can end up with

elder abuse later.

- o Issues gray and require sensitivity and often law does not address them clearly.
- o In educating judges, need to have dynamics of both ends of age spectrum.

-- Problems caused by cases being heard in Civil and Criminal courts. As a CPS supervisor for 12 years, found that families very confused by dual system.

- o Long delays affect families.
- o Children always traumatized, like most victims, when have to testify.
- o Children always feel guilty about describing experiences of molest or abuse.
- o Elderly person also feels guilty -- last thing an elderly person wants to do is say that their child is hurting them or mistreating them. They have mixed feelings.
- o Need expeditious trials and minimum of testimony by victim.

-- Need to protect accused and feelings and sensitivities of victim -- hard to work out.

- o Ideas you've presented hoping to address many of these problems but I'm not sure solution will work as presented.
- o I think advocacy for children in legal system is highly desirable.
- o Multi-disciplinary teams are only as good as people you have on them. They are no panacea.
- o Shared information helps but won't solve problem because what you have is overlap in systems -- so could have someone representing probate guardianship, family court, juvenile dependency, a probation officer of status offenders and the child may fit into all the systems.
- o Hardest thing multi-disciplinary teams have to resolve is who is going to take responsibility.

DR. DURYEE: Where do most counties hear elder abuse cases?

A: Elder abuse is really in W & I Code but often there is a petition of conservatorship to protect elderly person. Generally, if two courts are involved they are criminal court and probate court for conservatorship or an LPS if person's mentally ill, unless have civil suit because of financial exploitation which we see a great deal of, too.

Are more probate conservatorships in Sacramento County than LPS conservatorships. Would fit in a Family Relation Division but I'm not sure that would be administratively feasible. What I was really alluding to was the training judges would need to be sensitive to any family conflict, applies to both ends of age

spectrum. Kinds of problems I see in guardianship not terribly different from type of problems see in adult conservatorship -- age is turned around and sum levels of conflict are a little different but basic conflict is there. Sometimes exploitation, abuse, a great deal of misunderstanding, guilt, anger. Family systems are similar. Judge who is tuned into one system is going to recognize similar problems in other.

Education goes two ways. Makes more sense from my perspective to combine adult protective action and child protective action than it does to combine it with a criminal -- juvenile delinquency action.

MICHAEL STREIT -- MEDIATOR

(Submitted written testimony. See Attachment E)

Background in Child Protective Services and last eight or nine years in Custody Mediation in Placer County. Private counseling practice in which I do private mediation and handle alot of cases that end up in courtroom.

-- Polled judges and called everybody in my county and response to carry a separate court in family law/domestic issues was pretty unanimous -- they would really like to see that, idea sounded great and made a lot of sense. Written comments outline reasons why might be a good idea. (See Attachment E.)

- o Would prevent overlapping of courts.
- o Access of information by a judge who might be handling one or more facets of a case.
- o Expertise that a particular judge might develop in area of domestic relations, including interest judge might have in areas.
- o Some judges love area, others hate it and those that love it ought to be doing it.

-- Problems with a county size of Placer. Have to deal with resources and size.

- o Have four Superior Court judges and logistically would be almost impossible to set aside a department exclusively with family law and domestic matters.
- o People seem to get killed in Sacramento County and buried in Placer County so we have a lot of criminal trials.

-- Judges have a tendency to burn out with these emotional and volatile domestic cases.

- o To have one judge in domestic court and have that judge always be in that capacity any more than two or three years would take its toll.
  - o If one court, what would happen if that judge was not available -- what expertise would be available in the rest of court.
- Organization of court system often does not serve children.
- o Kids wind up in an adversarial position minute court system involved -- minute there's a judge and two sides works to detriment of children.
  - o Money -- lawyers often bring cases before court that might not need to be there -- provides them with an income.
- Written policy or protocol for exchange of information between various agencies is touchy issue because of confidentiality matters.

- o If more expert at winding way through confidentiality rules, persuasive and have a network that you use judiciously, then can get information.
- o As mediator, have called mental health workers, CPS, cops, anybody who's dealing with case and, at least verbally, they have been very forthcoming to best interests of child but we're all throwing the W & I Code out window.
- o Exchange of information under certain guidelines is absolutely essential.

JUSTICE KING: Placer does not employ court-employed mediators. Has a panel -- people in private practice employed on contracted basis. Heard of a lot of problems of getting information from CPS by those in FCS. Wondering whether in Placer, where have an employment relationship with county, if you or your colleagues have greater problems?

A: A great insight. Placer is small and tends to be closer knit than larger northern counties. Generally two of the four judges are dealing in issues we're responsible for. Access to information between agencies is more forthcoming. In half a minute I can get a Minute order to access information I feel is essential to case almost without question.

There is a trust factor built up between judges and mediators. Easy to get to know people in network and say a lot off record. We know players. But formalizing process without jeopardizing rights of others is very necessary.

-- Interviewing children. Had a career interviewing, rescuing and working with children.



- o Passionately against involvement of children in legal system, either as litigants or witnesses.
- o Don't believe best expert in America today can take any particular child and get information from minor that's going to resolve either a legal or mediation case.
- o Contextual interviewing part of total picture -- gives you flavor of what's going on in life of child but would never say, "This Case is going to depend on what you say here today," whether its a molest, abuse or custody case.
- o Cases such as McMartin case are testimony to how inefficient interviewing of children has become.

JUSTICE KING: Judge Couzens indicated that it's really beneficial being able to occupy role as juvenile and family judge. We asked if he could extrapolate from that to larger counties where there wouldn't be just one judge but perhaps a number of judges in each assignment but he wasn't able to do that. Any thoughts on that?

A: I'm not sure why he wasn't more forthcoming. When I talked to him he was more candid. I've worked cross country and idea of domestic court handling matters as outlined by Attorney General, I think could be done, especially in larger counties. Might redesign court so judge might be used in certain situation but not as final hearing officer for each and every issue. Mediation has proved we don't need judges to make decisions about all kids.

JUDGE CECILY BOND -- PRESIDING JUDGE

Appointed to bench in 1980. Served 16 months on family law bench in Sacramento County, four years in probate department and now in second year as presiding judge. Currently chair of County's Task Force on Juvenile Court.

-- Have reviewed questions supplied and in my opinion major, preliminary question Task Force needs to address is how common is overlap between juvenile courts, family courts and probate court. I assume overlap means multiple cases involving same family unit or children pending at or about same time in either juvenile or family or probate court.

- o No statistics in Sacramento and doubt that is unique.
- o Believe much information on topic anecdotal and urge not recommend change or restructuring of courts on such impressionistic data.
- o First task, gather empirical data which shows extent of overlap.

-- Data may not be too far away. Sacramento County in process of computerizing family law and juvenile court information. Several other counties moving in this direction though still year or two away.

JUSTICE KING: L.A. judges indicated figure of 1.03% for cases where something actively going on in both courts.

A: Doesn't surprise me. My experience as well as experience of a number of our family law and juvenile departments is that overlaps do not exist in a substantial numbers.

- o Is a problem of coordination and possibly problems of juvenile and family court control and increasing diversion to probate court of cases that ought to be handled as dependency petitions.
- o But not a great number of cases and should be handled by coordination mechanism rather than restructure of courts.
- o Our family law courts defer action when a dependency proceeding pending -- take no action in family law matter, permitting adjudication of dependency action to continue, take precedence.
- o Believe was only six overlap cases last year -- consistent with L.A.'s statistics.

-- Many reasons why maintaining the present system and making it work better is a better approach.

- o In juvenile, there is representation, confidentiality and all parties at hearing -- that's way to handle this kind of problem.

-- Attorney General's report assumes that one judge should handle all matters involving same family and this presumably will lead to judge becoming familiar with a particular case, its history and more consistent results. Infer that this might include criminal matters involving the same family Unless Legislature prepared to make massive infusion of new dollars into judicial positions, assumption simply wrong for most courts. Yearly filing figures demonstrate this dramatically.

- o First six months 1989, in Sacramento County, almost 7500 family law petitions filed, 1500 involving custody, visitation issues, 1150 petitions for modification of prior custody and visitation orders or total of 2650 referrals to family court services unit.
- o 2100 petitions in probate, about 180 involve guardianship.
- o Juvenile filing will total over 6,000 cases.
- o Approximately 2200 dependency petitions and almost 4,000 delinquency petitions.
- o Equates to approximately 1,000 or 1,300 cases involving

custody and visitation per judge per year, given current resources and I'm including two commissioners.

- o Totally unrealistic to think judges can handle 1,000 cases a year and remember nuances of each case, especially when there is a 3-4 month gap between hearings.

-- Problem requiring judges to be simultaneously prepared and proficient in three distinct areas of law. Will increase need for judicial positions.

- o Family and juvenile law are fastest and most changing areas of law and probate undergone major changes, too.
- o Judges who must deal with these won't be able to handle same number of cases. Efficiency will decrease.
- o Don't think consistency will necessarily follow.
- o Rather than make these assignments more attractive, will become less attractive.
- o Have found that specialization, even for a short period of time, should be promoted because it insures better quality and efficiency.
- o Would place severe strain on support staff and way it's organized.
- o Family law counselors are not prepared to handle juvenile and probation officers are not trained as family court counselors.

-- Inference to include criminal neither wise nor feasible. If want create, on judicial level, traditional family doctor who is available to handle all needs of family then should learn from medical profession that ever expanding need for expertise, costs, volume of cases, resources available doesn't permit that kind of model to exist.

- o Major constitutional, evidentiary problems raised by having one judge handle dependency, dissolution, custody as well as criminal.
- o Judges, juries in criminal cases can't go outside criminal record.
- o Would be difficult to separate evidence presented in criminal case from that of court sitting in juvenile or family law matter.

-- Statement made that family law should be made coequal with civil and criminal.

- o Statement assumes that civil is now equal with criminal but it's not as constituted at this time.
- o Erroneous to conclude that family law is given less resources than civil. Some counties aren't trying any civil cases.
- o True that neither family nor juvenile command kind of resources needed, primarily because criminal priorities

due to speedy trial requirement. And this the proper priority.

- o Priority ought to exist for civil, juvenile and family cases as well.

-- Real question is how can civil, family and juvenile be given fair share of judicial resources in light of continuing and growing shortage of judicial positions, expanding criminal caseload.

- o Recommend substantial increase in judicial positions.
- o Recommend courts be divided to insure a fair allocation between criminal, civil cases including appellate and supreme courts.

-- Question 5 seems to imply that court system's goal is to handle children and victims well. I would submit that function of court system is to process cases, both criminal and civil, as fairly and expeditiously as possible. It's important to structure system so you are responsive to needs of children, victims, however one should not lose sight of fact that main goal is to fairly and efficiently provide a forum for resolution of disputes and not to serve any particular group.

-- Generalized need for education of the public as to court and procedures, policies.

-- Assignment policy of court. (See Attachment F.) Rotating assignment policy. Utilize a rolling seniority system -- judges listed by seniority but each year three judges at top of list go to bottom. Judges select their assignments, state their preferences and preference will go to those from top of list.

- o Have a yearly assignment list, although some judges choose same assignment for more than one year.
- o Personal view that a two-year period of assignment is preferable.

-- Have two referees in juvenile court but are in process of converting those to full time judicial positions.

- o Feels strongly that all positions should be judicial positions and that public, litigants feel they get better treatment if handled by judges.
- o Closer judicial supervision in family law matters would facilitate their resolution but would demand more resources.

-- Utilize a system of written orders for FCS to obtain confidential information from CPS and sometimes use to get information from juvenile authorities in probate matters.

- o Have emergency system where court order can follow three days later but information is given on emergency basis.
- o Agree that some cases of overlap, believe problems should be addressed by a more formalized process of coordination of units.
- o But combined family court does not offer a good or feasible solution to problem.
- o Real problem is lack of adequate judicial resources.
- o Recommend creation and appointment of sufficient and adequate number of judges to handle ballooning caseload.

PHILLIP REEDY -- MEDIATOR

From Shasta County but has also gathered materials from Humboldt and Lassen County. Materials in packet (see Attachment G.) Mediator in Shasta which has 150,000 population but is large geographically.

-- Will address problem of overlap between different courts, detrimental interview procedures, coordination between courts, by using case examples:

- o Couple divorced four years ago. Eight year old daughter. Parents had joint legal preliminary agreement, mother had sole physical custody. Voluntarily switched physical custody without recording it. CPS involved in case a year and half before it was referred to mediation/custody based on allegations that step-sister and daughter had been molested by mother. Case went through CPS in large county where father lived. Daughter ended up being contacted, interviewed by 5 different people -- private clinicians, in a private psychiatric facility for about 20 days regarding her own sexuality, the abuse, her behavior with other children sexually. All while still at allegation level. Nothing was ever established in juvenile or criminal court.

Six public agencies involved, three different court systems and two counties. Only one clinician and one agency had been in communication with both parents. Most clinicians did not interview, call, assess, observe mother. Eventually file 300 petition.

- o Highlights problems we see. Upwards of 10% cases involve serious abuse allegations and increasing.
- o Results in investigation by law enforcement, CPS, therapists yet often does not lead to a conclusion that will fly in court or safety of child.
- o CPS and FCS see common problem that system abuse surmounts actual harm caused by parent originally.
- o In above case, if child had been in intact family, would have gone through treatment process and been united, if

treatment went well. Child would have been back with parent. But child is with neither parent, even though mother wants her back. Plan is to reunite but still a long way off.

-- Coordination with CPS and other agencies.

- o Child abuse -- will follow along and report to family law judges what's going on in juvenile court, in CPS so any orders from bench can take information into account.
- o Often will suspend all action in family court until resolved.
- o Sometimes an uneasy time where nothing is established in either court and both courts have potential for making conflicting orders that are detrimental.
- o Share information freely with CPS, private therapists -- used releases for confidential information and also T & G ruling, which county counsel recommended and judge signed as policy -- can release information without parental consent.
- o Staff meetings with police, probation, welfare, private therapists all in one room most productive, reduces disharmony.

-- Lassen County's program I CAN TEAM -- Inter-agency Child Abuse and Neglect Team. (See Attachment G.) Similar process to ours but more organized.

- o A retrieval file is kept with copies of reports and card indexes to cross reference victims and suspects.
- o Anyone from I CAN TEAM can access this information.

-- Informal policy in north state that if you're going to err in a legal position, err for safety of child. Maybe a little bolder in north state.

-- Education -- have submitted our packet of information that's given to parents. (See Attachment G.)

- o Mandated orientation process for all families referred to FCS for mediation.
- o Often 10-15 parents in a room, no children, shown video tapes. Given two-hours worth of written materials.
- o Want parents focused on best interests of child not on other disputes. Has pre-emptive value and alot of minor referrals resolved leaving us with tougher issues.
- o Use this to educate professionals in community and take it to CPS once a year -- bottom of conflicts is that CPS and FCS had no idea of each others struggles and we have tendency to say, "Why aren't they doing this?" They were doing same thing.

-- Good educational program is Humboldt model, which we're considering using. More involved.

- o Four hours, in two two-hour slots or four hours on Saturday.
- o Charging fee of \$20 which is waived for parents that can't afford it.
- o Led by two therapists who have done program themselves.
- o Share alot with county: man/woman team approach for mediation, meet once a year for Northern California Mediators' Institute, including 12 northern California counties for a workshop and brainstorm.

-- Also cooperated with Bar Association -- created a Family Law Committee with attorneys who have helped with our policies and procedures.

-- Find Huntsville Model in text very, very positive -- could be cornerstone of any justice system in any of our states.

- o Problem of a shrinking tax base and prioritization.
- o Fear in north state that mandated solution will not be followed with money -- will be forced into something we can't afford to do.
- o Huntsville model is well thought out and very little there that I wouldn't want to implement in some way.

-- Recommendations:

- o Child interview specialist can reduce some fear and uncertainty in evaluations. Limited value to statements when you don't know who's behind them.
- o Have interview specialist meet certain state standards, be fluent in all different codes that impact children to prevent conflict that occurs when someone interviews from only one legal perspective.
- o Specialist should be a state position -- regional like Highway Patrol with certain standards you can count on throughout state.
- o Have annual, regional institute throughout state where parties that interact with these type cases can meet with various agencies and private sector, including advocate groups to brainstorm these issues and come up with solutions and strategies.

PROFESSOR JOHN MYERS -- MCGEORGE SCHOOL OF LAW  
(Submitted written testimony. See Attachment H.)

-- Support concept of a Family Relation Court and urge Task Force to recommend its adoption. My research, writing on child abuse and comments relate to that.

- o Increasing number of cases where allegations are made that one parent has sexually abused child.
- o Family court judge faces complex psychological issues and has little or no training in abuse while juvenile court judge routinely handles such matters.
- o Combining family and dependency matters before one court would increase knowledge and sophistication of judges responsible for cases, permit judges to draw upon powers of juvenile court when child protection an issue, be natural focal point for training of judiciary and support staff.
- o Bolster sagging public confidence in legal system's ability.

-- Need to educate judges assigned to family relations court, mostly in disciplines other than law -- psychiatry, social work, psychology, child development, medical and psychological literature.

- o Would take two years to acquire necessary expertise to operate at peak performance.
- o Recommend judges remain in court for a minimum of 5 years.
- o Attorneys should receive special training in child development.

-- Recommendations contained in final report of California Child Victim Witness Judicial Advisory Committee, of which I was a member, are important and should be implemented -- interview specialist:

- o Increasing tendency to concentrate defense in child abuse cases on professional who interviews child.
- o Specialist working in Domestic Relations Court would increase quality of training provided and would eliminate many concerns about quality of interview.

-- As a teacher, I try and let students know that they can be helping professionals, just like doctors, social workers, psychologists. A number of students get very excited by idea that they could devote their professional lives to helping families and children. Many of these students are among most altruist students we have. It opens new possibilities for their professional lives.

Then they ask ultimate question, "Well, how can I find that first job working with families and children." Law school career development offices have very little to offer and leaves them out in cold.

- o One thing Family Relations Court would do would inspire students these students. Side effect of court would be allowing young lawyers to see that there really is a place that's concerned about families.



-- Have attached to testimony a manuscript of article to appear in Journal of Family Law which discusses, beginning on page 33, some of these complex evidentiary issues. (See Attachment H.)

ANN CHONG: Recommended interdisciplinary education for judges and attorneys. What education would you recommend for the mental health professional?

A: Social workers and psychologists get almost no training on forensic aspects and implications of their interviewing. Critical importance of documenting precisely what a child says.

JAMES MIZE -- ATTORNEY AT LAW

Attorney in private practice in Sacramento. Degree in psychology, masters degree in social work. Certified Family Law Specialist and has taught about a dozed CEB courses, written supplements for CEB.

-- Agree with Judge Bond -- need more judges.

- o Family Law has one third of cases but far less judges.
- o Also have small personal injury practice and will spend a week in trying to get \$30,000 for personal injury client and then settle a 2-3 million dollar domestic relations case in cafeteria in 2-3 hours the morning of trial because no courtroom is available.
- o Most people's only contact with court is family court and not positive because often leaves no time to testify.

-- Quality of judiciary:

- o Imagine in Sacramento County anywhere from 3-18 months as a stay on Family Law bench.
- o Problem not so much that that's a short period of time -- wouldn't be if person coming into court were a family law practitioner to begin with but we have attorney generals appointed to judicial positions and the first three months, they're lost.
- o They may be able to help new practitioner but of little assistance to experienced counsel with more difficult case.
- o Will settle simple cases with other competent counsel but if very difficult case, will go to court and end up with someone who has been a judge for three months and is still learning how to be a judge, how to make decisions, still has this monstrous body of law to learn.
- o If have attorney on other side who's experienced, will call him up and find out who we're going before and if

that person is not helpful, we'll try and get another judge or simply throw up our hands and say, "We'll just settle it ourselves."

- o Not judges fault, found most have good sense of what to do, but have little time, experience.
- o Want predictability -- having judges come in and then leave doesn't allow that. Leads to more litigation, more cases in court, less time for judge.
- o Recommend a mandatory two-year minimum assignment and get some judges who have experience in family law rotated back so not always training.
- o No question that Family Law Court, at least in Sacramento County, is mandatory internship before you become a real judge.

-- Would not like to see permanent family law judge.

- o Would be certain loss of perspective, interest, creativity staying 10-15 years.
- o Maybe a bias so profound by that point, that you would choose your court by what decision that you want.
- o Several years and rotation would give predictability and yet still have enthusiasm.

-- From viewpoint of practitioner, against consolidation, particularly of juvenile and domestic relations court.

- o Different standards of practice, constitutional standards.
- o Very little overlap in numbers of practitioners who do both juvenile and domestic.
- o Judge would be putting on one hat for domestic relations, one for juvenile.
- o In my practice, seen only one case where need for real coordination.
- o No problem with domestic court in Sacramento deferring to juvenile -- not sure what problem legislation was trying to address -- no need in 15 years of practice.
- o Judge would have to learn three areas of law -- domestic, juvenile and probate and be out in three months -- makes no sense.

-- Believe should stay with judges not commissioners.

- o Clients want a real judge, whatever that means.
- o Family law already given short shrift and if add to that not even important enough for judges.
- o Realize a good practitioner can probably help more than new judge but neither is as good as an experienced judge with full regalia.

-- Maybe some other solutions:

- o Creation of a family law file examiner to assist court to create some of basic calculations for judge.

-- Problem of sexual abuse allegations difficult -- have represented both sides and found that most people don't understand due process.

- o I have not had bad experiences with Family court -- if you present reasonable evidence, court will immediately provide some protective mechanism for child.
- o Though would never object to more education on part of judges and practitioners in terms of psychological preparedness, don't find that to be a problem.
- o Problem endemic to society -- not more going on but just more being reported. Not more complicated today, just now starting to realize what complication have always existed and to address those problems.

#### BRUCE KIRBY -- MEDIATOR

Mediator in San Joaquin County for about seven years. Prior to that, was probation officer for 13 years. Just stepped down after two years as Chairman of the Children's Commission of San Joaquin County.

-- Just finished putting together project to copy Huntsville -- going to have a child's advocate program. Facility is up.

- o Done in conjunction with superior court judges, Board of Supervisors, all department heads, Children's Commissions, Family Law Division of Bar.
- o Have protocols together and will interview children so not have 14 to 30 interviews per child.
- o Child Interview Specialist should be trained in dynamics that we look for as mediators in making child custody terminations.

-- Mediation in San Joaquin County:

- o Four mediators handled about 800 new cases last year, reviewed about 500 other cases, less than 30 cases went to trial.
- o Take cases right off OSC calendar so as soon as issue of custody is raised, goes to mediation.
- o Include attorneys in mediation unless they maintain aggressive posture, then will exclude them but only had to do this once in seven years.
- o Mediator can make recommendation at OSC hearing, do evaluations and investigations -- Last year under 20 evaluations.

-- Overlap -- Over 200 cases I personally did last year do not believe that had more than ten cases overlap with juvenile court.

- o County has protocol that juvenile court takes precedent.
- o Judges do a blanket court order allowing mediator and CPS have open access to one another.
- o Major difficulty in terms of criminal court and our courts overlapping is in domestic violence cases -- and last year our caseload increased by 200 domestic violence cases, most in pro per.
- o Finding father being charged in criminal court and asking for full custody and make battle start in our area and then takes that back into criminal court and gets his attorney to stall and we find that criminal case lags.
- o If there's any overlap there, it would be potentially harmful and I think these issues should remain separate.

-- Judge who has an average of three years experience on bench is really coming into his own in second and third year.

- o Heard some say two years but would strongly disagree with that.
- o Know its a difficult position but look at mediator who has worked at this for 10-15 years and ask courts to have some of same strengths.

-- Like to see judges have training in early childhood development.

- o Some decisions made by court after hearing expert testimony and court can rely on that but in cases where deciding based on attorney argument, would like to see more judicial training.
- o If do more than 15 or 20 cases a year should be Certified Family Law Specialists.

-- Don't see problem coordinating cases between courts, particularly in our County.

- o Have very few trials.
- o Mediators criticized for making recommendation but believe its done very expeditiously -- don't make snap judgments but find that when recommendation is made same day or within a matter of three or four weeks people can get on with their lives.

-- Issue of burnout -- nine years to go to retirement. In superior court, mediator not allowed latitude to move away if gets tired. Are mediators and that's all we are -- have no where to go.

- o Make \$38,000 a year and think we're extremely underpaid. Need to compensate mediators for stress.
- o Max out at four weeks vacation -- need latitude for sabbaticals and more vacation time to help deal with stress.

-- Standards being developed by Judicial Council -- appropriate to a degree but do not strip counties of right to perform within their own socioeconomic ideas and own court philosophy.

- o Need standards to protect client.
- o But don't want to see someone come into our county to modify how we do mediation based on a bias that came from another county.

JUSTICE KING: Do you have any sense that those standards are going to deal with things like recommendations?

A: Sense that they could since there are some fairly influential people that would like to see that happen but am told they have respect for individual county's rights. When I looked at proposals from Attorney General's Task Force, I think those are, by in large, excellently put together. If those were followed throughout, it seems that they really do focus on what's in best interest of children.

DIANE WASZNICKY: Do you have an opinion on idea of consolidating Family, Dependency and Delinquency and maybe Probate?

A: I think they should not be consolidated. In all interactions I've had with CPS -- with abuse and molest -- where we are certain something's happened, we can't file a petition. Find that in those difficult cases they try and get it to us before it's ready and try and get us to resolve it through mediation. I do not think that's appropriate. More and more asking mediator to resolve juvenile case and don't mind on an isolated basis but not what we're here for.

Specifically, again we are a small county. My judge and juvenile judge can sit down and talk and see each other all time. When there's 13 family court judges and 10-12 juvenile court judges, I can see that there'd be a much different perspective.

DR. DURYEE: Comment about mediating dependency cases is a comment about resources. In other words, if a position was developed in FCS that would be targeted just to mediate selected dependency cases, you wouldn't object because resource had been created to do that?

A: That's right. Our judge is very discriminate about what case he feels we should look at. Loads up other three mediators and that's not fair in terms of workload. It becomes a funding issue.

JOANN JOHNSON -- CLINICAL SUPERVISOR

-- Recommendations of Attorney General's Task Force on Child Victim Witness can go far in rectifying problem that has been long prevalent in society. Current judicial system does not foster environment which lends itself to healing family wounds. Judicial system is not solely responsible for promoting healing of children, individuals, families. However, when a system that society established to serve people, inadvertently, through normal course of its business, harms people, then system itself needs to be re-evaluated.

-- Supervise staff that includes physicians, consulting psychologists, clinical social workers, marriage and family counselors and paraprofessionals. Provide mental health services to families that have gone through court system.

- o See children, family members involved in allegations of molest, abuse, neglect.
- o Because of location of clinic, many clients poor and/or minority without resources to access extensive services on own.
- o Clients not generally well educated, often confused, angry and hopeless as result of what's happened to them.

-- System is problem maker instead of helper. All have responsibility to make sure that what we do doesn't harm.

- o Often find children and families involved in multiple courts -- juvenile, courts focused on prosecution, courts dealing with custody, dissolution issues, conservatorships.
- o Not as if courts operating simultaneously -- often family in therapy, involved in one court procedure only to have that procedure end and go on to another court and another protracted, extended period of time in which they're questioned, interviewed.
- o No consistency in who asks questions and often no consistency or logic in decisions that are made by various courts -- too isolated, fragmented, ask too much, too often.
- o Know that what we doing isn't working, destroying hope that abused children could have and our family structure because of way that we try to right a wrong.

-- Recommendations of Attorney General's committee.

- o Education in child development very important not only for judges but also for all people who are involved with families.
- o Education for mental health professionals in legal -- matters.
- o Providing atmosphere that supports children -- don't victimize children in courtroom setting.
- o Need to make things in courtroom child-participatory -- based on what developmental level child is.
- o Child interview specialist -- difficulty in extended court procedure is that there are so many people coming from so many frameworks interviewing child. Part of difficulty is always somebody different.
- o No mechanism set up so that there's consistent person child can develop relationship with, feel comfortable in talking with and consistency of contact is very important in bringing about resolution of problems within family.
- o Combination of courts -- difficult process to combine but crucial wherever we can or provide one person who really has knowledge of what's gone on in all court arenas.
- o In mental health often encounter situation with children and families where various court's determinations are conflicting and often have to spend time working around conflicting nature of courts before can ever spend any time working on alleged molest.

Spend time on issues that really were a creation of our institutions as opposed to spending time working with children and families.

DR. DURYEE: How many cases a year in your agency do you see families that have involvement with more than one court, whether sequential or at same time?

A: See approximately 1,000 cases a year. Approximately 40% of those cases are children in families who are involved in allegation of molest. I would say of that 40%, a good 75% talk about either being involved with varying courts at different times or are involved with several courts. We see people often who are in crisis and often at time of crisis, there is court involvement. The numbers are very high.

SYLVIA VELEZ: Several practitioners have said percentage of overlap is small. I'm wondering why your comments are different. I feel that one possibility is that a lot of these professionals are talking about persons who deal with attorneys.

Do you find that in the cases and people you deal with, persons are dealing with criminal systems, with public defenders, or don't have attorneys and are dealing in pro per and perhaps that's why your statistics are so different?

A: I don't know who you've had, but most of our clients are poor and cannot afford their own attorneys. Therefore, they must use public defenders.

SYLVIA VELEZ: In civil cases where there's no public defender, are they going to court on their own?

A: Sometimes they're dealing on their own. Often in cases where there is overlap, has to do with juvenile court and dependency matters and criminal courts were they are prosecuting perpetrator.

ANN CHONG: Is part of your position that you would like to see a court system deal with family as a whole, since your agency sees all members the of family?

A: Yes. Our agency believes that most efficient way of providing treatment, especially for poor and/or minority is to work with their families. Poor and/or minority people and others rely very heavily on their families because they don't have resources, educational background to go out and purchase or access support services.

**JERRY PLUMMER -- ASSISTANT DIRECTOR, CHILDREN'S SOCIAL SERVICES**

Assistant Director for Children's Services with Department of Social Services in Sacramento. In charge of Children's Protective Services and children who are in placement. Passed out sheet of statistics (See Attachment I) because in order to understand perspective of CPS need to talk about numbers and what's happened to our program over years.

-- Given you basic measurements of our program activity:

- o Calls to 24-hour emergency response hotline -- cases where we do field investigation.
- o Immediate response cases are cases where we go immediately because children seem in imminent danger.
- o Dependent intake is number of petitions that we file each year.
- o Number of referrals are number of families where their children have been brought into custody.
- o Court investigation are dependency petitions that then go forward.



-- Unbroken 10 year history of increasing referrals to CPS.  
Two reasons:

- o Children in poverty -- if you're a child, you have a real good chance of being poor. In our county, over 20% of children are on public assistance.
- o Other services that were in place 10 years ago that would have helped families are no longer there. Before 1980's was a whole division of 100 social workers in my department alone, that helped families with general problems, expanded mental health system, expanded substance abuse system, schools had more counseling.
- o All that gone now so that families that would have been identified, helped become responsibility of the one system that's left -- CPS.
- o Effect is system being overwhelmed -- staff increasing at roughly half rate that cases have increased.

Use battlefield metaphors:

- o We do triage, we pick out cases that will die even if treated and set them aside, and take cases that will survive for awhile if they don't get treated and they're set aside and you focus on ones in middle.
- o Taking our capacity and working backwards and impact is that threshold for what a CPS case looks like lower and lower each year.
- o No longer have capacity to respond to families that have chronic head lice -- complaints from schools that head lice is not getting cured.
- o Don't have capacity to respond to families where children not going to school systematically.
- o Looking at life or death situations -- is adult so bad that child is likely to starve or health going to be endangered, abuse so bad child's safety threatened.

-- Final thing that has put system on overload is crack epidemic.

- o 3 years ago would have maybe 40 drug-addicted babies born a year, by in large by heroin.
- o Now have 50-60 drug-addicted infants a month born in Sacramento County mostly cocaine or poly-abusive substance.
- o Have become an emergency ward for families, can only deal with those that are so dysfunctional that members can no longer physically survive without our intervention.

-- Puts us in conflict with reporting law and other agencies. Anyone who cares about children has high expectations and we can only deal with society's basic minimum bottom line. Leads to conflict between us and other agencies.

- o Heard about problems with CPS responding in custody issues and it is true -- we actively discourage people from having many expectations of us in custody matters.
- o One reason is if take those cases as a group, don't find many that pan out -- not alot of proven child abuse.
- o Only group where people are actively unhappy when you tell them that their children have not been abused.
- o Our experience that they are not really interested in protecting child, really interested in getting evidence against somebody else.
- o Kinds of things that they bring to our attentions are up here rather than down there -- leaving child alone -- not serious child abuse.

-- Sharing information: Our policy is to share information.

- o Had an informal agreement where people would come into family court, sign a waiver to give us authority to talk about case with FCS worker.
- o Then County Counsel told us shouldn't be doing that so worked out process of getting judicial order to cover us.
- o Feel problem is relatively small -- get 5-6 calls a week from FCS, cases where we have done a CPS investigation and they want information.
- o Not aware of any cases where there's a juvenile court dependency matter and at same time a custody case.
- o New 243 gives juvenile court authority to resolve custody issues and defer to juvenile court, wait until they have made their decision.
- o Not many cases that overlap between family court and juvenile -- my belief that juvenile court resolving dependency cases that turn into custody cases.

-- Biggest overlap is where have dependency action and criminal action against one of the parents.

- o Relatively small proportion of total -- less than 10%.
- o Skeptical about whether a combination of courts would work.
- o People in FCS won't want to do it because they're overworked now.
- o Juvenile judges hardest working people I know.
- o If take two overworked systems and combine them, I don't see that you're going to have anything of benefit to anyone.
- o Also complexity of law -- won't benefit children by combination.

-- Simpler solutions:

- o Endorse need of judges to stay two or three years -- it takes that long to learn business, judge not hitting stride until second or third year.
- o Basic problem is we don't value opinions of children.
- o When we talk about an interview specialist and looking at the process where evidence is gathered, that adversarial process itself is what we need to attack.
- o For example, in drunk driving cases have come to consensus on what need to do to preserve chain of evidence and if do it properly not going to be questioned by defense attorney.
- o Need to move to consensus in area of child abuse so that you have agreement from people on what is proper interview.
- o Educating jurors about child development.
- o But vast majority of cases straight forward -- 2/3 of parents aren't even available so it's a routine process.

-- What gives everyone concern is minority of cases that get a lot of publicity or are intensely litigated.

- o Trying to develop a multi-disciplinary interview center.
- o Trying to develop protocols with defense bar.
- o This, in the long run, is going to serve children better than a reorganization of the courts.

DR. DURYEE: What you described at beginning of your testimony was a system collapsing or maybe, as Don was saying, it's collapsed already and we don't know it. Is that the system in CPS that you're describing?

A: We're not saying clearly enough how bad things are. Everyone's told war stories. I'll tell you one more story that gives you a hint of how bad things are.

CPS worker in a Bay Area county went out to do a home assessment and she heard gunshots. She thought about caseload and thought about overdue court reports and thought about all various stuff that she had to do and she said, "Oh, hell with it. I'm just going to wait. I'm not going back to the office and mess around and have to come out here and make another visit." And so she waited a little bit and people ran off and she didn't hear anymore gunshots, so she went in and did her home interview.

In some parts of our community it feels like Beirut. I don't know what it's going to take for people to get that. It feels like the Barbarians are at the gates. I say that, but it doesn't seem to register -- it's really outside the reality of most people.

DR. DURYEE: One thing that you said was that you're not able to comply with reporting law and agencies are fighting with each other. Seems like the rallying cry for some kind of change.

A: I think we talk to each other really well. Child Abuse Council is where agencies try to work together. Agencies work real well together. But we need to mobilize the bigger community -- aren't enough foster homes, not enough places to put them -- 50-60 kids a month and that's just the newborns.

JUSTICE KING: Do you think there is some legal impediment to exchange of information?

A: Don't really think there is. I had my own informal understanding and then county counsel said, "FCS is not listed specifically in the reporting law. Reporting law lists people you can exchange information with, we don't think you can do it." I think we found a way legally around it with judicial order because it was always our belief that we should exchange information, it's to benefit of clients and everyone else.

DIANE WASZNICKY: What you worked on informally isn't being applied to an order from the Court to turn information over to a therapist or a subpoena because you still won't produce in those situations.

A: Right. Only on advice of County Counsel. What you're talking about is a little more complex. When we are sharing information with an agency, that seems like a straight-forward question because agency is evenhanded. We get more uncomfortable when our records are subpoenaed by one side or other. Advice we've been given is that Court needs to determine whether or not confidentiality under 10850 should be breached in view of its probative value for that case. And that's the reason we take that stand.

DIANE WASZNICKY: The experience is that even when a judge makes an order that you produce information for say, a particular therapist who's been ordered to evaluate, the response is a refusal.

A: Have to tell you, I'm astounded to hear today that we are disobeying judicial orders. When it comes to my attention, I deal with that. If we have a court order to release information, no policy not to. I'm astounded that any supervisor feels confident enough to say, "I'm not going to do it." Now they may not understand. Sometimes we have gotten orders what we haven't understood.

ANN CHONG: Overlap cases you described between FCS and CPS. Are they cases where filings are sequential? My experience is that sometimes these families that you describe that are really litigious will do a dance between FCS and CPS.

A: Right. I think there may well be sequential overlap. That's a real common problem with a parent who is involved in custody who will take their child around to a variety of people to be examined so that there may be more overlap that we don't know about. Kids may also be in probation and we don't know that. But so far as active cases before a court, it's either one or the other -- family or juvenile, not both.

DETECTIVE ERNIE BARSOTTI

From Sacramento Police Department. Will talk about investigating a child molest/abuse case.

-- Get a complaint of abuse, neglect or molest from either victim or mandated reporting party. A police officer goes to area where victim is. If lucky enough to have a worker there, they'll take a combined statement of victim at that time. This is a preliminary statement that's forwarded to detectives.

Detective's job to develop corpus of crime. If doesn't believe crime has been committed, can send CPS information or send us an information report instead of an actual offense report and we follow up but not as speedy.

-- A follow-up interview is done either at victim's house, police department, hospital, school. I prefer child's residence. I like to have them as comfortable as possible. Some police departments have rooms where you can bring them -- children's rooms. We don't have that ability. Our room has a table with bolts on it where we put our suspects, carpeted walls, ten chairs. Not receptive to children. I try to go to house. A lot of guys like to come down. Personal preference again whether you have written communication, audio taped, video taped.

-- Multi-disciplinary team -- have talked about it for years. Specialists trained to talk to children. Someone behind a screen or a window will take notes.

- o If in multi-disciplinary team area, say at a hospital, would want everybody together -- CPS, medical staff, police, possibly district attorney.

- o Sounds great, but if you're going to have one person doing these interviews, going to have a lot of interviews to do and sooner or later will call that person to court.
- o Think it's a great idea.
- o Cuts down on the interviews of all and we don't want to traumatize children anymore that we have to but must talk to kids to get down corpus of the crime.

-- Environment where child is has to be receptive to him. Want him/her to be comfortable so will answer questions with regards to where it occurred, to assess victim and see if has corroboration to crime because a lot of times have no evidence.

- o Sometimes have physical evidence and it's easy to prove in court.
- o But seldom go to a criminal court on that type. Usually go to a detention hearing and maybe a jurisdictional hearing but usually plead out of criminal because they're not going in front of jury with injuries and try to explain that.

-- Dates of crime essential. New legislation, 288.5 PC, on a resident child molest, where person who has lived within household for three months continuously and has committed acts at least 3-4 times in period, will let us talk to child.

- o If we can prove was within certain period of time and molester lived within house, then we can charge this new law.

-- Sharing information.

- o Give our reports to CPS -- anything they would need to get through a dependency hearing.
- o Have a few problems getting information from juvenile people -- if, in fact, we have to get a warrant on someone, we can get it. Better than it used to be. Changes in that area would help us drastically.

-- Reporting law. Down to point where everyone that deals with children has to report and that's valid.

-- Custody -- seen a lot more of this in last two or three years. If someone's getting a divorce they charge other with abuse or molest, mostly molest.

- o Problem with FCS because they have to call us and ask us what are we doing and we ask them what are they doing?
- o Everyone says, "Well, we're waiting for you."
- o If we don't have evidence to go to court, then we're not going to be able to go to court and it's up to them.

JUSTICE KING: Is it always the same person that does follow up?

A: If you get a case from patrol, then you will follow up on that child and you will talk to that child one, two or three times. Don't want to talk to this child more than once if we can. But they forget and they do remember. They won't say anything for 2-3 years so how can they tell you everything that happened to them three years ago. Kids usually don't lie -- they perceive things differently.

I've been in Department 18 years and I've done child abuse work for 12 years and out of that 12 years, I bet I've had four or five cases of kids telling lies.

JUSTICE KING: Not only in your own Department, but to extent you have knowledge in other departments, what is extent of training that you get in child development?

A: Not much. You take it on your own. What our guys have to do -- within 6 months they have to go to a program, 40 hours with Department of Justice in interviewing children, basic child abuse law, taping, video taping. But very little child development.

Ken Peterson talked of an interview specialist with five years working with children, whatever that means -- juvenile officer or being a police officer or whatever. A 40-hour class on child development and interviewing techniques and then possibly taking a three-unit class at a university on child development.

I believe in that. If you're going to get into this specialized system, then you're going to have to know how these kids develop.

We get a lot more on how to interview children than on child development. I'd say we have something every year on interviewing. If it's not something with outside agency, it's with Child Abuse Council or it's ourselves. We'll go in and do it to each other. Ask, "What have you learned." Talk about different techniques.

KATHLEEN AMOS -- ATTORNEY AT LAW

Member of Family Law Section of County Bar. Practicing family law for over five years and has been working on a contract basis, part time for County Counsel's Office at juvenile court.

-- Opportunity to see interface between systems.

- o Have had an increasing number of attorneys call asking for help in distinguishing whether or not a particular case is more appropriate for juvenile court or guardianship proceedings in probate court.
- o Struck by difference in attitude -- juvenile court philosophy and purpose is to protect children, family court have two parents as adversaries regarding a particular minor.

-- Making the domestic relations and probate court systems more like juvenile court system in certain respects would be an improvement in system.

- o Juvenile court has well-trained, well-seasoned judicial officials who are there for a long time, know law, have experience and training regarding family and individual dysfunctions and how relates to legislative purposes behind juvenile law.
- o Leads to better, more consistent decision making.
- o Every parent has right to court-appointed attorney upon request in juvenile court because of threat to constitutional right.

-- Sacramento has two referees and two superior court judges at juvenile court. Only perceived difference is that decision of referee may be reheard by judge so in certain situation can hear entire case over but believe that a minority of cases.

- o Don't think parents perceive referees as less capable or opinions less valid than judges.
- o Attorneys know distinction and will use that when they feel it's necessary.

-- Disadvantage of juvenile court:

- o Lack of calendar control due to strict time limits under statutes.
- o Means have periods in juvenile court where there's great deal of cases and periods when there's slack.
- o Juvenile court ill-equipped to deal with property rights.

-- Advantages of superior court system over juvenile:

- o If child's custodian can't afford attorney, go to probate court where guardianship is probably more efficient process because of juvenile court requirement



- that reunification be offered for 12 months prior to a permanent planning hearing.
- o No requirement for reunification in probate court -- leads to strange situations and confusion whether these cases should be in probate or juvenile.
  - o Cohesive group of well-trained family law attorneys in superior court system -- important in Sacramento's revolving door system of judges in family court because judges will ask seasoned attorneys what law is.
  - o Though there are a lot of good attorneys in juvenile, most appointed from criminal panel downtown and don't always have experience.
  - o Ability to afford an attorney.

-- More mediation and more involvement of mental health professionals would be an improvement.

- o Conservatorships are similar to these other matters -- guardianships, custody and visitation -- because entire family in crisis and mental health professional can be very useful.
- o Combining courts would improve exchange of information, especially between mental health professionals.
- o Now party can be pro per downtown in custody dispute, have an attorney appointed regarding another child in juvenile or probate so a lack of coordination between services.

-- Have judges have a minimum commitment of 3 years in family law or probate department.

- o Would then have judges and attorneys with a commitment to family problems and issues.

-- In area of sexual abuse, there is a danger of forum shopping between juvenile and superior court because juvenile standards are probably much more strict and juvenile takes more protective action towards child.

- o Aware of one petition where mother alleged one-year-old had been molested by father in context of custody dispute. Juvenile had actually dismissed petition under W & I Section 300, stating there was no need for juvenile supervision in case but mother went to superior court and got an order for no contact after juvenile court had ordered that visitation with father was reasonable. Mother didn't get results she wanted in juvenile so she went back to superior court.

- o In another case, father was a convicted child molester and mother ended up on AFDC. Went through 18 hearings and 6 different judges over about 30 months before we finally got a no-contact order that father let stick. Some of those were new judges and dad had ex parte order. Every time a new judge, he went in for a new ex parte to try and get contact.

With 6 judges in 30 months, must educate about this case and about these facts. That case had been going on between juvenile and superior for over 6 years. Irony is that if mother had been a worse parent and failed to protect children, she could have been in juvenile court with social worker coming every week to make sure she was protecting children from him.

She would have had court appointed attorney and probably father's access to children would have been restricted much more quickly, severely. Judges know psychologists have better handle on what's going on in community.

- o A family member had four minors placed with her directly after a murder-suicide. No money for support and her income was \$400 a month. Had two children of her own. Children all wanted to be there but she had no money to support children. She called juvenile court and said, "I need petitions filed on these minors." Since no parents to unify really belonged in probate to get legal guardian but she doesn't have money to go to probate.
- o Sexual abuse case that's been to FCS three times in a period of about 5 years with parents fighting over custody and visitation. Wasn't until after third visit that we discovered, quite by accident, that father convicted sex offender in 1982. No one at FCS ever bothered to check. Something that is routinely done at juvenile court.

CHARLITA ANDERSON -- LEGAL ADVOCATE

Legal advocate at WEAVE (Women Escaping A Violent Environment) in Sacramento.

-- Background on WEAVE. Agency provides counseling and advocacy to victims of domestic violence and sexual assault in Sacramento County.

- o In past year, have received over 9,000 crisis calls, housed over a thousand safe-house residents, though have had 2,500 requests for shelter, counseled over 1,200 counseling center clients.
- o In addition, provide legal advocacy through myself, only full-time paid staff legal advocate, and through volunteers.

-- Providing specific information for people going through FCS or family court.

- o 65-75% of our legal advocacy program clients are low income, unable to maintain employment because caring for minor children or receiving some type of government assistance.
- o Generally come into contact with FCS in pro per -- have no access, resources to hire attorneys.
- o In process of looking for attorneys that will practice for us one case per year, pro bono -- have not yet been successful.
- o Family law complex and pro per are just lost in maze, don't understand paperwork, legal jargon, overwhelming for them to even complete simple task of filling out order after hearing is over and that is a simple two-sided form.
- o Consequence is law enforcement isn't available to enforce their restraining order.
- o With contempt order, law enforcement has become increasingly sympathetic and helpful but for most part there are a lot of clients that find a great deal of fault with law enforcement's treatment of their restraining orders.
- o If they come into court and file a contempt charge against their batterers, that's completely overwhelming yet defendant is allowed public defender because sentence allows a jail term.
- o Client required to act as in pro per prosecutor so to speak but has no ability to do that -- doesn't know rules of evidence and totally on her own against an attorney.
- o Small claims court has an advisory system where clients would get help in process of filing small claim.
- o Recommend for family court system that low income clients be able to come in and ask questions and have them answered by qualified people.
- o As overwhelming as process is, I'm sure that a law students or volunteer attorneys in conjunction with clerk although would not completely fill gap but at least would be drop in bucket.

JUSTICE KING: You're talking about an advisor for domestic violence type cases or beyond that?

A: Beyond that. Several issues that clients need to address in court and generally domestic violence is most common case where sides are not balanced -- tendency for court to believe that once you're before a court that things are equal and they're not.

-- Judges and attorneys should have special training. Judges and attorneys tend to see parties as equal once they come before court and that just does not happen.

- o A great deal of loss of control, power when a women is battered -- especially when she is battered for a long period of time.
- o Once she finally does come into court system, she still has a great deal of inability to exert any type of control or any way to address what she needs and hard for her to express that to a court.
- o Very intimidating, especially with calendar being so crowded, hard for judge or attorney to spend time with her that she needs.
- o Recommend that at least if judges and attorneys were well-aware and well-read would trickle down into ways of dealing with caseload, especially where restraining orders are concerned.

-- With regards to children -- long after children leave a violent environment they are still being traumatized. A sense of fear. I don't mind saying I was a child who grew up in a violent environment. Being taken out of that environment and living in a safe place, I still had a great deal of fear, apprehension that it would happen again.

- o A lot of times judges, attorneys don't understand that just pushing family back together in terms of visitation or custody is not as healthy, helpful to children as it may seem.
- o A lot of times parent extremely violent and giving visitation that's unsupervised to me seems very detrimental because child still has no idea that they're safe.

-- Restraining orders -- feel that with training and awareness of domestic violence experience, think judges would be better equipped to deal with violence and should be more apt to enforce restraining orders.

- o Civil Code Section 545 allows judges to make orders of protection but there's no standard as to what type of activity or violence must have occurred.
- o No standard as to how long violence should have occurred before victim comes before court for protection.

- o So seeing some restraining orders being denied and others granted -- shocking to see number of women who come before judge for restraining order and are denied because there has been no real physical violence while Code clearly states that a threat is sufficient.
- o Not extending restraining orders for 3 year statutory period -- very arbitrary imposition of these restraining orders.
- o Know of one judge that requests a plaintiff come before him and articulate her reason for wanting a 3 year restraining order -- doesn't seem necessary.
- o Other judges allow three years by declaration.
- o Recommends that should be clearly laid out in legislation and would be clearer for all involved -- plaintiff who apply for restraining order and judges who implement them.

JUSTICE KING: Is the problem with extended period restraining orders more related to cases where parties have children?

A: No. What we're seeing is there's just one specific court that prefers one year restraining orders and that's a blanket rule. No consideration given to whether or not there are children involved.

JUSTICE KING: You're talking about an educational process, I suppose.

A: Yes, absolutely. If that's going to be a problem, I think that this certain criteria can be added to legislation.

JUSTICE KING: Most courts -- Sacramento has peculiar problems because they tend to have a lot of turnover -- but most courts make a determined effort to have a level of consistency. Sounds like a lack of communication among three judges in that family law assignment. I'm not sure how you correct that problem, maybe the other two can talk to him.

A: I don't know. Just think that if you're going to have a court system that gives protective orders then it should be consistent in terms of how long for restraining orders.

DIANE WASZNICKY: Are restraining orders being denied at hearing stage or when someone goes in for an Ex Parte Restraining Order?

A: During Ex Parte. Not usually denied at extension phase.

DIANE WASZNICKY: In Sacramento, we have a family law file examiner who has a great responsibility for giving first clearance to any domestic violence pro per filings and she is one who takes them to judge for signature. Are these being denied initially by File Examiner.

A: We've talked about that. She's told me that she doesn't have power to deny restraining orders. She has to submit each one of them judge.

DIANE WASZNICKY: She has power to say certain things to judge about them.

A: Right. She has power to say certain things to plaintiff who gets discouraged and leaves.

DIANE WASZNICKY: In Sacramento, our judges are constantly reminded by our incoming presiding judges that unless there is blood on the floor, there is absolutely no reason to grant an Ex Parte Restraining Order and that's probably why you're having problems.

JUSTICE KING: Legislation passed which will provide automatic restraining orders upon initiation of action. And if does not apply to non-marital cases, to pure domestic violence cases, then next step would be to get Legislature to extend it and then that will take care of initial one. Try and enlist help of Family Law Section of County Bar to develop level of consistency.

ANN CHONG: Your role at WEAVE is legal advocate -- you are advocating on behalf of agency to provide information?

A: No. Generally, our contact is with clients through the Victim Witness TRO Workshop. We contact them and give them information about services that WEAVE offers. Sometimes the shelter refers clients to us and women will actually call in and get information about where to get a restraining order and what it does and what they need to get one. A lot of them don't have any resources and have no idea where to get an attorney. We might give them a referral or something of that nature.

ANN CHONG: If there is a recommendation by FCS to maintain restraining order at hearing, would judge still deny extension of restraining order?

A: Generally referred to FCS after hearing. FCS actually doesn't have role in restraining order hearing process.

**ATTACHMENT A**

**ATTACHMENT A**



AGENDA FOR SR7 TASK FORCE PUBLIC HEARING

State Capitol, Room 113  
Sacramento - October 6, 1989

<u>TIME</u>	<u>SPEAKER</u>
9:00- 9:20	Charlotte Keeley Attorney at Law, C.F.L.S. Sacramento, CA
9:20- 9:40	Kerry Martin Program Coordinator Victim Witness Program Sacramento, CA
9:40-10:00	Joseph Sylvester Principal, Mills Junior High School Rancho Cordova, CA
10:00-10:20	John Paulsen Attorney at Law, C.F.L.S. Auburn, CA
10:20-10:40	Carol Voyles Licensed Clinical Social Worker Child and Family Psycho-therapist Sacramento, CA
10:40-11:00	<u>BREAK</u>
11:00-11:20	Justice Arthur Scotland 3rd Appellate Court Sacramento, CA
11:20-11:40	Michael Jett Chairman of the Children's Agenda Sacramento, CA
11:40-12:00	Judge J. Richard Couzens Placer County Superior Court Auburn, CA
12:00-12:20	<u>PUBLIC TESTIMONY</u> - (Limited to 3 minutes per speaker; written testimony will be accepted through Nov. 1, 1989.)
12:20-1:00	<u>LUNCH</u>
1:00-1:20	Anita Branman Chief of the Probate Division Sacramento Superior Court, Administration Sacramento, CA
1:20-1:40	Michael A. Streit Chief Mediator Placer County Sacramento, CA

1:40-2:00 Judge Cecily Bond  
Presiding Judge  
Sacramento Superior Court  
Sacramento, CA

2:00-2:20 Phillip Reedy  
Family Court Mediator  
Redding, CA

2:20-2:40 Professor John Myers  
McGeorge School of Law  
University of the Pacific  
Sacramento, CA

2:40-3:00 James M. Mize  
Attorney at Law, C.F.L.S.  
Sacramento, CA

3:00-3:20 **BREAK**

3:20-3:40 Bruce Kirby  
Mediator  
Sacramento, CA

3:40-4:00 Joann Johnson  
Clinical Supervisor  
Visions Unlimited  
Sacramento, CA

4:00-4:20 Jerry Plummer  
Assistant Director of Children's Social  
Services  
Sacramento County  
Sacramento, CA

4:20-4:40 Kathleen Amos  
Attorney at Law  
Law Offices of Ann Taylor Garrett  
Sacramento, CA

4:40-5:00 Detective Ernie Barsotti  
Child Abuse Investigations Unit  
Sacramento City Police Department  
Sacramento, CA

5:00-5:20 Charlita Anderson  
Legal Advocate  
Women Escaping A Violent Environment  
Sacramento, CA

5:20-6:00 **PUBLIC TESTIMONY** - (Limited to  
3 minutes per speaker; written testimony  
will be accepted through Nov. 1, 1989.)

**ATTACHMENT B**

  
Carol A. Voyles, LCSW  
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October 6, 1989

California State Senate  
Task Force on Family Relations Court  
Senator Bill Lockyer, Co-chair  
Justice Donald King, Co-chair

#### INTRODUCTION

First I want to thank you for giving me an opportunity to share my views about possible solutions to the problems faced by child victim witnesses in the present court system.


I would like to tell you briefly about myself and the ways in which I am familiar with the needs of child victim witnesses. I have made a more complete VITA available for your review.

I received my Masters in Social Work from California State University, Sacramento in 1973 and became a Licensed Clinical Social Worker in 1976. I was employed in both in-patient and out-patient community mental health settings for several years and have had a private psychotherapy practice since 1978. In each of these settings a significant portion of those served have been child victim witnesses and their families..

Beginning in 1982 I became a part-time faculty member at CSUS. Courses taught, among others, include Child Development and Clinical Intervention in Sexual Abuse.

#### PRESENTATION

The issues related to this hearing have been a source of great concern for my colleagues and me. I am impressed and encouraged by the identification of and suggested changes in the court system related to the child victim witness and his or her family.



One of the most difficult tasks in working with child victims and their families is trying to provide adequate support to minimize the frequently destructive and always stressful experience of our judicial system. There have been many times that it has been impossible to weigh the value of such an experience given the trauma to the child and his and her family. I have always felt compelled to encourage my clients to participate fully in the judicial process, but I must admit that it is the knowledge of the perpetrators compulsive nature, which will result in frequent re-molests, that sways my opinion. As citizens we all carry a responsibility to serve our judicial system as a juror or witness when called. However, this responsibility as currently experienced, is too burdensome for a young child.

There is another consideration I would like to share with you. We know that the perpetrators of tomorrow are sadly the victims of today. A child victim has been failed in a profound way by his parents and society by their inability to protect him or her. If that child is further mistreated by the very institutions of our society whose purpose it is to protect the innocent and seek justice, is it not likely that the child will feel alienated and hostile toward society? Such an attitude is likely to contribute to that child's future productive or anti-social behavior. We must advocate for not only today's childhood victims but for tomorrows.

Like you I am hopeful that modification of the current judicial system will increase the courts effectiveness in the interest of both human compassion and justice while decreasing the pain experienced by child victim witnesses. However, I feel I must preface further comments by stating that it is my belief that children under the age of twelve should not be subjected to the traditional form of adult testimony. The court system was designed for adults only. This adult process, in and of itself is psychologically damaging in that it subjects the child to public shame, extreme levels of stress and anxiety, and increases his or her sense of guilt not only for the original crime but the punishment of the perpetrator who is frequently a loved adult. This experience also leads to specific clinical symptoms of sleep disturbance, excessive fears, mental confusion, separation anxiety, depression, plus runaway and suicidal ideation. The role of the Child Interview Specialist as described by the "California Child Victim Witness Judicial Advisory Committee, Final Report, October 1988," could be expanded to more appropriately meet the judicial needs for both the alleged victim and the defendant.

I will now specifically comment on questions 1, 3, 5, 12 and 20 found in the document titled "Questions for the Public Hearings."

Question 1. I strongly agree that as many courts as possible should be combined allowing cases to be heard by one judge. The

advantages include more comprehensive understanding of case dynamics and more consistency in rulings therefore preventing conflictual court orders. An example of the problems created by the current system is a civil court ruling that the perpetrator be given visitation with his children while the custodial parent has been warned by the juvenile court that the court dependant children will be put in out of home placement if she allows contact with the perpetrator father.

The proposed changes would also reduce the possibility that subsequent hearings would misinterpret the intent of a prior court ruling. The disadvantage would be a loss of balance sometimes obtained by having more than one judge review a case.

Question 3. I believe that I could safely state that all victims must currently testify in front of at least two judges and make difficult disclosures to a minimum of eight persons. These numbers quickly escalate when the perpetrator is a family member, which is sadly the circumstance for most child victims. The danger of these numerous disclosures, in addition to the obvious stress, is the possibility of doing so with an untrained or insensitive person. An inappropriate, but to the untrained ear, subtle interview error such as asking a child, "Why didn't you tell right away?" can cause significant damage.

Question 5. Unfortunately I do not believe the court system serves children and victims well. In addition to my previous comments I would like to recommend that the practice of frequent postponements of hearings involving witnesses be decreased. The anticipation of testifying is extremely stressful. Frequently the process of taking a child out of school, arranging child care for siblings, taking time off work, driving a long distance, and so forth is over-whelming to an already fragil family system. The frequent experience of going through this effort only to be notified that the hearing has been delayed, due to a matter which could have been addressed previously, is a brutal disregard of the witness and his family. Could not the acceptance of a plea bargain be limited to 24 hours prior to the court date? Might it be possible for an attorney to submit a written request for further time for preparation to the judge before a hearing or trial date. One of my clients has experienced 10 postponements in the criminal court alone. Two of her children have been sexually assaulted, the second during a court ordered supervised visitation.

Question 12. Judges and attorneys should absolutely have special training when practicing in the area of child victims. It has always been of interest to me that prior to accepting my testimony, my expertise must be established. Would it not be appropriate that all professionals demonstrate their ability to apply their services specifically to cases which involve children. I particularly hope that judges will be trained to understand the impact of abuse on a child; how willing a child is to accept blame for the wrong doing of an adult and how any such implication by a judge is devastating. I had a young adolescent client who had been raped by a family friend, age 30. This victim had been induced by the perpetrator with promises of alcohol and an opportunity to drive his expensive car. The adolescent worked very hard in treatment to understand that in spite of his poor judgement to join this adult, he had no blame for the forced rape that followed. My client was invited by the court to make a statement at the sentencing hearing. Can you for a moment imagine what this task would be for a child of yours? When he finished his very moving statement to the court, the judge's response was, "I hope you learned your lesson!"

Question 20. I concur with the recommendation that a Child Interview Specialist should be assigned to interview a child as soon as the need for an investigation has been identified. Furthermore, I believe these interviews should be video-taped and that as further information is needed by the court and its officials the child should be re-interviewed by this same specialist. The use of two-way mirrors and a "bug" in the ear of the interviewer would facilitate the need for further clarification by the District Attorney's office, defense counsel and judge.

The specialist should be licensed mental health professional with extensive post-graduate academic and clinical training in the area of child abuse. This person should also have, as a part of his orientation, relevant training in the general area of the court system and specific area of submissionable evidence and testimony.

VITA

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California State University, Sacramento

BACHELOR OF ARTS - 1970  
SOCIAL SCIENCE (Concentration in Psychology)  
Sacramento State College  
Dean's Honor List

AFFILIATIONS:       National Association of Social Workers  
                          Diplomate in Clinical Social Work  
                          NASW Register of Clinical Social Workers

California Professional Society on the  
Abuse of Children

PROFESSIONAL  
EXPERIENCE:

September 1978 - Present  
PRIVATE PRACTICE  
Adult, Child and Family Psychotherapy  
Clinical Consultation

September 1982-February 1984  
Eskaton American River Counseling Center  
CLINICAL SOCIAL WORKER, CHILD SPECIALIST  
Responsibilities included Pre-assessment,  
Individual and Family Therapy, and  
Consultation.

September 1979 - Present  
California State University, Sacramento  
Division of Social Work  
PART-TIME FACULTY  
Undergraduate courses taught include: Psycho-  
social factors in Human Functioning: Infancy  
through Adolescence, Social Work Practice, and  
Social Work Practice in Medical and Mental  
Health Settings. Graduate courses taught  
include: Women in Social Work, Social Work  
Practice: Maternal and Child health, Social  
Work Practice: Mental Health, and Social Work  
Practice: Human Sexuality; Clinical  
Intervention in Child Sexual Abuse.



PROFESSIONAL  
EXPERIENCE:  
(continued)

June 4 - June 5, 1979  
CO-INSTRUCTOR  
Family Services Association of America, Annual  
Conference Seminar to Train Professional  
Group Therapists.

September 1974 -September 1977  
Sutter Community Hospitals  
Children's Inpatient Psychiatric Service  
CLINICAL SOCIAL WORKER  
Responsibilities included: Intake  
Evaluations; Individual, Family and Adolescent  
Group Therapy, Discharge Planning, Community  
Liaison and Participation in Unit Adminis-  
tration, Clinical Supervision and Training  
of Staff.

September 1973 - September 1974  
University of California at Davis Medical  
Center, Mental Health Services.  
CLINICAL SOCIAL WORKER II  
Responsibilities included: Major Caseload of  
Adult Methadone Maintenance Patients and Minor  
Caseloads of Adult Psychiatric Out-Patients  
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**ATTACHMENT C**



**HILDREN'S AGENDA**

## WHAT IS THE CHILDREN'S AGENDA?

The Children's Agenda is a place to start.

Over a quarter of our children subsist on AFDC.

One-third of our children live in poverty.

Educational achievements are declining.

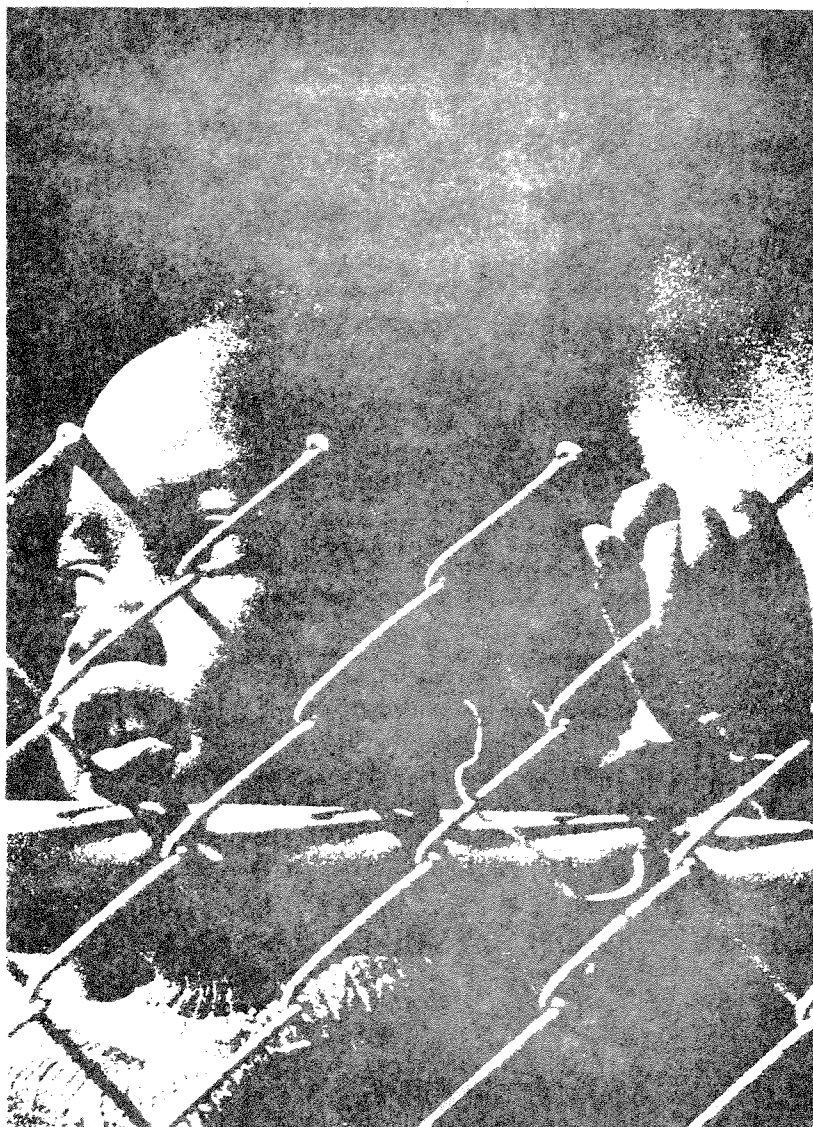
Drug-addicted births are increasing.

One out of two marriages ends in divorce.

Felony drug-related arrests stand at an all-time high.

Crime and violence continue to escalate.

The Children's Agenda provides an opportunity to effectively and collectively deal with the crisis we face. Each of us wants our children to be healthy, safe, and productive. The Children's Agenda offers a place to start. Through the Children's Agenda, we can make our dream a reality.



## EVERY CHILD NEEDS . . .

. . . prenatal health care to assure the best chance for healthy infants and mothers.

. . . a family with a solid economic base which allows self-sufficiency and the ability to provide its own housing, clothing, and necessities.

. . . safety and freedom from abuse or neglect.

. . . adequate and affordable health care, including mental health and nutrition.

. . . education as preparation toward becoming a fully participating, responsible adult — an education that prepares for gainful employment.



## THE CHILDREN'S AGENDA FOR SACRAMENTO COUNTY

A dream has been born in Sacramento County. No one is quite sure what it will look like when it is completed. Still, we cherish its potential and anticipate its impact on our future.

### **The Beginning**

In the Fall of 1987 a group of service professionals and policy-makers began to identify the quality of life for children and their families in Sacramento County. Are our children better off today than they were ten years ago?

No.

### **The Problem**

In Sacramento, over one-quarter of the children subsist on Aid to Families with Dependent Children (AFDC), one-third live in poverty, the homeless rate is rising, educational achievements are declining, and drug-addicted births are increasing.

### **The Solution**

The Children's Agenda is a call to action, designed to solve long-term problems. Those individuals and organizations already involved share a solid commitment to altering the pre-



sent course and providing the future our children deserve.

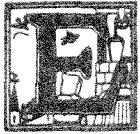
### **The Opportunity**

At last, we have the opportunity to provide a healthy, safe, productive environment for our children. Our children are our hope for the future.

The response of the public to the media's coverage of the plight of individual children understandably is overwhelm-

ing. The Children's Agenda is an opportunity to contribute to *all* children in *all* ways.

If the future belongs to those who dream, the Children's Agenda is the opportunity for Sacramento to make its dream come true.



## ECONOMICS

The Department of Finance estimates that during the past decade, per capita income in Sacramento rose at a slower rate than in the state as a whole and that the county's median income as a whole fell from 98.4% of the state median in 1972 to 88.4% in 1985.

During the last decade, the AFDC caseload increased over 100%. In January 1988, one out of four children in Sacramento received AFDC assistance.

Two out of five of the county's jobs are in the service and retail trade industries. The State Employment Development Department projects that the majority of new jobs in the county will be in low-wage occupations. Many of these jobs are less than full-time and do not include health care and other benefits.

Typical expenses for a single working mother with two children, ages two and four, employed at the high range of a Bookkeeper salary (\$18,700 annually):

<b>\$1,559</b>	<b>Monthly Gross Salary</b>
- 159	Medical Insurance*
- 26	Dental Insurance*
- 345	Other Deductions*
<b>\$1,029</b>	<b>Net Monthly Salary</b>
- 425	Housing**
- 40	Transportation (Bus Pass)***
- 433	Child Care****
- 223	Food*****
<b>\$- 19</b>	<b>Monthly Deficit</b>

\* Community Services Planning Council

\*\* Housing Element, Sacramento General Plan

\*\*\* Regional Transit Bus Pass

\*\*\*\* Child Action

\*\*\*\*\* University of California Cooperative Extension

*Figures do not include clothing, school fees, or savings for emergencies.*

*Almost one-third of our children are living in poverty.*

Teens are at greater risk for unemployment than adults, and of those, minority youth are at greatest risk. In October 1988, the overall unemployment rate for Sacramento County was 4.7%, while for youth 16 to 21 years, it was 9.6%. The rate for white youth was 8.8%, compared to 12.8% for Hispanic youth and 15.1% for Black youth.

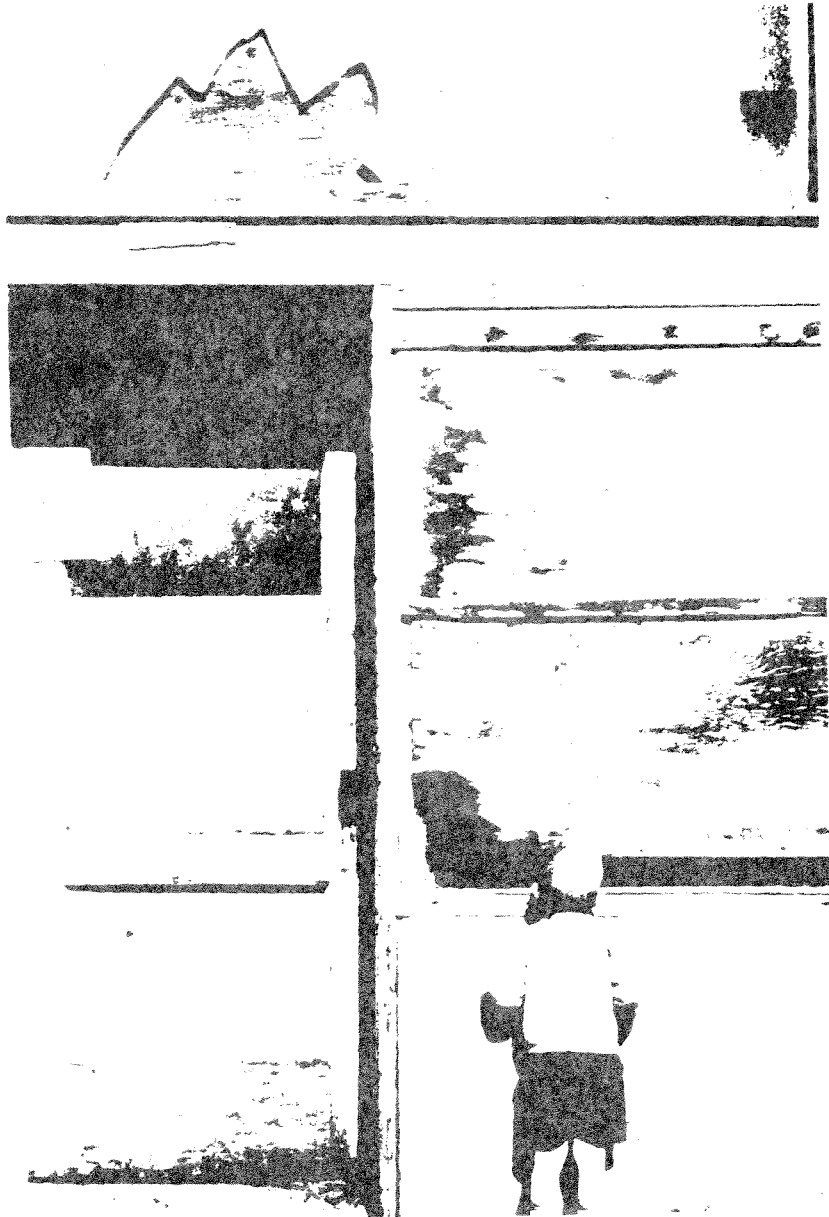
Without intervention, parents at the low end of the wage scale increasingly will become unable to pay for the costs of daily living.

Sacramento County's General Plan states . . . "It is estimated that income rose by approximately 9.0% annually between 1980 and 1987 while rents rose 11.4%."

An estimated one-third of public school students do not graduate with their class; thus, a significant number of youth will not possess adequate skills to enter the labor market.\*

Many families lack sufficient resources to cover all their basic needs, let alone deal with emergencies. As a result, a critical event such as an illness or major car repair may threaten a family's ability to maintain rent and utility payments and may force family members into homelessness.

\*Reference: Sacramento County Office of Education







## HEALTH

*"I just wish I didn't  
have to keep telling  
parents and kids 'I'm  
sorry . . .'"*

*- Public School Nurse*



At a time when fewer families are able to afford health insurance, many babies are born with health problems related to inadequate and insufficient prenatal care and/or drug addiction. One and one-half million children in California are not protected by any type of health insurance.

Twelve percent of babies born in Sacramento County between 1980 and 1987 were low-birthweight babies, a condition often associated with a lack of prenatal care.

Care for premature low-birthweight infants can be \$21,477 for an average 19-day stay in a Neonatal Intensive Care Unit.

This does not include care and treatment of life-long disabilities such as cerebral palsy and mental retardation.

With an estimated 20,000 to 30,000 IV drug users in Sacramento County\*, there is an increasing number of infants born with a drug addiction or a diagnosed AIDS-related virus.

Medi-Cal payments have not kept pace with the population. The number of women of child-bearing age in the County increased 18.2% during this seven-year period while the number of women covered by Medi-Cal increased only 7.5%. Birth by teenagers increased 65.2%. One out of every 18 teenage girls age 15 to 19 had a baby in 1986.

\*Reference: Sacramento County Health Department



## MENTAL HEALTH



Children and families in need of mental health services are innocent victims in the community mental health policy battles generated by the deinstitutionalization movement. During the past three decades, hundreds of thousands of severely mentally ill people have been discharged from state hospitals. However, adequate public funding for continuing care has not followed those patients to the communities. As a result,

many who need assistance do not get it.

Since resources are spent on the most critical cases, there is nothing left for prevention and early intervention for young people beginning to experience mental health problems. In Sacramento County, children who represent 26% of the population receive only 14% of the state-supported local mental health budget.

More than half the school

children who could qualify for mental health services as special education pupils receive no such services.

Only one in ten mentally-disturbed children is adequately served in out-of-home placement. Only those who can afford to see private practitioners have the opportunity to receive the family and individual therapy they may need to avert escalation of mental illness.



## CHILD CARE

Requests for child care increased from 4,800 in 1980 to over 14,000 in 1987.\* By 1990, there will be an additional

40,000 children in the County between birth and age nine.

Almost one-half of Sacramento mothers with children under age six are in the workforce. The working parent with a sick child has few viable choices except to stay home with the child or leave the child unattended.

The cost of child care has almost tripled in the last seven years from an average of \$25 per week to \$75 per week. A single mother with a three-year-old and a seven-year-old, working full time for \$5 per hour, will spend 30% to 50% of her income on child care. Rates for children with special needs, such as physical or learning disabilities, are higher than standard rates.

The average wage for a child care teacher is \$6 per hour, and the annual turnover rate within the profession is 57%.

In 1985, only 27% of family day care home providers had child care liability insurance coverage. Insurance is difficult to find and so expensive that some providers have been forced to terminate service. Since 1984, premiums have increased from \$80 per year to \$600 per year for home day care and from \$2,000 per year to \$12,000 per year for child care centers.

\*Reference: Child Action





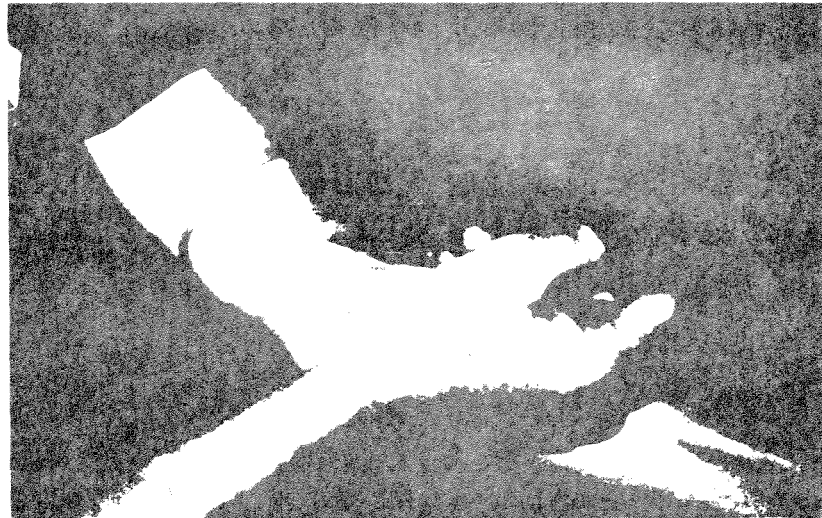
## UBSTANCE ABUSE

Substance abuse has increased dramatically in Sacramento County during the past six years. The State Attorney General's Office data indicates that between 1982 and 1986, felony drug-related arrests increased by 125.5% and juvenile drug-related arrests increased by 23%. During this same period, deaths due to drugs increased 70.5% in Sacramento County and 23% in California.

Juveniles with little or poor employment opportunities can earn up to \$5,000 per month selling drugs.

In the past six years, persons killed in alcohol-related accidents increased 40% in Sacramento County and 5% throughout the State.

Forty percent of neonatal intensive care admissions in Sacramento County included drug addiction as a diagnosis, compared to 25% statewide. The referral of drug-addicted babies to Children's Protective Services in Sacramento County has increased more than 10 times since 1985 to an average of 40 children per month. More abusing/neglecting parents have major problems with substance abuse.



***"We are producing a new generation of innocent addicts."***

***- Dr. Elaine M. Johnson, commenting on drug-addicted babies***



## FAMILIES

*"We spend more in this country on pizza than the federal budget for children on AFDC."*

*- Child Advocate*



The "Ozzie and Harriet Family" of old continues to fade from prominence as the divorce rate soars and more and more children grow up in single parent and/or poor families. According to census information, the number of families in Sacramento County with single female heads of household and children under the age of 18 has increased by 80.1% since 1970 to 23,269. This compares to a 54.4% increase statewide. One-third of these families live in poverty. Only 7% of eligible poor children receive subsidized care in California.

Nearly one of every two marriages ends in divorce. According to professionals, overstressed parents without family or informal supports may be most likely to physically abuse their children.

During the 1970s, families headed by never-married mothers increased by 356%. In 1983, almost 70% of these families were poor.\* Sacramento County has the fourteenth highest birth rate in the state for girls age 11 through 13.

\*Reference: *A Growing Crisis: Disadvantaged Women and Their Children*

## HOUSING

Although Sacramento is widely known as one of the few remaining "affordable" cities in California, a large number of its households still are inadequately housed or pay a burdensome proportion of incomes on housing costs. When these households consist of families with children, such housing pressures contribute to overall poverty and stress and increase the likelihood that child abuse and neglect will occur.

### The Need for Affordable Housing

The cost of housing has skyrocketed in recent years and will continue to do so.

Whereas the median family income in Sacramento County rose by 198% between 1970 and 1980, home prices increased by 352%. Fewer than 33% of all households in the County can afford to purchase a median-priced resale house.

### Rental Needs

Sixty thousand renter households earn less than 50% of the area's median income. These are considered very low income households by prevailing standards for federal, state, and local housing programs.

Twenty-four thousand of these very low-income households pay over 50% of their incomes in rent. Prevailing standards assume that households should pay not more than 30% of income in rent.



In Sacramento, only 12,000 of the 60,000 very low-income eligible households can receive direct housing assistance through all current local, state, and federal programs.

AFDC monthly grants are inadequate to cover an average family's market-rate housing costs when utility and other living costs are taken into account.

On the first day it reopened its waiting lists for assisted housing, the Sacramento Housing and Redevelopment Agency received 760,000 attempted phone calls from prospective applicants.

### Increase in Homelessness

Although it is seventh in state population, Sacramento County ranked fourth in the state in July 1988 in terms of families receiving special homeless assistance from AFDC. In 1987, city/county homeless shelters provided emergency aid to approximately 6,000 families.



## CHILD SAFETY

*“Children can’t speak for themselves, and that’s why I suspect they haven’t received their share of funding.”*

*- Director, Children’s Receiving Home*

Since 1980, calls to the emergency response lines of Children’s Protective Services (CPS) have increased in Sacramento County by 195%. During the same period, cases opened have increased 137%, and cases requiring a two-hour response have increased 155%.

Since 1982, the average overall monthly foster care caseload has increased by 87%, and the caseload in permanent placement has increased by 119%. The county had 3.3% of California children in January 1988 but 4.24% of the emergency response inquiries, indicating a proportionally high level of complaints of abuse.

While referrals to Children’s Protective Services increased over 150% between 1982 and 1987, staffing increased only 46%. Although 26.4% of all children are on Aid to Families with Dependent Children, over 60% of the CPS caseload is from AFDC. Also, more



and more referrals to CPS involve parents who are substance abusers.

Professionals are concerned that the increase in demand for services has diminished the level of prevention, early intervention, and in-home services. Those are the very services which reduce the future degree and severity of child abuse.



## EDUCATION

*"The future belongs to those who believe in the beauty of their dreams."*

*- Eleanor Roosevelt*

Poor children who enter kindergarten without having attended preschool are at an academic disadvantage. Preschools are in short supply. Only 12% of those eligible for Headstart are served. There are 6,000 total preschool slots, while the three- and four-year-old population is 32,000.

Homeless children are not in attendance in the schools. Mobility is especially prevalent among the poor. Some elementary schools experience as much as an 80% turnover yearly.

While Sacramento is eighth among the 58 counties in student enrollment, it is second in assaults and attacks in schools, third in assaults with a deadly weapon and in sex offenses, and seventh in incidences of substance abuse reported at school sites.

Students seldom see a nurse, psychologist, social worker, or counselor.

The dropout rate is alarming. Attrition for the last five years was about one third. If the figures are corrected for immigration, the results would be even higher.

Graduation Class	Attrition Rate
1984	32%
1985	32%
1986	27%
1987	33%
1988	31%*

For ethnic minorities, attrition rates are bleaker:

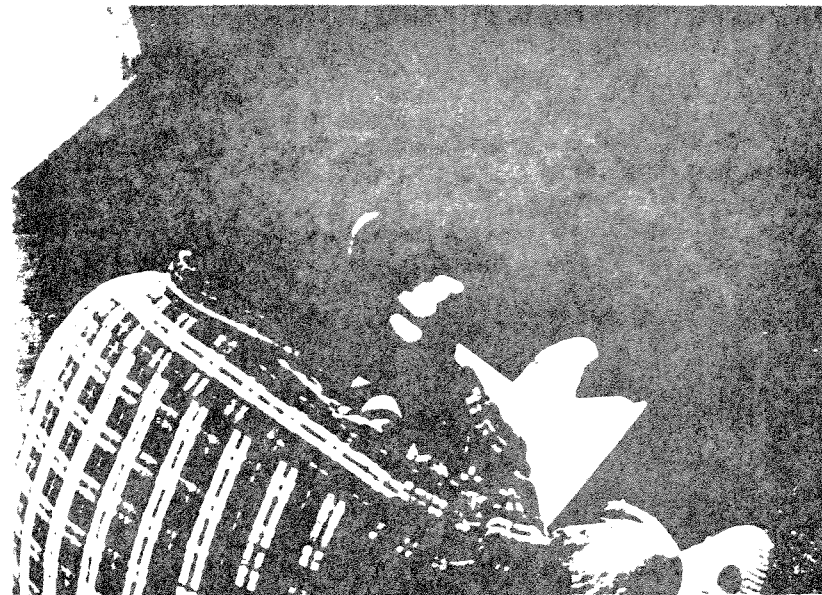
Ethnic Group	Attrition Rate
American Indian/Alaskan Native	57%
Black	47%
Hispanic	45%
White	26%
Asian	18%

School Attendance Review Board hearings for truancy and behavior problems rose 38% during the last year. There were 226 expulsions.

Although education is supposed to be free, there are many associated expenses, the largest of which may be transportation. A family with two secondary students would pay \$440 per year just for transportation in some districts.

Sacramento has experienced an increase in the number of students for whom English is not their native language. Since 1981, this group has increased from 4.4% of the enrollment to 7%. While the majority may speak Spanish, Cantonese, or Vietnamese, more than 50 different mother tongues are represented.

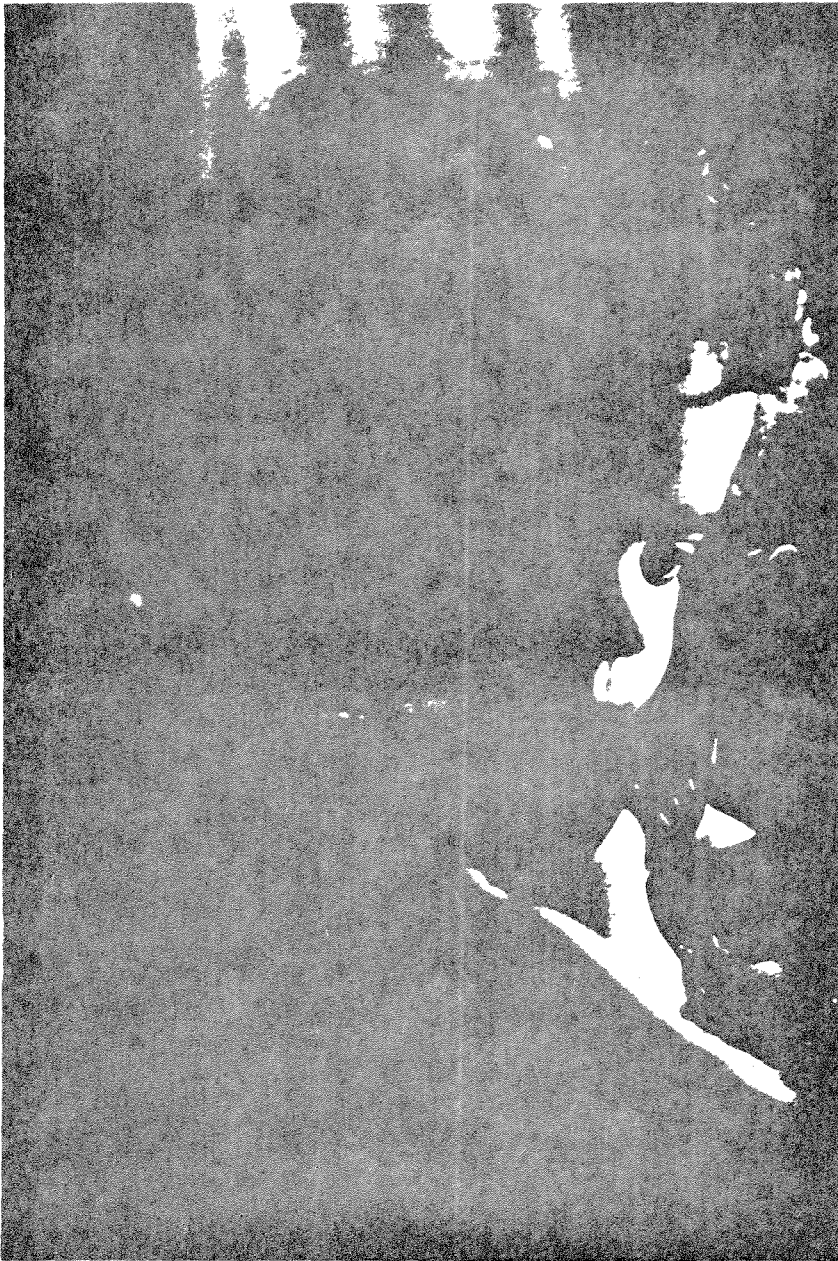
\*Reference: California Basic Educational Data System







## JUSTICE



### *Who are the victims?*

The justice system substantially impacts the lives of our children. The system deals with our children on two different levels - as juvenile victims and as juvenile offenders.

This week's abused/neglected child may be next week's juvenile offender. This year's juvenile delinquent easily can become next year's adult offender.

Who are the child victims?

In 1988 . . . 2,333 children were taken into protective custody as a result of abuse and neglect . . . 6,500 cases of sexual/physical abuse were investigated by the Sheriff . . . 2,000 cases were referred to the court for child custody mediation.

At each juncture, the child is forced to repeat his or her story to new investigators, social workers, or judges. Potentially, a child is faced with having to deal with three distinct court systems: Juvenile Court, Family/Domestic Court, and Criminal Court.

There has been a marked increase in juvenile crime. In 1987, almost 8,000 young people were arrested.

One thousand, nine hundred and seventy-four juveniles are on probation in 1989. Probation officers responsible for supervising them have an average caseload of 80.

Over one in four California Youth Authority (CYA) wards are identified as suffering from

Juvenile Crime	1978	1987	% Change
Vehicle Theft	354	461	+ 30%
Drug Violation	113	254	+122%
Assault and Battery	285	535	+ 88%
Malicious Mischief	188	234	+ 24%

Gang Participation	1986/87	1987/88
Gang Arrest	268	433
Gang Homicide	7	15
Gang-related Arrest/ Aggravated Assault	161	248

mental/emotional problems. About 40% of CYA wards have been through out-of-home placements prior to commitment. About two-thirds of CYA wards come from homes broken by divorce, separation, or death of one or both parents.

Approximately 40% of the families of CYA wards receive public assistance. Of older wards in the job market at the time of commitment, about 75% are unemployed. Although the average age at commitment is about 17, the average grade level in both reading comprehension and arithmetic reasoning is about sixth grade.

Ethnic minority group members represent about 73% of the CYA population. One in four wards has been abused.



## WHAT CAN WE DO?

There are no magical solutions. If there were, the problems would not exist as they do today. We know that no single agency or individual can solve all the problems facing our children and our future. We can begin to reshape our community by working together.

**We can participate** in the Children's Agenda. Attend meetings and community planning forums to ensure that our priorities and ideas are considered.

**We can take responsibility** for advocating issues and services which will improve the situation.

**We can learn** more about the status of our community by requesting information from the Children's Agenda and other agencies.

**We can volunteer** our time and talents to assist with those issues we can effect personally. The solution to every human problem begins with one person.

**We can communicate** our concerns to local, state, and federal elected officials by writing to them and attending their meetings. We can let them know that children are a priority.

**We can call or write** the Children's Agenda for more information. Today.

**Children's Agenda**  
2335 American River Drive  
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Sacramento, CA 95825  
(916) 920-1765



**The Children's Agenda  
For Sacramento County**

*Under the Auspices of the  
Child Abuse Council of  
Sacramento, Inc.*

**The Children's Agenda  
Steering Committee**

Child Action, Inc.  
Child Abuse Council  
of Sacramento, Inc.  
Community Services  
Planning Council  
Grant Joint Union  
High School District  
La Familia Counseling Center  
Sacramento County  
Children's Commission  
Sacramento County  
Department of Health:  
Alcohol and Drug Programs  
Mental Health  
Public Health  
Sacramento County Department  
of Social Services  
Sacramento County  
District Attorney's Office  
Sacramento County  
Probation Department  
Sacramento County  
Sheriff's Department  
Sacramento Employment  
and Training Agency  
Sacramento Housing and  
Redevelopment Agency

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Diogenes Youth Services

*Many things we need  
we can wait for . . .  
But not the child.  
Now is the moment . . .  
in which his bones  
are formed, his blood  
is constituted, and his  
brain developed.  
We cannot answer  
him "tomorrow" —  
His name is "today."*

*- Gabriela Mistral  
Nobel Prize-winning  
poet, Chile*



The Children's Agenda  
c/o Child Abuse Council  
of Sacramento, Inc.  
2335 American River Drive  
Suite 400  
Sacramento, CA 95825



*“California is not so  
'golden' for its  
children.”*

*- Child Advocate*

# CHILDREN'S AGENDA

## 1989/90

*On behalf of our future...  
all our children*

**CHILDREN'S AGENDA  
FOR SACRAMENTO COUNTY**

**Fiscal Year 1989/90 Recommendations**

Prepared for:  
The Child Abuse Council of Sacramento, Inc.

on behalf of:  
The Sacramento Children's Agenda Coalition

by:  
Sheila Anderson  
Consulting Group

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DEDICATION

The 1989/90 Children's Agenda Report is dedicated to:

Chandra who was born addicted to cocaine

William who has no home

Maria who was beaten to death by her father

Nathan who dropped out of school at 16 and is unemployed

and

Steven who was born with a preventable birth defect

# SACRAMENTO COUNTY

## CHILDREN'S AGENDA

2335 American River Drive • Suite 400 • Sacramento • CA 95825 • (916) 920-1765

### STEERING COMMITTEE

Child Action, Inc.

Child Abuse Council  
of Sacramento, Inc.

Community Services  
Planning Council

Grant Joint Union  
High School District

La Familia  
Counseling Center

Sacramento County  
Children's Commission

Sacramento County  
Department of Health  
Alcoholism and Drug  
Programs Division  
Mental Health Division  
Public Health Division

Sacramento County  
Department of  
Social Services

Sacramento County  
District Attorney's Office

Sacramento County  
Office of Education

Sacramento County  
Sheriff's Department

Sacramento Employment  
and Training Agency

Sacramento Housing  
and Redevelopment  
Agency

Sacramento County  
Probation Department

May 30, 1989

Dear Sacramento:

I am pleased to present the first annual report of the Sacramento Children's Agenda. This effort began for us several years ago, when professionals in the system began to identify the alarming trends which we present to you in this document. Over the last few months the Children's Agenda Coalition has worked to understand this information so that we can begin to change the otherwise bleak future facing our children.

We found that over a third of our children live in poverty; the homeless rate is rising for families with children; educational achievements are declining and schools are more dangerous environments; drug addicted births have increased; more children are abused, arrested and incarcerated than ever before. We know that you will agree with us that it is time for action: Time to change direction.

What we propose in this report is a first step toward long term solutions. The Children's Agenda is not a single report, it is a multi-year community commitment to our children and our future. The answers are not easy; they require administrative changes, legislative changes and funding changes. But unless we join together now the situation will only worsen.

It is my honor to transmit, on behalf of the entire Children's Agenda Steering Committee and Coalition, our recommendations for 1989/90.

Sincerely yours,



Michael Jett  
Chair, Sacramento Children's Agenda

## ACKNOWLEDGEMENTS

This report is the result of many individual's combined efforts. Chuck Gatten, MSW, and Paul Lake from the County Department of Social Services authored a discussion paper which provided the impetus and initial research for this document. The Community Services Planning Council provided data to both the Department of Social Services' early research and to the ongoing efforts of this coalition. Blue ribbon committees of experts and practitioners were formed by the Children's Agenda Coalition on each of the topical areas presented. The committees compiled data and offered possible solutions to the problems. Their work was augmented by the dedicated participation of the Children's Agenda Steering Committee. The Child Abuse Council of Sacramento, Inc., through its Board of Directors, staff and consultants provided the overall coordination of the project. Funding for the development of this report was provided by the Sacramento County Board of Supervisors through the Children's Trust Fund which is administered by the Sacramento Children's Commission.

# Summary of

## Recommendations

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Establish a group health insurance program for small businesses, which will allow small business and non-profit agencies to offer employer-provided benefits.

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Implement a three year pilot project to reduce barriers to adequate prenatal care by: 1) providing subsidized transportation; 2) reducing delays in obtaining Medi-Cal coverage; 3) implementing a patient-physician referral and follow-up system; 4) providing community education and outreach; 5) and providing individual case management and patient education.

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Fund County Mental Health services for children at the level required by law, allocating 50% of all new monies until the total level of funding reaches at least 25% of the total mental health budget.

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Establish a Child Care Fund for the purposes of meeting new and existing needs for child care in the county.

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Implement a comprehensive, multi-faceted continuum of care to address the problems of perinatal substance abuse.

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Support the adoption of a Housing Trust Fund Ordinance by both the City and County.

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Provide intensive, in-home prevention services for parents and children in high risk situations for child abuse or neglect and for infants born drug addicted, to prevent family breakups.

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Establish school based, multi-disciplinary service centers to provided a range of services to children and families available on the school campuses.

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Establish a multi-disciplinary interview center to reduce the traumatic aspects of the investigative procedures upon child abuse victims and to improve the operations of the criminal justice and protective systems regarding children.

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Provide alternatives to status offenders and delinquent youths by expanding the Neighborhood Alternative Center and other community-based alternatives to incarceration/custody.

# Recommendations

Population	Cost	Revenues	Benefits
Over 20% of the non-elderly population has no health insurance.	Unknown	Private	-Better health -Fewer public health costs -Fewer families in poverty
At least 300 pregnant women and their babies annually	\$250,000	Foundation(s)	-Increased prenatal care -Reduced infant mortality
Hundreds of children annually	None	N/A	-Increased mental health services for children. -Prevented escalation of mental health problems -Compliance with the law
Up to 10,000 families		Developer fees, City, County, Grants, Donations	-New child care facilities -Expanded child care programs
700-1,600 infants annually	\$1,288,054	Foundation and State Funds	-Fewer drug addicted babies -Increased treatment for mothers and infants
500 families annually	\$7.2 million	Developer fees and employee or other tax	-Increased affordable housing -Decreased homelessness
Approximately 2,000 families	\$3.4 million	State legislation	-Reduced foster care placement -Increased prevention and early intervention for at-risk families
Potentially, all families	Unknown	n/a	Increased academic performance by students -Increased access to services for families -Reduced drop-out rate -Increased service agency coordination
Over 13,000 cases of child abuse were reported to CPS in 1987.	\$817,557	County, City and Foundations	-More humane treatment of child victims -Increased safety -Increased child abuse convictions
3,000 juveniles annually	\$134,196+	County	-Increased alternatives to incarcerating children -Reduced recidivism among juveniles -Reduced exposure of non-delinquent youth to offenders

## **Advocacy**

*Sacramento County elected officials, professionals and community leaders must join together to advocate for the needs of children. Children cannot speak for themselves; they are forced to rely on the commitment of adults to protect their well-being. To this end:*

Sacramento County elected officials should actively advocate and lobby the State Legislature and Governor to support legislation to encourage and provide incentives to counties statewide to undertake local children's agendas.

Sacramento County elected officials should actively advocate and lobby the State Legislature and Governor for enhancements to the AFDC, GAIN and other economic assistance programs to begin to alleviate the conditions of poverty which permeate all other social problems.

Sacramento County elected officials should actively advocate and lobby the State Legislature to broaden health insurance coverage for all Californians.

Sacramento County elected officials should actively advocate and lobby the State Legislature and Governor for full funding of the mental health portion of the state budget, including the funding derived from the newly enacted cigarette tax approved by the citizens.

# Recommendations

Sacramento County elected officials should actively advocate and lobby the State Legislature and Governor for additional funding to support the provision of child care to all families.

Sacramento County elected officials should support legislation to secure state and federal funding for programs for infants and children born with drug toxicity.

The Sacramento County Children's Agenda encourages local officials to explore the use of Mather Air Force Base as a possible site for facilities for the homeless families in the community.

Sacramento County elected officials should undertake the process leading to the establishment of a Child and Family Court in Sacramento.

Sacramento County elected officials should actively advocate and lobby the State Legislature and Governor to continue the County Justice System Subvention Fund at a level equal or greater than the previous budget year.





## INTRODUCTION

In the fall of 1987, a group of service professionals and policy leaders began to investigate the status of children and their families in Sacramento County. Central to their concerns was the fundamental question, "Are children in Sacramento County better off than they were five or ten years ago?" The resounding answer was "NO."

As a result, over two hundred organizations and individuals joined together as the Children's Agenda Coalition. They share a solid commitment to altering the present course and providing the future our children deserve. The recommendations contained in this first annual report are only the initial proposals of the Coalition. The Children's Agenda is a multi-year effort to provide a healthy, safe, productive environment for our children through policy, legislative, and administrative changes; through advocacy, volunteerism and funding.

Implicit in any discussion of children is the families of which they are a part. But the "Ozzie and Harriet" family of television lore is fast becoming a relic of the past that we can no longer rely on to solve all of society's problems. The Children's Agenda Coalition found that the fundamental changes in the structure and roles of families underlie all other issues, and places them in context.

Most people would agree that the best place for children to grow up is in a healthy and productive family atmosphere which nurtures the child, and in which the family handles the bulk of its own problems. However, family life has undergone rapid and, in many instances, destructive changes since 1970; children are often the innocent victims.

The normal stresses of family life have become magnified by these changes. In many families, several stressful conditions exist together, compounding the problem. For example, of the families with a child in Head Start over half are headed by a single parent; over 90% live below the poverty level; 79% have an unemployed head of household; 27% of the parents have less than a 10th grade education; and 49% have not graduated from high school.

If a single mother is working full time at minimum wage, her family will still be in poverty, and she will not be able to meet their basic economic needs of food, shelter, and clothing. There are costs associated with working: transportation, child care, clothing, special work supplies and tools, etc. Ironically, the mother may do better for her family by not working, but by receiving government assistance, which at least allows her to stay home and care for her children.

The number of families headed by single women is very high. These families often have reduced family income and limited family supports in which to raise children.

According to U.S. Census information, the number of families with single female heads of household with their own children under age 18 increased considerably between 1970 and 1980. Today one in 4 children lives with a single parent. Almost one-half of California's female heads of households live in poverty - though 70% of them work. (California Legislative Joint Select Task Force on the Changing Family)

In Sacramento County in 1970, there were 12,920 such families. By 1980, there were 23,269 such families in Sacramento County, an 80.10% increase. The State percentage increased by 54.51% during the same time.

Between 1970 and 1981, the divorce rate has more than doubled. Nearly one of every two marriages in the United States now ends in divorce. The figures are even higher for teenage marriages.

Having and keeping a child outside of marriage has become more acceptable. During the 1970's, families headed by never-married mothers climbed to 3.4 million nationwide, an increase of 356%. In 1983, almost 70 percent of families headed by never-married mothers were poor.

The consequences of these problems are numerous and complicated:

As more families are forced to have a single parent or both parents work, and child care is unavailable, more children are forced to take on adult caretaking roles, without the resources to do so, and without the emotional support they themselves need as children.

The overstressed young working parent will more likely have limited energy and patience for dealing with the needy child.

The single parent will most likely be less able to cope with daily stresses and may "take it out" on the child. Studies currently underway in Alameda County suggest that overstressed single parents without family or informal supports may be most likely to repeatedly physically abuse their children.

The problems faced by families are complex, involving many interrelated issues, including economics, changing social values, new roles for both women and men, alcoholism and drug abuse, and shrinking public dollars available to help them. Solving these problems will be difficult, and will require a broad based community and professional effort. In order to save children we must look at the families in which they reside.

## POLICY DIRECTION

The Sacramento Children's Agenda Coalition concluded that, throughout the various topical concerns, three general themes or problems permeated every issue and overrode every previous attempt at solutions:

Sacramento County should emphasize prevention and early intervention services for its children. We do too little too late. So many cases demand so much of service providers' attention they can only focus on problems which have reached crisis stages, when intervention is least effective at resolving them.

Existing service agencies are overburdened with caseloads and demands they cannot meet. This is true in every human service category and is steadily worsening. More distressing is the fact that the intensity of the problems agencies face has increased. The system is so overcome with the magnitude and severity of demand that it has developed a triage approach which caters to the most extreme and dangerous symptoms and cases. While there is no arguing against the strength of the demand or our obligation to serve a child whose life is in danger or who may be a serious threat to others, that child is least likely to be "saved" and made a productive, healthy member of society. His/her chances were much greater when the problem first emerged; but then the child was considered a lesser priority by the service system. By discontinuing and de-emphasizing prevention and early intervention efforts, Sacramento now faces a deluge of hardened, intransigent young people, the flood of which will never be slowed by "last resort" measures. Today's abused child is tomorrow's abuser; today's truant student may be tomorrow's criminal. It is more cost effective to pay for prenatal services than to provide life-long support to a person born with preventable birth defects; it is less

expensive to hire one school counselor than to incarcerate one juvenile offender. In every case, prevention is less expensive, and more importantly, more effective than the continued emphasis on our children only when their problems are most severe. The only hope for decreasing the volume of problems before us is to allocate resources and services to those children and families who are still willing and able to accept help in becoming healthy, productive, and self sufficient.

Sacramento County services should be client based. All too often, we provide services that treat symptoms instead of people. The resources and programs currently available to assist children and families are distinct and categorical, or single issue, with little coordination or facilitation of client access.

Generally, existing programs and services are designed to be internally efficient, to make scant resources go as far as possible. However, these services operate categorically, independent of other related services. The service system has become service provider-based, not client-based. An individual child may need support and assistance simultaneously from substance abuse programs, child protective services, health treatment and mental health. His/her parents may also require assistance for the same family crisis from a variety of other agencies. It is unlikely, however, that any of the service providers will know of the other actions on behalf of the family or that they will ever discuss the course of treatment and needs with the schools. The child, instead, will be referred to a series of different providers at different locations, times and dates. The incentive required by a damaged child and family to complete all these appointments is great. Perhaps it is more than we can expect. We have not done a good job of treating the whole child and family; we have treated

their symptoms.

The Children's Agenda Coalition has concluded that the major priority for existing service providers is to restructure services to meet the needs of children and families. In almost every category, it is possible to begin doing a better job at helping children and families by coordinating services and focusing on the client. A first step in doing this is the implementation of the demonstration programs recommended in this report: 1) the school-based service delivery model and 2) the multi-disciplinary interview center. They are designed to serve as models to encourage government and the private sector to begin addressing our problems, not as issues, but as people.

Sacramento County elected officials, professionals and community leaders must join together to advocate for the needs of children. Children cannot speak for themselves; they are forced to rely on the commitment of adults to protect their well-being.

There is a need for immediate action at the local level to implement new programs or to make administrative changes. In addition, there is a clear and pressing demand for Sacramento's elected officials (Congressional, County, City, school district and special district) to actively represent our children with the State Legislature, the Governor, Congress and federal government agencies which affect children, to alter the policies under their control. Sacramento is not a separate and self-sufficient island. In addition to the direct programs and policies we can implement locally, we need the support and willingness to act on other levels of government and the private sector to bring about the needed solutions.

Sacramento County elected officials should actively advocate and lobby the State Legislature and Governor to support legislation to encourage and provide incentives to counties statewide to undertake local children's agendas.

The Sacramento Children's Agenda also encourages other counties, local jurisdictions and state organizations to take up the call to action and begin a state-wide drive toward improving the lives of children. Children do not have the access, money or power to make the necessary changes in public policy or in the conscience of the citizens. That responsibility belongs to those who care. In the coming months and years, the Sacramento Children's Agenda will encourage every other jurisdiction and state organization to work together to fulfill that responsibility through the development of a statewide children's legislative package, through a concentrated focus on children's issues during the upcoming gubernatorial campaign, and through a possible state ballot initiative to secure sufficient resources to address many of the issues described in this report.

#### **ORGANIZATION OF THE REPORT**

The next nine sections of this report are divided into topical areas. Each topical section begins with an overview of the current status of children in Sacramento County. This is followed by the projected consequences of taking no action to change the situation in the future. Finally, we offer the first year recommendations of the Coalition for dealing with each problem. The recommendations come in two forms: 1) Action Recommendations which describe specific proposals for new programs, funding sources or administrative approaches, and 2) Advocacy Recommendations which relate to multi-jurisdictional policy issues. The later are highlighted in boxes at the end of the sections.

These recommendations coalesced from the ideas of over 200 policy makers, community leaders and professionals, including line staff who work with families and children on a daily basis. These participants were asked to submit an unlimited list of recommendations and proposals for general consideration. The resulting list of almost 100 recommendations were reviewed and screened by the entire Coalition and the Steering Committee and ultimately synthesized into the recommendations presented in this report. They represent a starting point for action, a focus for community mobilization. The Coalition will continue to work on the other issues and new concerns as they emerge, and expects to issue subsequent reports and recommendations.

The report is divided into these nine topics for simplicity and presentation, not because there is a perception that the problems of children and families are neatly compartmentalized. To the contrary, there is clear evidence that each issue and concern is related to all the others. For example, substance abuse may have the following related effects:

- The abuser has mental and physical health problems,
- There are health risks to unborn children of abusers,
- The education system is faced with providing special education services to the baby born drug addicted,
- The justice system deals with the youth gang members who commit crimes to support their habits,
- The lack of economic alternatives entices young people to sell drugs instead of unemployment or minimum wage,
- Social and human service programs assist all the family members financially if they are unable to care for themselves.

There are no simple problems, just as there are no easy answers. Every issue addressed affects all the others, because these are



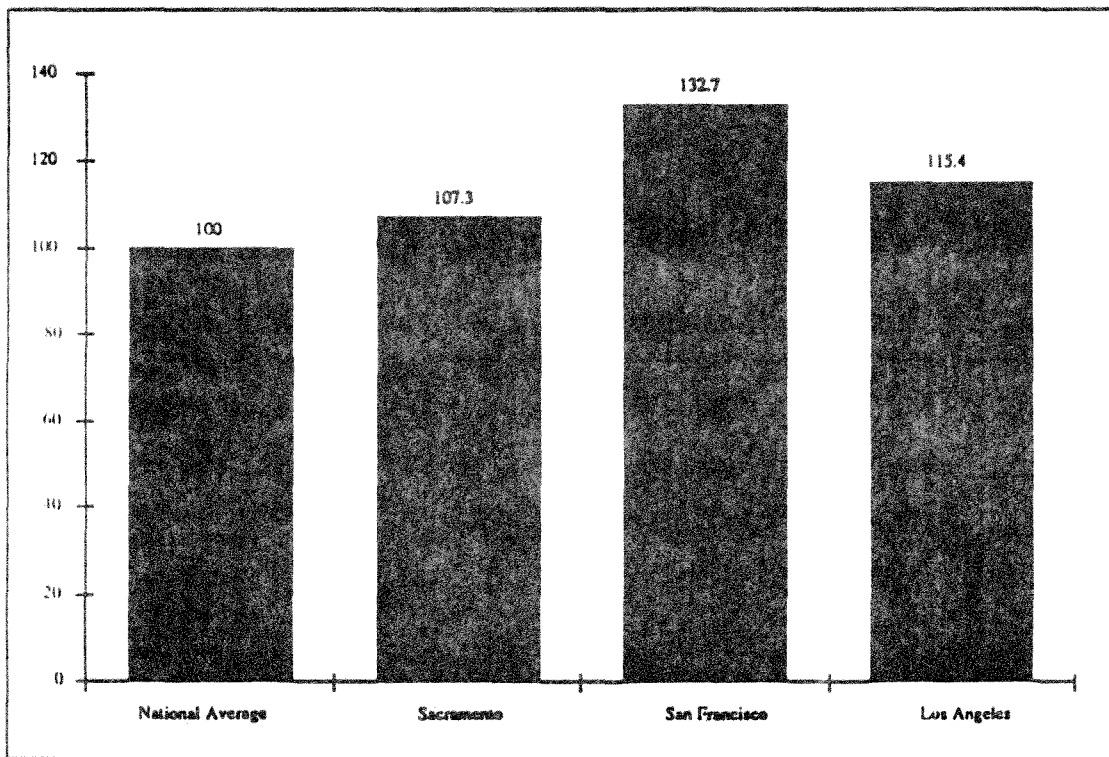
human concerns. Much of the impetus for the Children's Agenda was the recognition that the existing services were inadequate alone, that they could not change the trends affecting children in Sacramento County. The problems facing our children are broad in scope and impact and require the dedicated effort of community leaders and professionals from all fields working together.

## ECONOMY

### PROBLEM

Sacramento is a fast growing community with a healthy economy. New jobs are expected to increase 36% between 1985 and 1995. The unemployment rate has declined steadily from 9.6% in 1983 to 5.5% in 1987. Sacramento's relatively low cost of living compares favorably to other California cities.

## Cost of Living

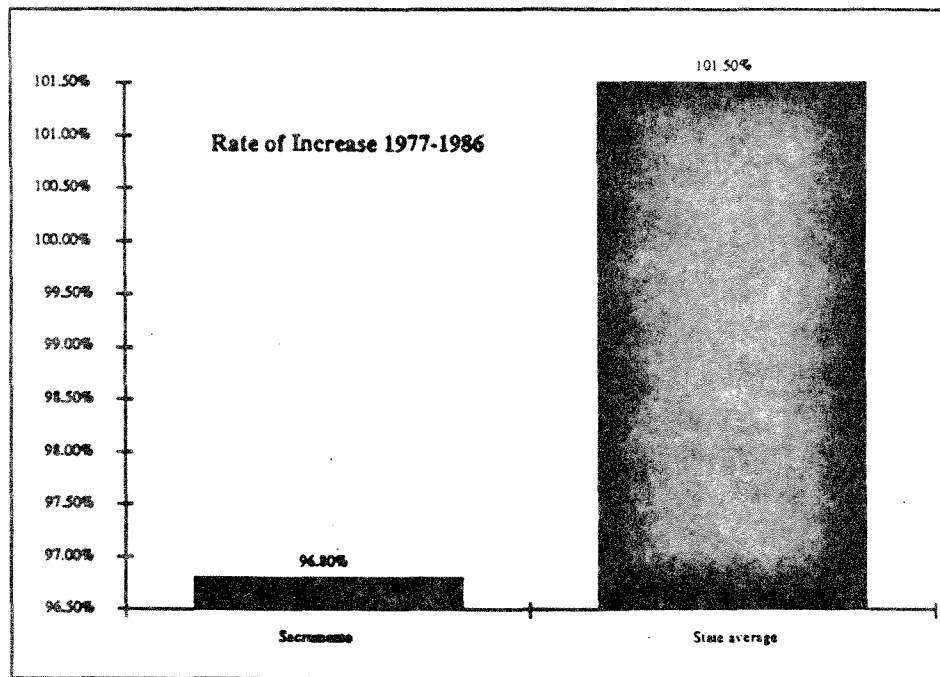


Source: California Department of Finance

The prosperity implied by the foregoing statistics is not shared by all members of the Sacramento community. The basic economic necessities of food, shelter, and clothing are not available to all our children. Deprivation of these necessities often leads to other problems: poor health, inability to learn, and attraction to crime.

Income in Sacramento County is not rising as fast as it is in the state as a whole.

## Per Capita Income



Source: California Department of Finance

A significant portion of Sacramento's children are living in poverty:

In January 1988, 26.4% of children in Sacramento County received AFDC assistance, compared to 16.1% of the children in the state as a whole. (Ca. Dept. of Social Services, Public Welfare in California)

Sacramento County's Aid to Families with Dependent Children Family Group caseload increased by 102.9% between January 1977 and January 1988 compared to an increase of 47.8% statewide. (Ca. Dept. of Social Services, Public Welfare in California)

Sacramento County, with 3.43% of the State's population, has 5.12% of State's total AFDC single parent caseload. (Ca. Dept. of Social Services, Public Welfare in California)

One out of three Sacramento County public school children received free or reduced price lunches as of June 1988; 37,254 public school students were receiving AFDC. (Sacramento Employment and Training Agency)

In October 1988, the unemployment rate for all age groups in the county was 4.7%. Among youth, ages 16-21, the rate was 9.6%. When this is broken down by ethnic group, Black youth have the highest rate of unemployment. After American Indians, this is also the group with the highest drop out rates from high school. Asians, on the other hand, have the lowest unemployment rate and the lowest drop out rates.

**YOUTH UNEMPLOYMENT RATES IN SACRAMENTO COUNTY  
BY ETHNIC GROUP**

ETHNIC GROUP	UNEMPLOYMENT RATE
BLACK	15.1%
HISPANIC	12.8%
WHITE	8.8%
ASIAN	6.2%
TOTAL	9.6%

Source: Employment Development Department

The ability to afford adequate services for many families is limited or nonexistent.

A high portion of the labor force is employed in industries which have low paying wages; 40.9% of the County's jobs are in the service and retail industries. (Employment Development Department)

Nearly half of the estimated new jobs that will be created between 1985 and 1995 will be in sales, service and clerical occupations. (Employment Development Department)

In 1985 statewide, 21.6% of the non-elderly population was not covered by health insurance. While 19.0% of children living with both parents were uninsured, 30.0% of children living with a single mother and 45.0% of those living with a single father had no insurance. Eleven percent of full-time, full year employees were uninsured and 29.2% of part-time employees

were uninsured. (California Policy Seminar)

Wages for unskilled and semi-skilled workers in the Sacramento area are 8-10% lower than those in the largest metropolitan areas on the West Coast. (Targeted Industry Study for the City of Sacramento, 1987)

To qualify for most federally funded services, a family of three may not earn more than \$11,260 per year. (Sacramento Employment and Training Agency)

In the four year period between 1980 and 1984 the average selling price of a home rose 23.9%, from \$69,880 to \$86,595. (Sacramento, General Plan)

The Hunger Study Group of the Community Services Planning Council reported, in May, 1989, that almost half of those receiving food assistance in Sacramento County are children. Half of the adults who received this assistance have jobs: they are the working poor. During 1988, 79,359 people received monthly bags of food, a 26% increase in one year. The demand continues to increase and the nearly 3,000 volunteers who deliver food are not sufficient to meet the need.

#### CONSEQUENCES

Sacramento County, despite its expanding economy, has a high portion of its population which is unable to provide its children with adequate shelter and support. The structure of the labor market and predictions for new job creation indicate that this situation will not substantially change.

Without intervention, parents at the low end of the wage scale will be increasingly unable to pay for the costs of daily living.

It has been estimated that rents increased 11.4% annually while income rose 9.0% in the period between 1983 and 1987. Increasingly, families will be unable to afford homes.

The labor market structure will shrink opportunities for the middle class. New jobs are being created at the two ends of the wage scale. Professional jobs require higher education and low-wage jobs will not adequately maintain a family.

An increasing number of women and children will fall through the safety net. One critical event for some families, such as an illness or a major car repair, can result in homelessness and hunger.

Interviews with single parents indicate that many single mothers are forced to cope with poverty. Living in poverty means single parents and their children have incredibly limited choices - no insurance, limited health and dental care, lack of funds for recreation, and substandard housing.

#### RECOMMENDATIONS

Establish a group health insurance program for small businesses, which will allow small business and non-profit agencies to offer employer-provided benefits.

#### OBJECTIVES:

1 - To increase the number and percentage of working citizens in Sacramento County who have at least minimum health coverage for themselves and their families.

2 - To decrease the cost to the public in providing health services to the "working poor."

3 - To reduce the burden on small businesses and agencies committed to employee protection.

A significant portion of California's non-elderly population is not covered by health insurance. The types of new jobs projected for the area are in the service and retail industries which are least likely to offer benefits. Small businesses and agencies cannot afford to provide insurance for their employees and no one wants to see them close trying. Collectively, they represent a significant market which may be able, with the expertise of business leaders, to provide minimum group health benefits to their employees. Such a program would help alleviate higher public costs to treat severe health crises in the expanding poor population.

The Children's Agenda encourages the Sacramento Metropolitan Chamber of Commerce to take a leadership role in establishing such a program because of their proven record in coordinating services for small businesses.

**ADVOCACY RECOMMENDATION**

Sacramento County elected officials should actively advocate and lobby the State Legislature and Governor for enhancements to the AFDC, GAIN, and other economic assistance programs to begin to alleviate the conditions of poverty which permeate all other social problems.



## PRENATAL HEALTH CARE

### PROBLEM

Even though Sacramento County has an adequate number of physicians and clinics who provide obstetric services, a growing number of women still do not receive adequate prenatal care. Over six percent of babies born in Sacramento County between 1980 and 1987 were low-birthweight babies (infants weighing less than 5.5 pounds at birth), a condition often associated with a lack of prenatal care. Reasons frequently cited as contributing to this problem include:

- difficulty in finding a physician
- transportation problems
- difficulty obtaining Medi-Cal (the application process is complex and can be intimidating)
- lack of knowledge about the importance of prenatal care
- language and cultural barriers
- fear of the medical system

The consensus among health professionals is that a woman should receive a minimum of 5 prenatal visits (10 is ideal) and that these visits should begin before the seventh month of pregnancy. Anything less qualifies as "inadequate care" and increases the risk of having a low birth weight baby.

Low birth weight infants are more than 20 times as likely to die within the first year of life and have an increased incidence of mental retardation, birth defects, growth and development lags, blindness, autism, cerebral palsy, and epilepsy.

According to State statistics, there are several geographical areas within Sacramento County (North Sacramento, Oak Park, Del Paso

Heights, South Sacramento and downtown) where the impact of inadequate prenatal care appears to be particularly significant as evidenced by low birthweight babies and high infant mortality. These same geographical areas have a high concentration of ethnic minorities, especially blacks. In Sacramento County, the incidence of black infant mortality is almost twice that of the white population.

In 1986, 501 women received no or late prenatal care. Of these 119 or 24%, were teens. In Sacramento County 1 out of every 18 teenage girls (age 15-19) had a baby in 1986. In the high risk areas of Sacramento County, the percentage of teenage births dramatically exceeds the State average of 10.93%. For example, the percentage of teenage births in North Sacramento is 23.80%, 23.07% in Oak Park, 21.31% in Rio Linda, 19.8% in Del Paso Heights, and 16.85% in South Sacramento. Infants born to teenage mothers are twice as likely as others to be of low birth weight, and subsequent pregnancies during adolescence are at even higher risk for complications. The percent of all teen mothers receiving inadequate prenatal care was 12.9% for the under 15 age group and 6.4% for the 15-19 age group.

### CONSEQUENCES

Unless the number of women receiving early and ongoing prenatal care can be increased, the number of low birth weight infants will not be reduced. Care for premature low birth weight infants costs \$21,477 for an average 19 day stay in a Neonatal Intensive Care Unit; then someone, usually the public, must pay for the care and treatment of life-long disabilities such as cerebral palsy and mental retardation. Without intervention, Sacramento can expect to pay more public dollars to care for more babies and children with preventable birth defects, from birth through special education classes through life-long disability services.

## RECOMMENDATIONS

Implement a three year pilot project to reduce barriers to adequate prenatal care by: 1) providing subsidized transportation; 2) reducing delays in obtaining Medi-Cal coverage; 3) implementing a patient-physician referral and follow-up system; 4) providing culturally appropriate community education and outreach; 5) and providing individual case management and patient education.

## OBJECTIVES:

- 1 - To reduce the percentage of mothers receiving inadequate prenatal care below the 1986 level.
- 2 - To reduce Black infant mortality below the 1986 level.
- 3 - To manage a minimum of 325 cases per month.
- 4 - To offer a minimum of six childbirth presentation and parenting classes serving 100 clients.
- 5 - To increase compliance with prenatal care through patient education.
- 6 - To provide effective education and outreach to pregnant women and community agencies/organizations having contact with pregnant women.

The project should build upon those services already in place within the County Health Department, and establish a new service through the Medical Society. The intent is to link those in need with the existing medical providers.

The project should provide access to prenatal care to the high-risk women to assure an early, comprehensive range of services offered in a coordinated manner by a team of health care professionals. It should also establish linkages with grassroots leaders in the community to elicit support for the project and to ensure its success.

The total first year cost for such a program would be \$250,000.

**ADVOCACY RECOMMENDATION**

Sacramento County elected officials should actively advocate and lobby the State Legislature to broaden health insurance coverage for all Californians.

## MENTAL HEALTH

### PROBLEM

Children and families in need of mental health services are innocent victims in the community mental health policy battles generated by the deinstitutionalization movement. During the past three decades, hundreds of thousands of severely mentally ill people have been discharged from state hospitals. However, adequate public funding for continuing care has not followed those patients to the communities. As a result, many who need assistance do not get any.

Since all available resources are spent on those cases deemed most critical according to the patient's symptoms, money is not left for prevention and early intervention services for young people who are beginning to experience mental health problems. Their situation must become "critical" for them to receive assistance. For example, a child who has been abused or molested may be assessed as requiring counseling to recover from the experience, but because no resources are available, the child must wait. The long-term effects of neglecting the child may be more severe and costly.

In terms of funding, Sacramento County is significantly below state legal mandates. Only fourteen percent of the state-supported local mental health budget is devoted to children's services. Although this represents a slight increase over the last few years, this level is inadequate to meet the current demand.

There are wide gaps in the spectrum of services. More than half of the school children who could qualify for mental health services as special education pupils receive no such services. In fiscal year 1987/88, 200 special education pupils were referred for services. The County received enough state funding to serve only

100. During the course of the year, agencies were forced to implement a slow down on referrals. Had the slow down not occurred, the county would have faced an additional \$2.68 million dollar expenditure to serve the additional pupils. It is expected that the special education pupil referrals will continue to increase in the future at a level indicated below:

**PROJECTED REFERRALS OF SPECIAL EDUCATION STUDENTS  
FOR MENTAL HEALTH SERVICES**

FISCAL YEAR	PUPILS REFERRED (projected)
1988/89	500
1989/90	800
1990/91	1,100
1991/92	1,400
1992/93	1,700

Source: Sacramento County Health Department

**CONSEQUENCES**

Only those children whose families can afford to send them to private practitioners have the opportunity to receive the family and individual therapy which they may need to avert escalation of mental illness. The others are forced to join the masses already on seemingly endless waiting lists. The marginal individuals will worsen and remain in the community untreated; the symptoms of those with beginning problems will escalate until they are of sufficient crisis to require attention, long-term care, and significant cost.

## RECOMMENDATIONS

Fund county mental health services for children at the level required by law, allocating 50% of all new monies until the total level of funding reaches at least 25% of the total mental health budget.

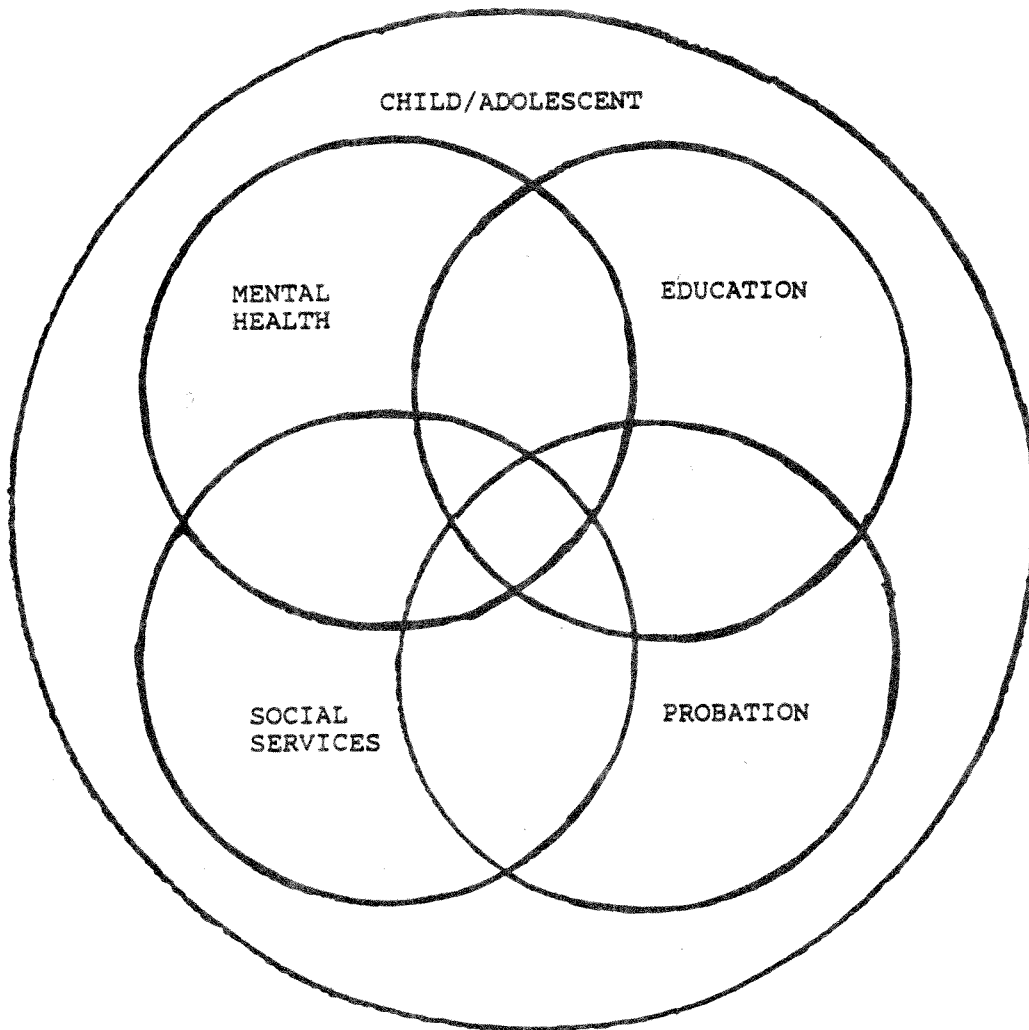
### OBJECTIVES:

- 1 - To bring the county into compliance with the law regarding mental health funding for children's services.
- 2 - To increase the level and range of services offered to children.
- 3 - To provide a continuum of services to children and their families.
- 4 - To prevent an escalation of mental health problems among children.
- 5 - To decrease the waiting lists for mental health services.

State law, passed as the Egeland Bill (AB 1339, Statutes of 1978, WIC5704.6), requires that all counties allocate 50% of any new non-categorical Short-Doyle money to children's services, until the proportion of money going to children is equivalent to their percentage of the county population. Currently, Sacramento County Mental Health Division estimates that only 14% of these funds are allocated for children's services, compared to a population percentage of 25.8%. Therefore, the county is, and has been for some time, below rate the legally prescribed by law.

The impact of this difficiency is that children are underserved. Under direction from subsequent state legislation, (AB 2541), an

interagency work group has designed an ideal continuum of service model. That continuum requires integration among all the major service elements: mental health, education, probation and social services.



It requires that the following services be available in sufficient quantities and quality to meet the needs of children and their families:

1. Community Outreach
2. Community Support



3. Case Management
4. Outpatient Services
5. Day Treatment
6. Emergency/Crisis Treatment
7. Mental Health Advocacy
8. 24-Hour Transitional Services

In order to begin to meet these needs, the county must immediately proceed to correct the imbalance in county mental health funding and to comply with existing state law.

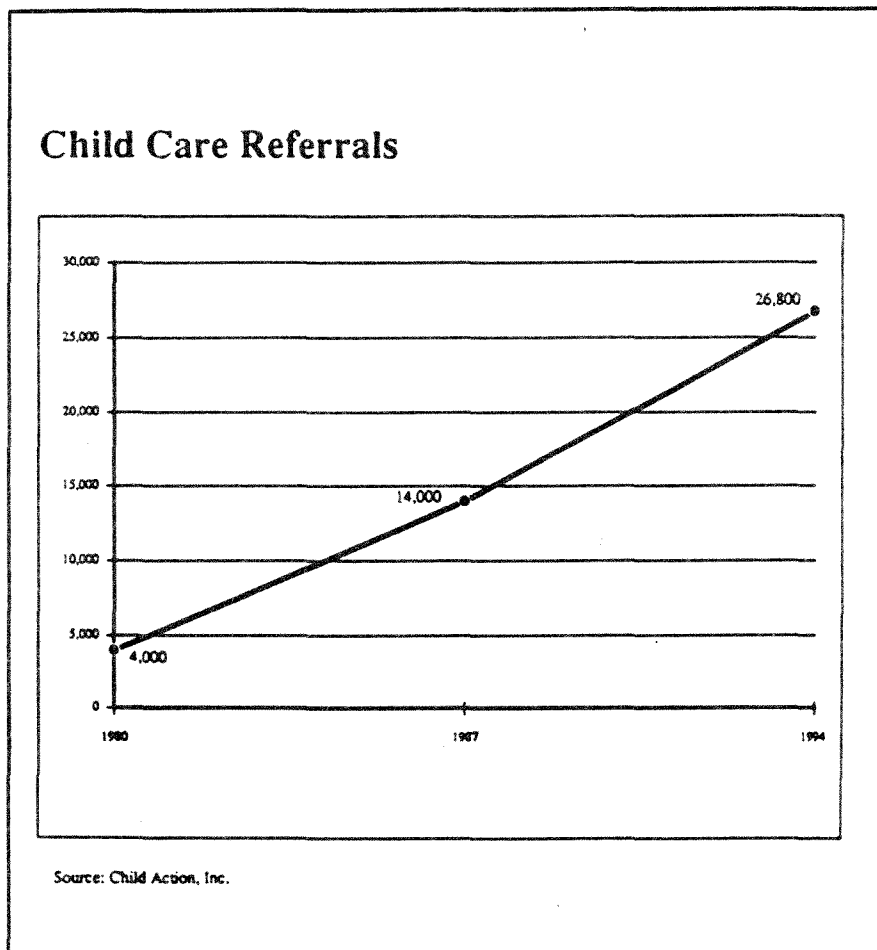
**ADVOCACY RECOMMENDATION**

Sacramento County elected officials should actively advocate and lobby the State Legislature and Governor for full funding of the mental health portion of the state budget, including the funding derived from the newly enacted cigarette tax approved by the citizens.

## CHILD CARE

### PROBLEM

There is insufficient child care available at affordable costs to meet an ever-increasing demand. Demand for child care has been increasing because of the growth in population, and changes in the economy, in the workforce and in family structure. Requests for child care referrals received by Child Action, Inc. increased from 4,800 in 1980 to over 14,000 in 1987. The trend can only be expected to continue. At this rate, over 26,000 referrals will be needed in 1994. These referrals represent the experience of only one agency; the actual demand in Sacramento County is actually higher.



Half of all married mothers with infants less than one year old are in the work force, a 108% increase since 1970. Almost one-half of the Sacramento mothers with children under six work outside the home. For children 6-17 years, the figure is over two-thirds. By 1995, two-thirds of all preschool children will have mothers in the work force. Four out of five school-age children will have working mothers by that time.

Many of these families are headed by a single parent; during 1988, 32% of the requests for child care assistance came from single parent families.

Parents are also returning to work earlier after the birth of a child, sometimes as early as two weeks after birth. Approximately 50% of the requests for child care referrals are for children under age two.

Mothers work out of economic necessity. A 1983 New York Times poll reported that "for 71 percent of mothers who work the primary reason was not for something interesting to do but to support their families." The average income of two-parent families with children dropped 3.1 percent between 1973 and 1984. This decrease would have been more than three times greater had mothers not increased their participation in the work force.

The current child care capacity in the county is 26,451 slots. The most difficult placements are for children under two and those in school.

The working parent with a sick child has few choices except to stay home with a sick child or leave them unattended. Services are few and expensive. Regulations prevent the provision of care for these children in most facilities.

Older school age children are without services. Traditional child care services serve children under the age of 10. The GAIN Child Care Program will not pay for child care for children twelve and older, although this program mandates participation of women with children over six years of age who receive AFDC.

The cost of child care has risen; it is one of the largest expenses in a working family's budget. Ten years ago child care could be purchased for as little as \$25 per week. In 1987, the average costs of child care range from \$50 to \$75 per week. A single mother with a three-year old and a seven-year old, working full time for \$5 per hour, will spend 30% to 50% of her income on child care. Rates for children with special needs, such as physical or learning disabilities, are higher than standard rates.

At the same time that costs have gone up for the families, the child care workers' wages have remained relatively low. A survey in Alameda County states the average wage for child care teachers is just above \$6 per hour. The annual turnover rate is 57%.

Availability and cost of insurance have adversely affected child care providers over the last three years. An 1985 Child Care Insurance Survey indicated that only 27% of family day care home providers had child care insurance coverage. Insurance rates have increased dramatically and child care insurance carriers are difficult to find. Family Day Care Insurance has increased from \$80/year in 1984 to \$600/year today. Some day care center rates have expanded from \$2,000 to \$12,000 during the same period.

### CONSEQUENCES

By 1990, there will be an additional 40,000 children in the County between birth and age nine, and increase of almost 31%. Child care slots will fall even farther behind the demand. Fewer children will continue to have a parent at home to care for them and more

will be left unattended.

The demand for quality, affordable child care will increasingly be unmet. Providers will either be uninsured or will raise prices beyond the reach of many working parents. It will be increasingly difficult to attract competent, dedicated professionals into the child care field to help develop our most precious resource as long as the wages and relative status of the jobs remain low.

#### RECOMMENDATIONS

Establish a Child Care Fund which could be composed of public funds, private fees and donations for the purposes of meeting new and existing needs for child care in the county.

#### OBJECTIVES:

- 1 - To construct new child care facilities.
- 2 - To increase the availability of affordable child care for low-income working parents.
- 3 - To support child care activities that benefit the larger population such as care for ill children.
- 4 - To expand programs at school sites.
- 5 - To provide for cross cultural training of staff and volunteers providing services.

The fund could be created from developer fees, City and County general funds, grants, donations, foundation support and/or perhaps a child care tax or employer fee. The fund could be established through local ordinances by the City and County. The most productive approach would be a joint effort by the City and County.

**ADVOCACY RECOMMENDATION**

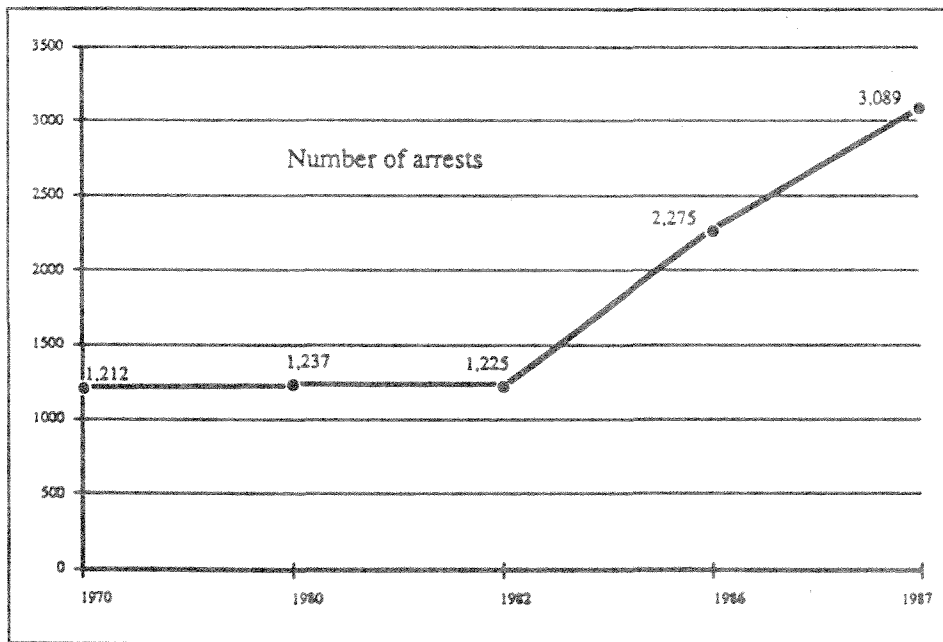
**Sacramento County elected officials should actively advocate and lobby the State Legislature and Governor for additional funding to support the provision of child care to all families.**

## SUBSTANCE ABUSE

### PROBLEM

Substance abuse has increased dramatically in Sacramento County during the past six years compared both to our own history and the state averages. During the 1970's, felony drug arrests in Sacramento County were stable. Then, however, a dramatic increase occurred. Between 1982 and 1986, felony drug-related arrests increased by 125.5% and by 1987, they increased 152% from 1982.

### Felony Drug Arrests



Source: State Attorney General's Office

Juvenile drug-related arrests rose between 1982 and 1986 by 125.5% in the county compared to only 49.5% statewide. This increase is out of proportion with the 10.4% population increase experienced by the county.

Deaths due to drugs increased by 70.5% in Sacramento County and 23% in California during this same period.

One reason for this increase has been the influx of gangs whose trade and motivation is based on drug trafficking and sales. Juveniles with little or poor education and few employment opportunities are easily enticed by the reality that some young gang members make up to \$5,000 per month selling drugs. Particularly when their families are living in poverty, this is a hard temptation to resist. Once kids have become affiliated with the gang it is even harder for them to leave.

Besides heroin and cocaine trafficking and abuse which plague our county, we also have a worsening record with alcohol abuse. In the past six years, persons killed in alcohol-related accidents increased 40% in Sacramento County compared to a 5% increase for the State as a whole.

Forty percent of neonatal intensive care admissions in Sacramento County involve drug addiction as a diagnosis, compared to 25% statewide. During the past five years, the incidence of substance abuse during pregnancy has increased alarmingly. It is estimated that 7-12% of pregnant women in California are addicted to drugs and/or alcohol. In Sacramento County in 1985, 42 infants were removed from their families by Children's Protective Services (CPS) for maternal drug addiction. In 1988, an average of 40 infants per month were referred to CPS because of maternal drug addiction. Dr. Elaine M. Johnson, Director of the Federal Office of Substance Abuse Prevention, said drug use in pregnancy "cuts across racial



and socioeconomic lines and maternal age groups, especially since cocaine has become so popular." Of the affected babies, she said, "we are producing a new generation of innocent addicts."

Treatment programs for drug addicted pregnant women are extremely limited in Sacramento: only out-patient services are available (and only in the methadone program), with no more than 100 patients receiving care in FY 1987-88.

### CONSEQUENCES

Increasing numbers of our children will become the victims of substance abuse, either as the innocent addicted baby, as the young experimenter, the youth gang member finding his only source of income through drugs, or as the child victimized by an addicted parent. The jails and prisons are already overcrowded with offenders who have substance abuse problems. The trends all point to a worsening problem which becomes harder to combat the more entrenched it becomes.

State statistics estimate that 5-8% of women of childbearing age are alcohol dependent; 2-3% are cocaine dependent; and .5% are heroin/methadone dependent. At these rates 700-1600 infants per year in Sacramento County may be affected by drug and alcohol abuse. Infants exposed to alcohol or drugs prenatally may suffer permanent neurological damage. They may exhibit developmental and speech delays; impaired motor development; hyperactivity; inability to concentrate; increased muscle tone, coordination and balance problems; inability to enjoy activities; and difficulty with interpersonal relationships. Some of these "drug babies" are now entering school and present multiple problems for educators. Inner city day care centers are reporting growing populations of children "with garbled speech who can't sit still or play with other children." The long term implications for education and human services are staggering: there will be a rapidly increasing

dependent population of children whose needs could cripple an already overburdened service system.

### RECOMMENDATIONS

Implement a comprehensive, multi-faceted continuum-of-care system to address the problems of perinatal substance abuse.

### OBJECTIVES:

- 1 - To assess 100% of the mothers referred to the project to determine need for public health services.
- 2 - To provide case management services to a minimum of 130 families per month.
- 3 - To provide a minimum of 2,640 outreach home visits.
- 4 - To improve pregnancy outcomes based on birthweight, prematurity rate and other health status indicators of newborns over 1988-89 health data.
- 5 - To establish a residential 20 bed treatment program for chemically dependent mothers and infants.
- 6 - To increase the number of methadone treatment slots for pregnant women over the 1988-89 level.
- 7 - To ensure that a minimum of 50% of participants of the Recovery/Day Treatment program will maintain a sober lifestyle while participating in the program.

Specifically, the proposed program would include the following components:

- Culturally appropriate outreach and case management services, including client tracking and follow-up;
- Health education, using a variety of modalities: one-to-one at home, "mentors", and parenting and childbirth classes focused on the special needs of the target population.
- Facilitation of access to care through subsidized transportation.
- Implementation of residential treatment services for chemically dependent mothers and infants.
- Implementation of a Recovery/Day Treatment Center.

Start up funding would be solicited from foundations to support the first three components in the proposed continuum; anticipated State and Federal funding would be used to complement the program by supporting the latter three components for a total cost of \$1,228,054 for the first year.

The target group for the proposed project should be the estimated 2,041 pregnant women at risk for perinatal substance abuse. Based on information from public health field services staff and police records, the geographic areas at greatest risk for large populations of substance abusing pregnant women are Del Paso Heights, Meadowview and Oak Park.

**ADVOCACY RECOMMENDATION**

Sacramento County elected officials should support legislation to secure state and federal funding for programs for infants and children born with drug toxicity.

## HOUSING

### PROBLEM

Although Sacramento is widely known as one of the few remaining "affordable" cities in California, a large number of its households are still inadequately housed or pay a burdensome proportion of their incomes on housing costs. Especially when these households consist of families with children, such housing pressures contribute to overall poverty and stress and increase the likelihood that child abuse and neglect will occur.

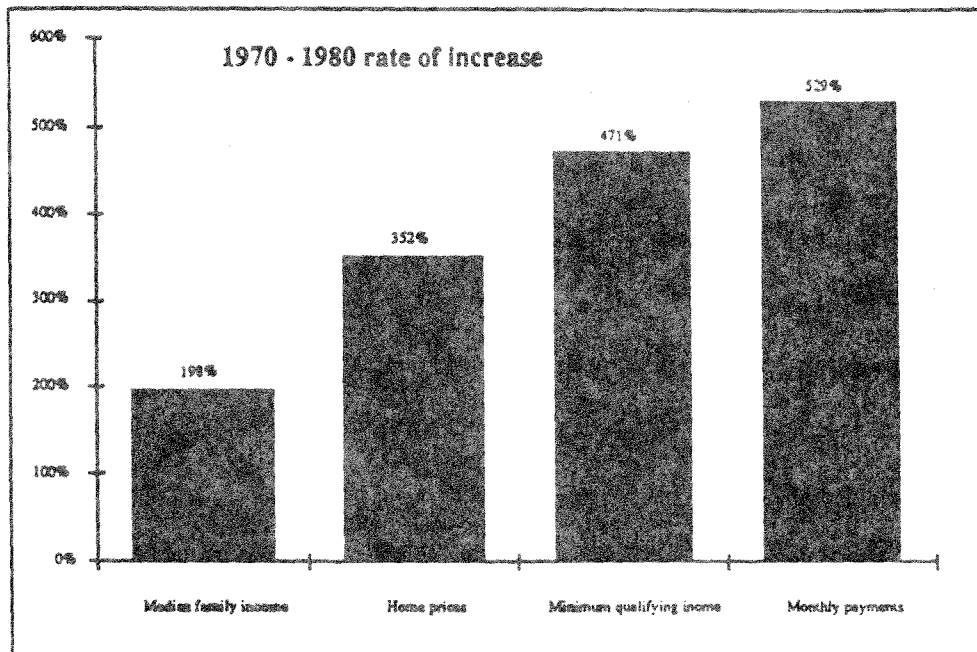
In addition, Sacramento is growing rapidly. An ever increasing number of businesses and individuals are migrating to Sacramento, drawn by relatively inexpensive land and labor costs, pleasing climate, good accessibility to transportation and, at least until recently, a relative lack of the "big city" problems of crime, traffic and smog. The supply of affordable housing is already far below the need, and this gap will be widened by pressures caused by population growth.

In the last decade, federal funds for housing have been cut drastically. State funds fluctuate widely placing an ever greater burden upon local governments to provide their own funding for affordable housing.

\*Unless otherwise noted, statistics in this section have been provided by the Sacramento Housing and Redevelopment Agency and the Sacramento County Department of Social Services, or have been derived from 1980 U.S. Census data.

Increases in home prices and monthly homeownership payments have far exceeded increases in median family income in Sacramento County over the last decade.

## Housing Costs



Source: Sacramento Housing and Redevelopment Agency

The cost of housing has skyrocketed in recent years and will continue to do so.

Fewer than 33% of all households in the County can now afford to purchase a median-priced resale house of \$83,000. (Multiple Listing Service data, 1986)

Only 10% of renter households can afford ownership of a median-priced home. Likewise, roughly 72% of households with incomes below median are renters.

60,000 renter households earn less than 50% of the area's median income. These are considered very low income households by prevailing standards for federal, state and local housing programs.

24,000 of these very low income households pay over 50% of their incomes in rent. Prevailing standards assume that households should pay no more than 30% of their income in rent.

Only about 5% of appropriately-sized rental units have monthly rents which are within 30% of the average monthly income for very low income families. (Divine MIS Multifamily Marketing Information Service, October 1987)

The current supply of assisted housing in Sacramento falls far short of the need.

Since 1980, new commitments for housing assistance by the federal government have declined by 75%

On the first day it reopened its waiting lists for assisted housing, the Sacramento Housing and Redevelopment Agency received 760,000 attempted phone calls from prospective applicants.

In Sacramento, only 12,000 of the 60,000 very low income households eligible can receive direct housing assistance through all current local, state and federal programs. Several thousand more are indirectly benefitting from

restricted rent provisions tied to projects with loans insured by FHA. However, these indirect programs do not assure that the household pays no more than 30% of their income in rent.

For the twelve months ending September 1988, using all forms of federal, state and local funding available, the Sacramento Housing and Redevelopment Agency was able to construct or subsidize private or non-profit developers in the construction of, only 244 units of affordable housing.

The total supply of assisted rental housing is actually decreasing. Privately-owned units are being converted to market-rate prices following owner payoffs of federally subsidized loans and/or owner decisions not to renew Section 8 contracts.

Monthly grants in Aid to Families with Dependent Children (AFDC) are inadequate to cover an average family's market-rate housing costs, when utility and other living costs are also taken into account. The maximum monthly grant for a family of three (assuming the family has no other resources available to it at all), is \$663. Theoretically this household should pay no more than \$221 (30%) per month in rent. However, median rent for a two-bedroom apartment is \$425. This leaves only \$238 to cover the remainder of the family's needs.

Inadequate housing, overcrowded housing, housing costs at levels which decrease a family's ability to purchase other needs, continual relocations as families seek to find less expensive or more decent housing and, of course, homelessness, all contribute to increased stress in families. Such stress may often be taken out on children in the form of child abuse and neglect, which only worsens the child's already difficult circumstances. In addition, constant moves greatly impact the quality of services public and

non-profit agencies can provide such families. Lack of education, in particular, only serves to contribute to the ongoing cycle of poverty.

Statistics are not available regarding how many children registered in the County's school districts are homeless or how many homeless are without educational services. Specific examples, however, are telling. One school in North Sacramento which has a 400 student capacity reported that in the 1987/88 school year, approximately 1000 separate students were enrolled at some point throughout the year, representing a turnover of 250%. This high turnover rate may well be indicative of inadequate housing factors.

School districts within Sacramento County are struggling to devise workable solutions to the problem of educating children of homeless families. A pilot program in the Sacramento City Unified School District includes an emergency housing shelter for children and their families which will accommodate up to 15 kids and an on-site teacher. Another school district hires personnel to go to areas where there are high concentrations of homeless families to encourage them to enroll their children in school. Clearly, such programs are costly and cumbersome, reactive rather than proactive solutions to the core problem of inadequate housing.

#### CONSEQUENCES

Sacramento's explosive growth will mean that the need for assisted housing will increase.



A Wharton Econometrics study in June 1987 predicted that Sacramento would be America's fastest growing urban area within three years. A nearly identical 1986 Chase Econometrics report projected Sacramento's growth (in terms of population, income, and jobs) as the fastest among the nation's regions which have populations over one million.

A recent study by the Joint Economic Committee of Congress documents that more than half of the eight million jobs created in the United States as a whole from 1979 to 1984 paid less than \$7,000 a year, while the number of jobs paying \$28,000 or more actually decreased. The report also found that the proportion of new jobs which are middle income and above dropped dramatically, from 64.2% in the 1970's to 47.5% in the early 1980's.

There is indirect evidence of the migration of low-income families from the Bay Area and, possibly, other cities with an overall higher cost-of-living than Sacramento. Between 1970 and 1988, both Alameda County and San Francisco had an actual decline in the average monthly number of children on AFDC, by 15.5% and 43.3%, respectively. Concurrently, Sacramento charted a 63.3% increase in the number of children on AFDC.

As the gap widens between the need and the supply of affordable housing units, more and more families will become homeless.

In 1987, the California Legislature passed AB 1733 which provides special AFDC funds for homeless families. In Sacramento County, the funds go towards paying for temporary housing of up to 28 days. Since the program's inception in February 1988, approximately 5600 families have received assistance through the program. Sacramento County, which is

7th in State population, ranked 4th in the State as of July, 1988, in families receiving AFDC. The County ranked 3rd in the State in funds expended in July, 1988, for this program, behind only San Bernardino County and Los Angeles County.

In 1987, City/County homeless shelters provided emergency aid to approximately 6000 families.

### RECOMMENDATIONS

Support the adoption of a Housing Trust Fund Ordinance by both the City and County.

### OBJECTIVES:

- 1 - To provide safe, sanitary and affordable housing critical to the welfare of children.
  
- 2 - To provide up to 1000 very low income housing units annually; at least 55% of which would be targeted to assist families.
  
- 3 - To provide a cost-effective program for the working poor to prevent future homelessness.

In June, 1988, the City/County Housing Finance Task Force recommended a five year plan to address the need for affordable housing in Sacramento County. The Plan recommended the formation of a Housing Finance Partnership consisting of businesses, lenders, government agencies and housing providers. A key local financing component of the Plan is the establishment of a county wide housing trust fund (HTF) to generate \$7.2 million per year from commercial development fees and employee or other taxes.

Part of the HTF proposal would establish new commercial development fees to mitigate the future housing needs of the working poor. The proposed fees range from \$.25 per square foot for warehouse projects to \$.95 per square foot for office projects. A nexus study quantified the relationship between types of commercial development, low paying jobs, housing needs and the cost of new affordable housing. The fees were reduced to less than one-half the housing subsidy amount justified in the nexus study to mitigate the impacts on commercial rents.

Additionally, the HTF would be funded by a per employee tax on businesses or by some other general tax. At its March 14, 1989 meeting, the Sacramento County Board of Supervisors directed staff to further investigate a a tax proposal, or other funding proposal, to balance the development fee as a source of funding for the HTF.

Funds from the HTF will be used to provide gap financing to developers of rental housing for very low income households (e.g. a family of four earning less than \$18,050 per year). The housing will be located within a reasonable commute distance of job centers. The program will benefit the working poor and help prevent homelessness caused by the shortage of affordable housing. The housing trust funds will be administered by the Sacramento Housing and Redevelopment Agency to achieve maximum integration of all funding programs.

**ADVOCACY RECOMMENDATION**

The Sacramento County Children's Agenda encourages local officials to explore the use of Mather Air Force Base as a possible site for facilities for the homeless families in the community.

## CHILD SAFETY AND PROTECTION

### PROBLEM

Memories of childhood bring up warm feelings for many of us, but not for everyone. In this country of promise and opportunity, thousands of young lives are short-changed by abuse and neglect. Children deserve to be cherished, yet they are hurt by the very people who are supposed to protect and care for them.

Protecting of children from abuse became public policy in California in 1963, when the child abuse reporting law was enacted. Public awareness campaigns were launched in the mid 1970's to prevent child maltreatment, and have gained momentum throughout the 1980's. As the public became more aware, they identified and reported more and more cases of abuse, severely taxing public protective service system's ability to respond. Although major efforts have been undertaken to prevent child victimization, the challenge has not yet been fully met.

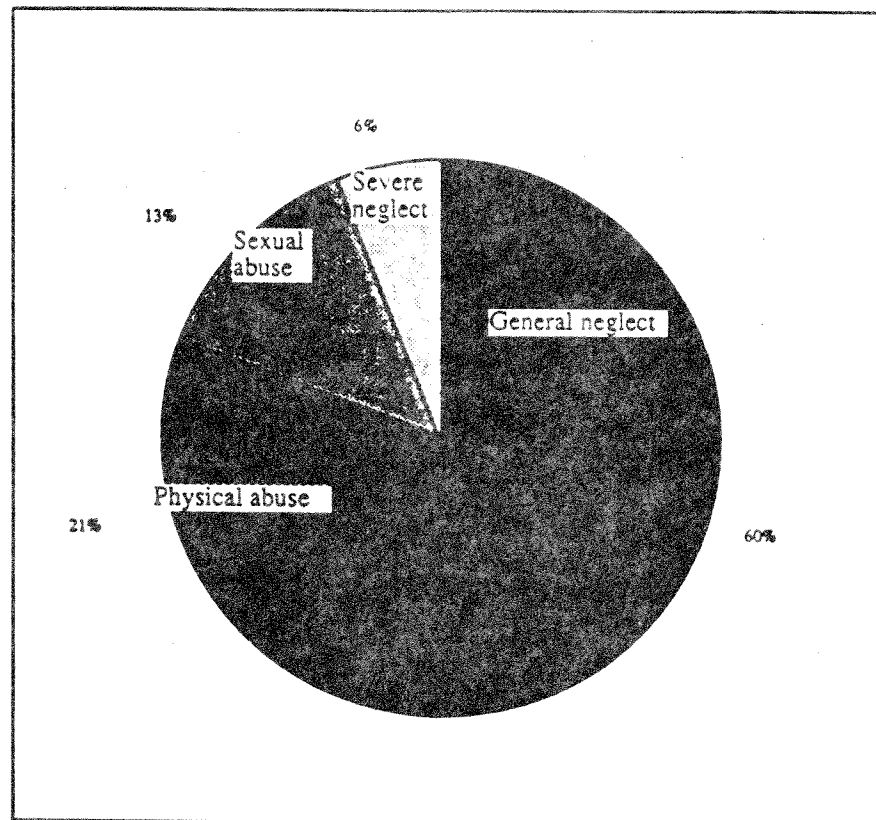
The following statistics, which also reflect the national picture, show the prevalence of child maltreatment in the Sacramento community:

Referrals to Sacramento County's Child Protective Services (CPS) increased by more than 150% between 1982 and 1987. During the same period, services staffing increased by only 46%. This has forced the Department to tighten its criteria for intervening in abuse situations. A case that would have been opened to protect a child ten years may not be today.

Despite this tightened criteria, the number of child abuse cases in which CPS intervened quadrupled from 3,131 in 1980, to 13,105 in 1987, a 420% increase. In 1987, 60% of these

cases involved general neglect, 21% were physical abuse cases, 13% involved sexual abuse, and 6% were opened due to severe neglect.

## Child Abuse in 1987



Source: Sacramento County Social Services

Emergency child abuse reports (which require response within two hours because of their severity) increased 155%, from 532 in 1980, to 1,360 in 1987.

Since 1982, the average overall monthly foster care caseload in Sacramento County went from 928 in 1982 to 1868 in 1987, up more than 100%. The average monthly cost per child was \$1033 in 1988, which means that foster care in Sacramento is currently costing more than \$23 million yearly. Foster care is only available to children in the more serious cases.

In 1980, 367 children received medical examinations from the University Medical Center to assess abuse. By 1987, this number had increased 290%, to 1,434. Sixty percent of these children were girls; 69% of the total were under the age of 5.

Over sixty percent of the 90 children residing in the Sacramento Children's Home Residential Treatment Program in 1988 were victims of physical or sexual abuse. The average annual cost providing treatment to each of these children is slightly more than \$40,000.

#### CONSEQUENCES

If we do nothing, and if these trends continue at current paces, the future will indeed be bleak:

-By 1994, 14,239 children will require protective services if the current trend continues.

-By 1994, 3000 Sacramento children will be in foster care, at a cost of more than \$37 million a year.

(Based on the current 15% annual increase)

-Hundreds more babies will be born addicted to drugs or infected with the AIDS virus every year.

The implication is clear - children are paying the price of the crises in American families. There is a potential for geometric escalation in the severity and volume of child abuse. Research has shown that, without intervention, abusive families tend to increase their level of violence. Most abusing parents were abused children; today's untreated child may become tomorrow's child abuser.

#### RECOMMENDATION

Provide intensive, in-home prevention services for parents and children in high risk situations for child abuse or neglect, and for infants born drug addicted, to prevent family breakups.

#### OBJECTIVES:

1 - To reduce the number of children in foster care, while still providing protection and intervention services. This will permit more children to avoid the trauma of being moved from their homes and placed in foster care.

2 - To reduce stress in high risk families by providing a variety of home-based services including, but not limited to: family counseling, nutrition information, basic homemaker skills, parent education and training, respite care, support network.

3 - To reduce the number of unwanted pregnancies through education and information.

4 - To reduce the number of infants born drug addicted through available prenatal medical care and drug counseling for the parent(s).

5 - To provide alternate resources for temporary child care for parents who are substance abusers and have developed a pattern of use that occasionally prevents them from providing care for their children.

Currently, efforts to prevent foster care placement and keep families together are dependent upon the availability of home based, family-centered services. However, the major public financial resources are appropriated to the last resort of the system, the foster care programs. There is no strong financial investment in prevention services to reduce the need for foster care. As child abuse reporting grows, more money is spent on emergency response and foster care programs, and less remains for family maintenance or prevention services. We need additional funds appropriated for high risk families and children to bring services into the home and prevent the need for out-of-home placement.

The source of funds would be to allow the county to utilize up to 10% of its foster care appropriation for in-home services to children and families, in lieu of foster care. Three California counties are now participating in such a pilot program; State legislation would be required to expand the program for all counties. For Sacramento county, this would amount to \$3.4 million annually. Services would be provided by public and private agencies, contracted through the County Department of Social Services.



## EDUCATION

### PROBLEM

The public education sector for children from kindergarten through the 12th grade in Sacramento County comprises 16 school districts, each with its own superintendent and elected school board. The Sacramento County Office of Education, an intermediate unit between the State Department of Education and school districts, educates an additional number of students who are either special education pupils or have probation status with the County Probation Department. Matters regarding instructional content and instructional delivery are guided by state directives and legal codes; however, there is considerable latitude for local districts to make decisions on these issues. Districts vary considerably in size from 364 to almost 50,000.

### STUDENT ETHNICITY

ETHNICITY	NUMBER	PERCENT
American Indian/Alaskan Native	1,840	1.1%
Asian	14,371	8.9
Pacific Islander	628	.4
Filipino	2,179	1.3
Hispanic	18,760	11.6
Black	20,734	12.8
White	103,297	63.8

There are four primary functions assigned to the institutio of education: (1) to provide a free and appropriate education, (2) to care for children during the work day, (3) to prepare future workers, and (4) to prepare good citizens. The public educational agencies within Sacramento County are falling short of fulfilling all these expectations in the community.

#### **THE COST OF EDUCATION**

Education is not free. While education per se may not have a monetary cost to a student's family, there are many expenses associated with education. Perhaps the biggest one is transportation. In Sacramento City Unified School District, for example, middle school and high school students must pay for their own transportation, using designated buses provided by RT Metro at the cost of \$22 per month - even more if students lose their bus passes, as they are prone to do. This is a tremendous hardship for poor families, who may have more than one child. For example, a family with two secondary students would have to pay \$440 per year just for transportation.

Children bring many problems to school from their home environment, and the most pervasive one is poverty. Almost 1/4 of the students' families receive AFDC. Poor children tend to be concentrated in particular schools: 95 schools (34%) have 25% or more of their students on AFDC; 34 schools have 50% or more on AFDC (Sacramento County Office of Education, October 1987).

Full participation in all school activities, especially extra-curricular activities, is not available to some students because of their associated costs: uniforms, instrument rental, field trips, gift exchanges, special projects, etc. High school students often must work during the school year to augment their family's income, and are unable to participate in some school activities. In a 1986 survey of seniors at two large Sacramento County high

schools, it was found that more than two-thirds of the students had jobs during the school year.

Poor children who enter kindergarten without having attended preschool are at an academic disadvantage compared to their age peers who have. Without the benefit of a developmentally appropriate program when they are 3 or 4, these students will take longer to acquire basic skills and make satisfactory progress through the grades because they start out behind children who have been to preschool. The number of free and subsidized preschool programs for those with limited incomes are in short supply. Based on the figures from 1983-84, which included both poor and non-poor children, it is apparent that more preschool programs are needed for the poor. Today, three and four-year olds number approximately 32,000. Using 25% as the rate of poverty, free programs should be provided for approximately 8,000 children. Headstart, a federally funded preschool program with multiple locations in the county, can currently serve only 1,412 preschoolers or only about 18% of the eligible children.

Sacramento has experienced an increase in the number of students whose native tongue is not English and who have limited proficiency in English. Since 1981-82, this group has risen from 4.4% of the enrollment to 7% or 11,397 in 1987-88 (Language Census Report, SDE). This situation strains the capacities of the schools to respond with appropriately trained staff and instructional materials. While the majority may speak one of three or four major languages, the children represent more than 50 different mother tongues.

Homeless children are not in attendance in the schools in the county. In spite of federal law requiring the homeless to be educated, districts have been slow in providing instruction for these children. It appears that service will not be rendered

unless a parent or guardian signs to enroll the student and that assurances are given that the student intends to live in the district.

Children's lives are not stable. Mobility of students is especially prevalent among the poor. Some elementary schools experience as much as an 80% turnover of students from one year to the next.

#### **CHILD CARE**

While we think of child care for young children, this function of education applies to high school students as well. The schools in which we care for students are typically crowded and not safe. While Sacramento is 8th among the 58 California counties in student enrollment, it is 2nd in assaults and attacks in schools, 3rd in assaults with a deadly weapon and in sex offenses, and 7th in incidences of substance abuse reported at school sites. Some of the offenders are non-students who have come on to a school campus, but the vast majority are students themselves (1986-87 Standard School Crime Report, SDE).

All enrolled students have access to a teacher on a daily basis; however, students seldom get to see a nurse, psychologist, social worker, or counselor if they have problems. In high schools, a nurse and an academic counselor are usually present in the school, but their caseloads are very large and students are discouraged from going to these professionals because of the "waiting period" dictated by policies and procedures which may require referrals from school staff rather than the student. In elementary schools, nurses and psychologists are typically itinerant and spread their services across several schools. Counselors and social workers are rarely available in elementary schools.

There is evidence that the traditional structure of the schools is not a comfortable, relevant environment for students today, especially high school students. The traditional, comprehensive high school in Sacramento County can be described as a grade level based program operated 6 periods a day, five days a week, with classes of approximately 30 students, with an emphasis on academic instructions and little if any provision for dealing with personal problems. In 1988-89, there are 56 public schools providing education to 12th graders. Twenty-six of these are comprehensive high schools and the remaining 30 are non-traditional schools with 1,401 or 14% of the 12th graders. The non-traditional schools have emerged because of the need for: more flexible schedules for working students; smaller campuses to alleviate interpersonal tensions in the large comprehensive high school campuses; and, schools where students with personal problems like pregnancy and probation, which make them less welcome on a regular campus, can go (CBEDS, 1988).

#### **FUTURE WORKERS AND LEADERS**

Obtaining a high school diploma has become an entry-level requirement for many jobs. The military services also require a diploma or its equivalent. Many students, however, drop out of school. Attrition, or loss of students from 9th grade to graduation, for the last five graduation classes has been equal to about 1/3 of the students.

### ATTRITION RATES

GRADUATION CLASS	ATTRITION RATE (non-graduates)
1984	32%
1985	32
1986	27
1987	33
1988	31
Source: CBEDS	

The above figures are county-wide and are not affected by students moving from one school to another within the county. These figures are also conservative; Sacramento County has experienced continuous growth in K-12 students enrollments since 1982, and students who left may have been backfilled by students moving into the county. If these figures could be corrected for in-migration, the results would reflect an even greater loss. The 1988 class had a 32.4% attrition for males and 29.0% for females. When attrition is disaggregated by ethnicity for the class of 1988, the results are even more disturbing among the minority students:

**STUDENT ATTRITION RATE BY ETHNICITY**

ETHNIC GROUP	ATTRITION RATE (non-graduates)
American Indian/Alaskan Native	57%
Black	47%
Hispanic	45%
White	26%
Asian	18%

Source: CBEDS

Relevant knowledge for responsible teenage and adult behavior is not given to all students (AIDS, responsible parenting, substance abuse, sex education, etc.) because it is often included in elective courses that only some students take. The grade level targeted for delivering instruction on these topics is often too late to make a difference because many young people have already experienced personal problems related to drugs, alcohol, and sex even before instruction is given.

High school course graduation requirements have become stiffer and require students to take more academic courses, leaving little opportunity for students to take vocational classes if they want to graduate from high school in the 4 year time frame. High school is age-graded, and students are not welcome after the year they become 18, even if the same school system retained them at an early age because they were taking longer to acquire basic skills. Vocational courses have less status than academic subjects and are considered "electives" and not part of the required subject matter for high school students. Vocational courses tend not to be

integrated with essential skills like reading, writing, and math, and are therefore not alternatives to academic subjects in these areas.

#### **CITIZENSHIP**

Two early measures of good citizenship are attending school and being on time. SARB (School Attendance and Review Board) hearings for truancy and behavior problems rose 38% in the last year. There were 226 expulsions in 1987-88 of students whose disciplinary and/or criminal infractions were so great that they were prohibited from returning to school (and sometimes the district) for several weeks or the rest of the school year (Ortiz, SCOE).

School safety is affected by the increased presence on campuses of students who have been and are involved in crime. Because of legal codes which protect youthful offenders' records, there are no procedures in place to inform school administrators about the behaviors of their students which have brought them into the juvenile justice system. Students are typically arrested after school hours and may be released pending a court date. This presents a potential "powder keg" for schools when students bring their problems to school, especially if the students are vengeful. Even when the legal authorities and probation are knowledgeable about particular situations, they are not at liberty to share such information with school officials.

#### **CONSEQUENCES**

The continued growth in the county will increase our school population. What the students face is a more violent environment. More importantly, the trends indicate that we are increasingly unable to educate all our children. At the current rates of provision of preschool, there will be two populations of students beginning kindergarten: one that has had access to preschool and is fully prepared to benefit from the curriculum and another that



starts out behind and is likely to remain there.

The disturbing trend in drop-outs has long range implications for the entire community. If at least one-third of our students do not graduate, and another portion do not receive the vocational instruction they need, who will be available to join the labor force? Where will we find the workers of the 1990's? Who will pay the taxes to support the increasingly aged population and the multitude of unemployable drop-outs?

The schools continue to view the student only with regard to his/her education, disregarding the homelife, social and economic problems which may be affecting learning. Without increased coordination and a changing view of the student as a whole person, today's alarming trends will continue to worsen. While it is not a fundamental responsibility of the educational system to assist the child and his/her family with their problems -- substance abuse, poverty, homelessness, etc. -- the ability of the educational system to carry out its primary mandate of teaching is severely hampered by these myriad problems facing our children. A hungry, troubled, abused, or sick child is less likely to learn the daily lesson than one who is being helped. While other agencies may have the direction to provide the needed services, the schools are frequently the only institution with access to the child and his/her family. They remain the one public institution available in the neighborhoods with routine contact with children.

#### RECOMMENDATION

Establish school based, multi-disciplinary service centers to provide a range of services to children and families available on the school campuses.

**OBJECTIVES:**

- 1 - To improve the condition of life for children in the schools.
- 2 - To improve the access to services by children and their families.
- 3 - To increase the level of coordination among all service agencies.
- 4 - To reduce the costs for services.
- 5 - To reduce the drop out rate of students.
- 6 - To provide for cross cultural training.

The project would cluster staff representing various human service agencies at school-based centers to enable them to take their services to the communities in which their clients live and to coordinate services between agencies to better meet the needs of Sacramento's youth and their families.

Examples of this type of program have begun to grow in Sacramento County. The Grant Joint Union High School District and North Sacramento School District have become partner agencies in the Cities in Schools project, along with other human service agencies. This project has formed a corporation to enable the member agencies to have a Board of Directors that provides an umbrella organization for the various jurisdictions involved and that raises funds for the program's implementation. Space for the out-stationing of member agency caseworkers will be provided by the school districts. With a common location for meeting with clients, the opportunity for multi-disciplinary handling of cases will be tremendously

enhanced. Access to school records will also be enhanced. Other, less comprehensive efforts are under way in Rio Linda Union School District, Robla School District, and Sacramento City Unified School District.

These are good beginnings, but they should be extended, intensified, and made more comprehensive at school-based sites. A multi-agency task force should be formed which brings together school districts and City/County agencies including Department of Social Services, Department of Health Services, Department of Parks and Recreation, City and County law enforcement, Probation Department, CSU, Sacramento, and community-based organizations. The task force would determine the need for services which could be delivered in a coordinated, school based manner.

The second step would be to find a school site within each high priority area which could become the center for multi-agency service delivery. Because Sacramento County is experiencing growth in most of its schools, the likelihood of finding available space at school sites is slight. This means that portable units would probably have to be located at the school sites to provide facilities for the various out-stationed caseworkers. With such units detached from the main school building issues such as security and after-school hour access are more solvable.

In situations where the fully developed model of the out-stationing of staff from several agencies in a single center cannot be established due to financial or other concerns, smaller scale coordination of services should be pursued.

## JUSTICE

### PROBLEM

The justice system substantially affects the lives of our children -- our children as victims and our children as offenders.

Many aspects of the justice system seem to operate separately and apart from the remainder of our child welfare/protection system and often are either unaware or inattentive to the special needs and concerns of our children.

The justice system deals with our children on two different levels: as juvenile victims and as juvenile offenders. This week's abused/neglected child may well be next week's juvenile offender; this year's juvenile delinquent can easily become next year's adult offender.

### OUR CHILDREN AS VICTIMS

There is a clear lack of coordination among law enforcement and other child service agencies that investigate cases involving child welfare/safety issues. For example, in a case of abuse/neglect, a child victim must deal with a variety of professionals, each with his/her own special purpose and corresponding interview. These multiple interviews potentially re-victimize children and can detract from the credibility of their reports by requiring them to report their story numerous times to strangers. These children and their families have needs and problems that could be identified and addressed earlier if we had better coordination among the child protection agencies.

In 1988, the Department of Social Services reported that 2,333 children were taken into protective custody as a result of abuse and neglect and that there were 1,336 children for which that

department filed petitions for dependency. Each protective custody hold entails interviews of the child by a law enforcement officer, a child protection/emergency response worker and dependent intake worker. The filing of a dependency petition calls for the child of that action to be interviewed (even if previously interviewed by law enforcement and/or a child protection/emergency response worker) by the court investigations social worker. Other professionals who potentially will interview that same child include County Counsel staff, medical personnel, Deputy District Attorneys.

For fiscal year 1987/88, the Sacramento County Sheriff's Department received 6,500 sexual/physical and neglect reports and investigated 2,500 of those reports. Again, such reported child victims will be interviewed by a number of professionals such as child protection and law enforcement personnel, medical staff and deputy district attorneys.

In 1988, approximately 2000 cases were referred to the civil Family Court Services for child custody mediation; these required interviews of all children five years of age or older.

A child and his/her family can be the focus of concern in three different judicial forums: the juvenile court, the criminal court and the civil family court. Each court procedure can require that the child testify in each case for a different purpose - in juvenile court for dependency issues; in criminal court for determinations of guilt/culpability for criminal conduct; and in family court for custody awards. Resolution of these important decisions often involves placement of the child and family reunification efforts. There can also be orders made in these different courts that conflict with each other.

**OUR CHILDREN AS OFFENDERS**

There has been a marked increase in juvenile crime. In 1987, almost 8,000 young people were arrested.

**JUVENILE CRIME**

JUVENILE CRIME	1978	1987	% CHANGE
Vehicle Theft	354	461	+30%
Drug Violation	113	254	+112
Assault and Battery	285	535	+ 88
Malicious Mischief	188	234	+ 24

Source: Sacramento County Probation Department

Gang activity has increased considerably in the last two years:

**GANG CRIME**

GANG CRIME	1986/87	1987/88
Gang Arrests	268	433
Gang Homicides	7	15
Gang Related Arrests/ Aggravated Assaults	161	248

Source: Human Services Information System, CSPC

In 1989, 1,974 juveniles have been placed on probation. The probation officers responsible for supervising them have an average caseload of 80 juveniles.

For the state, over one in four California Youth Authority (CYA) wards are identified as suffering from mental/emotional problems. About 40% of CYA wards have been through out-of-home placements prior to commitment. About two-thirds of CYA wards come from homes broken by divorce, separation, or death of one or both parents.

Approximately 40% of the families of CYA wards receive public assistance. Of older wards in the job market at the time of commitment, about 75% are unemployed.

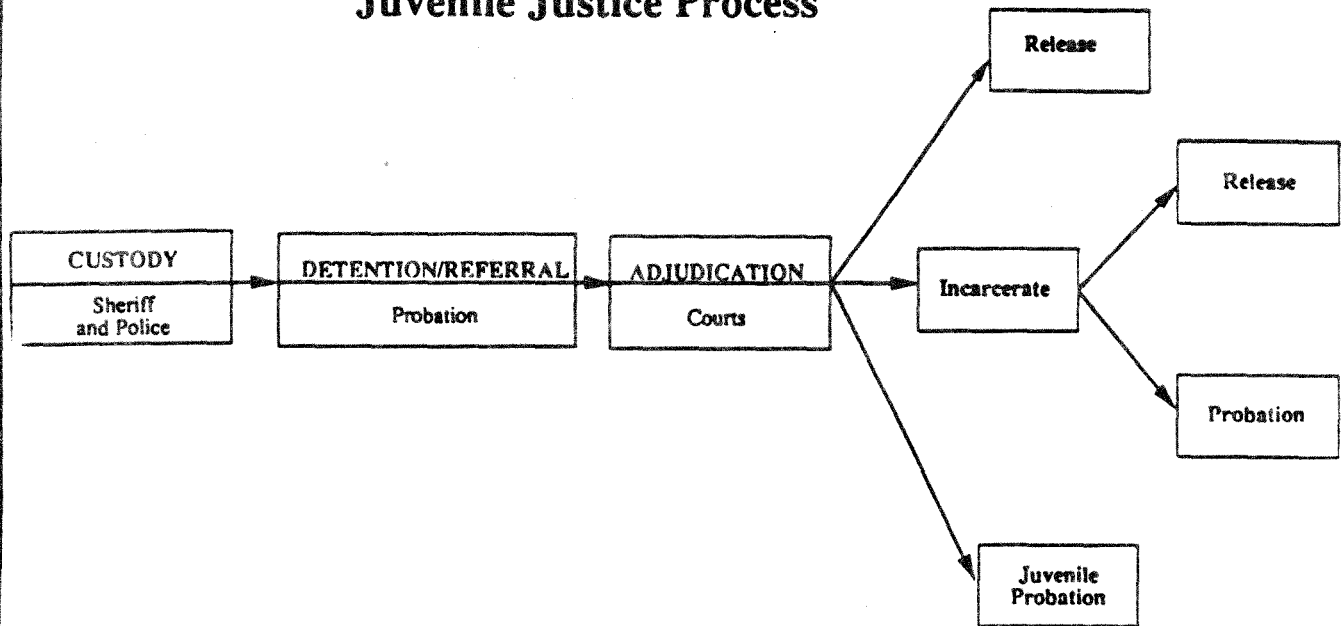
Ethnic minority group members represent about 73% of the CYA population. One in four wards were abused as children.

#### **THE JUSTICE SYSTEM**

The increasing crime rates have had a serious and pressing affect on all justice agencies: law enforcement, prosecution, courts and probation. The response to this impact has been uneven.

The justice system, like all systems--environmental, health, human, etc.--is composed of interrelated parts. Any change or impact applied to one part, in this case an agency, affects all the others. For example, if the law enforcement agencies double their arrest rate, each other agency throughout the process experiences changes. The prosecutors will either have to prosecute more cases or begin to screen and select cases for prosecution more narrowly, allowing some offenders back on the street. If more cases are prosecuted, there will likely be an increased workload for the remaining agencies throughout the process.

## Juvenile Justice Process

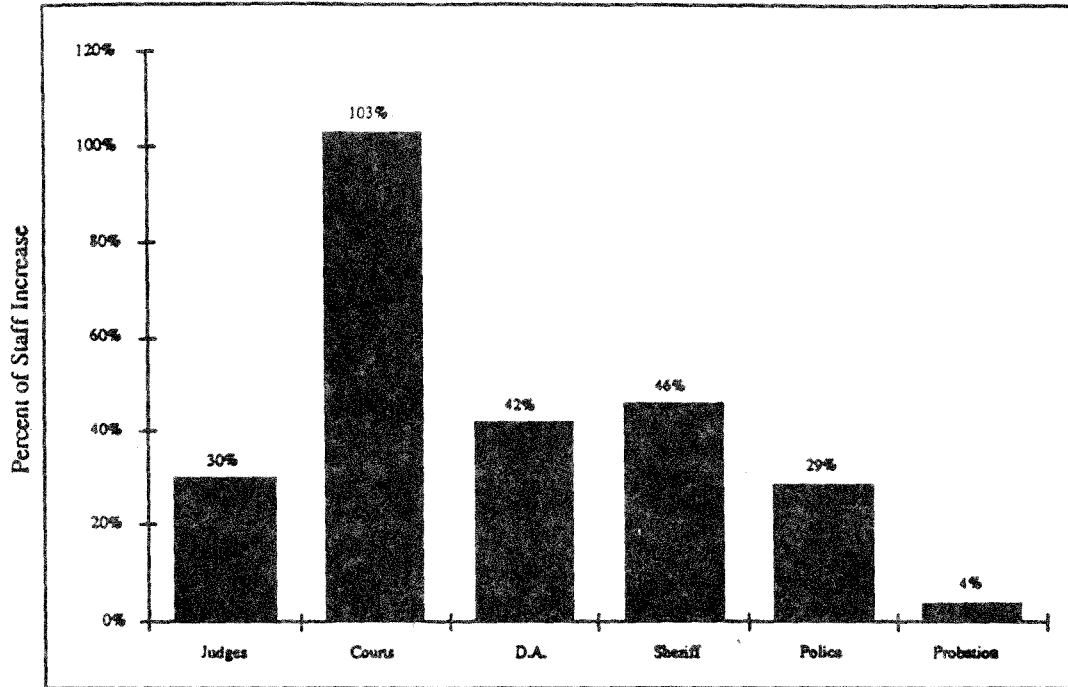


The staffing policies of Sacramento County during the last decade have ignored the relationship between the criminal justice agencies, setting the stage for system dysfunction. During this period, staffing increases in the courts have more than doubled that of any other segment of the system. However, the probation department has fallen significantly below the levels of all other agencies.



## Criminal justice agency growth

Staff increase in each agency (9178 - 1989)



Source: Sacramento County Probation Department

### CONSEQUENCES

The justice system is forced to deal with the social, economic and human problems which have not been solved earlier by all the other existing agencies and systems. When children and families are not mentally and physically healthy, when they are uneducated and unemployed, when they abuse drugs, when their options are closed; then the potential for violence and crime increase. Unless earlier assistance is provided to these people, a continuing escalation of

demand on the criminal justice system can be expected.

The procedures of the justice system are not coordinated. Without change, child victims will continue to face numerous duplicative and humiliating interviews and processes. The result will be fewer successful interventions on behalf of the child and more children will continue to live in danger.

If the growth patterns continue among the various criminal justice agencies, the probation department will slip further behind, at some point becoming an internal research unit of the courts. There will be no option for supervising offenders in the community; this responsibility will fall into the hands of the public and law enforcement. Consequently probation violations will go undetected and the violators will remain in the community,]; the border-line probationer will not receive assistance and may commit additional crimes. The assignment of offenders to probation may be, at best, a gesture.

#### **RECOMMENDATIONS**

1. Establish a multi-disciplinary interview center to reduce the traumatic aspects of the investigative procedures upon child abuse victims and to improve the operations of the criminal justice and protective systems regarding children.

#### **OBJECTIVES:**

- 1 - To improve the quality of information obtained from children,
- 2 - To reduce the number of interviews of children,
- 3 - To limit the number of persons interviewing children, and

4 - To reduce the number of court hearings.

Establish a multi-disciplinary interview center at a projected cost of \$817,557, using county and foundation funds and private donations. The center would coordinate all interactions with the child victim by law enforcement, child protective services, medical treatment providers, and prosecution. This would be achieved by the following process.

Initial field investigations by law enforcement and child protective services in response to allegations of child abuse would be performed in a coordinated manner to determine whether a crime had been committed and whether the child needs protection. If a determination was made that a criminal or dependency investigation was warranted, one comprehensive interview of the child would be performed. To ensure a consistent approach, interagency protocols would be developed regarding interview procedures and selection criteria would be established to determine which children would be interviewed at the multi-disciplinary center. The protocols would also contain alternate methods to achieve the goals of the multi-disciplinary center for those children not referred there. Personnel would be drawn from the Sheriff's Department, Police Department, Child Protective Services, the District Attorney's Office and the medical treatment community. The center would have to be accessible on a 24-hour basis and should be centrally located in Sacramento, preferably at or adjacent to the University of California at Davis Medical Center.

2. Provide alternatives to status offenders and delinquent youth by expanding services provided by the Neighborhood Alternative Center (NAC) and community-based agencies which provide alternatives to incarceration/custody.

OBJECTIVES:

- 1 - To increase the alternatives to incarceration for juveniles,
- 2 - To reduce the number of non-delinquent juveniles detained who are exposed to juvenile offenders,
- 3 - To increase the level of supervision and service offered to status offenders,
- 4 - To reduce the recidivism and probation violations among juveniles served in the NAC program and other community based alternative programs.

Since Proposition 13, the community diversion and corrections programs have had increasing difficulty finding solid and reliable funding bases to provide a necessary ingredient in the juvenile justice system. Many of these programs serve as the last resort or final hope of troubled children and their families. They are frequently the only available services for children who have failed in the educational system and have dysfunctional families. Unless they are available, children will likely end up incarcerated and a part of the criminal justice system. Most of the programs are community-based non-profit organizations.

The Neighborhood Alternative Center has served as a primary service program for juvenile status offenders within county government. The NAC has, since 1984, averaged more than 3,000 annual referrals, 10% of whom were repeat intakes. Six deputy probation officers

provide the basic family counseling portion of the program. The intakes are carefully screened for appropriate referrals and the officers attempt to provide emergency level response. The cases handled by the NAC during the last few years have escalated in intensity and severity creating an additional workload for the program. Currently, 100 to 150 persons attend the family counseling sessions each week.

In December, 1988, the Family Reunification Program housed in Juvenile Hall was moved to the NAC and the residential capacity of NAC was increased to 27 beds, with one additional deputy probation officer position transferred with the program.

This has damaged the NAC program because the non-delinquent children are placed in residence with minors who have been adjudicated for serious offenses and who have exhibited criminal behavior. In the majority of situations the non-delinquent child is actually exposed and introduced into criminal attitudes of the far more sophisticated ward. The NAC staff is now more careful about allowing the non-delinquent children to take residence at NAC but this denies them the needed service. By design, the very contamination and exposure the original program was designed to stop is now being facilitated.

Therefore, it is recommended that the current NAC facility be converted into the Family Reunification Program for delinquent wards and for other non-secure detention wards as needed. The program for non-delinquent youth will be moved to an office arrangement. Residence when necessary could be provided by use of one six-bed group home attached to the status offender program at AFDC expense. An outreach program is needed to inform the community of the counseling resource available to it, especially to single parents with minimal family resources. The deputy probation officer staff should be increased from the current 7 to

12 deputy probation officers over the next 3 years. Two deputy probation officers should be assigned to the Family Reunification Program in combination with the existing probation assistant staff.

This expansion of the Neighborhood Alternative Center would initially cost an additional \$134,196 per year. The source of funds for the Neighborhood Alternative Center would be a combination of County general funds and State subvention funds under SB 789, should sufficient funds be available to allow for this without jeopardizing the other juvenile offender programs. The processing of minors through the Neighborhood Alternative Center, rather than referring them to the Juvenile Court, represents potential tax savings. Community-based agencies may need to increase services to the status offender population due to the conversion of the NAC and the reduction of beds for status offenders, which will require an undetermined amount of increased funding.

#### **ADVOCACY RECOMMENDATIONS**

Sacramento County elected officials should actively advocate and lobby the State Legislature and Governor to continue the County Justice System Subvention Fund at a level equal or greater than the previous budget year.

It is further recommended that the process leading to the establishment of a Child and Family Court in Sacramento be undertaken.

## CONCLUSION

The Children's Agenda for Sacramento County was founded with the conviction that we can do something; that it is not too late. The response of the public to the media's coverage of the plight of individual children understandably is overwhelming, but we need to respond to all our children now. In the face of frightening statistics and headlines about drug addicted babies, school dropout rates, teenage pregnancy, homelessness, and youth gangs, it is easy to see that the approaches of the past have failed. The good intentions and hard work by professionals and community leaders, each working in one area of expertise, have not solved the problems. We need the renewed commitment of the entire community to save our children and preserve our future. The quality of life in Sacramento County is only as good as the life of each child within our borders. IT IS TIME FOR ACTION.

"Each of these children represents either a potential addition to the productive capacity and the enlightened citizenship of the nation, or, if allowed to suffer from neglect, a potential addition to the destructive forces of the community. The ranks of criminals and other enemies of society are recruited in an altogether undue proportion from children bereft of their natural homes and left without sufficient care.

"The interests of the nation are involved in the welfare of this army of children no less than in our great material affairs."

Theodore Roosevelt



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The following individuals have contributed directly to the production of this report and deserve a special note of appreciation for their diligence and commitment.

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**ATTACHMENT D**

MEMORANDUM OF UNDERSTANDING  
FOR THE  
SPECIAL MULTI-DISCIPLINE ASSESSMENT  
AND REFERRAL TEAM

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I. PARTIES:

This agreement, establishing the SPECIAL MULTI-DISCIPLINE ASSESSMENT AND REFERRAL TEAM (S.M.A.R.T.), is entered into between the Placer County Probation and Welfare Departments, the Mental Health Division of the Health Department and the Placer County Superior Court.

II. PURPOSE:

A. SMART is being created (1) to encourage and direct families to use their own or private resources in the resolution of family problems; (2) to effectively assist in solving the problems of children who are in trouble with themselves, the schools, law enforcement agencies, or social agencies; (3) to intercede in the chain of events which often lead children into the court system; and (4) to identify community needs to assist problem youngsters where programs or services are not currently available, but probably needed.

B. SMART is not created to solve routine departmental case problems. Referrals generally will be made for children with complex personal, family or social problems who are or may be involved with several service or enforcement agencies. The



typical referral will concern the child with multiple problems; for example, school, family, peer, emotional/behavioral or legal problems where the solution to the problems is beyond the scope of a single agency and will require multi-discipline consideration.

C. The participating departments agree that they will abide by the decision of SMART in directing referrals of cases for management and disposition.

D. The participating departments agree to morally support the representatives to SMART such that department politics will not eliminate the free participation of a representative during the deliberation of team issues.

E. All materials and information received by SMART shall be confidential and shall not be disclosed to any person or entity except as authorized by law or by Rule 50.1 of the Local Rules of the Placer County Superior Court.

### III. ORGANIZATIONAL STRUCTURE:

SMART shall consist of a Resource Team and an Assessment and Referral Team.

#### IV. RESOURCE TEAM:

A. Composition: The Resource Team shall consist of the department heads of the Placer County Probation and Welfare Departments, the director of the Mental Health Division of the Health Departments, and the Placer County Juvenile Court Judge.

B. Duties: The Resource Team shall:

1. Establish policy for implementing the objectives of SMART, including policies, standards and procedures for

screening, reviewing and resolving cases referred to SMART.

2. Render full support to the departmental representative on SMART as a priority responsibility.

3. Appoint a Facilitator who, in addition to other duties, shall record actions of the Resource Team.

4. Establish appropriate in-service training regarding SMART referrals.

5. Establish appropriate meetings for the Resource and Assessment and Referral Teams.

6. Consider financial needs of SMART and establish a budget based on available funding.

7. Resolve interdepartmental case management problems not resolved by the Assessment and Referral Team.

8. Dedicate staff and departmental resources appropriate to the proper operation of SMART, including any clerical needs.

9. Develop appropriate procedures for the efficient gathering and exchange of case information between participating departments, through SMART.

10. Establish an appropriate means of case tracking to assure that directives of SMART have been met.

11. The Juvenile Court Judge member of the Resource Team shall not hear any discussion nor participate in any decisions regarding specific cases referred to SMART, but shall only participate in policy discussions and decisions.

C. Quorum: Decisions by the Resource Team shall be made by majority vote, with at least three members of the Resources

Team eligible to vote being in attendance.

V. ASSESSMENT AND REFERRAL TEAM:

A. Composition: The Assessment and Referral Team shall be composed of the Facilitator and representatives appointed by each of the department heads from the Probation and Welfare Departments and the Director of the Mental Health Division of the Health Department.

B. Duties: The Assessment and Referral Team shall:

1. Receive referrals from the participating departments.

2. Review case histories, deliberate the proper allocation of resources and to assign cases to a lead agency for management and disposition.

3. Establish and maintain a current list of all available public and private youth services and resources.

C. Operational Outline:

1. The Assessment and Referral Team shall designate a lead agency for each case for general case management and may assign any specific case responsibilities to other appropriate agencies and/or persons, including the child's family or other private resources.

2. The Facilitator shall act as chairperson of the meetings; shall record actions taken by the Assessment and Referral Team; shall be able to call special meetings of the team; and shall act as liason with the Resource Team, reporting to the Resource Team as directed.

3. The Assessment and Referral Team shall meet at

least once a week at a regularly scheduled meeting and shall meet as directed by the Facilitator for emergency situations.

4. The Assessment and Referral Team may require the appearance of and participation by parents and other persons employed by the participating departments and may request the appearance of and participation by private agencies or individuals.

5. The designated member of the Assessment and Referral Team shall act as the source of referrals from other individuals in the member's department and any other source. The member shall initially screen potential referrals for appropriateness and to assure completion of the referring material.

6. The Assessment and Referral Team may refer any case back to the department of origin for further action deemed appropriate.

7. Decisions of the Assessment and Referral Team shall be made by majority vote, with at least three of the members of the team in attendance.


8. In the event of an unresolved dispute in the resolution of a case, the Facilitator shall promptly refer the case, and all case materials, to the Resource Team for final resolution.


9. Appeal from decisions of the Assessment and Referral Team may be made to the Resource Team by any Resource Team member.

This memorandum of Understanding has been executed on January 11, 1988, at Auburn, California.

Placer County Probation  
Department

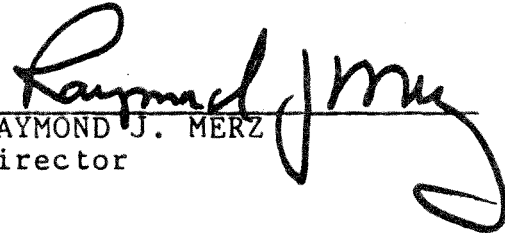
Mental Health Division of the  
Placer County Health Department

By:   
TED L. SMITH  
Chief Probation Officer

By:   
SANDRA GOODWIN  
Director

Placer County Welfare  
Department

Placer County Superior Court

By:   
RAYMOND J. MERZ  
Director

By:   
J. RICHARD COUZENS  
Presiding Judge

## SPECIAL MULTI-DISCIPLINE ASSESSMENT AND REFERRAL TEAM

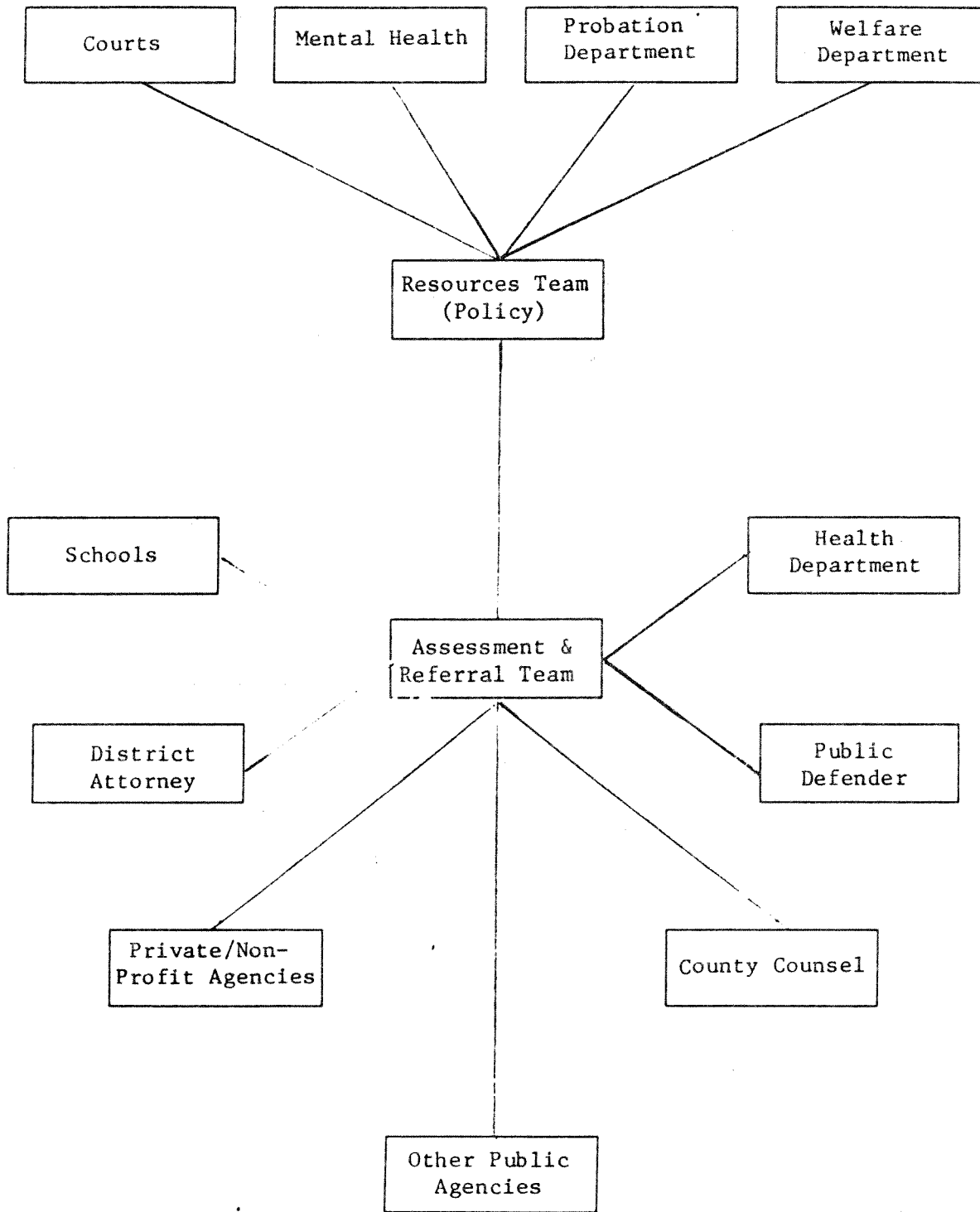
### REFERRAL PACKAGE

The Special Multi-Discipline Assessment and Referral Team is not created to solve routine departmental case problems. Referrals will generally be made for children with complex personal, family, or social problems who are usually known by or actively involved with other service or enforcement agencies. It is assumed that each department would carefully screen referrals to the Special Multi-Discipline Assessment and Referral Team.

The goals of the Assessment Team are: (1) to effectively assist in solving the problems of children who are in trouble with themselves, the schools, law enforcement agencies, or social agencies; (2) to intercede in the chain of events which often lead children into the court system; and (3) to identify community needs to assist problem youngsters where programs or services are not currently available, but probably needed.

TABLE OF ORGANIZATION

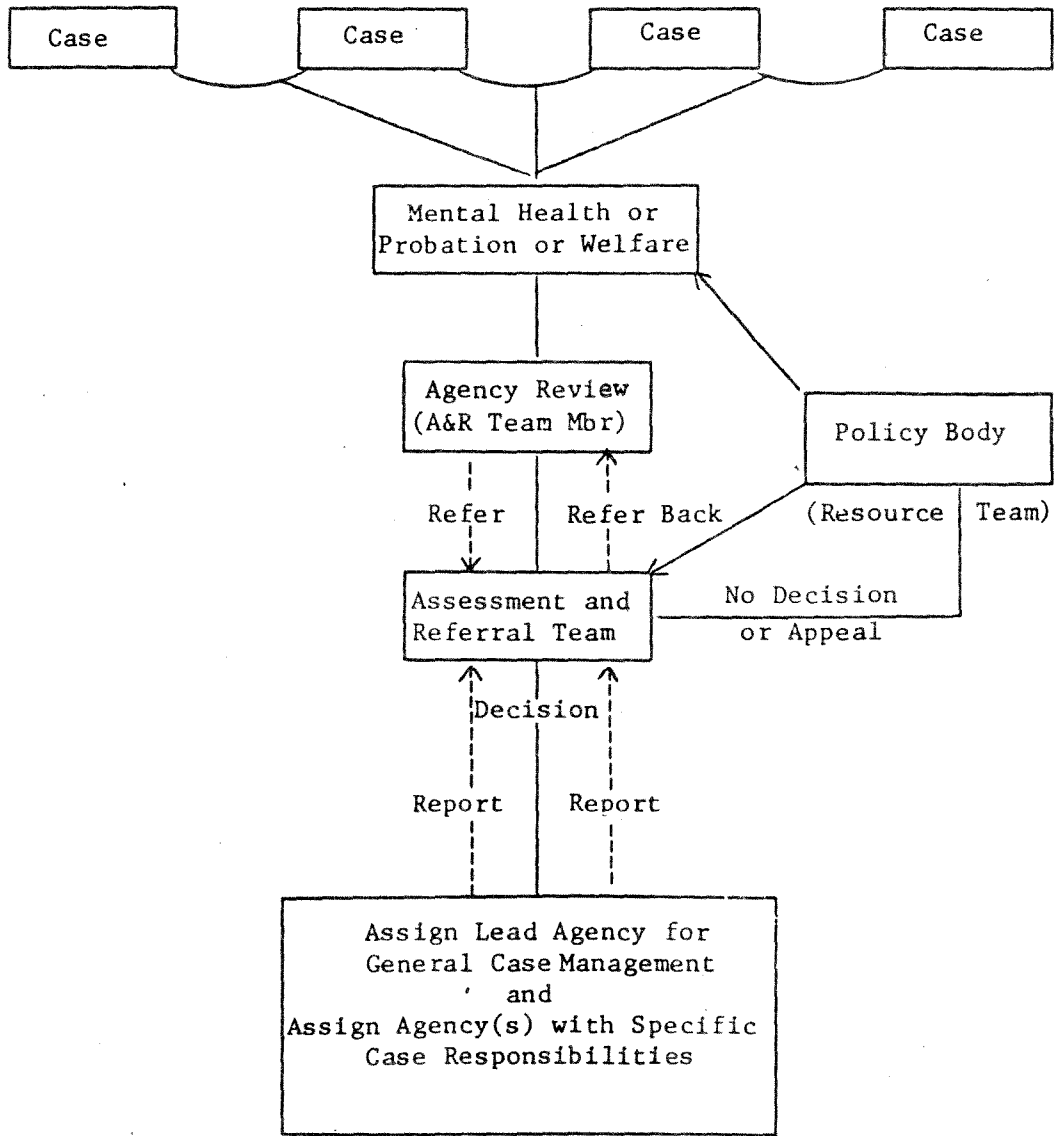
Special Multi-Discipline Assessment and Referral Team



S M A R T

REFERRAL PROCESS

----- Complex Personal, Family, Social Problems -----





SPECIAL MULTI-DISCIPLINE ASSESSMENT AND REFERRAL TEAM

REFERRAL CHECKLIST

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Referring Agency: \_\_\_\_\_  
Case Carrier: \_\_\_\_\_

The following documents must be submitted with any referral to the Multi-Discipline Assessment and Referral Team.

1. \_\_\_\_\_ Signed Referral Form
2. \_\_\_\_\_ Signed Release of Information Form

The following information, if at all possible, should be submitted with the Referral and Release of Information Forms.

1. \_\_\_\_\_ Psychological and/or Psychiatric Assessment
2. \_\_\_\_\_ School Individual Educational Program Form (I.E.P.)
3. \_\_\_\_\_ Court Report(s)
  - a. \_\_\_\_\_ Original Disposition Report
  - b. \_\_\_\_\_ Current Report(s)
4. \_\_\_\_\_ Case Notes
5. \_\_\_\_\_ Other Assessments
6. \_\_\_\_\_ Other Agency Reports (e.g., Health, School, Regional Center, S.A.R.B. Referral)



B. PREVIOUSLY OFFERED SERVICES WITHIN REFERRING DEPARTMENT:

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C. PREVIOUSLY OFFERED SERVICES OUTSIDE REFERRING DEPARTMENT:

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D. SUGGESTED SERVICE NEEDS BEYOND THE SCOPE OF REFERRING AGENCY:

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Signature: \_\_\_\_\_

(For Special Multi-Discipline Assessment and Referral Team Use Only)

Date of S.M.A.R.T. Meeting: \_\_\_\_\_

A. CASE PLAN:

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CASE MANAGER: \_\_\_\_\_

REVIEW DATE: \_\_\_\_\_

SPECIAL MULTI-DISCIPLINE ASSESSMENT AND REFERRAL TEAM

INSTRUCTIONS: Use this form to obtain the required authorization when a request is received for patient information, unless the request received is a facsimile of this form or contains all of the required information. Obtain signature of patient or parent/guardian/conservator. If patient signs, obtain witness signature. Designated Physician, Licensed Psychologist or Social Worker with a Masters Degree in Social Work must sign for patient access to record. List the information released per this authorization on the back of this form.

Patient's Name \_\_\_\_\_ Birth Date \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_
Month Day Year

I, \_\_\_\_\_ and/or \_\_\_\_\_
Name of Patient Name of Parent/Guardian/Conservator

hereby authorize \_\_\_\_\_
Name of Agency/Person/Organization Address (Street, City, State & Zip Code)

to release to \_\_\_\_\_
Name of Agency/Person/Organization Address (Street, City, State & Zip Code)

the following information with the knowledge that such contact discloses the fact that mental health services have been/are being provided.

This disclosure of information is required for the following purpose(s):

[ ] Evaluation [X] Treatment Planning/Course [X] Other \_\_\_\_\_ S.M.A.R.T. Referral

and shall be limited to (requesting) (releasing) the following information:

- [ ] Entire Record [ ] Medical, Neurological Assessment, Lab Tests, e.g., EEG, EKG, etc. [X] Results of Psychological/Vocational Testing
[ ] Diagnosis [X] Other Evaluations/Assessments [ ] Conferences (\_\_\_\_\_) Date
[X] Psychiatric Evaluation [X] Other Evaluations/Assessments [X] Other Verbal reports of client progress & problems
[ ] Discharge Summary \_\_\_\_\_
[ ] Social History \_\_\_\_\_
[ ] Individual Treatment Plan \_\_\_\_\_
[ ] Legal Information

This consent becomes effective \_\_\_\_\_ Month Day Year. This consent may be revoked by the undersigned at anytime except to the extent that action has already been taken. If not revoked, it shall terminate at the end of (check one): [ ] 6 months [ ] one year or [ ] other date \_\_\_\_\_. I understand that I am to receive a copy of this authorization.

Signature of Patient Date: \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_
Month Day Year
Signature of Parent, Guardian or Conservator, if Applicable Date: \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_
Month Day Year
Witness Signature Date: \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_
Month Day Year
Signature of Professional\* Person Obtaining Authorization

\*Professional for this authorization refers only to a physician, licensed psychologist or social worker with a master degree in social work who approves patient access to patient records.

AUTHORIZATION FOR RELEASE OF PATIENT INFORMATION

Confidential Patient Information See W&I Code, Section 5328

**ATTACHMENT E**

COUNSELING OFFICES OF  
MICHAEL A. STREIT, L.C.S.W.  
700 SUNRISE, SUITE H  
ROSEVILLE, CA 95661  
(916) 783-5003

October 3, 1989

California State Senate  
Senate Office of Research  
1100 - J Street, Suite 650  
Sacramento, CA 95814

RE: Task Force on Family Relations Court

Dear Committee Members:

Thank you for inviting me to take part in the committee's mission of exploring avenues of improving the court system with regard to family law matters. We agree that dramatic changes are needed to deal with both the overload the courts are facing, and the complex issues relating to family law.

In an effort to assist the committee in evaluating this matter, I submit the following thoughts, all of which will be elaborated on at the time of my appearance on October 6, 1989.

With regard to question number 1 of the guideline submitted to me, I submit the following analysis.

The issue of combining two or more divisions of the court so that all matters arising out of one cause of action or one particular family situation are coordinated before one judge, was a concept unanimously approved of by the judges in Placer County.

The concept of issues relating to families falling under a single domestic department makes a great deal of sense. The benefits of this concept include:

1. Courts would not overlap as they do now.
2. The judge would have access to more information and the total family issues.
3. Those judges particularly interested or expert at such matters could be assigned those positions.

However, in a small county, such as Placer, the logistics of how to accomplish this appear insurmountable. Some of the problems faced are:

1. In counties, like Placer County, there are few Superior Court judges. Assignment must therefore be judged to meet pressing needs. The work load has to be divided in the most expeditious manner, and the luxury of having a separate department for domestic issues is not realistic.

2. The best judge for such a position may not be assigned to such a position due to seniority, burn out, or in the case of Placer County, the rotational system where assignments are traded annually.

3. The viability in a small county of having one expert is tenuous, as it relies on that person always being available and functional.

With respect to question number 5 of the guideline, the following sets forth some of my thoughts regarding the organization of the court system and how it serves children.

The organization of the court system serves children as best it can. However, there is a great deal of work to do in this area. As a Child Protective Services worker, and a custody mediator, the adversarial nature of the court system almost never serves the well being of the child. In my opinion, the child does not belong in the court system at all.

Too often the child is locked into an adversarial position against a parent. It would be my sincere hope that some day children would not be subjected to a system that positions them between their parents. Mediation, as I was taught, sought to mitigate some of the effects of the system. Unfortunately, the latest research by the AOC shows that low income, substance abusive, sometimes abusive cases are becoming the norm in family court services, while attorneys syphon off lucrative, well paying clients and, by definition, involve them even deeper into unwanted and unnecessary litigation.



In cases where there is unsubstantiated or situational problems, agencies outside the court system should deal with such issues. To rely on the court, which is not trained or designed for such problems, to issue solutions as to the best interest of such children is a disservice to the minor and the court adjudicating the matter.

Often times in these cases, opposing therapeutic agents enter the arena and further confuse the issue before the court. To that end, it should be the policy of the court to have agencies involved with children, such as Child Protective Services, Family Courts, Juvenile Units, Mental Health Departments, Public Defenders, and even the District Attorney's office working more as a team to assist the best interest of children. Confidentiality, meant to protect children, has turned out to be detrimental in many instances.

Question number 16 asks "Does your court have a written policy or protocol which facilitates the movement of information from one of these courts to the other?" In response to that question, the following is submitted.

The court in Placer County, while preserving the integrity of the Welfare and Institution Code, considers the verbal exchange between a mediator and other agencies as being crucial to the welfare and well being of children. Informally, such information is routinely traded if the agencies are concurrently working on a particular case. The need for confidentiality is clear in many instances, but specific material for the protection of children is responded to by Placer County's court, by minute order if necessary, in almost all instances.

Coordination has become, by necessity, a must to avoid injustice to a parent or a child. Usually there is interagency consensus in cases when there is open communication. It is a problem when an outside agent comes into the case, wither as an adversary or advocate. When this occurs, the matter usually ends up mired in conflicting moot situations. Psychological evaluations rarely clear the picture as they almost always hedge and, rightfully, do not make definitive statements which may further cloud the issues. In the more complicated cases, psychological testing must be seen only as a predictive tool and not an instrument of crazy or not crazy, or guilt or innocence.

Finally, with respect to question number 20 of the guideline which elicits comments respecting the Attorney General's report recommending that after a determination is made that a criminal or dependency investigation is warranted, a comprehensive interview of the child should be conducted by a Child Interview Specialist, the following comments are submitted.

In my opinion, the interviewing of children is the most sensitive issue that this Task Force, under the heading of Child Witness Task Force, has to deal with. Never, in my experience, could a child's testimony be used as proof positive to adjudicate a case. There are too many variables to consider in the information garnered from interviews to use a child's testimony to prove as the definitive statement in a case.

Cases, especially those cases relating to molest, where a child's testimony is used as the basis of a prosecution or legal defense, have wound up with the parties involved being in two polarized camps. Children have become the victims of the system designed to protect them, and are further victimized by their own testimony which places them, again, squarely in the middle of their fighting parents. A child's testimony must be looked at contextually and only as one element in the investigation of such matters, rather than the heart of the case itself. Questions like "Why would a parent hurt this child?", "Why would another parent program a child to say such things about an opposite parent?" are as significant, or more so, in the context of determining the outcome of such cases.

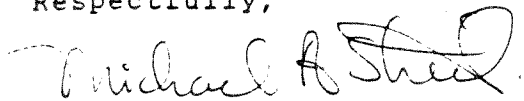
Children are notoriously unreliable in their testimony, and only become more entrenched with more insistent investigation. Therefore, I must applaud the Task Force's efforts with the stated proposals in working with children who may have been victimized. I might even take it one step further and get these children out of the legal system altogether, except where absolutely necessary.

RE: Task Force on Family Relations Court  
October 3, 1989  
Page Five

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I hope this short analysis is of some help to the committee,  
and I look forward to going over these issues with you in more  
depth and detail on October 6, 1989.

Respectfully,



MICHAEL A. STREIT, M.S.W., L.C.S.W.  
Supervising Custody Mediator, Placer County

MAS/jmp

**ATTACHMENT F**

JUDGE CECILY BOND

SACRAMENTO SUPERIOR COURT ASSIGNMENT POLICY

"The Presiding Judge shall designate each of the departments to conduct all of the business of the Superior Court each calendar year in accordance with Rule 205 of the Judicial Council Rules for the Superior Court. The Presiding Judge shall designate the judges to preside in said departments subject to the following annual rotation policy. All assignments shall be rotated annually amongst the judges of the Superior Court, giving each judge his or her choice of assignment in the order of seniority in coming on the Bench.

Said rotation policy is said to commence in the month of January, 1977. Each year thereafter the three judges at the top of the list of seniority the prior year shall be placed at the bottom of the list in order of seniority except that all newly elected or appointed judges during the year shall be placed following all of the judges' names from the prior year in the order of their dates of appointment or election to the Bench.

It is understood that this is a declaration of policy only and is not intended to abrogate the ultimate authority vested by law in the Presiding Judge to make departmental assignments in accordance with his/[her] judgment."

ATTACHMENT G



# SHASTA COUNTY

## PROBATE AND FAMILY COURT SERVICES

1558 West Street, Suite 1  
Redding, CA 96001  
Telephone: (916) 225-5707

The following comments and materials presented to the Senate Task Force on the Family Relations Court are from the perspective of a mediator in Family Court Services dealing with child custody disputes. I have combined questions that are related to the same general topic to reduce repetition and narrow my focus. Wherever possible and appropriate, I have included reference materials, policy, and procedure.

TASK FORCE QUESTIONS 3, 5, 15, 16, 17, and 18 (PROBLEMS OF OVERLAP BETWEEN DIFFERENT COURT SYSTEMS, DETRIMENTAL INTERVIEW PROCEDURES, COORDINATION BETWEEN COURTS IN A CASE INVOLVING THE SAME CHILD/FAMILY, POLICIES AND PROCEDURES):

A case referred to Shasta County Family Court Services in January 1989 serves as an example of the problems referred to in the above questions.

The case was referred from the Order to Show Cause Calendar for mediation services because the parents had a dispute regarding how visitation should occur with their only child, an eight-year-old girl. Their Petitions/Pleadings indicated they divorced four years earlier, with agreement at that time for Joint Legal Custody, Sole Physical Custody with mother, and Reasonable Visitation to father. Parents voluntarily reversed physical custody (without changing their Court order) two years later. The father resides in a large county to the south; the mother remains in Shasta County. The mother is seeking unsupervised visitation; father objects, stating mother molested the girl and should not have contact until deemed appropriate by the therapist working with the child. (Physical evidence of sexual abuse was confirmed by a physician.)

In mediation, the following was discovered:

- \*\* father did not want the child back in his home and had in fact placed the child with his mother a month earlier;
- \*\* child was hospitalized by her father in a private psychiatric facility for nearly a month during the prior year;

TASK FORCE RESPONSES  
PAGE 2

- \*\* Child Protective Services Departments in the father's county and our county were investigating the matter;
- \*\* the child's current placement by father was tenuous because of the paternal grandmother's history of emotional instability;
- \*\* father did not want mother to have any contact with the girl whatsoever;
- \*\* mother was unaware of the present placement with paternal grandmother or of the child having been hospitalized for nearly one month.

The following was discovered during our investigation in the months following the mediation session:

- \*\* the child had been interviewed by at least ten different professionals over a one-year span regarding allegations she was sexually abused and her own sexual behavior with other children;
- \*\* during this time span and continuing to date, significant family members engaged the child in conversation regarding these issues (against advice of the therapist);
- \*\* until intervention by our office thirteen months after the initial allegations were reported to CPS, not one of the professional parties involved (including the hospital) contacted, interviewed, or observed the natural mother;
- \*\* detective/social worker team in Shasta County interviewed the mother and the child's stepsister regarding allegations of sexual abuse, and investigation including polygraphs resulted in no charges being filed;
- \*\* the child's placement with paternal grandmother deteriorated, and the child went to live with her paternal aunt where she remains at this time;
- \*\* the parents are still in dispute regarding the child's best interests;
- \*\* neither jurisdiction's Department of Social Services has sought dependency;
- \*\* allegations of sexual abuse remain the father's focus;
- \*\* mother wants reunification with her;
- \*\* emotional and physical abandonment of the child is the dominant issue in our opinion.

This case involves at least five private clinicians, personnel from six public agencies, potentially three different divisions of Superior Court, and two different counties



within California. Of these parties, only one clinician and one of the agencies has been in communication with both parents; none of the agencies/clinicians have been in communication with all of the other parties involved.

This case highlights the problems encountered in allegations of sexual abuse of young children in cases referred for resolution of custody/visitation disputes. We note an increasing number of cases involving these allegations (approximately 10% of all cases). Results of investigation by law enforcement and Child Protective Services often leave doubt regarding the accuracy of the allegations and, at the same time, doubts regarding safety of the child. Cases wherein dependency is not declared nor criminal charges filed, the mediator is often left with the task of determining a best interest solution for the children. In these matters, it is not uncommon for the various professionals and agencies involved to be evaluating what is best for the children by different standards, observations, and legal guidelines. Ignorance of the other professionals'/agencies' tools, limitations, and expertise creates confusion and disharmony, and takes away from the focus of what is best for the child.

We at Family Court Services and our colleagues at Child Protective Services often assess that the damage done by the suspected abuse becomes secondary compared to the harm children encounter during the investigative/Court procedure.

There is no doubt in my mind that reduction of overlapping between the Courts/Judges in these cases would better serve the children and families. The following procedures have been established as our policy in Family Court Services for handling of these cases:

1. Mediation will proceed in the same manner as in cases without said allegations, except that Family Court Services will include information concerning the current status of any police and/or CPS investigation. FCS is free to include alternative recommendations dependent upon later verification or failure to verify the allegations. The team may also include recommendations concerning contacts, or lack thereof, between children and the suspected parent, as well as recommendations concerning interim temporary and/or permanent custody and visitation orders.
2. Contact will be made with investigating social workers, police officers, and therapists involved with abuse allegations in cases Family Court Services is evaluating. Joint staffings are encouraged.

3. During first mediation session, all parents sign release of confidential information forms.
4. Shasta County Superior Court orders that Family Court Services is included under the provisions of W & I Code Section 827 and the duty imposed on the Court by the decision of the California Supreme Court in T.N.G. v Superior Court (1971) #4 CAL 3d 767 [94 CAL.RPTR. 813] regarding release of confidential information.
5. Staff from Family Court Services to participate on Shasta County Multi-Disciplinary Team to review and advise on cases involving W & I Code Section 300.

As a result of the above policies, Family Court Services has been effectively interfacing with various agencies in this county regarding child victims of parental abuse. Most productive have been meetings held with all parties (both private and public sector) professionally involved in investigating and treating cases of suspected abuse that are currently in Family Court Services for evaluation of custody/visitation. There is no additional cost for these policies; time involved coordinating with other agencies and professionals typically reduces each party's workload.

I submit to the Task Force a program in Lassen County, our neighbor to the east, that illustrates a possible mode of coordination in these matters. The Interagency Child Abuse and Neglect Team (also known as the ICAN Team) includes staff from Probation, Child Protective Services, Sheriff, Police, District Attorney, and the Child Abuse Prevention Program (per AB 1733). Policies of ICAN include:

1. Staff involved with child abuse investigation have specialized training, currently completion of 40-hour POST Child Abuse Investigation Course.
2. In cases of physical/sexual abuse and severe neglect there will be:
  - a. immediate cross reports to agencies involved;
  - b. police officer and social worker to interview together whenever possible;
  - c. agencies involved to communicate regarding referral;
  - d. retrieval file to be kept with copies of reports and card indexes to cross reference victims and suspects (anyone from ICAN Team has access to this information).

For further information regarding the Lassen County program, contact Barbara Malone, M.S. at 916-257-8311, X212.



# SHASTA COUNTY

## PROBATE AND FAMILY COURT SERVICES

1558 West Street, Suite 1  
Redding, CA 96001  
Telephone: (916) 225-5707

### RESPONSES TO QUESTIONS SUBMITTED BY THE TASK FORCE ON FAMILY RELATIONS COURT

6. IS THERE A NEED FOR SPECIAL PROGRAMS TO EDUCATE CHILDREN AND FAMILIES ABOUT THE COURT PROCEDURES, VISITATION RIGHTS, ETC.?

Education and orientation regarding Court procedures, mediation, rights of parents and children, legal terminology, and how typical presenting problems are dealt with are vital and important steps in families served by Family Court Services in Shasta County. Parents referred to Family Court Services for mediation of a custody or visitation dispute must first attend an hour-long Orientation session led by a Family Court Mediator. In this session, the parents watch video tapes directly related to problems children confront in divorce, questions are answered, and they are sent home with approximately two hours of reading materials for themselves and their children. Included in this packet is a questionnaire for each parent to fill out to further assist them in gaining a focus to best serve their children in mediation.

Cost for this service is limited to an hour of staff time each week and the written materials given away. We do not charge fees for this service and find the preemptive value in having parents better prepared more than makes up for expenditure.

Please refer to Exhibit A: Shasta County Family Court Services Orientation packet for a copy of written materials parents receive. For further information, contact Joan Lewis, Director of Probate & Family Court Services, 1558 West Street, Suite 1, Redding, California 96001, telephone 916-225-5707.

Another example of a mandatory educational program for parents referred to mediation is Humboldt County's Children of Divorce Workshop. The Parenting Subcommittee of the Humboldt County Juvenile Justice and Delinquency Prevention Commission put this program together and secured judicial support to require that all divorcing parents complete the workshop prior to receiving their Final Judgment of Dissolution. Other parents who have child custody or visitation disputes may be required by the Court to attend the monthly workshop, and it is available to anyone on a voluntary basis. There is a \$20 fee, but it may be waived if there is no ability to pay. Licensed counselors who have attended at least one of the workshops and is familiar with the materials used in the program serve as leaders. Two leaders are used for each workshop, receiving \$100 for their services.

Please refer to Exhibit B: Humboldt County Children of Divorce Workshop. For further information, contact Eric Olson, M.F.C.C., Child Custody Mediator, at 707-445-7401 or James Riis, Director of Humboldt Family Service Center, at 707-443-7358.



# SHASTA COUNTY

## PROBATE AND FAMILY COURT SERVICES

1558 West Street, Suite 1  
Redding, CA 96001  
Telephone: (916) 225-5707

### RESPONSE TO CHILD VICTIM/WITNESS TASK FORCE RECOMMENDATIONS

The proposed method of investigation of child abuse dependency and criminal proceedings (Exhibit A of the Child Victim Witness Advisory Committee) and the proposed Superior Court restructuring (Exhibit B) present as solid models to better serve children and families in our Court system. Some of the recommendations have evolved as policy in most of the north state counties in one form or another, most common is cross reporting between the agencies, joint interviews (typically with police officer and social worker) to reduce number of parties child has to contend with, and multi-disciplinary team meetings.

While many parties would identify as being "Child Interview Specialists", there is a wide range of expertise and background in the parties that serve in this capacity now. Probably the most distressing thing to witness is the turnover in personnel who interview the children. The pay for this demanding task is not differentiated from other police officers or social workers, resulting in little reward to become specialized in this area of their job function. Often, social workers with the skills to do this job well move on to private practice and find their incomes double the first year.

Committee recommendations regarding use of a Child Interview Specialist (Recommendations #3, #4, and #5) would solve many of the problems confronting child victims/witnesses. The following suggestions are made regarding this position:

- \*\* Until there is some uniformity in the laws affecting children, a Child Interview Specialist should be fluent in areas of the W & I Code, Civil Code, Penal Code, and Evidence Code that apply to children and families.
- \*\* A Child Interview Specialist should be a state position, independent of local agencies involved with child abuse allegations and paid at a level that would guarantee a degree of professionalism and continuity the job requires.

TASK FORCE RESPONSES  
PAGE 2

In reviewing the entire text of the Child Victim/Witness Judicial Advisory Committee report, I find all of the recommendations valuable. The Huntsville model could probably serve as a cornerstone to the justice system in all states. A serious problem affecting implementation in rural California, however, is the shrinking tax base and the prioritization away of these possibilities. In talking with other mediators and child protective service workers in the north state regarding these issues, I find a common fear that the legislature will mandate specific programs and standards without offering a means to finance same.

EXHIBIT A



THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SHASTA

PROBATE AND FAMILY COURT SERVICES  
1558 West Street, Suite 1  
Redding, California 96001  
(916) 225-5707

PARENTS

\*\* You've been referred to Family Court Services (FCS) for mediation of a custody and/or visitation dispute. If this is your first time here, you will attend an Orientation session in order to acquaint yourself with the process before mediation occurs.

If you've been here before, Orientation is not required. If you want to attend Orientation again anyway, you may do so if seating is available.

Whether you're "new" to FCS, or a "repeater", please read and comply with the following. Thank you.

\*\* If you decide after Orientation that you wish to consult with each other about the children - please do so. If that consultation results in an agreement between you about custody and/or visitation, it is very important that you call us and cancel your mediation appointment. (We must hear from both of you in this regard.) Then have your attorney(s) put your agreement into order form for the Judge's signature.

\*\* Please arrive promptly for your mediation appointment.

\*\* Do not bring children with you to mediation unless you were specifically asked to do so by Family Court personnel.

\*\* Do not bring other persons with you to mediation; they will be asked to wait elsewhere.





THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SHASTA

PROBATE AND FAMILY COURT SERVICES  
1538 West Street, Suite 1  
Redding, California 96001  
(916) 225-5707

IMPORTANT INFORMATION

Staff here are Court personnel. There are private mediators in the greater Redding area, of course. You always have the option of using private mediators should you prefer to do so. Your attorney can refer you to private mediators, or you can locate one on your own through the Yellow Pages of the telephone book. They are listed under marriage and family counselors or psychotherapists. Generally speaking, those who are familiar with mediation and family law will say so in their advertisement in the Yellow Pages. No form of mediation will work unless you both use the same mediator. Please keep that in mind if you are contemplating using a private mediator. Be sure that you consult with each other and choose that party together. Mediators on this staff who will be working with you are fully qualified, educated, trained, with a great deal of experience dealing in family dynamics and the major issues that relate to family law, family dysfunction, and most importantly, the best interest of the child.

About the books that have been provided...you'll notice that the PINK and YELLOW books are designed for children. The BLUE book is designed especially for you parents. PLEASE DO TAKE THE TIME TO READ THE BLUE BOOK THOROUGHLY BEFORE YOU RETURN FOR YOUR MEDIATION APPOINTMENT. We're trying to accomplish here that you come into mediation prepared, familiar with the terminology, familiar with the definition of Legal Custody as opposed to Physical Custody, and ready to work. The GREEN book is for general information.

- I. After mediation, we will be sending a report to the Judge, advising him of the result of our work with you. This report may say "the parents have arrived at the following agreement", etc., or the memo may say "the parents have been unable to reach an agreement and our recommendation is as follows", whatever that is. The original report goes to the Judge and a copy goes to each of your attorneys, or directly to you if you are not represented by counsel. FROM THAT POINT ON, from the moment we file our report, WE HAVE NO FURTHER AUTHORITY over your issues or your case, and THAT IS THE TERMINATION OF OUR CONTACT WITH YOU. That's the end of our work with you. We are not in an ongoing relationship with you, we are not in an ongoing counseling or therapeutic or educational mode with you. This form of operation is called crisis intervention, which means that we are into your lives and out of your lives just as quickly as possible. If you need some sort of ongoing assistance, obviously we will be happy to help get you referred to the proper party/agency.

If conflicts arise in the future about your children, custody, or visitation, obviously we hope you attempt to work it out between you, or with the assistance of a private mediator, or with the assistance of your attorneys. If all of that should fail, the conflict may result in another referral here. Then we just begin all over again.

GUIDELINES FOR A SUCCESSFUL PARTNERSHIP FOR POST-DIVORCE PARENTING

The following guidelines from Harriet Whitman Lee, attorney, professor of law and Ph.D. candidate in psychology, Family Law Counseling Services, Berkeley, California, should be of help in discussing issues of parenting partnership so critical for children of parents of divorce. The focus is to maintain a business relationship.

- Your mutual concern is the rearing of your children. Make a conscious decision to create a successful partnership for the project.
- Be businesslike with your former spouse. Test all of your own behavior against this standard: Was I businesslike? Did I follow these guidelines?
- Test your ex-spouses' behavior not by how you feel; but by the same standard: Was their behavior businesslike?
- Respect your children's relationship with your ex-spouse. Your children did not divorce either parent; don't force them to - and do encourage them to get over any feelings of estrangement from the other parent.
- Make appointments to talk about business. Except for emergencies, call only during business hours or agreed upon times; always ask if the timing is convenient, and if not, make an appointment for a time that is.
- Be polite. Do not use bad language or name call. Do not try to conduct business under the influence of alcohol or other drugs. If you feel yourself getting unbusinesslike, say so and agree to resume the conversation at a later time.
- Give the benefit of the doubt as to behavior, as you would with a stranger. Do not assume anything based on past experience without checking out now, at this time, reasons for behavior, what your partner thinks or what your parenting partner has decided.
- Do not expect approval from your partner. Have your personal and emotional needs fulfilled elsewhere and with others. On the other hand, if you are able to acknowledge something positive in work or deed of your partner, do not withhold it. The reward of expressed appreciation, no matter how small, contributes to the greater success of the parenting partnership.
- Do not discuss matters irrelevant to business unless your partner specifically agrees to do so. Respect your ex's privacy; do not seek to know the details of his/her life and do not intrude on his/her territory.
- Make all agreements explicit and follow up with written confirmation when possible (or make your own written memorandum). Be clear and complete in your communications; include time, place, whether children will be fed or not, what clothes they need, etc. Communicate directly: DO NOT ask the children to do your business.
- Keep agreements. Do not break appointments. Carry through on what you promised. If you can't promise something, make it clear that you can't and say why.
- Do not make unilateral decisions; consult your partner and the children so that the best, most workable decision can be made.
- Don't insist on what does not work. On the other hand, be flexible; commit yourself as much as you are able to and experiment to see what does work.
- Above all, cultivate good will in the partnership. Keep in mind always the importance of your investment and the expected returns. The investment is what you are willing to do for your children's happiness and success in life. The returns are comfort and security for your children, and the knowledge that their parents care enough to make life work. You can make a good life for yourself personally and for your children.

# THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

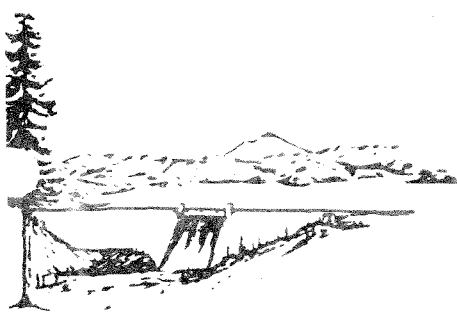
IN AND FOR THE COUNTY OF SHASTA

PROBATE AND FAMILY COURT SERVICES

1558 West Street, Suite 1

Redding, California 96001

(916) 225-5707



**\*\* ATTENTION \*\***

Regarding materials you may hope to bring to mediation, please be advised of the following regulations developed by the Bar Association's Family Law Committee:

1. If you are represented by an attorney, you may not bring references, declarations, statements, records, etc., to mediation,

UNLESS they are copies of what has already been legally filed with the Court, and copies have been previously served on the other party.

2. If you are represented by an attorney, he/she is aware of the procedure for getting such pleadings to us, i.e., prior to mediation. Further, your attorney is aware of what material is helpful to us, and what is not.

3. If you are not represented by an attorney, you need to follow these guidelines:

- a. you may bring copies of material already filed and served;
- b. you may bring new material if it is from a doctor or dentist, a school, a law enforcement or social services agency, a licensed child-care center, a landlord, an employer, or sources similar to these --

HOWEVER, if you do (b), you must bring an extra copy of each item which will be given to the other parent at the same time we accept our copy. This office will not copy these things for you, therefore, if you do not provide the sufficient number of copies for our office and the other party, we will not accept the material.

Please be advised that exercising #3(b) may create a delay in mediation. The other party has a right to respond to new material.

4. Pleadings, formal declarations, etc., will not be accepted or considered here after our work with the parents.

THE BEST INTERESTS OF THE CHILD

Transcript of Audio Tape - March 1981

\*

The Honorable Donald B. King, Judge, Superior Court, San Francisco County, and  
Dr. Judith S. Wallerstein, Executive Director of the Center for the Family in  
Transition in Marin County

KING: I am Superior Court Judge, Donald King, and I'm the Domestic Relations Judge for my Court, and have been for several years, and I want you to know that Judges who handle cases of parents who are ending their relationship sincerely believe that when there are disputes about custody or visitation, that the worst way to attempt to resolve those disputes is through the adversary system in our courtrooms. The adversary system tends to focus on what each parent contends is bad about the other parent, and very little of any positive nature is accomplished. In California now, we have a system where, before you can have a court hearing on custody or visitation, you're given the opportunity, through a mediation process, with a trained and experienced family counselor, to assist you in reaching your own solutions in what's best for your children. The counselor or mediator will not tell you what to do or will not tell you what's in the best interest of your child, but will work with you as parents to help you reach agreement about what's in the best interests of your child, and I think you'll find that what's in the best interest of your child is also in your own best interests.

We're very fortunate today to be able to spend a few moments with Dr. Judith Wallerstein. Almost all of the information we have available today in our society as to the effect of divorce on children comes from research which Dr. Wallerstein has carried out. So it might be well to discuss, Dr. Wallerstein, what your research has consisted of?

WALLERSTEIN: Well, Judge, in order to really understand how children respond to their parents' divorce, you have to look at them not only at the time of the divorce, but also later down the road. And in the children that we followed, we spoke with them at some length over a six-week period at the time of the divorce, and with their parents. We saw them again two years later and then brought them back again, all together, children and the parents...children three to age eighteen at the time of the divorce... we brought them all back again five years later to really find out what's

going on, and we learned a great deal that we hadn't known.

KING: How do children feel at the time of their parents' divorce?

WALLERSTEIN: Well, you know, my hunch is that if parents knew how their children felt at the time of the divorce, they would change their behavior very much. They would act very differently and think very differently.

I guess what's most striking about how children and adolescents feel at the time that their parents decide to separate and file for divorce is that they're very worried about what's going to happen to them. In this society, the family serves a very protective function, and the children feel that that protection that they've had - the scaffolding, that supports their growing-up years - has in some way become unstable, it isn't going to hold and they're very worried about what's going to happen to them. The little ones, I was surprised to learn, my colleagues and I were surprised to learn, worry about whether they'll be fed and who's going to take care of them, and if they're going to have a house over their heads, and older youngsters worry very much about whether they'll have an opportunity to go to college, and what's going to happen.

A second, considerable worry to the children is about their parents. This also surprises parents, because it's somehow very hard for parents to think of children as very worried about them. But our children were very worried about fathers who left the house -- what had happened to them? They were concerned about who was feeding daddy, did daddy have a place to sleep. As a matter of fact, we discovered that at the children's first visit to the father's new place of residence - or the mother's new place of residence, depending on who left the household - as if they had consulted together, they all went to look at the bedroom to look at the bed, and they all went to the refrigerator and they opened it to see if there was enough food in the refrigerator. They were worried about where daddy was, they didn't quite understand. There was one little six-year-old who was told that his father was in Oakland and he went around for weeks saying "where is Oakland" and "is Oakland in Mexico" and "where is Mexico". The children really have some sense of the father having vanished or the mother having vanished, or whoever left the household, and being very concerned about what the remaining parent would be able to manage.

I guess the central concern of the children was "what is going to happen to me" and "what's going to happen to my parents", and they were very frightened.

KING: We know from our own observations, and of course you know from your study, that some children do very poorly after their parents divorce and other children seem to do very well. What makes the difference as to whether a child is going to do well or do poorly?

WALLERSTEIN: I guess that's the most important question, "Really what makes the difference," because that's what parents want to know. I don't know any parent who isn't really concerned about his or her child at the time of the divorce but I also don't know any parent who isn't also concerned about his or her own problems at that time, and it's very difficult for parents to face all the questions they have, the economic concerns, their angers at each other, the disappointments in the marriage, the dashed hopes that were attached to that marriage, and also to think about what would be helpful and useful to their children. Nevertheless, I guess this is something they have to know because the most important decisions that are being made for the children, that will affect their future, are made right at the time of the divorce when the stress on the parents is the highest. I guess that is one of the prices of being a parent, it's just not easy at any point and especially in a crises.

What helps children first of all and is in the best interests of the children is if the parents can stop fighting. It seems like an easy prescription. It's very hard for many people, and as a matter of fact what's striking is that if people aren't able to come to some kind of terms with the divorce and the unhappiness of the divorce and their anger about it early on, that it can last for a long time. I have seen a number of adults both in and out of the Courts, as I know you have, where the anger has gone on for five and six years and when you talk to these people it's almost as if it was yesterday. The anger is green or hot and just as it always was. So the first thing that helps children is if people are able to make use of the divorce to settle their feelings about each other and to really resolve the issues that brought them to divorce, and to sort of close the door on the issues that were hot and angry and unhappy at the time of the marriage, and to regard the divorce really as a second chance -- not as just a chance to go on fighting.

KING: And that's an area where the mediator should be able to help them as part of this process.

WALLERSTEIN: Yes, that's where this whole opportunity for parents in California is an important and exciting and really a revolutionary step forward, in terms of the society or the state or the community saying to parents "let's really have a chance to settle these differences", on behalf of yourselves and your own future as well as on behalf of the children.

KING: Okay. What else was there that you found that enables the kids to do well, or cause them to do poorly as a result of the divorce?

WALLERSTEIN: What we found very strongly -- and this also came as a surprise to many of the Judge's and many of the legislators and many people in the community -- is that it's very important for a child to have a continued relationship with both divorced parents. With the parent they continue to live with and with the parent who visits, and that even when they visit with the parent who was not a parent they had a close relationship with during the marriage, for that parent and for that child the divorce is a second chance, and sometimes children and adults who didn't get along that well during the marriage are able to make use of this second chance to really do a lot better and to get to have a much more loving and close and more intimate relationship in the divorced family than they did during the married family. Children who had a relationship with a parent -- where the parent/child relationship is disrupted -- where the father doesn't maintain contact with the child -- often suffer very much in the post-divorce years, and often these are the children who really don't recover the momentum that they lost at the time of the divorce, and don't do well, and appear unhappy and even depressed children in the years following the divorce.

KING: What do you mean when you use the term doing well?

WALLERSTEIN: I mean things that people are really concerned about. I mean that these children who weren't doing well after the divorce weren't learning well at school. They weren't doing well with friends. Some of them were getting into trouble with a range of minor or more serious delinquencies. They were unhappy children, some of these kids sat around

waiting for their daddy to appear, and spent their whole life waiting for their daddy to appear -- at least a lot of the years of their childhood. Whereas the children who did well, where the parents were able to come together on their behalf, showed sometimes a special bonus of extra measure of understanding, of compassion or empathy, sympathy for other people so that it mattered very much in the difference between doing well and doing poorly and gets bigger as time goes on.

KING: We find that some parents tend to think that once the divorce occurs that changes the relationship that each of them have with their child and that's the worst thing that can happen is to have that relationship change any more than has to happen because now the parents may be living in two separate homes instead of just one. At the time of the divorce how can parents be the most helpful to their children?

WALLERSTEIN: Well, a lot depends on how they act and a lot depends on what they tell the child. I will take on both of those separately because this is really important and I really think the parents should know this. That the child needs to think of his parents as rational, as reasonable, as having taken this act -- decision to divorce in a careful and thoughtful way, and to think of his parents as people who he can really emulate and admire. That they made a mistake about the marriage but that they are dealing with their mistakes in an adult and mature way. That they are putting aside their angers and that they are seriously concerned about what happens to their children.

That's hard for grown-ups to do. It's hard for us always to be at our best, but it's most useful to the children if the parents can behave and look to their children as people who are thinking and behaving reasonably and who are sorry that the marriage didn't work out, and are able to say so to the child.

What the child needs to hear from the parents is a lot of things. Maybe I should list them. What the child needs to hear first of all is what's going to happen in the future, because they are so worried about what's going to happen. The child needs to know where they are going to live, who is going to take care of them, that the parent-child relationship isn't divorcing, it's the parents who are divorcing each other. The child needs to know where each of the parents is going to be, and what's going to happen



in the immediate future. The child doesn't need to be told these sugar coated fairy tales about everything in the future is going to be just wonderful from here on out. It is much more helpful to say to the child "look, for the next couple of months, or the next year, things are going to be pretty chaotic around here but we are trying to put together a really good post-divorce family. We are trying to make things better, that's the point of the divorce - to make things better".

The child needs to be told clearly that he or she is going to be taken care of, and that he or she won't be forgotten. Children are terribly afraid that they are going to be forgotten, especially when they see their parents going to each other ~~hammer~~ and tongs, and they are terribly afraid that no one is going to listen to them. Children need some moments of intimacy and quiet with the parents -- with both parents separately -- at the time of the divorce. They need special care when they are being put to bed. A lot of parents would avoid a lot of the problems they are having at bedtime with the children if they could put a little bit of extra time at the time of the crisis/the divorce with the child. And they need to know when daddy is coming or when ~~mommy~~ is coming -- if ~~mommy~~ is visiting -- cause otherwise the visiting parent appears like a jack-in-the-box, and the kids never know when he or she is going to be coming again, and they figure that maybe this is going to be the last time I see them. So they need to have some sense that when they are going back and forth between mother and father that it's not a no-man's land or a no-child's land where it's dangerous to cross, and they need to feel that they know when daddy or ~~mommy~~ is visiting so they won't feel that maybe this is the last time and I'd better be good or I'd better behave or daddy or ~~mommy~~ won't come again. They also need to understand in the ways that are appropriate to the age of the child why the parents divorced. They don't need to know details but they need to know, or they need to be told, that the parents loved each other, they thought it would be a good marriage, they hoped it would work out, and they have discovered they made a mistake and they are sorry, and they are going to try and do better from here on out by themselves and by the children.

KING: How important is it for the parents to be supportive of the child's relationship with the other parent?

WALLERSTEIN: It's very important because sometimes the child feels he or she is betraying the one parent, if he or she loves the other parent, and that puts the child in a great quandry and a great conflict. The child really needs to be told -- and I know this is very hard for parents to do when they are unhappy with each other and angry and caught up in their own concerns, and I really appreciate that -- but nevertheless I think parents do a lot for children when they realize it's important, and what a parent needs to be able to tell the child is because I and your father don't get along it does not mean that you can't get along with your father, because he is your father although he is no longer going to be my husband, and this kind of loving permission from a mother to a child or from a father to a child, will probably build more mental health in that child than any single thing that that parent can do.

KING: Then you would agree that the parents we see occasionally who come in and say they don't want their child to have contact with the other parent are really doing a disservice to their child?

WALLERSTEIN: Yes, and I want to say that I am profoundly sympathetic to the feelings. Parents are people and parents have feelings, and I guess what we are saying to parents at this time is if you can create a conflict free zone, a sort of a miniature DMZ between you, in which you don't fight that you will be very happy about it because we've also found that when parents try to involve children on their side against the other parent, that this more often boomerangs than not. And the two or three years down the road the child will remember that with anger at the parent whom he originally allied with against the other parent.

KING: Well, Dr. Wallerstein, on behalf of the parents who have been listening to us, I want to thank you for the message you've given and I'm sure with the information, ladies and gentlemen, that Dr. Wallerstein has given to you and the assistance you're going to get from a skilled and experienced family counselor assisting you to mediate your disputes about custody or visitation, that you will find that you will be able to reach an agreement as to what is in the best interests of not only yourselves as parents, but more importantly, the best interests of your children.



# ***FAMILIES DIVIDED***

## ***MEMO TO PARENTS***

**You've decided to end your marriage... Like a  
few tips about the children?**

**ART**

**Margery J. Casebeer**

**TEXT**

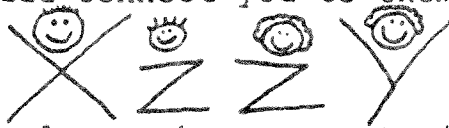
**Joan Lewis & Ann Hoffman**

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Revised 1987

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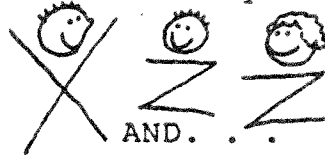
The kids still connect you to them in many ways.



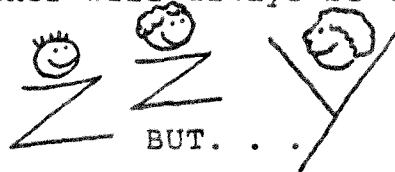
You will always share a past with the kids.

Children must understand --- as you must --- that the divorce is real and the end of their family as they know it.

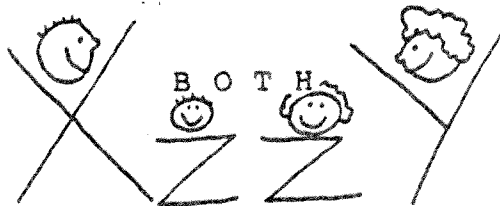
Their father will always be their father.



Their mother will always be their mother.



The children will always have a relationship with



Remember - - - a child is part of both parents,

BUT

a unique new individual

HIMSELF.

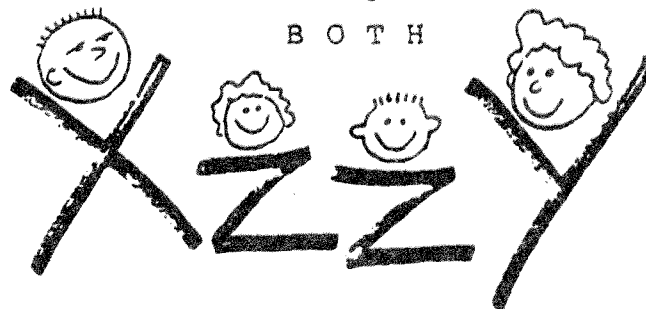


X + Y doesn't = X

X + Y doesn't = Y

X + Y does = Z!

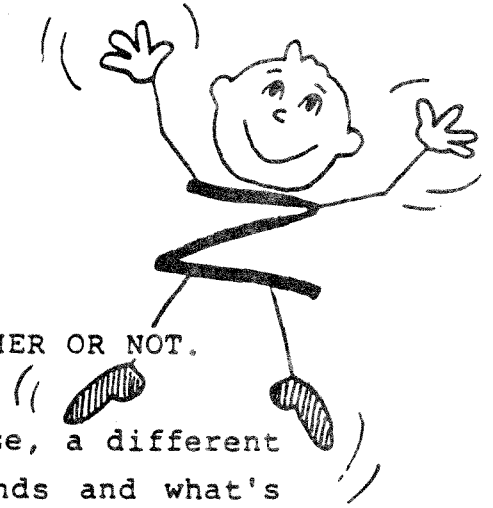
The children will always be connected with



ANY CHILD CAN HAVE

UPS... AND DOWNS...

--- WHETHER HIS PARENTS ARE TOGETHER OR NOT.



Brothers and sisters, a new house, a different school or new grade level, his friends and what's happening to them, his physical health, mom going to work, just getting older --- all these things affect every child and can, at times, cause you to worry. If you feel the problem is getting out of hand, whatever the cause, ask for professional help. You are not alone.

UNDERSTAND YOUR CHILDREN ---

The children will naturally be affected by the divorce --- especially your feelings about it. The affect can be permanently disabling, unless you work hard to prevent that.

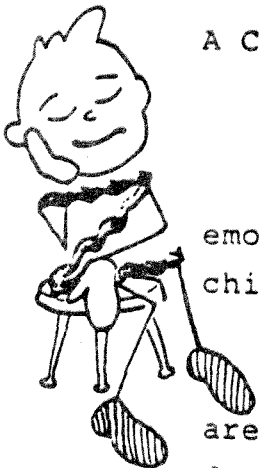
Explain the situation as best you can, even to very young children. There are booklets designed especially to help you through this important talk.

A CHILD FEELS WHAT HE FEELS ---

even if you wish he wouldn't.

Anger, resentment, sadness --- these strong emotions alarm the parent who sees them in his child.

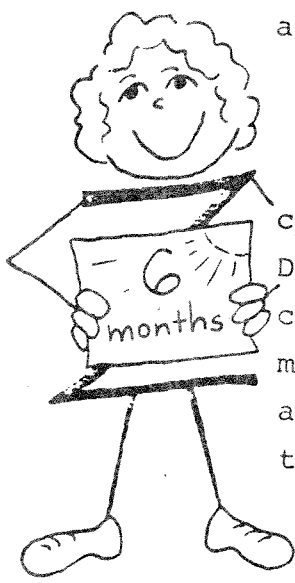
Accepting the child's feelings for what they are is the first step to helping him. Kids can and do adjust to new situations.





Kids also need to know the rules in the new situation --- what ways they can and can't express these feelings. It is important, however, to realize that accepting the child's feelings is not the same as accepting the way those feelings can be acted out. Johnny may be angry because he has to share a bedroom with his brother in your new house --- that's one thing. But for him to make you give up your room for him? That's another. Keep in mind that no matter how bossy a child can try to be, he still needs the assurance that there is a grown-up around who's really in control...for a child, that's security.

Your child will be making a transition from an old way of life to a new one. You can't ignore the past --- or what's happening in the present --- that you may not like. A child may react to the new life by being babyish, moping, fighting, or having problems at school. These are symptoms of distress, and parents separately need to recognize the symptoms and deal with them.



You can expect your child to successfully complete a major adjustment in about six months. Divorce demands major adjustments of children. They can use all the help they can get --- and preferably most of that comes from understanding and caring adults --- parents, grandparents, aunts, uncles, teachers, minister, etc.



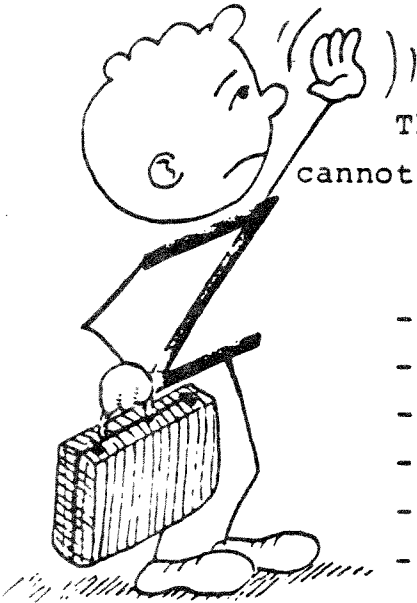
The six-month adjustment period is, of course, a generalization. Your child may need more or less time. Some factors to keep in mind are:

- the age of the child
- the emotional state of the child
- the quality of adult assistance given to the child
- the stability of physical and emotional support for the child
- the attitude of the adults closely associating with the child
- the degree to which parents (and others) support each other's relationship with the child

Many of the above are factors which the parents can and must control.

These following items, however, very often cannot be controlled following a divorce:

- changing homes
- changing schools
- losing friends
- losing pets
- distance from extended family
- financial deprivation
- loss of privacy (own room, etc.)



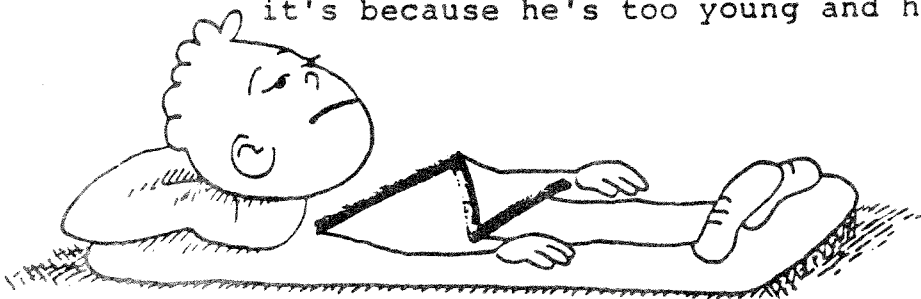


Be alert to the more serious symptoms of distress in your child, such as disturbance in sleep, disturbance of appetite, regression in toileting habits.

As you know, any child will experience these things occasionally, and/or for short periods of time. At a certain age, usually up to age eight, a child will also experience "night terror" --- the really bad nightmares that send them screaming and running to your bed for a great deal of comfort.

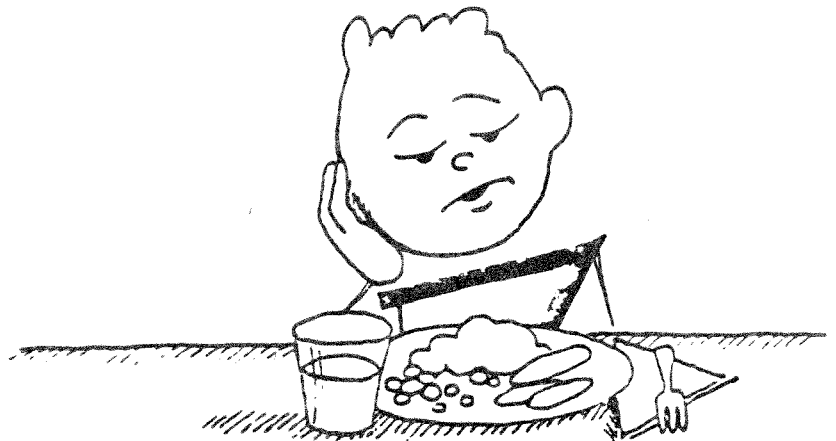
But, "serious symptoms of distress" are distinguishable in their nature and duration. The child also realizes something is very wrong, and he's frightened deeply because he believes there's no relief. Seek immediate help from a child specialist when you see these serious symptoms.

Back to the milder forms of symptoms --- these signals serve a wonderful purpose. They let you know something is troubling your child. Remember there is a reason why you have to rely on these physical signals from you child --- it's because your child can't tell you he's troubled. Sometimes it's because he's too young and hasn't the verbal

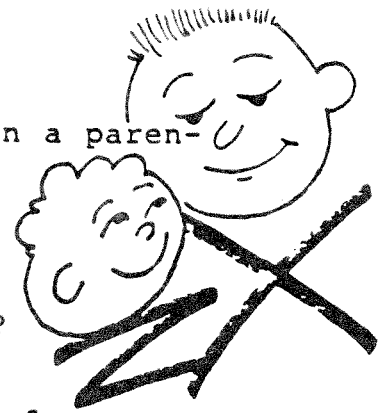


skills, sometimes it's because he's unable to identify what's troubling him, sometimes it's because he's not comfortable talking with you about his troubles, and sometimes it's because he's so torn up with guilt and/or confusion and/or anger that he thinks he deserves troubled feelings.

In the overall picture of comparisons, it is potentially healthier for your child to display some mild symptoms. The alternative exists in the significant number of seemingly "well-adjusted" children, who in reality are en route to horrible lives. Take a child who's going through his parents' divorce, following a really unnerving time just before their separation. Money is short, dad's gone, mom cries a lot, the dog was sent to the shelter, child and mom are in a one-bedroom trailer in a new school district, grandpa just died, and grandma moved to Cincinnati to live with Aunt Mary. Now envision this child going quietly and obediently through each day, smiling. Scary, huh?



And, how does one get on with life in a parentally responsible manner?



WHICH IS BETTER FOR YOUR CHILD?

A parent getting what she/he needs from many sources?

or

A parent who "lives only for the kids"?

You may wonder --- "Am I doing what's best?"  
"Am I handling this right?"

The best way a single parent should handle a child --- is the best way any parent should ---

By giving the child support, understanding, freedom to feel what he feels, but with control over the way the child is allowed to act --- and giving him the security of knowing he will always be loved by both parents.

UNDERSTAND YOURSELF --- AS A NEW "SINGLE PARENT" ---

Your lifestyle has changed --- you've had, and will have, some losses, some gains.

As a single person, you can bring many new joys and satisfactions into your life....if that is the attitude you take.

Even when circumstances seem to be beyond your control, your outlook on those circumstances can still be yours.



WHAT WILL BE YOUR ATTITUDE TOWARD YOUR NEW LIFE?

How do you pull yourself together from your most devastating experience to help yourself and your child? It isn't easy, and you will find it even increases your own pain for awhile.

Talk to a helper. Talk honestly to a helper, a kind and calming helper who will talk honestly back to you. Talk with and listen to your child. Ask the other parent to talk with and listen to the child. Have fun with your child. Heal, recuperate, get on with your life, and provide your child with ways to do the same. Expand his life, encourage other caring and fun people into his life.

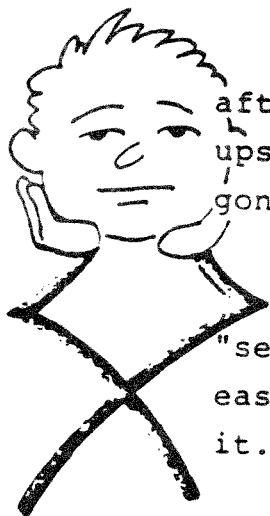
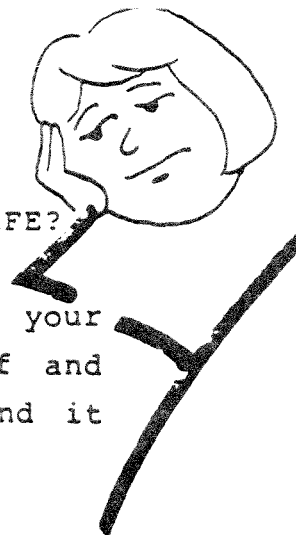
IF YOU'RE THE PRIMARY PARENT:

Encourage visitation --- it's for the children --- they really need contact with their other parent.

Remember that the contact with the other parent is more important to the children than whether or not they are treated "your way" --- the other parent's way is really okay with the kids.

Your children need a brief adjustment period after visitation. If they act out a bit or seem upset, it doesn't necessarily mean something has gone wrong at the other house.

The end of every visitation is another hurt of "separation" for the child at first. It will get easier on all of you in time, and if you all work at it.

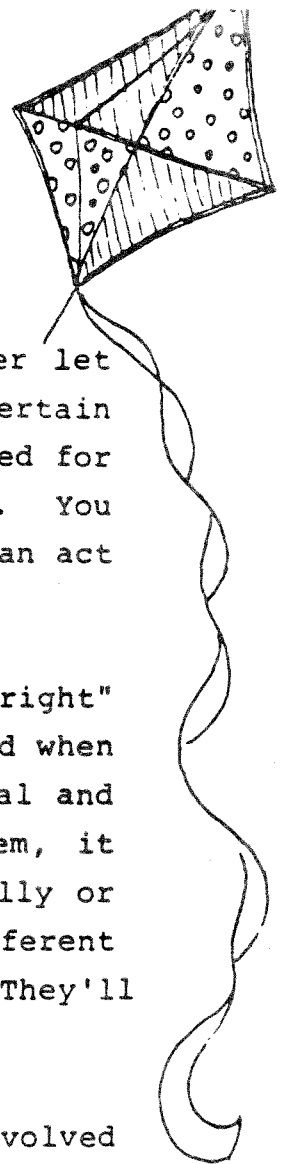
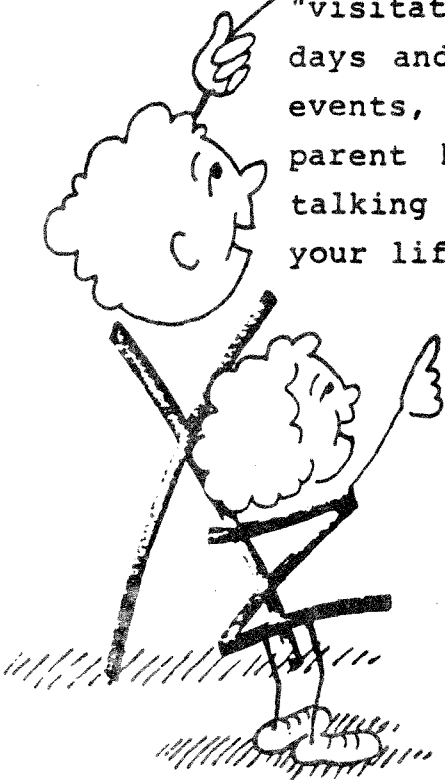


IF YOU'RE NOT THE PRIMARY PARENT:

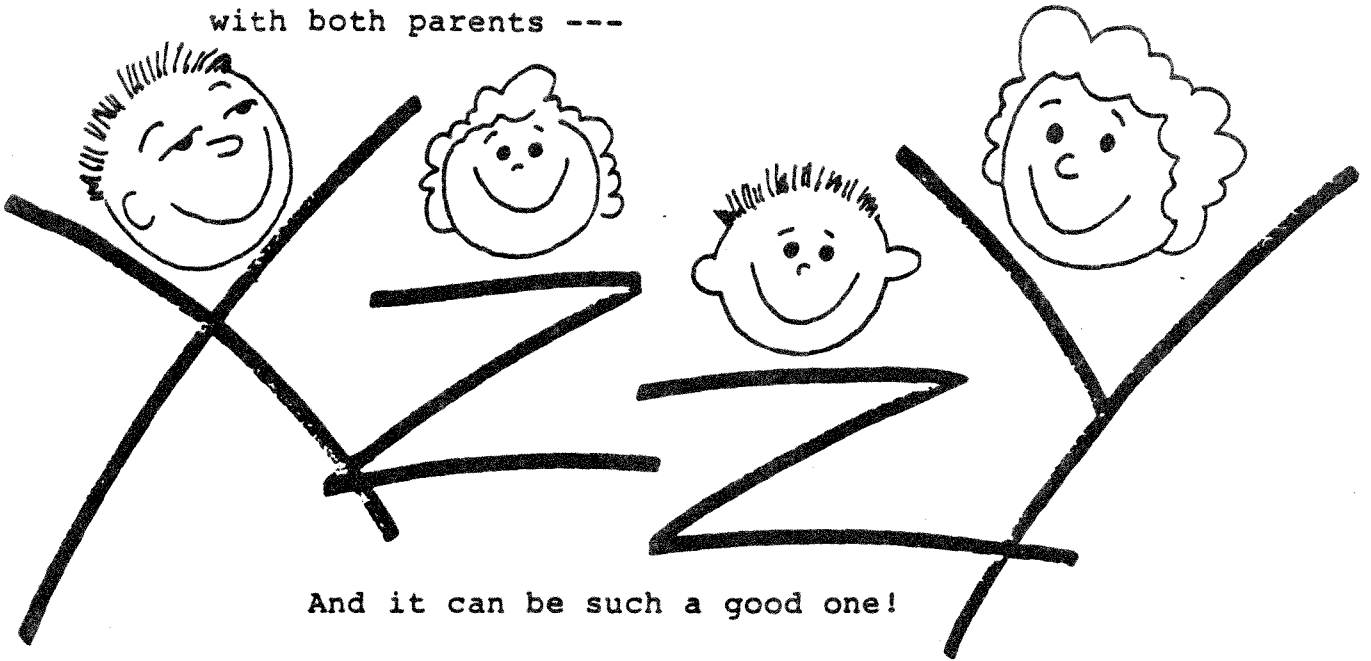
Visits should be regular --- try to never let the kids down. Don't feel you have to entertain them, but let them know what to expect. No need for expensive presents. Be who and how you are. You might as well, because kids see right through an act anyway.

Try to remember that visitation is a "right" for the children more than for yourselves. And when the children reach an age that their own social and recreational needs are more important to them, it isn't something that you have to take personally or take as a rejection --- they simply have different priorities than yours. They still love you. They'll still find room for you in their lives.

Find your own creative ways for being involved with your child's life in addition to your actual "visitation" times. Send cards, remember special days and occasions, go to the school, attend their events, stay informed about them, ask the other parent how the child is doing, offer to help by talking with the child during bad times. And, get your life in order, if it isn't already.



The children will always have a relationship  
with both parents ---



And it can be such a good one!

Try your best to give your child the chance to  
enter adulthood with the best footing possible.  
This task has to fall to you, the parents.

Who else is there, after all is said and done?

YOU MAY FIND THESE BOOKS HELPFUL:

CREATIVE DIVORCE - Krantzler (Especially the chapter  
on "Seeing the Person in the Child")

TALKING ABOUT DIVORCE - A DIALOGUE BETWEEN PARENT &  
CHILD - Grollman

YOUR CHILD'S SELF-ESTEEM - Briggs

THE BOYS' AND GIRLS' BOOK ABOUT DIVORCE - Gardner

CHILDREN OF DIVORCE - Despert

THE PARENTS' BOOK ABOUT DIVORCE - Gardner

SURVIVING THE BREAKUP - Wallerstein and Kelly

MOM'S HOUSE - DAD'S HOUSE - Ricci





# ***FAMILIES DIVIDED***

***MAKING IT BETTER FOR THE CHILDREN***

**DESIGNED FOR PARENTS  
WHO WANT TO MAKE  
JOINT CUSTODY  
WORK  
FOR THEIR CHILDREN**

**TEXT**

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Revised 1985

75  
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And a woman who held a babe against  
her bosom said, Speak to us of Children.

And he said:  
Your children are not your children.  
They are the sons and daughters of Life's  
longing for itself.  
They come through you but not from  
you,  
And though they are with you, yet they  
belong not to you.

You may give them your love but not  
your thoughts,  
For they have their own thoughts.  
You may house their bodies but not  
their souls  
For their souls dwell in the house of  
tomorrow, which you cannot visit, not  
even in your dreams.  
You may strive to be like them, but seek  
not to make them like you.  
For life goes backward nor carries  
with yesterday.

You are the bows from which your chil-  
dren as living arrows are sent forth.  
The archer sees the mark upon the path  
of the infinite, and He bends you with His  
might that His arrows may go swift and far.  
Let your bending in the archer's hand be  
for gladness;  
For even as He loves the arrow that flies,  
so He loves also the bow that is stable.

KAHLIL GIBRAN, The Prophet

IN CALIFORNIA, THERE IS NO LONGER A LEGAL BATTLE OVER DIVORCE ITSELF. YOU DO NOT HAVE TO PROVE YOUR SPOUSE WAS "UNFAITHFUL" OR "MENTALLY CRUEL." EVEN PROPERTY SETTLEMENTS ARE PRETTY WELL COVERED BY COMMUNITY PROPERTY RULES.

CUSTODY OF THE CHILDREN, HOWEVER, STILL BRINGS ON HORRIBLE LEGAL AND EMOTIONAL FIGHTS BETWEEN DIVORCING PEOPLE.

THIS BOOKLET IS TO TELL YOU THERE ARE VARIOUS WAYS CUSTODY CAN BE ARRANGED, HOW THESE THINGS CAN AFFECT YOU AND THE CHILDREN, AND SOME ISSUES TO KEEP IN MIND WHEN PLANNING FOR YOUR CHILDREN - - DURING AND AFTER DIVORCE.

PLEASE REMEMBER, THIS BOOKLET REPRESENTS OPINIONS AND MAY BE HELPFUL TO YOU, BUT IT IS NOT LEGAL ADVICE.

NOTE: THIS BOOKLET INFORMATION ALSO APPLIES TO PARENTS WHO WERE NEVER MARRIED TO EACH OTHER - - BECAUSE THE CHILDREN HAVE RIGHTS REGARDLESS OF THE MARITAL STATUS OF THEIR PARENTS.

IN MOST SITUATIONS, THERE IS NO ARGUMENT BETWEEN THE PARENTS ABOUT WHO WILL HAVE PHYSICAL CUSTODY OF THE CHILDREN.

IN THESE CASES, THE COURT SIMPLY ACCEPTS,  
AND ORDERS, IN ACCORDANCE WITH THE PAR-  
ENTS' ARRANGEMENT.

IF THE PARENTS DISAGREE OVER CUSTODY,  
THE COURT THEN MUST DECIDE FOR THEM.

SOMETIMES, EVEN MONTHS OR YEARS LATER,  
PARENTS DISAGREE OVER CUSTODY OF THEIR  
CHILDREN. IF THEY RETURN TO COURT FOR  
RESOLUTION OF THIS DISAGREEMENT, THE  
PARENTS ARE REQUESTING A MODIFICATION  
OF AN EXISTING CUSTODY ORDER.

VISITATION BETWEEN CHILDREN AND THE  
NON-CUSTODIAL PARENT IS SOMETIMES A  
DISPUTED ISSUE WHICH THE COURT MUST  
RULE ON. AGAIN, THIS MAY HAPPEN AT  
ANY TIME.

CALIFORNIA CIVIL CODE SECTION 4600 BEGINS  
WITH THESE VERY IMPRESSIVE WORDS:

"THE LEGISLATURE FINDS AND DECLARES  
THAT IT IS THE PUBLIC POLICY OF THIS  
STATE TO ASSURE MINOR CHILDREN OF  
FREQUENT AND CONTINUING CONTACT WITH  
BOTH PARENTS AFTER THE PARENTS HAVE  
SEPARATED OR DISSOLVED THEIR MARRIAGE,  
AND TO ENCOURAGE PARENTS TO SHARE THE  
RIGHTS AND RESPONSIBILITIES OF CHILD  
REARING IN ORDER TO EFFECT THIS POLICY."

FOR MANY YEARS, CALIFORNIA HAS STEADILY  
MOVED CLOSER AND CLOSER TO FAMILY LAW  
WHICH PLACES THE NEEDS OF THE CHILDREN  
UPPERMOST IN THE SCHEME OF THINGS, WHEN  
PARENTS DISPUTE CUSTODY OR VISITATION.

THE MOST RECENT AND SIGNIFICANT DEM-  
ONSTRATION OF THIS IS WHAT'S COMMONLY  
CALLED "JOINT CUSTODY." THIS NEEDS  
DEFINITION.

THE PHRASE "JOINT CUSTODY" IS MISLEADING,  
THEREFORE OFTEN MISUNDERSTOOD. MANY  
PEOPLE DEDUCE THAT IT MEANS "SIX MONTHS  
WITH MOM AND SIX MONTHS WITH DAD."  
NOT SO. ALTHOUGH IT CAN MEAN THAT, IT  
DOESN'T USUALLY MEAN THAT.

START BY RECOGNIZING CUSTODY IN TWO SEPARATE AND DISTINCT CATEGORIES -- LEGAL CUSTODY, AND PHYSICAL CUSTODY.



IN 1984, CALIFORNIA CIVIL CODE GAVE US A CLEAR DEFINITION OF JOINT CUSTODY, LEGAL CUSTODY AND PHYSICAL CUSTODY.

SECTION 4600.5 READS, IN PART, AS FOLLOWS:

(1) JOINT CUSTODY- MEANS JOINT PHYSICAL CUSTODY AND JOINT LEGAL CUSTODY.

(2) SOLE PHYSICAL CUSTODY- MEANS THAT A CHILD SHALL RESIDE WITH AND UNDER THE SUPERVISION OF ONE PARENT, SUBJECT TO THE POWER OF THE COURT TO ORDER VISITATION.

(3) JOINT PHYSICAL CUSTODY- MEANS THAT EACH OF THE PARENTS SHALL HAVE SIGNIFICANT PERIODS OF PHYSICAL CUSTODY. JOINT PHYSICAL CUSTODY SHALL BE SHARED BY THE PARENTS IN SUCH A WAY SO AS TO ASSURE A CHILD OF FREQUENT AND CONTINUING CONTACT WITH BOTH PARENTS.

(4) SOLE LEGAL CUSTODY- MEANS THAT ONE PARENT SHALL HAVE THE RIGHT AND THE RESPONSIBILITY TO MAKE THE DECISIONS RELATING TO THE HEALTH, EDUCATION, AND WELFARE OF A CHILD.

(5) JOINT LEGAL CUSTODY- MEANS THAT BOTH PARENTS SHALL SHARE THE RIGHT AND THE RESPONSIBILITY TO MAKE THE DECISIONS RELATING TO THE HEALTH, EDUCATION, AND WELFARE OF THE CHILD.

AN EXAMPLE OF A MAJOR DECISION WHICH IS CONTROLLED BY JOINT LEGAL CUSTODY IS THAT OF GEOGRAPHICAL MOVES OF THE CHILD -- THAT IS, NEITHER PARENT MAY MOVE A CHILD TO ANOTHER CITY/COUNTY/STATE WITHOUT THE OTHER PARENT'S WRITTEN CONSENT OR A COURT ORDER. TO DO SO WITHOUT A CONSENT OR A COURT ORDER COULD VERY LIKELY BRING A CHANGE IN PHYSICAL CUSTODY, AMONG OTHER THINGS.

JOINT LEGAL CUSTODY IS INTENDED TO GUARANTEE CHILDREN EQUAL ACCESS TO, AND GUIDANCE FROM, AND PROTECTION BY BOTH PARENTS, DURING ALL THE YEARS OF MINORITY. THAT'S THE NUMBER ONE SENTENCE TO KEEP IN MIND.

ANOTHER PART OF CIVIL CODE SECTION 4600.5 READS:

"NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ACCESS TO RECORDS AND INFORMATION PERTAINING TO A MINOR CHILD, INCLUDING BUT NOT LIMITED TO MEDICAL, DENTAL, AND SCHOOL RECORDS, SHALL NOT BE DENIED TO A PARENT BECAUSE SUCH PARENT IS NOT THE CHILD'S CUSTODIAL PARENT."

JOINT LEGAL CUSTODY RECOGNIZES THAT CHILDREN HAVE TWO PARENTS, HAVE A RELATIONSHIP WITH EACH PARENT, HAVE A NEED FOR EACH PARENT, AND HAVE AN IDENTITY WITH EACH PARENT.

JOINT LEGAL CUSTODY IS INTENDED TO EQUALIZE THE POWER BETWEEN THE PARENTS, SO AS TO GUARANTEE THE CHILD SOME HARMONY IN HIS/HER LIFE.

JOINT LEGAL CUSTODY BASICALLY MEANS THAT EACH PARENT HAS RIGHTS AND RESPONSIBILITIES, EQUALLY IMPORTANT.

IT IS INTENDED THAT PARENTS ARRIVE AT MAJOR DECISIONS REGARDING THE CHILDREN BY USING THE SAME STANDARDS AS WOULD HAVE PREVAILED HAD THE MARRIAGE REMAINED INTACT. THIS ESPECIALLY RELATES TO DECISIONS WHICH WERE FORMED BY THE PARENTS, FOR THE CHILDREN, WHILE THE MARRIAGE WAS INTACT.

SOME MAJOR DECISIONS ARE PLACE OF RESIDENCE, EDUCATION, RELIGION, CHILD CARE, MEDICAL AND DENTAL AND EMOTIONAL TREATMENT, FINANCIAL ASSETS AND LIABILITIES AND SOMETIMES EVEN RECREATION.

JOINT LEGAL CUSTODY ALSO MEANS THAT PARENTS CAN MODIFY ANY MATTERS REGARDING THEIR CHILDREN WITHOUT RETURNING TO COURT, AT ANY TIME AND AS OFTEN AS NEEDED, SIMPLY BY MUTUAL AGREEMENT (SOMETIMES IN WRITING).

IT'S CLEAR THAT JOINT LEGAL CUSTODY ABSOLUTELY REQUIRES THAT THE PARENTS

BE ABLE TO PUT THEIR CHILDREN FIRST. THAT'S SOMETIMES DIFFICULT, ESPECIALLY AT THE BEGINNING OF THE DIVORCE WHEN EMOTIONS ARE SO RAW AND UNCONTROLLED. (BUT THIS IS ALSO THE TIME WHEN CHILDREN GET THE LEAST OF WHAT THEY NEED MOST).

UNDER JOINT LEGAL CUSTODY, THE ADVANTAGES FOR THE CHILDREN ARE NUMEROUS -- AND, WE BELIEVE, ALL POSITIVE.

PHYSICAL CUSTODY MEANS WHERE THE CHILD LIVES -- OBVIOUSLY. SINCE MOST PARENTS AND PROFESSIONALS AGREE THAT STABILITY AND SECURITY ARE AS IMPORTANT TO CHILDREN AS ARE FOOD, CLOTHING, AND SHELTER THE MOST OFTEN APPLIED ORDERS FOR PHYSICAL CUSTODY ARE THAT ONE PARENT PROVIDES THE PRIMARY HOME, AND THE OTHER PARENT PROVIDES THE SECONDARY HOME. "SECONDARY" SIMPLY MEANS LESSER QUANTITY OF TIME NOT LESSER QUALITY OF CHILD-PARENT RELATIONSHIP.

EACH PARENT SHOULD MEET THE PHYSICAL NEEDS OF THE CHILD IN HIS/HER OWN HOME.

THE CHILD SHOULD HAVE HIS/HER OWN BED, AND CLOTHES, AND TOYS, AND PRIVACY, AND ANYTHING ELSE THAT MAKES THE CHILD FEEL LOVED AND IMPORTANT AT THAT RESIDENCE - FOR WHATEVER PERIOD OF TIME HE/SHE IS AT THAT RESIDENCE.

THE SPECIFIC BREAKDOWN OF TIME A CHILD SPENDS AT THE "SECONDARY HOME" IS OFTEN CALLED "VISITATION," AND DEPENDS ON AGAIN, WHAT WORKS FOR THE CHILD AND GOOD COMMON SENSE.

VISITATION PLANS ARE DESIGNED FOR EACH INDIVIDUAL CHILD DEPENDING ON HIS/HER AGE, AND A WHOLE LOT OF OTHER ISSUES.

FOR EXAMPLE, THE VERY YOUNG CHILD (INFANT TO THREE YEARS OLD) NEEDS FREQUENT IF BRIEF CONTACTS WITH THE NON-CUSTODIAL PARENT. OLDER CHILDREN (FOUR TO SEVEN) CAN HANDLE ABOUT FOURTEEN DAYS BETWEEN VISITS.

FROM ABOUT AGES SEVEN TO TEN, CHILDREN DEVELOP A NEED TO BE PRIMARILY WITH THEIR SAME-SEX PARENT.

BY ABOUT AGES TEN TO THIRTEEN, CHILDREN BEGIN "BREAKING AWAY" A LITTLE BIT --- SOCIALIZING MORE AND MORE WITH THEIR PEERS AND BECOMING ACQUAINTED WITH THEIR "POWERS" AND LIMITATIONS, "FINDING OUT THE HARD WAY" ABOUT SOME THINGS IN LIFE, PREPARING FOR THE TOUGH YEARS AHEAD, LEARNING ABOUT RESPONSIBILITIES THAT FEEL SO GOOD ONE MINUTE AND SO LONELY THE NEXT.

IS IT ANY WONDER THAT CHILDREN NEED ALL THE HELP THEY CAN GET? AND THAT IS HOPEFULLY COMING FROM ALL SUPPORT SYSTEMS --- PARENTS, EXTENDED FAMILIES, SIBLINGS, FRIENDS, ETC.

IT IS THE RESPONSIBILITY OF THE PARENTS TO SEE THAT VISITATION IS CONSISTENT, REGULAR, TROUBLE-FREE AND SATISFYING FOR THE CHILDREN.

CHILDREN CAN UNDERSTAND AN OCCASIONAL "BROKEN PROMISE," BUT SHORT OF EMERGENCIES, DON'T MISS A VISITATION WITH THEM. SUPPLEMENT VISITS WITH PHONE CALLS AND LETTERS - ESPECIALLY IF THERE IS A LOT OF MILEAGE BETWEEN YOUR HOME AND THE CHILD'S. PHONE CALLS AND LETTERS NEED TO BE SHORT, AND LIGHT-HEARTED...AN EXPRESSION OF "HI, I LOVE YOU, AND I'M HERE FOR YOU" IS OFTEN A BRIGHT SPOT IN A CHILD'S LIFE, AND CAN'T BE SAID TOO OFTEN.

PHYSICAL CUSTODY IS NEVER REALLY PERMANENT.

CHILDREN CHANGE AND PARENTS CHANGE.

CHILDREN SOMETIMES DESPERATELY NEED TO SPEND A LONG TIME WITH THE PARENT WHO HAS BEEN THE NON-CUSTODIAL PARENT.

ANY NON-CUSTODIAL PARENT CAN TELL YOU HOW THEY SOMETIMES DESPERATELY NEED TO SPEND TIME WITH THE CHILDREN.

CUSTODIAL PARENTS CAN ALSO TELL YOU OF THEIR PERIODIC NEEDS TO BE AWAY FROM THE CHILDREN. LET THE CHILD LEARN FROM ALL THE OTHERS IN HIS LIFE -- IT IS GOOD FOR HIM OR HER.

SOMETIMES, THE BREAKDOWN OF TIME A CHILD SPENDS WITH EACH PARENT IS CALLED "SHARED PHYSICAL CUSTODY" OR "SPLIT PHYSICAL CUSTODY" (RATHER THAN "VISITATION").

THE WORDS ACTUALLY CHOSEN HAVE ABSOLUTELY NO IMPACT ON THE REAL PRACTICE OF THE CHILD-TO-PARENT RELATIONSHIP, ESPECIALLY FROM THE CHILD'S POINT OF VIEW. PARENTS MAY HAVE A PREFERENCE ABOUT THE WORDING - SOMETIMES FOR PERSONAL OR SOCIAL OR FINANCIAL REASONS.

CHILDREN CAN, AND DO, LOVE BOTH PARENTS, AND ANYONE ELSE WHO IS IMPORTANT TO THEM. BUT A CHILD'S LOVE IS BOUNDLESS. THEY DON'T METER LOVE OUT IN CERTAIN QUANTITIES TO CERTAIN FOLKS, AND RUN SHORT OF LOVE FOR OTHERS. THEY JUST LOVE.

AND THEY NEED TWO PARENTS, EVEN IF DIVORCED.

WHETHER THIS IS THE BEGINNING OF YOUR DIVORCE, OR IT'S BEEN FINAL FOR YEARS - IF YOU AND THE OTHER PARENT ARE IN DISPUTE OVER THE CUSTODY OF OR VISITATION WITH THE CHILDREN, PLEASE TRY

TO NEGOTIATE WITH EACH OTHER AND ARRIVE  
AT A GOOD DECISION FOR THESE YOUNGSTERS.  
ONCE THEY REACH AGE 18, PARENTS CAN DIS-  
REGARD EACH OTHER. BUT JUST NOW, THAT'S  
NOT THE ANSWER.

REMEMBER - YOU DON'T HAVE TO MAKE  
THESE DECISIONS IN COURT, OR THROUGH  
AN ATTORNEY. YOU CAN, AND SHOULD,  
MAKE THESE DECISIONS OUTSIDE THE COURT.  
THE COURT, OF COURSE, WILL ASSIST WHEN  
ABSOLUTELY NECESSARY. UNFORTUNATELY,  
THIS SEEMS "NECESSARY" ALL TOO OFTEN.  
WHEN THE COURT IS ASKED TO MAKE  
FAMILY DECISIONS, THERE IS THE INFERENCE  
THAT THE PARENTS DO NOT AGREE ON WHAT'S  
BEST FOR THEIR CHILDREN.



SO - WHAT GUIDELINES DO YOU NEED TO COMPLETE  
YOUR OWN PACKAGE OF "CHILDREN FIRST?"

REMEMBER THAT YOU - THE PARENTS -  
ARE THE ONLY ONES ADEQUATELY EQUIPPED  
TO MAKE DECISIONS FOR YOUR CHILDREN.  
YOU KNOW THEM, YOU'RE AWARE OF THEIR  
STRENGTHS AND WEAKNESSES, YOU KNOW OF  
THEIR WAYS OF SHOWING JOY AND SADNESS  
AND FEAR AND LOVE. AND YOU KNOW WHAT  
RESPONSES THEY NEED TO ALL OF THESE.  
YOU KNOW WHICH CHILD REQUIRES MORE OR  
LESS DISCIPLINE, AND WHAT KIND FOR  
WHAT OFFENSE, AND WHICH IS THE SHY  
CHILD, AND WHICH IS THE OUTGOING CHILD.

TAKING ALL OF THAT, PLUS A MILLION OTHER  
THINGS PARENTS KNOW ABOUT THEIR CHILDREN,  
THEN TAKING INTO ACCOUNT WHAT THE SPECIAL  
CHILD OF DIVORCE NEEDS, DOES EQUAL A "GOOD  
DECISION." WE AREN'T TALKING ABOUT "GREAT"  
OR "PERFECT" DECISIONS - BUT JUST GOOD,  
SOUND ONES.

MAJOR DECISIONS IN WHICH PARENTS  
DISAGREE, NEED RESOLUTION BASED ON  
"HOW WOULD WE HAVE DECIDED THIS IF  
WE WERE STILL ONE FAMILY?"

SOME OTHER GUIDELINES RELATE TO SIMPLY "WEIGHING AND MEASURING" OF PARENTING ABILITIES, SKILLS AND SENSITIVITIES. THE FOLLOWING AREAS ARE ROUTINELY CONSIDERED BY FAMILY COURT PERSONNEL:

A. PHYSICAL PROVISIONS OF

- \* FOOD, CLOTHING, SHELTER
- \* MEDICAL CARE / DENTAL CARE
- \* EDUCATION, RECREATION
- \* EXTENDED FAMILY AS SUPPORT SYSTEMS
- \* ACTIVITIES AND INTERESTS AND OTHER PEOPLE WHO HAVE BEEN IMPORTANT TO THE CHILD

B. EMOTIONAL PROVISIONS OF

- \* LOVE AND AFFECTION
- \* GUIDANCE
- \* APPROPRIATE DISCIPLINE
- \* QUALITY OF RELATIONSHIP BETWEEN PARENT AND CHILD
- \* COOPERATION WITH VISITATION FOR CHILD AND OTHER PARENT
- \* CHILD'S REASONABLE PREFERENCE
- \* WHAT HAS BEEN THE STABLE AND WHOLESOME RESIDENCE OF THE CHILD
- \* HOW IS A MAJOR CHANGE LIKELY TO AFFECT THE CHILD

THERE ARE, OF COURSE, MANY OTHER AREAS WHICH ARE TAKEN INTO CONSIDERATION, WHICH SIMPLY CAN'T ALL BE LISTED HERE.

WHEN PARENTS ARE REFERRED TO THIS COUNTY'S FAMILY COURT SERVICES OF MEDIATION, PARENTS ARE REQUIRED TO MEET TOGETHER WITH THE COURT'S PERSONNEL, AND FOCUS ON THE CHILDREN.

YOU ARE REQUIRED TO IDENTIFY THE NEEDS OF YOUR CHILDREN, YOUR RELATIONSHIP WITH THEM, WHAT YOU HAVE TO OFFER THEM, WHY THAT'S THE BEST FOR THEM AT THIS TIME, AND IN GENERAL, ACCEPT AND COMPLETE THE TASK OF MAKING DECISIONS -- TOGETHER -- FOR YOUR CHILDREN.

AS INDIVIDUALS IN THIS NEGOTIATION BUSINESS, EACH OF YOU WILL HAVE TO WIN SOME AND LOSE SOME - AS YOU DO IN ANY PART OF LIFE. BUT AS PARENTS, DON'T PLAY WIN-LOSE GAMES WITH YOUR CHILDREN.

WHATEVER THE CUSTODY SITUATION, YOUR CHILDREN STILL NEED TO KNOW OF YOUR CONCERN FOR THEM.

STAY HONEST. TRY TO DO WHAT'S BEST FOR THE CHILDREN NOW, AND IT WILL COME BACK TO YOU TEN-FOLD LATER.

STRANGE, IS IT NOT? THAT OF THE MYRIADS WHO  
BEFORE US PASS'D THE DOOR OF DARKNESS THROUGH,  
NOT ONE RETURNS TO TELL US OF THE ROAD,  
WHICH TO DISCOVER WE MUST TRAVEL TOO.

- OMAR KHAYYAM

WE CAN RECOGNIZE THE ABOVE AS A COMMENT ON DEATH.

DIVORCE IS OFTEN MORE DEVASTATING THAN DEATH, FOR CHILDREN.

KHAYYAM'S COMMENT IS INCLUDED HERE AS DRAMATIC CONTRAST FOR  
DIVORCING PARENTS OF MINORS. PEOPLE DO RETURN TO TELL US  
OF THE "DIVORCE ROAD" - TO OFFER GUIDANCE AND SUGGESTIONS.

AND NOW, IT'S TIME FOR THE "EXCEPTIONS" TO ALL THE PRECEEDING  
PAGES WHICH YOU'VE JUST READ. THIS BOOKLET WAS DESIGNED ON  
THE BASIC NOTION THAT ALL PARENTS ARE GOOD AND ALL CHILDREN  
EXPERIENCE HEALTHY RELATIONSHIPS WITH THEIR PARENTS. THE  
SAD THING IS, THAT BASIC NOTION IS NOT ALWAYS TRUE. SOME  
CHILDREN ARE NEGLECTED; ABUSED, TORMENTED AND ENDANGERED BY  
SOME PARENTS. IF YOUR CHILD IS ONE WHO IS IN DANGER WITH  
EITHER OR BOTH PARENTS, A WHOLE NEW SET OF RULES AND GUIDE-  
LINES COME INTO PLAY. REMEMBER, OUR SINGLE OBJECTIVE IS TO  
SERVE CHILDREN AND PROTECT THEM AND PRESERVE THEIR RIGHTS.  
THAT IS WHAT WE WILL DO.

Speak gently to the little child  
Its love be sure to gain.  
Teach it in accents soft and mild.  
It may not long remain.

- David Bates.

NOW - there is a time to be born,  
and a time to die, says Solomon, and it  
is the memento of a truly wise man; but  
there is an interval between these two  
times of infinite importance.

- Richmond

### A BOY TO TRAIN

The man who has a boy to train,  
Has work to keep him night and day.  
There's much to him he must explain,  
And many a doubt to clear away;  
His task is one which calls for tact  
And friendship of the finest kind,  
Because, with every word and act,  
He molds the little fellow's mind.  
He must be careful of his speech,  
For careless words are quickly learned;  
He must be wise enough to teach  
What corners may be safely turned.

- Edgar A. Guest

LIFE'S LOYALTIES - I am not  
bound to win, but I am bound to be true.  
I am not bound to succeed, but I am  
bound to live by the light that I have. I  
must stand with anybody that stands  
right, stand with him while he is right,  
and part with him when he goes wrong.

- Abraham Lincoln



A BOTANY LESSON- If we had paid no more attention to our plants than we have to our children, we would now be living in a jungle of weeds.

-Luther Burbank.

***FAMILIES DIVIDED***

***DESIGNED TO BE  
READ BY YOUNG  
CHILDREN  
AGES 7 & UP***

**TEXT**

**Joan Lewis & Ann Hoffman**

**DESIGN**

**Margery Casebeer**

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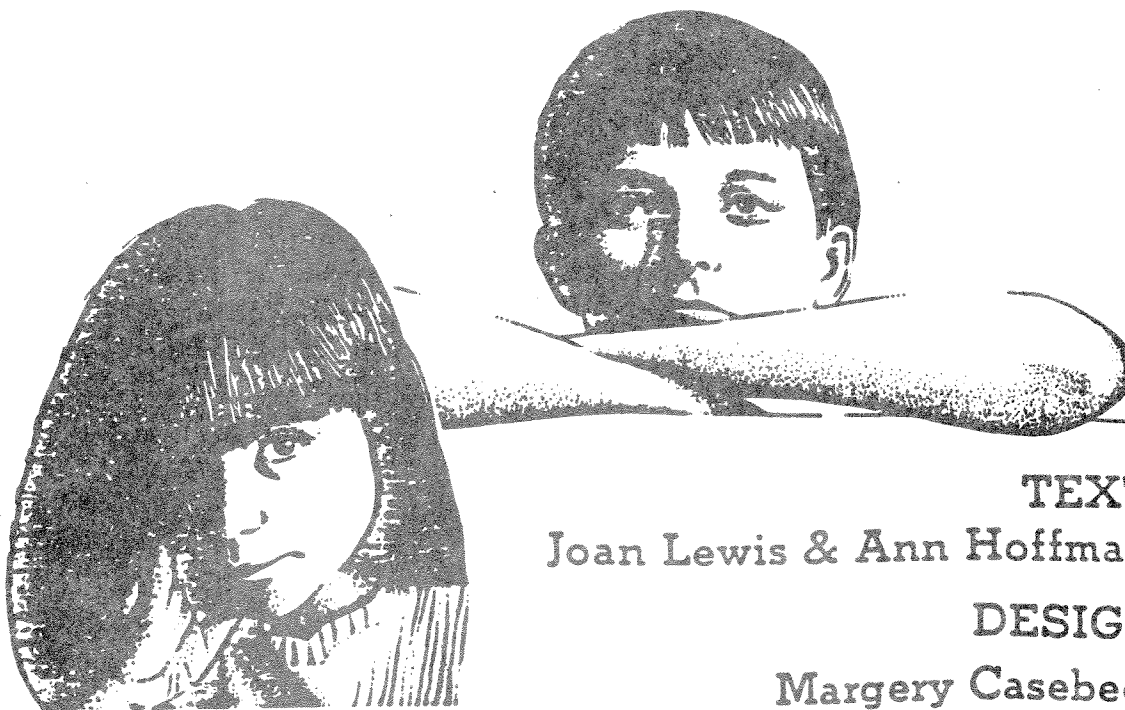
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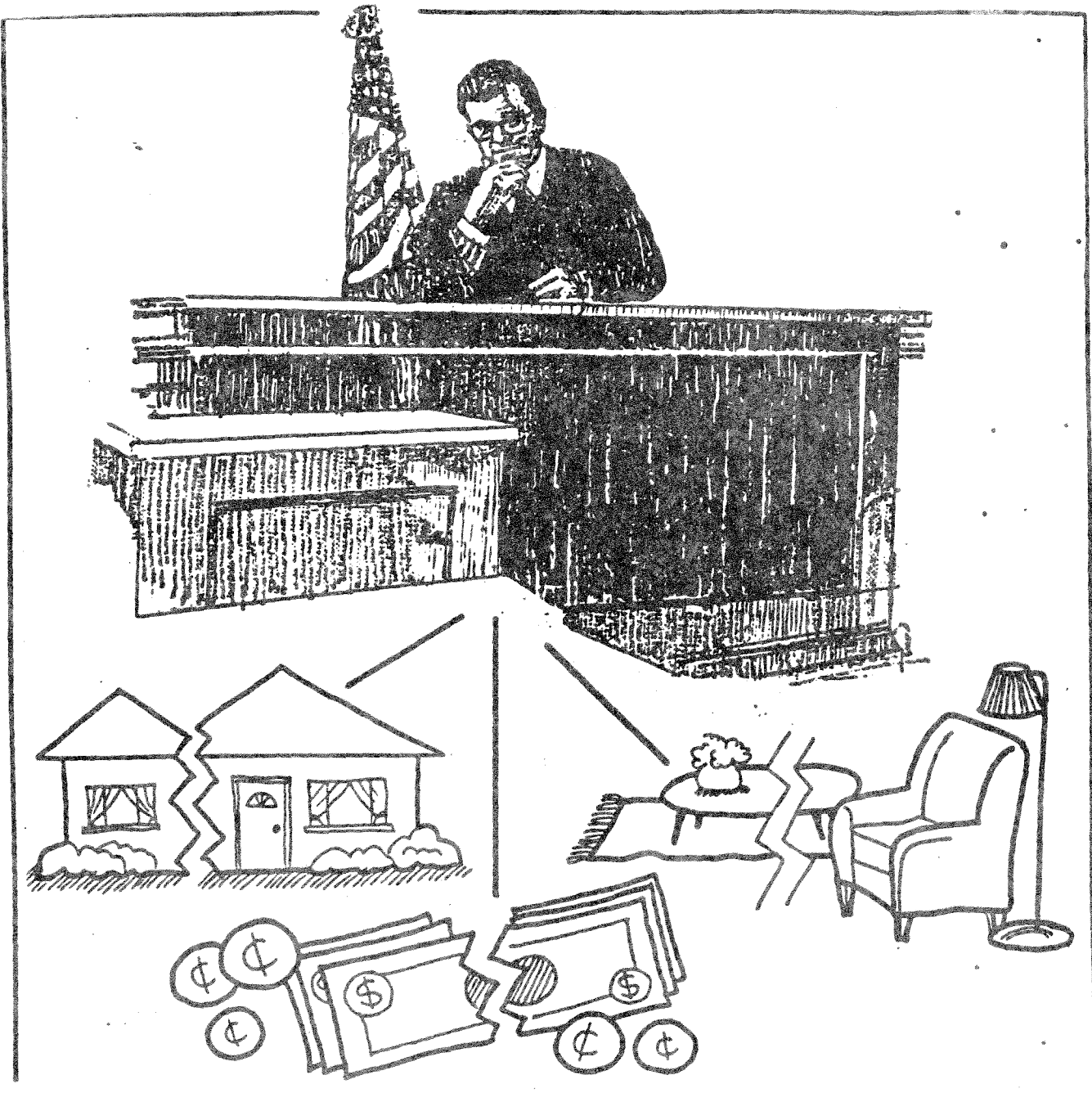
**Margery Casebeer**



## WHAT DOES DIVORCE MEAN?

WHEN A MAN AND WOMAN GET MARRIED, THEY PROMISE THAT THEY WILL LIVE TOGETHER, SHARE THEIR MONEY, TAKE CARE OF THEIR CHILDREN TOGETHER, AND DO MANY OTHER THINGS TOGETHER.

SOME PEOPLE FIND IT VERY HARD TO DO ALL THESE THINGS TOGETHER YEAR AFTER YEAR. THEY FIND IT HARD TO AGREE ON WHAT TO DO. SO THEY DECIDE TO STOP LIVING TOGETHER AND STOP DOING THINGS TOGETHER.



THE LAW SAYS THESE PEOPLE MUST COME TO COURT TO  
DIVIDE UP ALL THE THINGS THEY HAVE SHARED.

THIS IS DIVORCING.



### WHAT DOES DIVORCE MEAN TO YOUR PARENTS?

VERY OFTEN PEOPLE WHO FINALLY GET A DIVORCE DO SO AFTER MANY DISAGREEMENTS ABOUT HOW THEY SHOULD BE DOING THINGS . . . DIVORCE MAY MEAN THEY DON'T HAVE TO ARGUE ALL THE TIME.

SOMETIMES ONE PARENT WANTS THE DIVORCE AND THE OTHER WANTS TO GO ON BEING MARRIED. THIS HAPPENS OFTEN, AND FEELINGS GET HURT.

ONCE THE MAN AND WOMAN END THEIR MARRIAGE AND MOVE APART, THEY HAVE TO START LIVING IN A NEW WAY FROM BEFORE . . . IT MAY BE HARD FOR THEM AT FIRST TO GET USED TO LIVING ALONE. IT MAY BE SAD TOO.

WHEN THEY DIVORCE, PARENTS HAVE TO SPEND A LOT MORE TIME THINKING ABOUT MONEY. TWO HOUSES COST TWICE AS MUCH AS ONE DID. NO ONE WILL HAVE QUITE AS MUCH MONEY AS BEFORE, BUT THERE WILL ALWAYS BE ENOUGH TO TAKE CARE OF YOU.

WHAT DOES DIVORCE  
MEAN TO YOU . . .

(AND YOUR BROTHERS  
AND SISTERS) . . .



ONE THING YOU CAN EXPECT IS THAT YOU WILL LIVE WITH  
EITHER YOUR MOTHER OR YOUR FATHER . . .

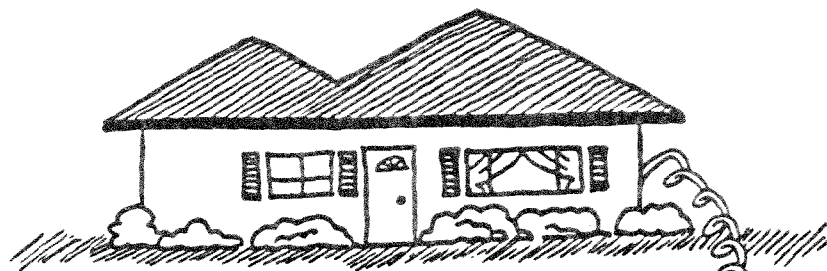
BUT NOT WITH BOTH, SINCE  
THEY WILL NOT BE LIVING  
TOGETHER.



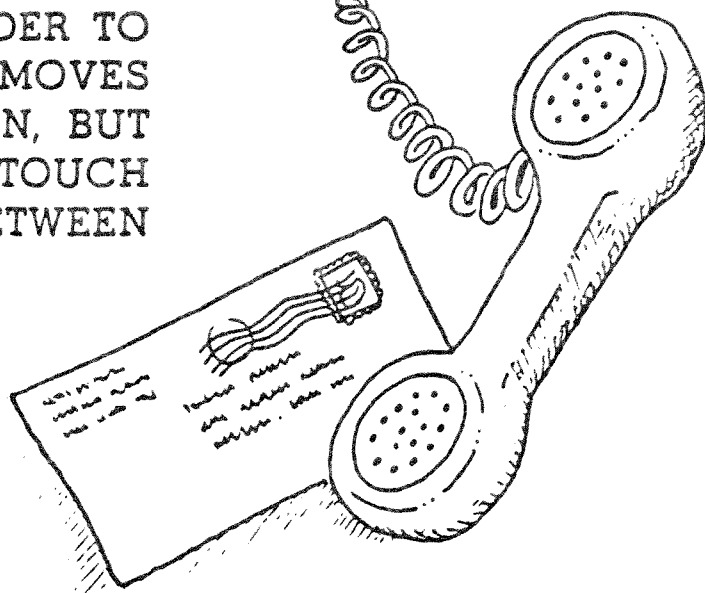


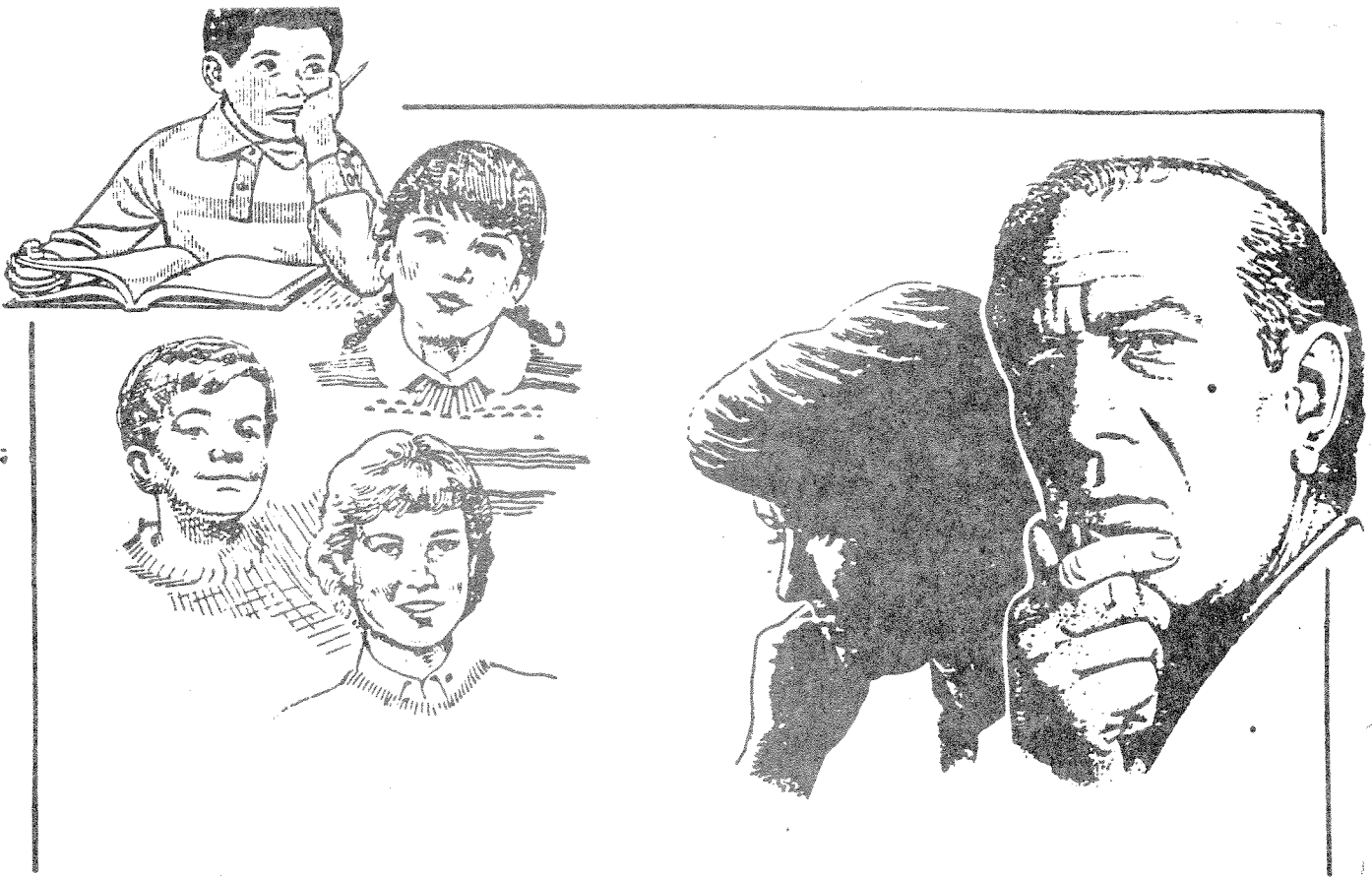


YOU WILL CERTAINLY BE ABLE TO  
SEE AND BE WITH BOTH PARENTS,  
BUT NOT AT THE SAME TIME.



IT MAY BE A LITTLE HARDER TO  
SEE ONE IF HE OR SHE MOVES  
AWAY TO ANOTHER TOWN, BUT  
YOU CAN ALWAYS KEEP IN TOUCH  
WITH EACH OTHER IN BETWEEN  
VISITS.





## WHAT DOES DIVORCE MEAN TO OTHER PEOPLE?

SOME OF YOUR RELATIVES MAY BE ANGRY AT YOUR PARENTS FOR GETTING A DIVORCE, BUT IT IS REALLY NONE OF THEIR BUSINESS. SOME OF YOUR FRIENDS MAY BE SURPRISED TO HEAR ABOUT YOUR PARENTS BREAKING UP. MANY PEOPLE DIVORCE NOWADAYS — ONE OUT OF EVERY THREE MARRIAGES BECOMES A DIVORCE. MANY OF YOUR FRIENDS HAVE DIVORCED PARENTS — THEY JUST DON'T TALK ABOUT IT. IT WOULD BE BETTER IF CHILDREN TALKED WITH THEIR FRIENDS WHEN PARENTS DIVORCE, BUT USUALLY THEY DON'T.

YOUR PARENTS MAY BE GETTING NEW FRIENDS — THEY MAY EVEN GO OUT ON DATES AND HAVE BOYFRIENDS AND GIRLFRIENDS. SOME OF THEIR FRIENDS YOU MAY NOT LIKE — SOME YOU MAY. THAT'S OK. AFTER ALL, YOUR PARENTS DON'T ALWAYS LIKE ALL YOUR FRIENDS. BUT YOUR PARENTS NEED THE CHANCE TO HAVE NEW FRIENDS — THEY CAN GET LONESOME JUST LIKE YOU CAN.



IF YOUR MOTHER OR FATHER GETS MARRIED TO SOMEBODY ELSE, YOU WILL HAVE A STEPMOTHER OR STEPFATHER.

THIS NEW STEP-PARENT MAY BE A LITTLE SCARED YOU WON'T LIKE THEM. STEPPARENTS ARE JUST LIKE PEOPLE — YOU MAY LIKE THEM AND YOU MAY NOT. BUT YOU CAN LEARN TO LIVE WITH THEM — YOU MAY EVEN ENJOY IT MORE THAN YOU USED TO LIKE YOUR OLD HOME. IT IS OK TO FEEL THIS WAY — YOU CAN GO ON LOVING YOUR REAL PARENT AND STILL HAVE PLENTY OF LOVE LEFT OVER FOR YOUR NEW STEPPARENT.



### WHAT ABOUT FEELINGS?

YOUR PARENTS STILL LOVE YOU. THEY ALWAYS WILL, EVEN THOUGH FOR A WHILE IT MAY SEEM LIKE THEY HAVE FORGOTTEN ABOUT YOU. YOU WILL STILL BE ABLE TO SEE THEM BOTH, AND SOMEBODY WILL ALWAYS BE THERE TO TAKE CARE OF YOU.

YOUR PARENTS MAY FEEL BADLY ABOUT THE DIVORCE AND THAT THEY UPSET EVERYTHING SO MUCH. THEY MAY TRY TO BE TOO NICE TO YOU TO MAKE UP FOR THIS. LET THEM KNOW YOU WOULD RATHER THEY JUST TREATED YOU LIKE THEY ALWAYS DID . . . NOT TO "OVERDO" THINGS.

YOU MAY FEEL ANGRY OR SAD ABOUT THE DIVORCE. YOU MAY MISS YOUR MOTHER OR FATHER A LOT SOMETIMES, AND WORRY ABOUT THEM. YOU MAY FEEL VERY MIXED UP — YOU MIGHT BE SCARED ABOUT WHAT'S GOING TO HAPPEN NEXT.

YOU MAY GET MAD AT YOUR PARENTS FOR MAKING THINGS HAPPEN SO THAT YOU FEEL THIS WAY. THAT'S NORMAL — DON'T BE ASHAMED OF YOUR FEELINGS. NOBODY LIKES TO GO THROUGH A DIVORCE, BUT WHEN IT HAPPENS YOU JUST HAVE TO "RIDE IT OUT".



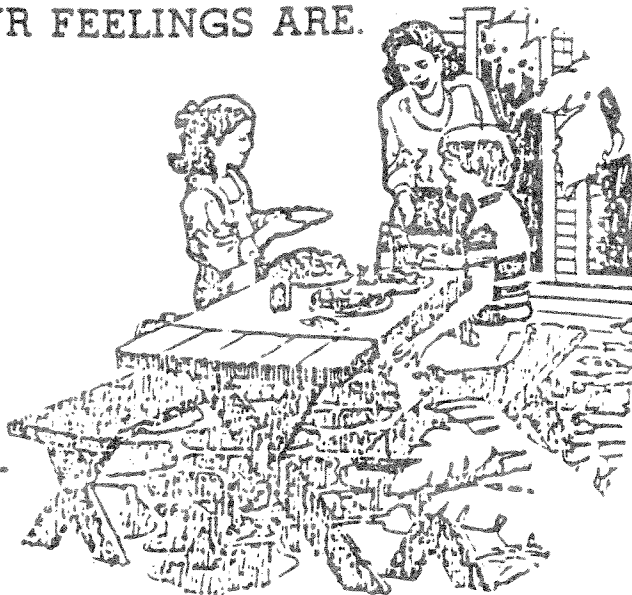


THE FIRST FEW MONTHS AFTER THE DIVORCE MAY BE THE HARDEST . . . ONCE YOU ARE SETTLED DOWN YOU MAY FIND LIFE IS OK AFTER ALL, AND SO MAY YOUR PARENTS.

YOU'LL FEEL A LOT BETTER WHEN YOU REALIZE THE DIVORCE IS NOT YOUR FAULT — AND IT REALLY ISN'T. IT IS NEVER THE CHILD'S FAULT, HONESTLY.

YOU'LL FEEL BETTER WHEN YOU UNDERSTAND THAT YOU ARE NOT "ALONE". MANY OF THE KIDS YOU GO TO SCHOOL WITH HAVE PARENTS WHO ARE DIVORCED. FIND OUT WHO THEY ARE, AND TALK THINGS OVER WITH THEM. YOU MAY FIND A NEW FRIEND!

IT HELPS TO FIND AN ADULT TO TALK THINGS OVER WITH, TOO. MAYBE YOUR PARENTS WOULD BE YOUR FIRST CHOICE, BUT DON'T FORGET AUNTS & UNCLES, GRANDMAS & GRANDPAS, TEACHERS & NEIGHBORS. THEY WON'T BE ABLE TO CHANGE THE DIVORCE, BUT YOU'LL REALLY FEEL BETTER IF THEY JUST LISTEN TO YOU TELL WHAT YOUR FEELINGS ARE.





***FAMILIES DIVIDED***

***DESIGNED TO BE  
READ TO VERY YOUNG  
CHILDREN***

**TEXT**

**Joan Lewis & Ann Hoffman**

**ART**

**Margery Casebeer**

**Pat Evans & Misha Evans**

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Revised 1985





# FAMILIES DIVIDED

DESIGNED TO BE  
READ TO VERY YOUNG  
CHILDREN



TEXT

Joan Lewis & Ann Hoffman

ART

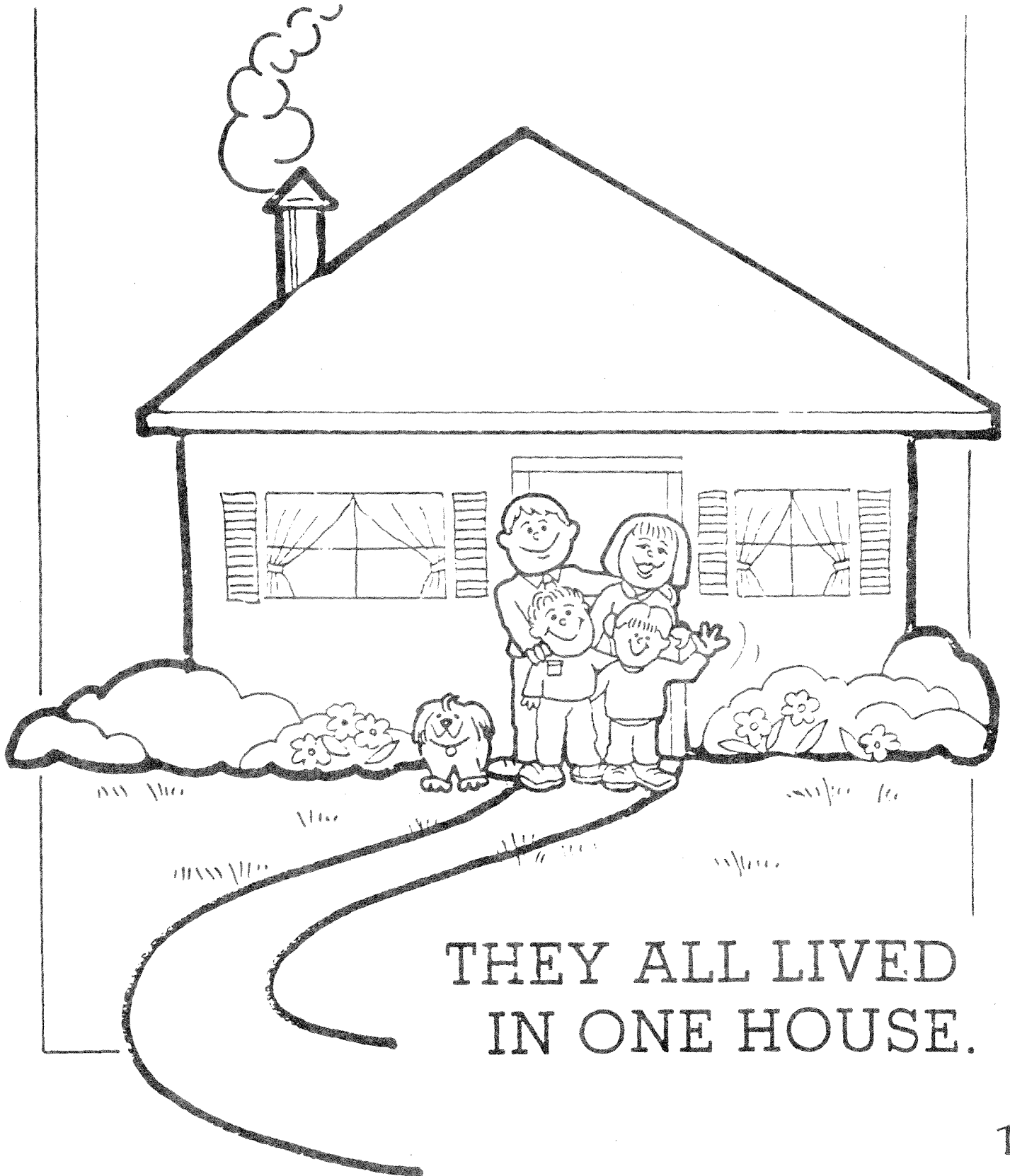
Margery Casebeer

Pat Evans & Misha Evans

**Joan Lewis  
Court Investigator/Mediator  
1558 West St., Suite I  
Redding, CA 96001**

**Ann Hoffman  
M.A. - M.F.C.  
Star Route, Glenburn  
Fall River Mills, CA 96028**

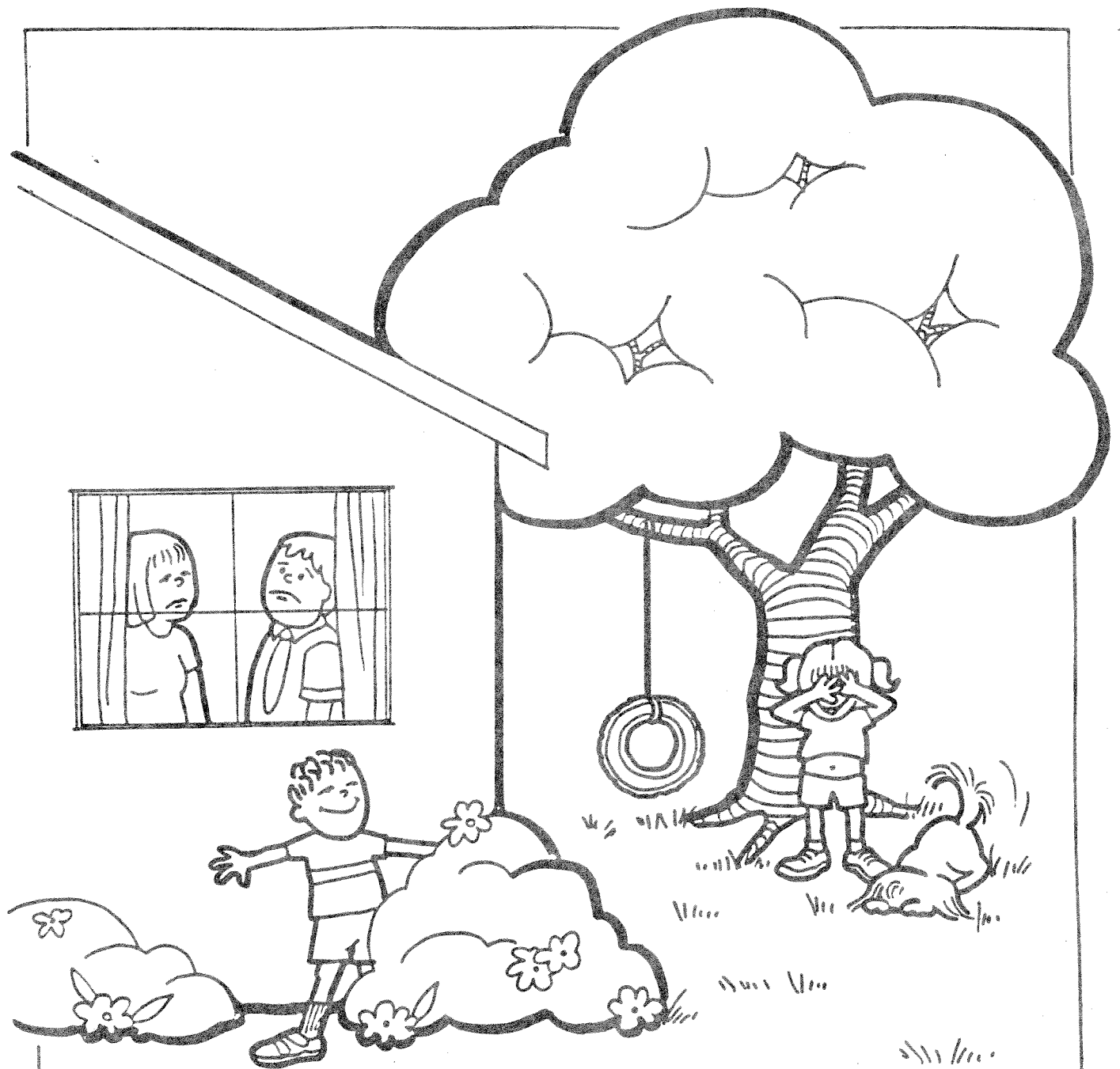
300  
ONCE UPON A TIME  
THERE WAS A LITTLE FAMILY.



THEY ALL LIVED  
IN ONE HOUSE.

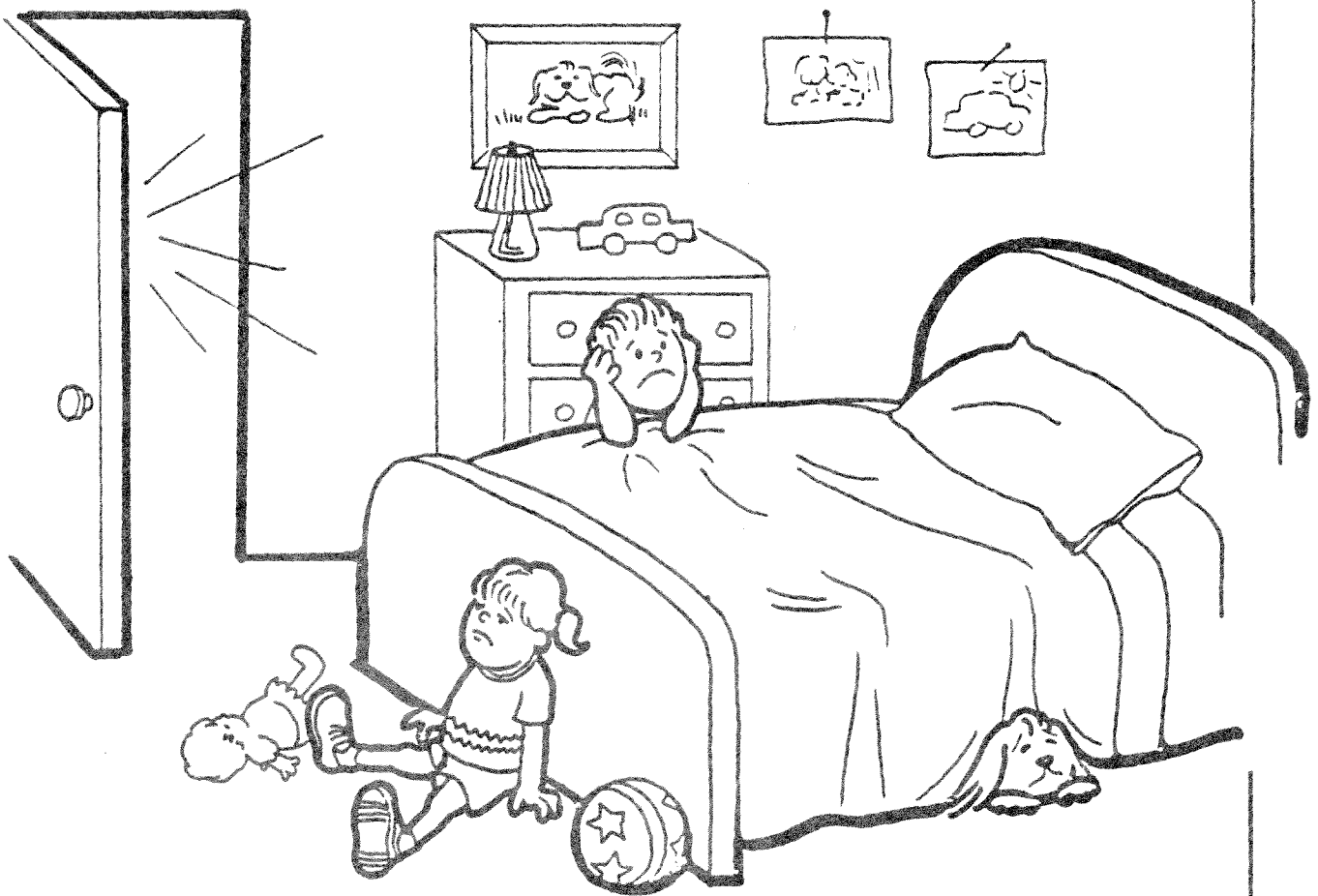


SOMETIMES THEY  
ALL WERE HAPPY.



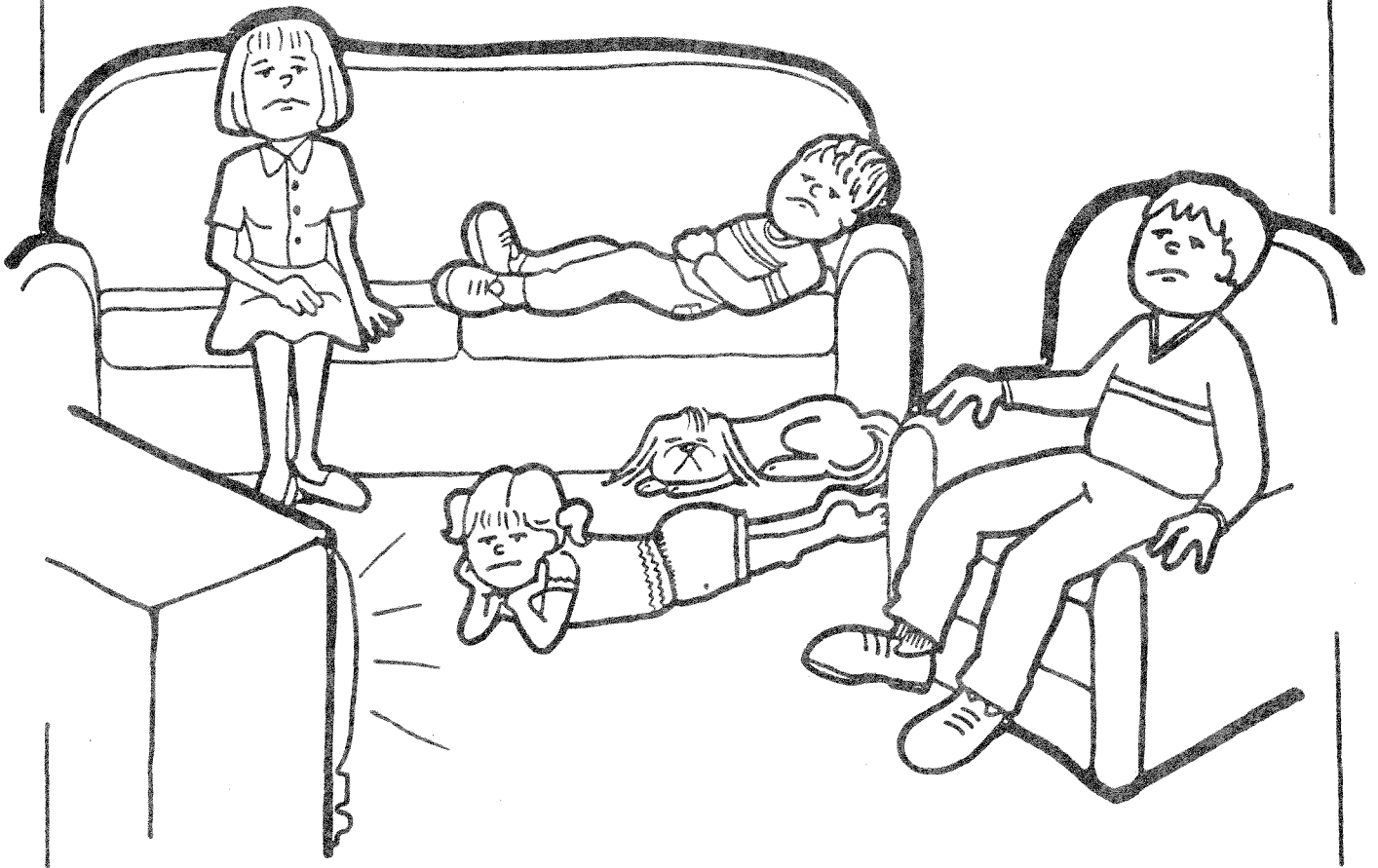
SOMETIMES SOME OF THE  
FAMILY WERE HAPPY  
AND SOME WERE NOT.

SOMETIMES THE PERSON WHO  
WAS NOT HAPPY MADE THE  
OTHER ONES FEEL UNHAPPY  
TOO.



THEN IT SEEMED LIKE  
NOBODY EVER HAD ANY FUN.

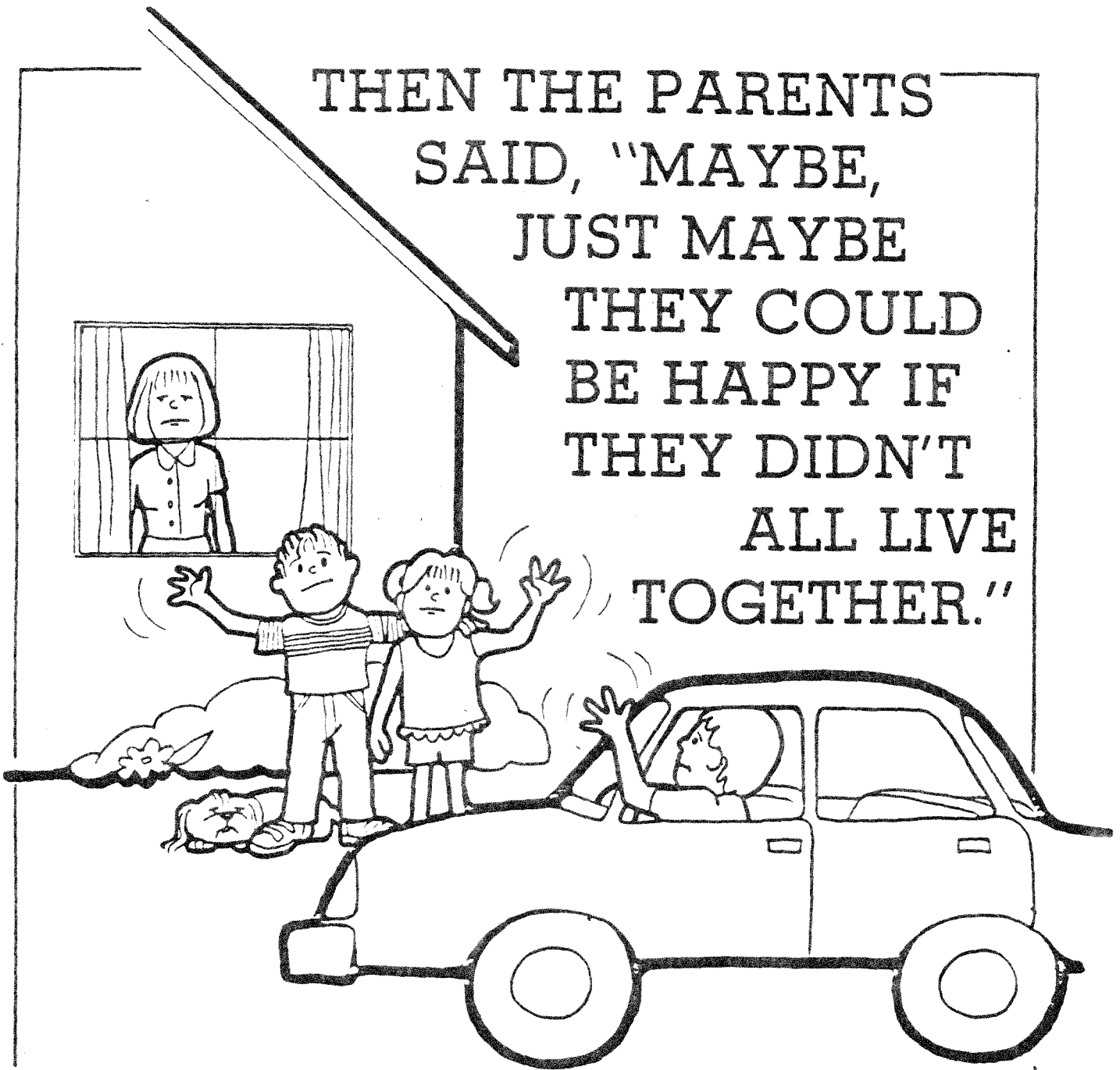
IT WAS NOBODY'S FAULT -  
THEY ALL LOVED EACH OTHER,  
BUT THEY JUST COULDN'T  
SEEM TO HAVE NICE TIMES  
TOGETHER.



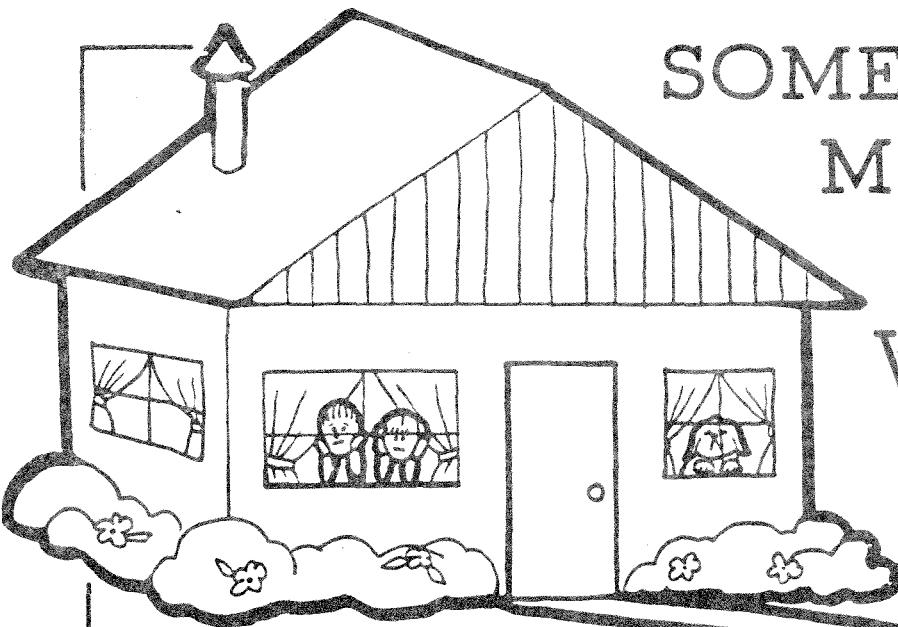
THE CHILDREN WERE  
AFRAID, AND THERE WASN'T  
MUCH HAPPINESS ANYMORE.



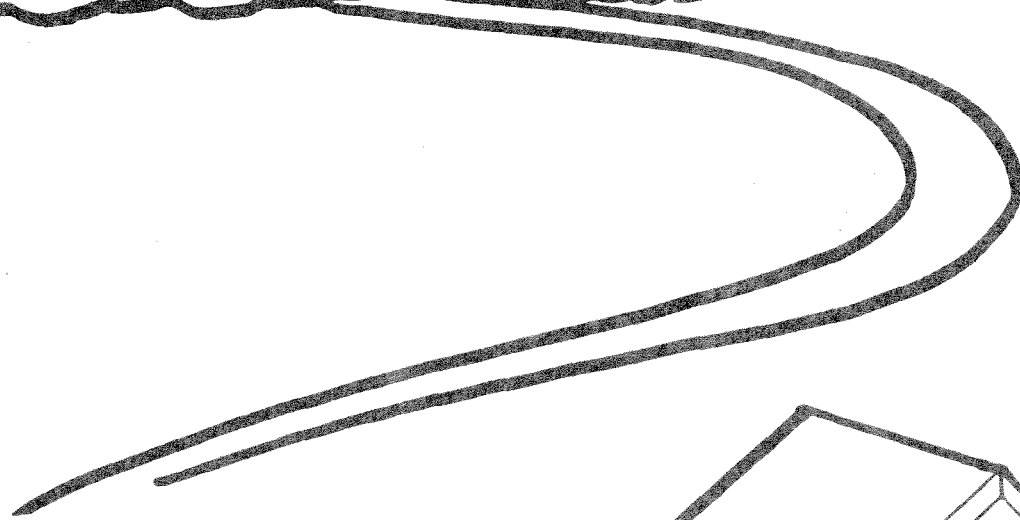
THEN THE PARENTS  
SAID, "MAYBE,  
JUST MAYBE  
THEY COULD  
BE HAPPY IF  
THEY DIDN'T  
ALL LIVE  
TOGETHER."



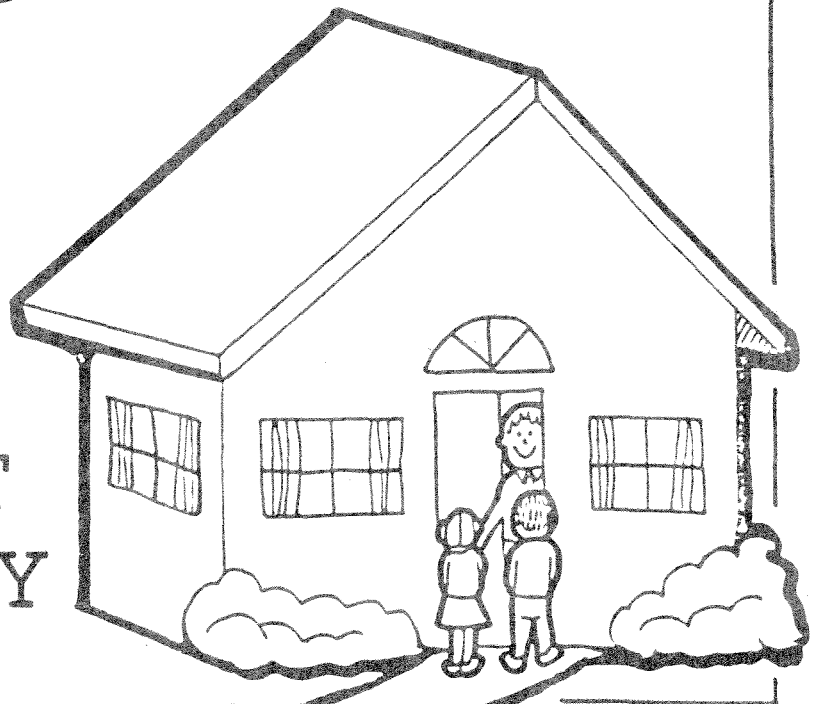
THE PARENTS DECIDED THEY  
WOULD GET A DIVORCE. SO  
SOME OF THE FAMILY MOVED  
TO ANOTHER HOUSE. \_\_\_\_\_

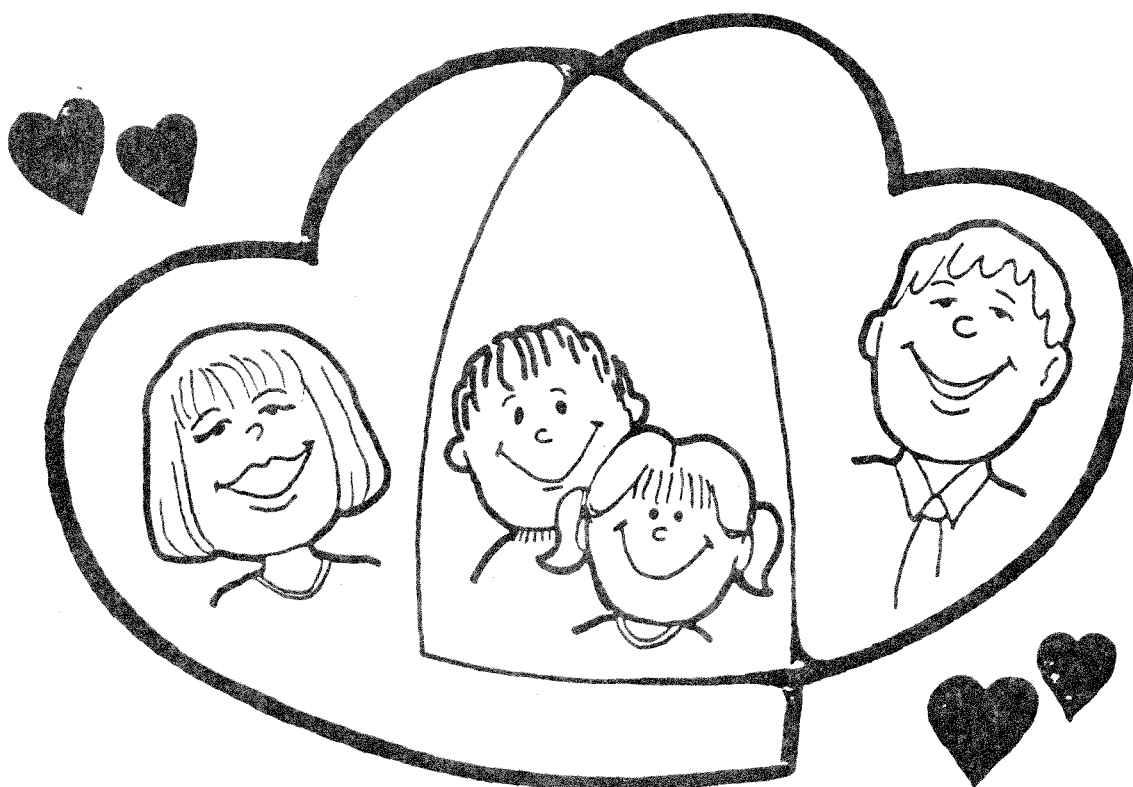


SOMETIMES THEY  
MISSED EACH  
OTHER  
VERY MUCH.

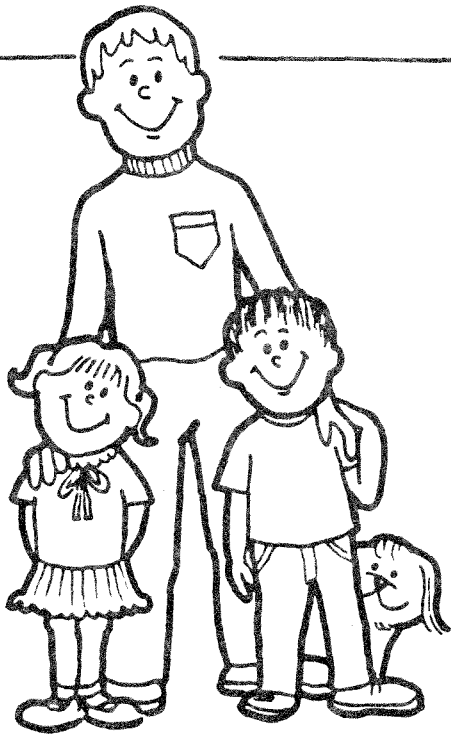


ON SOME  
DAYS THE  
CHILDREN  
WOULD VISIT  
WITH MOMMY  
OR DADDY.



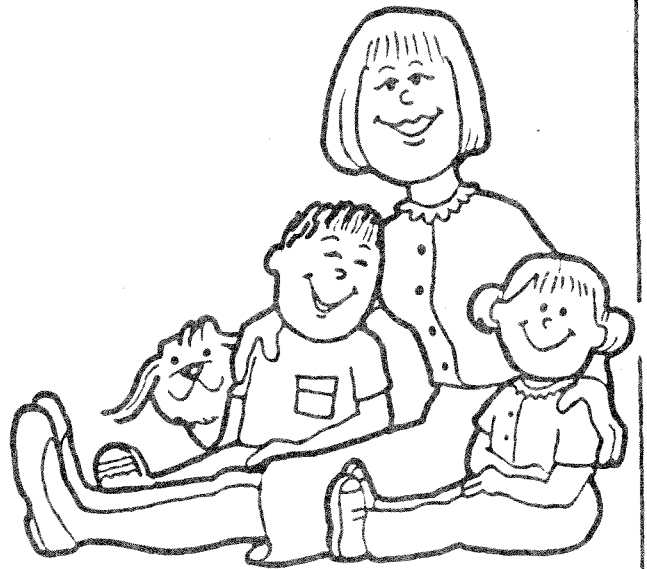


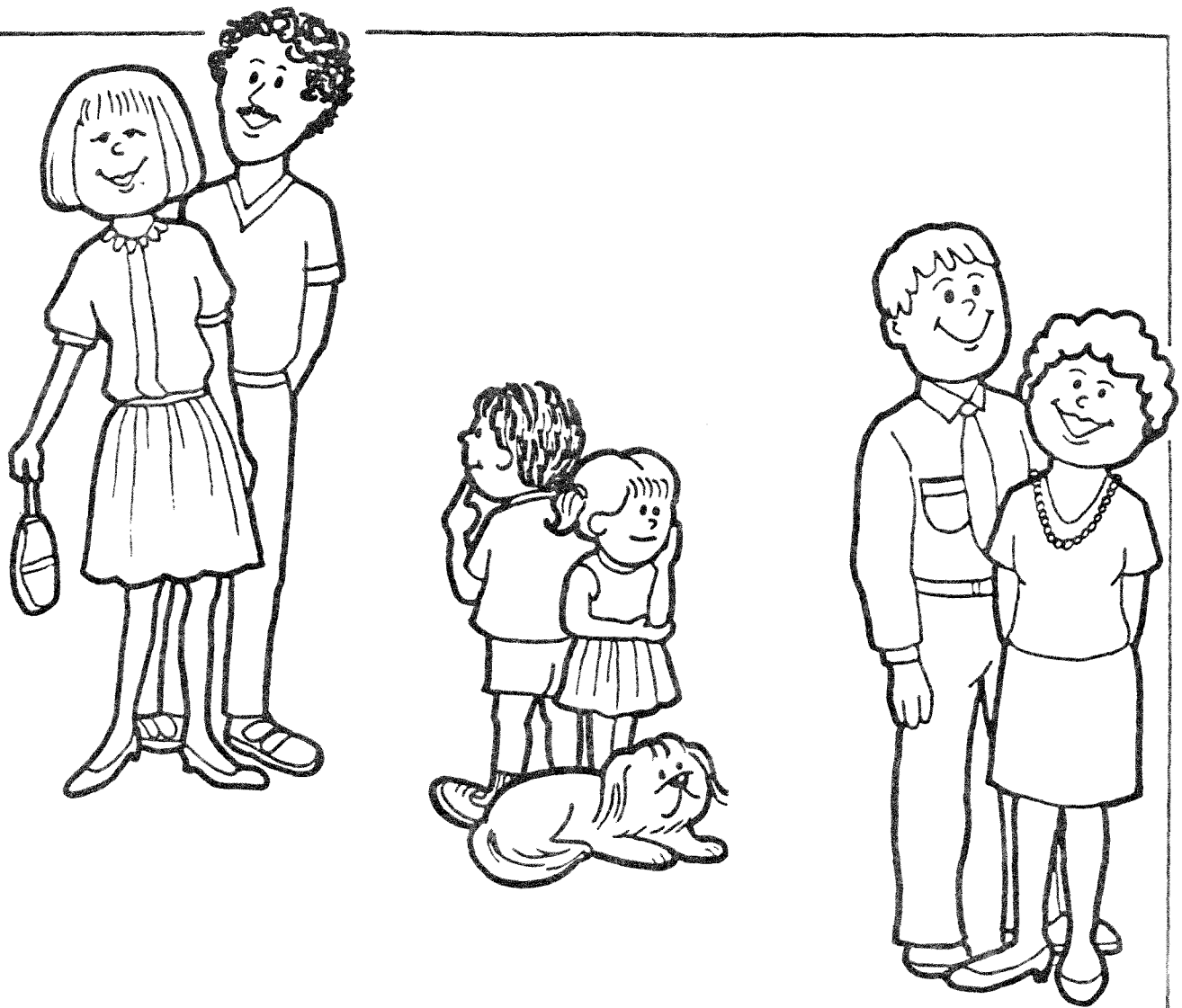
THE MOTHER AND  
FATHER ALWAYS, ALWAYS  
LOVED THE CHILDREN,  
AND THEY WERE SORRY  
THAT THEY COULDN'T  
LIVE TOGETHER.



AFTER AWHILE,  
THE CHILDREN  
FOUND OUT  
THAT IT'S SOME-  
TIMES OK TO  
LIVE APART.  
MOMMY AND  
DADDY SEEMED HAPPIER TOO.

LIVING APART  
MADE THE  
PARENTS FEEL  
BETTER, AND SO  
THAT HELPED THE CHILDREN  
FEEL BETTER TOO.





THE PARENTS MADE NEW FRIENDS. THE CHILDREN LIKED SOME OF THE NEW FRIENDS TOO. LIFE WAS NOT THE SAME, BUT IN A WAY, IT WAS BETTER. \_\_\_\_\_

FAMILY COURT SERVICES  
MEDIATION QUESTIONNAIRE

FULL LEGAL NAME: \_\_\_\_\_

YOUR ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER(S): \_\_\_\_\_

(EX) SPOUSE'S NAME: \_\_\_\_\_

CHILDREN'S NAMES: _____	BIRTHDATE: _____
_____	BIRTHDATE: _____
_____	BIRTHDATE: _____
_____	BIRTHDATE: _____

Please answer all of the following questions as completely as possible. Should you need additional space, continue your answers on a separate sheet of paper with the appropriate number. Type or write legibly.

1. What have you told your children about your separation and divorce of this custody/visitation dispute?
2. What do you think your children's feelings are regarding the breakup of their family or this custody/visitation dispute?
3. How have you dealt with your children's feelings regarding the breakup of their family or this custody/visitation dispute?
4. What changes have you noticed in your children's behavior since the separation, or since this custody/visitation action was initiated?
5. Since your separation, how much time have your children spent with the other parent? State frequency and length of time.

6. Is there an existing child custody/visitation order? If so, what is it?
  
7. What custody/visitation arrangements would you like to see happen?
  
8. Are there any reasons you believe the other parent should not have custody or visitation? Explain.
  
9. Describe your relationship with each of your children.
  
10. Describe the activities you share with each of your children.
  
11. What are the POSITIVE and NEGATIVE results for your children of spending time with the other parent?
  
12. What are the POSITIVE and NEGATIVE results for your children of spending time with you?
  
13. Which presents the bigger problem for you and the other parent?
  - A. Sharing your children's physical custody; or
  - B. Sharing major decision-making regarding the children; or
  - C. Arranging visitation schedules.

14. What could you do to encourage a cooperative and acceptable resolution of the custody/visitation dispute? Be specific, positive, and realistic.
  
15. What could the other parent do to encourage a cooperative and acceptable resolution of the custody/visitation dispute? Be specific, positive, and realistic.
  
16. What plans do you have for the children if you receive primary care? Include child care arrangements.
  
17. Will you be making any changes in your lifestyle and living arrangements (new job, home address, education, personal relationship, major move out of the area, etc.)?
  
18. What are your main strengths? Weaknesses?
  
19. What are the other parent's main strengths? Weaknesses?
  
20. Do any of the parents or children in this action have any health or medical problems? Explain.
  
21. For what reasons, in your opinion, is the other parent seeking custody and/or visitation?
  
22. What do you consider reasonable visitation regardless of which parent is awarded custody?



THE LEGAL AND PHYSICAL CUSTODY DEFINITIONS SET FORTH BELOW ARE TO ASSIST YOU IN COMPLETING THE LAST TWO QUESTIONS.

LEGAL CUSTODY - Legal custody defines the decision-making rights and responsibilities relative to your children.

- a. Sole Legal Custody means that one parent shall have the right and responsibility to make the major decisions relating to the health, education, and welfare of a child.
- b. Joint Legal Custody means that parents shall share the rights and responsibility to make the major decisions relating to the health, education, and welfare of a child.

23. Considering the definition, which do you favor?

\_\_\_\_\_ Sole Legal Custody or \_\_\_\_\_ Joint Legal Custody

Explain briefly:

PHYSICAL CUSTODY - Physical custody defines the amount of time children will spend with each parent.

- a. Sole Physical Custody means that a child shall reside with and under the supervision of one parent, subject to the power of the Court to order visitation for the other parent.
- b. Joint Physical Custody means that each of the parents shall have significant periods of physical custody. Joint Physical Custody shall be shared by the parents in such a way as to assure a child of frequent and continuing contact with both parents.

24. Considering the definition, which do you favor?

\_\_\_\_\_ Sole Physical Custody or \_\_\_\_\_ Joint Physical Custody

Explain briefly:

---

SIGNATURE

---

DATE

EXHIBIT B



ORDER

TO ALL PARENTS WITH MINOR CHILDREN WHO ARE FILING FOR DISSOLUTION

## Children of Divorce Workshop

### WHO

Based on a successful seven year program from Wichita, Kansas, Humboldt County has mandated through local Court Rule #9.6 that, after filing for dissolution or separate maintenance, those parties with dependent children will be required to attend an educational program designed to inform parents of the effects of divorce on their children. This program is mandatory and must be attended within four (4) months of filing.

1. Both parties must attend. They may attend separate sessions if emotion does not allow attendance together.
2. The parties, or counsel, may schedule the program before the first court appearance.
3. The court will order attendance at the program within 45 days of the first court appearance. (Waiting until this time results in less time to comply.)
4. Failure to comply within the time frames set forth may result in monetary sanctions.  
(Effective November 1, 1987.)

### WHY

Divorce and long-term separation are now experienced by 45 out of every 100 children born yearly in the United States. In 1986, 643 minor children in Humboldt County experienced divorce in their families. According to research, these children are at increased risk for developing social, emotional and school problems following the divorce of their parents.

The ability of the children to make an appropriate adjustment depends largely on minimizing ongoing parental conflict that specifically involves the child. Since divorce is the end of the parents' marriage, but not the child's family, one goal of the workshop is to help parents understand what types of new parental interactions will be most helpful to their child's healthy adjustment.

The workshop will also present parenting issues that are likely to occur at the time of divorce, and suggest ways to deal with them.

### WHAT

The four-hour educational workshop presents material about the potential impact of divorce on children, and how negative effects can be minimized. The program has been designed to help divorcing parents understand the needs of their children before, during and after divorce. These needs vary with the children's ages.

### WHERE

Workshops will be held in the Board Rooms of the Humboldt County Office of Education, 901 Myrtle Ave., Eureka, CA.

### FEES

Workshop fee is \$20.00 per person. For those who qualified for a fee waiver when filing their divorce papers (or response papers), the workshop fee will also be waived.

**CHILD CARE WILL NOT BE PROVIDED. PLEASE DO NOT BRING CHILDREN TO THE WORKSHOP.**

CLIP HERE 

### REGISTRATION

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: Home \_\_\_\_\_ Work \_\_\_\_\_

Please send \$20.00 Check or Money Order (OR copy of fee waiver) to:

**HUMBOLDT FAMILY SERVICE CENTER**  
7841 E Street  
Eureka, CA 95501

**DO NOT SEND CASH.**

Make check or money order payable to Humboldt Family Service Center.

### WHEN

Do you prefer:

Two weekday evenings  
(7:00-9:00 p.m.)

OR

Saturday - one day only  
(10:00 a.m.-3:00 p.m. with lunch break)

OR

Next available workshop

\*Do you prefer a separate workshop from your spouse? If so, spouse's name: \_\_\_\_\_

CHILDREN OF DIVORCE

SESSION I - EFFECTS OF DIVORCE

Introduction and Program Goals

How Families Experience Divorce

Six Divorces

Adult Grief Process

Grief Process of Children

Stress Symptoms of Normal Children of Divorce

Talking To Your Child About Divorce

Warning Signs

How to Help Your Children

Where To Get Help

Video - Still Our Children

SESSION II - HELPING CHILDREN ADJUST

Video - Pain Games

Building A New Business Relationship

Developing A Co-parenting Plan

Developmental Guidelines Groups

Visitation Guidelines

Joint Custody/Split Time Arrangements

Summary

---

## CHILDREN OF DIVORCE PROGRAM GOALS

1. Provide information and education regarding what is normally experienced by families during the divorce process.
2. Help parents recognize the positive things they are doing as parents - both individually and together.
3. Provide some rough guidelines for dealing with the child's stress during the divorce process.
4. Give some ideas about how to renegotiate parental responsibilities with your ex-spouse.
5. Help parents identify resources in the community that can be helpful to their family.

### A CHILD'S RIGHTS IN DIVORCE

I have a right to love whom I choose, without guilt, pressure, or rejection.

I have a right to love as many people as I want (step-parents, relatives, etc.) without guilt or being made to feel disloyal--for the more love I give, the more I have to give (and the more I receive).

I have a right to have a regular daily and weekly routine, one that is not filled with alternating patterns and disruption.

I have a right to visit both my parents, regardless of grown-up wants and wishes regarding convenience, money, or their feelings.  
I OWN VISITATION; IT IS MY RIGHT, NOT THE RIGHT OF MY PARENTS.

I have a right to be angry, sad, and fearful and to express that.

I have the right to like both my parents, since they are both part of me, and to be reassured that this is ok.

I have the right not to have to blame or choose sides.

I have the right not to have to make adult decisions.

I have a right to remain a child, and to not replace a parent in my duties or to be an adult companion, friend, or comforter to my parents.

I have the right not to ever have to choose with whom I live. This is a decision for wise adults. Having to make such a choice will always hurt someone else and, therefore, myself. I have this right even when I'm a teenager and people wish I were able to--I can never choose between my parents.

## PHASES IN DIVORCE PROCESS \*

1. Disillusionment  
Awareness of difference between real mate and ideal mate.
2. Erosion  
Chipping away of marital satisfaction.
3. Detachment  
Loss of investment; silent animosity; closed communication.
4. Physical Separation  
One spouse leaves (the initiator)  
One spouse is left (abandoned).
5. Mourning  
Loss of the relationship  
Sadness; guilt; despair.
6. Second Adolescence  
State of experimentation and overdoing  
Who am I?
7. Resolution  
Survival  
Renewal.

Stage 1 through stage 4 can take up to 5 years.  
Stage 5 through stage 7 equals life.

\* adapted from Kessler, Sheila, The American Way of Divorce. Nelson-Hall, Chicago, 1975.

## EFFECT OF THESE PHASES ON CHILDREN

1. Before Separation  
Disappointed, tension  
Feels avoided  
Sense something terrible is going on  
Anxious, need reassurance.
2. Separation Phase  
Acute shock, denial  
Have lost one parent, so fear losing the parent that is left  
Feel rejected
3. After Divorce  
Feel insecure and need stability  
Adjusting-will become more secure as parents cooperate

## STRESS SYMPTOMS OF NORMAL CHILDREN TO DIVORCE

### All

anger (more irritability, more into trouble)  
reconciliation fantasies  
increased sexual interest/fantasies  
physical concerns  
worry about who will take care of me  
shame/embarrassment

### Preschool

80% are not told, which leaves them confused and unable to grow cognitively (paralyzed)  
regression  
fears of objects, places, events  
self-blame - it's my fault, if I'd only, etc., or if my daddy loved me, he'd stay, or he's left; therefore, I'm not lovable

### School-aged 6-12

more realistic  
more idea of cause, but shakes up own identity  
fear about future  
sad, angry  
morally indignant - how could you?  
school helps, but grades go down  
friends help

### Adolescents

pain, sadness, loneliness, anger  
question marriage - including whether they ever will  
more interest in sexuality - aware of parent's and of their own  
money worries (before they are mature enough)  
pressure to act like adult - fill in for missing parent  
de-idealization of parents - adolescents do this anyway - pick out faults - they do more  
either detach and spend more time with friends (healthy) or stay around more and attempt to be spouse

### Danger Signals

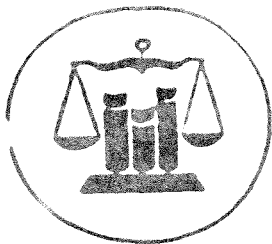
How much of their life does it effect?

1. periodic versus constant (crying) (anger) (daily basis)
2. continued symptoms or worse with no change
3. dramatic changes in behavior
4. if parent feels they can't cope



## NORMAL DEVELOPMENTAL STAGES & CHARACTERISTICS

	Basic Psychological Task	Characteristics of Age Group	Stress Symptoms	How to Help
Infants (0-18 months)	Establish Trust	Need consistent, prompt attention. Cry to signal something is wrong.	Crying, eating problems. Stress is related to not getting needs met and separation from significant individual.	Consistent response to needs from significant person for lengthy periods.
Toddlers (18 mon.-2 years)	Beginnings of a sense of self.	Self-centered. Fear of abandonment. Need rigid routines.	Anxious & irritable. Unusual & numerous fears. Regression to earlier age behaviors. Fear of separation & clinginess. Crying & asking for absent parent.	Give a lot of physical comfort - hugs & holding. Reassure verbally & say "I love you" more. Allow some regression. Keep consistent routine.
Preschoolers (3 - 6 years.)	Beginning to define roles.	Magical thinking. Mimic roles of adults. Fear of abandonment. Romance with opposite sex parent. Self-centered.	Anxious & irritable. Unusual & numerous fears. Regression to earlier age behaviors. Fear of separation & clinginess. Crying & asking for absent parent. Blame themselves.	Give a lot of physical comfort - hugs & holding. Reassure verbally & say "I love you" more. Allow some regression. Keep consistent routine. Explain & rehearse.
Elementary School age (6-12 years)	Accomplish & develop skills - sense of worth in doing.	Empathy increases. Age of absolutes (right & wrong-certain way to do things.) Expanding beyond the family. Beginning to attach more to same sex parent. Interested in physical activities and acquiring skills. Expanding social skills.	React strongly to parent's pain. Morally, righteously indignant. Disruption of identity. Tend to be angry & blame parent they are with School Problems. Problems in peer relationships.	Give physical reassurance-hugs Reassure verbally & explain simply what is happening & will happen. Allow involvement with adult friends & peers. Continue consistent routine. Get help for school problems. Enlist close relatives who are meaningful to the child.
Teens (12-19 years)	Develop a separate identity from parents.	Beginning to break from family-rejection of family activities. Idealistic. Need for absolutes. Heightened sexuality. Dependent/independent struggle. Concern about future. Sensitive to peer opinion. Self-image problems.	Pick a replacement parent figure. Feel torn by loyalty to both parents. Moral indignation-question marriage as an institution. Sexual issues. Breaking rules & acting out. Money worries. Shame and denial. Withdrawal & depression.	Keep minimal but consistent rules. Find time to be with the adolescent. Encourage involvement with other families of whom you approve. Seek help from school or professionals if symptoms warrant. Explain what is happening, what limitations will be. Use team approach.



THE BEST INTERESTS OF THE CHILD

A videotape for parents concerned about the effects of separation on their children.

Hon. Donald B. King  
1st District Court of Appeal  
California

Judith S. Wallerstein, Ph.D.  
Center for the Family in Transition  
Corte Madera, California

1. HOW CHILDREN FEEL AT THE TIME OF THEIR PARENTS' SEPARATION

When parents separate their children are very worried about what's going to happen to them. The family serves a protective function, a scaffolding supporting their growing up years, and children worry it isn't going to hold. Younger children worry about whether they will be fed, who is going to take care of them, and whether they will have a roof over their heads. Older children worry about whether they will be able to complete their education.

Children worry about their parents, especially the parent who has left home. They worry about whether that parent is being fed, and if they have a place to sleep. They worry about where that parent is, because they feel that parent has vanished. They also worry whether the parent remaining in the family home will be able to manage.

2. WHAT MAKES THE DIFFERENCE BETWEEN WHETHER CHILDREN DO WELL OR DO POORLY AFTER THEIR PARENTS SEPARATE?

It is important for parents to come to terms with their anger and upset about the separation, get it behind them, and stop fighting. Otherwise, the hurt and anger can last for years and adversely affect not just the parents, but the children. What helps children is for parents to make use of their separation to settle their feelings about each other and to close the doors on issues that were hot when they separated and not use it as a chance to keep on fighting. The mediator can help the parents settle the differences on their own behalf, and, even more importantly, on behalf of the children.

3. WHAT ENABLES KIDS TO DO WELL OR CAUSES THEM TO DO POORLY AS A RESULT OF THEIR PARENTS' SEPARATION?

The most important factor is for a child to have a continued relationship with both parents after they separate, even if their relationship with one was not very close while the parents were together. Sometimes a child and a parent who were not very close can use the separation as a second chance to develop a more loving and closer relationship than they had while the parents were together.

Children who suffer the most from their parents' separation are those who have their relationship with one parent disrupted by loss of contact with that parent. These children never recover the momentum which all children lose when their parents separate, and they are unhappy and depressed children in the years following their parents' separation.

4. AT THE TIME OF SEPARATION, HOW CAN PARENTS BE MOST HELPFUL TO THEIR CHILDREN?

How parents act is important because the child needs to think of his or her parents as reasonable and rational people who have taken the decision to end their relationship in a careful and thoughtful way. The child needs to see the parents as people he or she admires and can emulate, as people who are putting aside their anger and who are seriously concerned about what happens to their children and that the child will not be forgotten. Children are very afraid that they will be forgotten.

The child needs to hear from the parents what's going to happen in the future, i.e., where he or she is going to live, who will take care of them, where each parent is going to be, that the child is not going to lose one of his or her parents, what's going to happen in the immediate future, etc. Children need time for intimacy and quiet with each parent, especially the younger ones who need special care and attention when being put to bed. They need to know when the absent parent will be seen again so he or she is not like a jack-in-the-box--just popping up. Otherwise, they are afraid each time they see the absent parent may be the last time. Children need to know in an appropriate way, why the parents are divorcing. Not the details, but that the parents loved each other and thought they would have a good relationship together, but it has not worked out so it must end. The children need to know that in the future each parent will try to do better for themselves and for the child.

5. IMPORTANCE OF EACH PARENT TO BE SUPPORTIVE OF THE CHILD'S RELATIONSHIP WITH THE OTHER PARENT.

It's critical that each parent be supportive of the child's relationship with the other parent and positive about that relationship. Otherwise, the child feels disloyal to one parent by loving the other parent and enjoying their time together. The child feels in conflict between the parents. Each parent should give loving permission to the child to enjoy the relationship with the other parent. This will do more to build good mental health for a child than anything else a separated parent can do.

The child's relationship with each parent must be a conflict-free zone in which the other parent doesn't intrude. The worst thing a parent can do is try to align the child with him or her against the other parent.

CHILD CUSTODY  
MEDIATION IN HUMBOLDT COUNTY

When parents are unable to resolve their differences over child custody and visitation issues, California law requires them to participate in mediation in an attempt to "develop an agreement assuring the child or children close and continuing contact with both parents..." (Civil Code Section 4607)

In Humboldt County mediation is provided by a team of two professional therapists, one of whom is an employee of the Probation Department. Parents are referred by order of the judge when they appear in Court with a custody or visitation dispute. Mediation is also available privately for parents who wish to avoid Court proceedings. The fees for mediation are set by the Court, but may be waived if one or both parents lack the ability to pay.

The mediators meet with the parents on the day set for mediation and then interview any children aged five years and up. Mediation is a confidential proceeding and nothing is transmitted to the Court unless the parents reach an agreement or if there are previously unreported allegations of child abuse.

If an agreement is reached, it will specify how physical and legal custody are to be distributed between the parents and what the time sharing arrangement will be. Families with special problems are given referrals to appropriate agencies in the community.

If the parents fail to reach an agreement in mediation, they may request a hearing before the judge. At any time prior to the hearing an agreement submitted to the Court would be approved by the judge. Once the hearing is held, the issues of custody and visitation will be "submitted" and the Court will render its order which must be followed by both parents.

Any questions regarding child custody mediation in Humboldt County should be directed to Eric Olson, child custody mediator, Humboldt County Probation Department. Phone: 445-7401.

## A READING LIST FOR DIVORCING FAMILIES

- Adler, Carole. The Silver Coach. Coward, McCann & Geoghegan, 1979.
- Alexander, Anne. To Live a Lie. New York, Atheneum, 1975.
- Berger, Terry. How Does It Feel When Your Parents Get Divorced. New York: Messner, 1977.
- Blume, Judy. It's Not the End of the World. Bradbury Press, 1972.
- Francke, Linda. Growing Up Divorced. New York: Linden Press, Simon and Schuster 1983.
- Galper, Miriam. Co-Parenting: Sharing Your Child Equally. Running Press, 1978.
- Gardener, Richard. The Boys and Girls Book About Divorce. New York: Science.
- Gardener, Richard. The Parents Book About Divorce. Garden City, New York: Doubleday & Co., Inc., 1977.
- Halmering, Doris. I Have Two Families. Abingdon, 1981.
- Jackson, Michael. Your Father's Not Coming Home Any More. New York: Richard Marek Publishers, 1981.
- LeShan, Eda. What's Going to Happen to Me? Four Winds Press, 1978.
- List, Julie. The Day The Loving Stopped. New York: Seaview Books, 1980.
- Perry, Patricia. Mommy & Daddy are Divorced. New York: Dial Press, 1978.
- Ricci, Isolina. Mom's House, Dad's House. New York: Macmillan Press, 1980.
- Richards, Arlene, & Willis, Irene. How to Get It Together When Your Parents Are Coming Apart. David McKay, 1976.
- Rogers, Helen. Morris and His Brave Lion. New York: McGraw-Hill, 1975.
- Rofes, Eric E. The Kids' Book of Divorce: By, For, and About Kids. Lexington, Mass., Lewis Publishing Co., 1981.
- Rowlands, Peter. Saturday Parent. New York: Continuum, 1980.
- Salk, Lee. What Every Child Would Like Parents to Know About Divorce. Harper and Row, 1978.
- Sobol, Harriet. My Other-Mother, My Other-Father. New York: Macmillan, 1979.
- Stein, Sara. On Divorce: An Open Family Book for Parents and Children Together. New York: Walker, 1979.
- Troyer, Warner. Divorced Kids. New York: Harcourt Brace Jovanovich, 1979.
- Turow, Rita. Daddy Doesn't Live Here Anymore. Matteson, Ill.: Greatlake Living Press, 1977.
- Wallerstein, J.S. and Kelly, J.B. Surviving the Breakup: How Children and Parents Cope With Divorce.

01/01/87

2nd  
session  
handouts

## PAIN GAMES\*

(Video Tape)

### Messenger

Parents use children to carry messages between each other, thus avoiding direct communication while maintaining contact. Child receives the anger of both parents to the messages.

### Cut-Down

Parent takes out anger on ex-spouse by putting down the "ex" to the child. This cuts down the child's self-esteem since (s)he identifies with both parents.

### Disneyland Daddy and Marineland Mama

Non-custodial parent buys and does things for the child which (s)he really can't afford. Parent's guilt and attempts to "buy" the child's happiness and goodwill become destructive to the child and to the child's relationship with the custodial parent.

### I Spy

Parent asks the child to report on the other parent's activities. Child becomes the recipient of anger and hostility. Thus gives the child the opportunity to manipulate.

### Friendly Divorce

Parents deny that there were and are conflicts, thus confusing the child about why they divorced. However, if reconciliation is being seriously considered, don't get the child's hopes up until the decision is made. This will save your child from additional grief.

### I Wish

Children fantasize about parents getting back together and thus avoid acceptance of reality.

\* adapted from Roche Report: Frontiers of Psychiatry, February, 1979; Johnson County Mental Health Center, Olathe, Kansas; and Menninger Perspective, Winter and Spring, 1979.

## GUIDELINES FOR A SUCCESSFUL PARTNERSHIP FOR POST-DIVORCE PARENTING

The following guidelines from Harriet Whitman Lee, attorney, professor of law and Ph.D. candidate in psychology, Family Law Counseling Services, Berkeley, California, should be of help in discussing issues of parenting partnership so critical for children of parents of divorce. The focus is to maintain a business relationship.

- Your mutual concern is the rearing of your children. Make a conscious decision to create a successful partnership for the project.
- Be businesslike with your former spouse. Test all of your own behavior against this standard: Was I businesslike? Did I follow these guidelines?
- Test your ex-spouses' behavior not by how you feel; but by the same standard: Was their behavior businesslike?
- Respect your children's relationship with your ex-spouse. Your children did not divorce either parent; don't force them to - and do encourage them to get over any feelings of estrangement from the other parent.
- Make appointments to talk about business. Except for emergencies, call only during business hours or agreed upon times; always ask if the timing is convenient, and if not, make an appointment for a time that is.
- Be polite. Do not use bad language or name call. Do not try to conduct business under the influence of alcohol or other drugs. If you feel yourself getting unbusinesslike, say so and agree to resume the conversation at a later time.
- Give the benefit of the doubt as to behavior, as you would with a stranger. Do not assume anything based on past experience without checking out now, at this time, reasons for behavior, what your partner thinks or what your parenting partner has decided.
- Do not expect approval from your partner. Have your personal and emotional needs fulfilled elsewhere and with others. On the other hand, if you are able to acknowledge something positive in work or deed of your partner, do not withhold it. The reward of expressed appreciation, no matter how small, contributes to the greater success of the parenting partnership.
- Do not discuss matters irrelevant to business unless your partner specifically agrees to do so. Respect your ex's privacy; do not seek to know the details of his/her life and do not intrude on his/her territory.
- Make all agreements explicit and follow up with written confirmation when possible (or make your own written memorandum). Be clear and complete in your communications; include time, place, whether children will be fed or not, what clothes they need, etc. Communicate directly: DO NOT ask the children to do your business.
- Keep agreements. Do not break appointments. Carry through on what you promised. If you can't promise something, make it clear that you can't and say why.
- Do not make unilateral decisions; consult your partner and the children so that the best, most workable decision can be made.
- Don't insist on what does not work. On the other hand, be flexible; commit yourself as much as you are able to and experiment to see what does work.
- Above all, cultivate good will in the partnership. Keep in mind always the importance of your investment and the expected returns. The investment is what you are willing to do for your children's happiness and success in life. The returns are comfort and security for your children, and the knowledge that their parents care enough to make life work. You can make a good life for yourself personally and for your children.

## VISITATION AND COOPERATIVE PARENTING

Be Prepared--Prepare yourself and your children for the immediate changes at separation. Make a temporary visitation plan so you can reassure your child(ren) they'll still have both parents. In later months the parent with which the child lives must prepare the child(ren), physically and mentally, for visits and have them available at the agreed time.

Be Responsible--Develop a visitation plan appropriate for your child's development and age, and stick to it. Within the structure of this plan, recognize that special circumstances do arise which require flexibility. Be ADULTS and adjust visitation to fit the child's needs. This may mean extra phone calls or visits if the child is especially anxious about being separated from the absent parent.

Be Yourself--but remember you are a parent and your children have much to learn from you. They want to know who you are, what the texture and fabric of your everyday or weekend life is like. If you are the non-custodial parent, your child(ren) also need to know where they stand with you, and that requires setting reasonable limits and keeping them, gently and consistently. This helps them feel more secure in their relationship with you and helps them feel more comfortable and a part of your life. Remember your goal is to help them feel that they have two homes.

Communicate--This is one of the most important factors in a good divorce adjustment. Communicate with your ex about important events in your child's life (school events, recitals, ball games, problems at school, illness, etc.), or in your life (moves, new mates, unemployment, serious illness, death of close relatives, etc.) that may effect your child(ren). They need both parents.

Separate the Roles--You are no longer husband and wife, but you are still mommy and daddy. Make a conscious decision to create a successful partnership for the project of raising your child(ren). Review what you have done together as parents that worked. Keep your feelings of anger and hurt from interfering in this project, and get help if you can't do this.

Accept Limits of Your Control--Recognize that you cannot control your ex's behavior or relationship with your child. You can only control your own behavior. Thus, you can do your best to play growth games and not to play pain games. But if your ex continues with some negative behavior even after your assertive attempt to persuade him or her differently, accept your lack of control (unless it's harmful to the child) and focus instead on what you can control.



Regarding Visitation--Do Not:

- a. use visits as an excuse to continue arguments or contact with your ex.
- b. visit your children if you have been drinking.
- c. fail to notify your ex as soon as possible if you cannot keep your visitation, as your children will be expecting you at the agreed upon time and date. Be adults, and work out another agreeable visitation time.
- d. do not involve your children in your dating relationships. Dating and sexual relationships should be for and between adults. Children who get emotionally involved with their parents dates may end up having to experience even more separation and loss.

01/01/87

## Developmental Perspectives on Custody and Visitation Arrangements

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Most of the research on the effects of divorce on children suggests that minimizing parental conflict and maximizing parental cooperation (especially on issues which directly involve children) is the key to protecting children from trauma and promoting their healthy development. This is a primary goal to keep in mind when particular child custody or visitation agreements are being negotiated.

When divorcing partners can cooperate and both can function adequately as parents, research suggests that another factor also contributes to the healthy development of pre-adolescent children: frequent contact with both parents. This should be a secondary goal in negotiations around custody or visitation.

Divorced parents who are cooperative, live in the same geographical area, and able to invest significant time with their children can choose among many different custody or visitation arrangements which will work well. Even for these fortunate families the choices are not unlimited, however. Infants, toddlers, preschoolers, and older age groups have unique developmental characteristics which must be respected. When parents have difficulty cooperating, live far apart, or have major schedule constraints, it may be even more important to consider carefully children's developmental needs.

Summaries of the major stages of child development are presented on the following pages as starting points in evaluating a particular child's needs. Any college child development textbook will provide more information about these stages and the research which documents their characteristics. Of course, generalizations never fit individual children perfectly. From birth on children differ in temperament, with some being easygoing and adaptable while others are much more easily upset by change. Parents need to be sensitive to each child's individual temperament and typical ways of signalling distress. Normal, healthy children also differ in the rates at which they progress through the developmental stages described below. Assessment of particular children and their unique family situations by qualified professionals may be advisable when parents have serious questions about the suitability of particular custody or visitation patterns.

Very little research exists on the effects of specific custody/visitation arrangements on children of different ages. The specific recommendations made in this paper are based on inferences from other developmental research and on the advice of

various professionals who work with divorcing families. There is nothing magically accurate about the specific figures offered (for example, when a "brief" visit is defined as "1-3 hours"). These numbers are merely used to give a ballpark orientation to terms such as "brief."

#### Infants (Birth to 18 Months)

Major milestones of normal development during this period include the development of "object permanence" (the awareness that objects continue to exist even when they are out of sight); beginning understandings of cause and effect relationships; and the development of secure attachment bonds to one, two, or several major caretakers. Developmental researchers agree that frequent interaction with stable primary caretakers is critical for the development of secure attachment and for healthy infant growth.

Ideally in divorced families an infant could have significant daily interaction with both parents during this critical period. Thus, the baby could develop primary attachments to both mother and father. If this is not possible, it is probably best to arrange custody so that one parent has intensive daily contact with the infant and the other parent visits as frequently as possible. Separations from primary caretakers with whom the baby is thoroughly familiar will be very stressful for the child and should be brief (1-3 hours).

#### Toddlers (18 months to 3 years)

Major milestones of healthy toddler development include the development of language and the ability to think about the world symbolically. The child's need for continuous physical proximity to primary caretakers lessens toward the end of this period as he/she becomes able to maintain relationships symbolically. The 2 1/2-year-old can understand a caretaker's verbal reassurance that he/she will return after nap, breakfast, etc. Explanations must still be simple and concrete, however. Concepts such as "next Friday" or "in a week" are beyond the toddler's grasp.

In divorced families, daily contact with both parents is still ideal for the toddler. If both parents cared for the child on a daily basis during infancy, however, they will have increasing flexibility in scheduling longer periods (1-3 days) with one parent only as the child approaches 3 years of age.

If only one parent has been the primary caretaker on a daily basis during infancy, separations from this parent will still be stressful and should be brief (1-3 hours). Frequent, shorter visits with a noncustodial parent are more beneficial than less frequent, longer visits. The presence of brothers, sisters, grandparents, or others with whom the toddler is very familiar

can reduce stress during longer visits with a noncustodial parent.

#### Preschool Children (3 years to 5 years)

During this period children are developing their language and symbolic thinking abilities rapidly. Their speech becomes quite mature in many respects. Their thinking is still different from adult thinking in important ways, however. Preschoolers' understandings of cause and effect relationships are often illogical by adult standards; their grasp of what things can change and what things are constant in the world is shaky; they sometimes have difficulty distinguishing their fantasies from reality; and they tend to be egocentric in their thinking--seeing themselves as causal agents in all the events around them. Thus, sudden drastic changes in their living situations, schedules, or access to primary caretakers may produce a great deal of anxiety and self-blame. A stable, predictable environment is desirable.

In divorced families frequent, regular contact with both parents is ideal. If both parents have frequently cared for the child in the past, the preschooler will probably now be able to handle regularly scheduled longer stays (1-4 days) with each parent separately and an occasional even longer stay (1-2 weeks) for vacations, etc. The more frequent the contact and the more predictable the schedule, the less anxiety it is likely to arouse in the child.

If one parent only has been the primary caretaker, and the other parent has been unable to visit on a frequent, regular basis, lengthy separations from the primary caretaker may still be highly stressful for a preschool-age child. The presence of brothers, sisters, or others with whom the child is very familiar may reduce this stress.

#### Early Elementary Grade Children (5 years to 8 years)

During this period children are becoming much more logical and planful by adult standards. Cultures worldwide tend to see children over 7 years of age as potentially "responsible" for the first time (capable of following through on assigned tasks, contributing to the household economy, telling "right" from "wrong," making religious commitments, etc.). Individual children vary in the rate at which they develop these new capacities, so this whole period is best viewed as one of developmental transition. Again, a stable, predictable environment promotes healthy development.

In divorced families frequent, regularly scheduled contact with both parents remains the ideal. If children have close, comfortable relationships with both parents, they can probably handle regularly scheduled stays of up to a week in length with

each parent separately, as well as occasional longer vacation periods (up to a month). Shorter, more frequent contacts with each parent are still likely to be most beneficial, however.

If an early elementary age child lives primarily with one parent, and the other parent has been unable to see him/her on a frequent, regular basis, lengthy separations from the primary caretaker may still be somewhat stressful. The presence of brothers, sisters, or others with whom the child is very familiar may reduce this stress, as might telephone contacts or visits with the primary caretaker.

#### Older Elementary Grade Children (8 years to 12 years)

During this period children's language and reasoning abilities are much like adults' (except that children aren't yet capable of very abstract or hypothetical reasoning). As friends and school increase in importance to children, they become less dependent on adult caretakers.

In divorced families the older child can probably understand and adapt to a more flexible schedule of contacts with both parents than would be ideal for a younger child. Older children may have their own schedules of social and recreational activities to factor into family schedules. Ideally, the child could still have frequent access to both parents, but she/he can probably tolerate long separations from one parent or the other without great stress if her/his environment is generally stable and supportive and if the absent parent maintains regular contact via letters or phone calls.

#### Adolescents (12 years to 18 years)

Young adolescents need more support and guidance from parents than do older adolescents. Most of the generalizations about older elementary grade children hold true for young adolescents. More mature adolescents may not need contact of long duration with either parent. Positive parent/teen relationships characterized by mutual respect and affection remain important for healthy development, but these relationships can take many different forms.

Ideally, divorced parents can communicate well enough with their teenage children and with each other to work out mutually acceptable custody and visitation arrangements. The adolescent's need to develop a more independent identity and to make more of the decisions affecting his/her own life should be respected.

## GROWTH GAMES

Be aware of the Pain Games (+ Other Common Reactions) and make a conscious decision not to play them. We all make mistakes sometimes, so do a periodic check on yourself. If you have slipped, do your best to get back on track.

SOS--Find some place to get help, support, or another adult to listen to your feelings (relatives/friends, divorce support group, minister-clergy, professional counseling).

Message Received--Acknowledge your child's feelings about the divorce or the other parent (without adding your own feelings). It's okay to say, "Sometimes you feel sad that Daddy/Mommy doesn't live her anymore."

Keep It To Yourself--Keep your feelings separate from your children's and handle them in grown-up ways. You might briefly want to acknowledge you feel sad or angry about your ex, but 3 words is about the maximum; anything else is too much or too adult and should be shared with another adult. This will leave plenty of room for your child's feelings, which are most important.

OWN IT!--Be brief, honest, and specific about what "I feel". Don't expect anyone to agree with you, take care of it, or sympathize - just own it for yourself. Remember, the "I's" have it.

Now Focus On You--Bury the past and deal primarily with today and tomorrow. Plan and talk about the following: household duties, money, visitation, holidays, vacations, the future (dating, remarriage, moving, etc.). Try to consider everyone's needs, yours and the children's. The best decisions are those that consider the needs of everyone in the family.

## RULES FOR FIGHTING FAIR

1. Fights should be held in order to reach a solution not to gain a victory.
2. NO PHYSICAL FIGHTING ALLOWED. This is a firm guideline to effective fighting.
3. The basic outline for the fight should be:

A. I think _____		A. State your "gripe"
B. I feel _____	OR	B. Suggest some
C. I want _____ (specific)		alternatives
D. I will _____		C. Reach a solution

HINT: No stamp collecting. Clear the air as soon as possible. Although fighting is scary, hang in there! BE BRIEF  
(A FEW WORDS ONLY)

4. State your "gripe" in the form of a REQUEST NOT A COMMAND. Make it a POSITIVE request.
5. Fight about ONE THING AT A TIME. If the fight is a question of fact (?) then it is your DUTY TO GET THE FACTS. If the fight is a matter of OPINION you must recognize that A COMPROMISE IS THE ONLY SOLUTION.
6. NO HITTING BELOW THE BELT. No personal attacks or name-calling. Why use an atomic bomb when a squirt-gun will do. Remember, you are not out to destroy the enemy, but to discover the person with whom you are in combat. You can state your gripes about BEHAVIOR NOT STATES OF BEING.
7. YOU CANNOT REFUSE TO FIGHT. If something is important enough to one person it is worth fighting over.  
HINT: It is sometimes good to make an appointment to fight, so that each can be prepared.
8. RULES should be set by the mother and father only. No third parties in setting or enforcing rules. No friends or relatives opinions or rules.
9. NO LEAVING THE FIGHT in the MIDDLE UNLESS there is a mutual agreement for truce, or temporary cessation of hostilities.
10. DON'T PLAY ARCHAEOLOGIST. Focus clearly on the real issue of CURRENT material. Don't dig things out of the past.
11. DON'T PLAY PSYCHOLOGIST. Don't try to tell the other what they are thinking, or feeling, or why they are doing something. This is covered by our most famous rule DON'T ASSUME.
12. DON'T TRY TO MINDREAD. It's impossible...ASK INSTEAD. Don't ask the other person to mind-read, tell them.
13. DON'T MAKE SPEECHES. State your gripe and then let the other person answer. If your opponent states a point, you MUST respond to it before you make a new one. ANSWER QUESTIONS DIRECTLY.
14. NO EMOTIONAL BLACKMAIL. "If you really loved \_\_\_\_\_, you would..."

## CHILDREN OF DIVORCE

### COMMON REACTIONS TO DIVORCE & OTHER STRESSES

"I'll go live with (other parent)!"--This is a common thing children say when angry. It has nothing to do with where they want to live. What the child is saying is that they are angry with you and are using this way to express their anger, (like the two-year-old who says "I don't like you anymore!"). Don't respond by saying "go" (that's missing the point and saying it's not okay to be angry). Do say "I know you're angry".

"You're just like so and so."--This happens when the child does something negative that reminds the parent of their ex. The parent gets unreasonably angry, rejecting, and is fearful that the child will grow up to be exactly like all the bad parts of the ex. This is not true - the parent is forgetting it is okay and normal for a child to act like a child--it just wasn't okay for ex-spouse to act like a child.

Over-indulging the child--Do set reasonable and consistent limits for your children. Over-indulging your children only adds to the confusion. You can increase your child's sense of security by making rules simple, expectations clear and consequences consistent and appropriate.

Feeling like a failure--Do forgive yourself and your ex and concentrate on rearing your children in a healthy manner in the here and now. Rejecting yourself as a failure will only make life more difficult for you and your children. All normal people make mistakes. Choose to learn from these mistakes - not be overcome by them.

Using your child to meet companionship needs--Do develop adult relationships to meet your need for companionship and so on; don't use your children to meet this need. Allowing your child to sleep with you or burdening him or her with your problems can eventually lead to emotional problems for the child.

Feeling your child should be loyal to you--Do reassure your child that it is okay to love both parents. Children cannot choose one parent over another because their own identity includes aspects of both parents. Rejecting a parent means rejecting or feeling badly about a part of themselves.

Expecting your ex-spouse to continue to fill his/her past role--Do be aware of changing roles. The shoulds and "oughts" of marriage no longer hold true after a divorce. As a check, ask yourself, "Could I ask \_\_\_\_\_ (neighbor) to do that?"



LIST OF AVAILABLE COMMUNITY RESOURCES

AL-ANON and ALATEEN.....	442-5731
ALCOHOLICS ANONYMOUS.....	442-0711
BIG BROTHERS - BIG SISTERS.....	443-9161
CATHOLIC COMMUNITY SERVICE.....	444-9611
CHILDREN OF DIVORCE.....	443-7358
CHILD SEXUAL ABUSE TREATMENT PROGRAM.....	443-7358
COASTAL FAMILY DEVELOPMENT CENTER.....	443-7048
CONNECTIONS.....	444-0467
DRUG/ALCOHOL ABUSE CENTER.....	445-6250
FAMILY DISCUSSION GROUP.....	445-7644
FAMILY VIOLENCE PROJECT.....	443-7358
FOSTER PARENT SUPPORT GROUP.....	839-1915
HUMBOLDT CHILD CARE COUNCIL.....	444-8293
HUMBOLDT FAMILY SERVICE CENTER.....	443-7358
MOM'S SUPPORT GROUP.....	839-4888
PARENTS ANONYMOUS.....	445-3230
PARENT SUPPORT GROUP (for custody disputes).....	<del>445-3886</del> 445-3822
PARENT SUPPORT GROUP (for parenting teens).....	443-8322
PARENTS UNITED.....	443-7358
PARENTS WITHOUT PARTNERS.....	443-4897
UNITED WAY (information and referral).....	445-8637
WIC (supplemental food for women, infants & children).....	445-6255
YOU'RE NOT ALONE SUPPORT GROUP.....	442-6955
YOUTH SERVICE BUREAU.....	443-8322
YWCA.....	442-6955
HUMBOLDT MENTAL HEALTH.....	445-7234
24 HOUR CRISIS LINE.....	445-7203

\*SEE YELLOW PAGES OF TELEPHONE BOOK FOR A LISTING OF:

\*CLERGY

\*PSYCHOLOGISTS

\*MARRIAGE & FAMILY COUNSELORS

\*SOCIAL SERVICE ORGANIZATIONS

\*PSYCHIATRISTS

\*SOCIAL WORKERS

EVALUATION - CHILDREN OF DIVORCE

NAME \_\_\_\_\_

DATE \_\_\_\_\_

PLEASE CHECK THE APPROPRIATE BOX

1) How much useful information did you gain from the lecture and discussion in the following areas:

A GREAT DEAL      SOME      VERY LITTLE


- a) Understanding the divorce process (how it effects the family, 6 divorces and communication triangle).
- b) Normal developmental stages of children and how they experience stress.
- c) Pain games (games families play).
- d) Visitation and cooperative parenting.

STRONGLY AGREE      AGREE      DISAGREE

- 1) The presenters were knowledgeable of the subject matter.
- 2) The presenters were well prepared.
- 3) The workshop overall was helpful to me.
- 4) I would recommend this workshop to others.
- 5) The content was well presented.
- 6) The content was what I expected.
- 7) The learning environment was comfortable.


What one aspect of the group was most helpful to you?

What one aspect of the group was least helpful to you?

Comments:



ATTACHMENT H



CALIFORNIA STATE SENATE

TASK FORCE ON FAMILY RELATIONS COURT

Senator Bill Lockyer and Justice Donald King, Co-Chairs

Testimony of John E.B. Myers, Professor of Law  
University of the Pacific  
McGeorge School of Law  
October 6, 1989

Thank you for affording me the privilege of testifying before you today. I support the concept of a Family Relations Court, and urge the Task Force to recommend adoption of such a court.

My research and writing concentrate on child abuse, therefore, I will focus my testimony on child maltreatment. As you know, a small but increasing number of parents embroiled in custody and visitation litigation allege that a present or former spouse sexually abused a child of the marriage. When allegations of sexual abuse arise in family law proceedings, the judge faces exceedingly complex issues.

Many judges sitting in family court have little or no training in child abuse. By contrast, juvenile court judges routinely handle child abuse cases, and are familiar with the complicated medical, psychological, and evidentiary issues arising in such litigation. Combining family law and dependency matters in one court would increase the knowledge and sophistication of the judges responsible for these difficult cases. Furthermore, in a combined court, the judge trying the custody or visitation issue can draw

upon the powers of the juvenile court when issues of child protection arise. Finally, a Family Relations Court with jurisdiction over both dependency and family law matters is a natural focal point for training on child abuse.

A portion of the public and of the relevant professional community is questioning the ability of the family court to respond appropriately to cases involving allegations of child sexual abuse. A Family Relations Court would increase the ability of the judicial system to adjudicate these difficult cases fairly and accurately, and would bolster sagging public and professional confidence in the legal system.

A judge assigned to the Family Relations Court has a great deal to learn--most of it from disciplines other than law. To be effective on the bench, the judge must learn about child development, and must become familiar with the medical and psychological literature on child abuse and neglect. In my estimation, it takes about two years to acquire the necessary knowledge to operate at peak performance. Given the length of time needed to master the complex legal and non-legal aspects on sitting in a Family Relations Court, I believe judges should remain in the court a minimum of five years.

Attorneys practicing in a Family Relations Court should receive special training in child development and in the

developmental capabilities and limitations of children as witnesses. Attorneys would benefit from training on the psychological, medical and evidentiary aspects of child abuse.

The recommendations contained in the Final Report of the California Child Victim Witness Judicial Advisory Committee are important and should be implemented. Particular attention is warranted to creation of Child Interview Specialists as discussed at pages 24 to 27 of the Final Report. In an increasing proportion of child sexual abuse cases, the defense concentrates its attack not on the child who alleges sexual abuse, but on the professionals who interviewed the child. The claim is made that inadequately trained and biased interviewers used improperly suggestive and leading interview techniques, with the result that the child cannot be believed. Unfortunately, there is truth in the assertion that some interviewers entertain preconceived notions about sexual abuse and the truthfulness of children. Furthermore, the quality of training provided to professionals who interview children is spotty at best. Use of Child Interview Specialists would eliminate many of the concerns about the quality of interviews now being conducted.

I would like to make one final observation, this time from my perspective as a law teacher. When I teach family law and juvenile law, I try to let the students know that lawyers can be helping professionals just like doctors and social workers. Every year,



a number of students get very excited with the idea that it is possible to devote their professional energies to helping children and families. For these students--who are among our most altruistic--the notion of law as a helping profession opens up completely new horizons that had never occurred to them before. The question these students always have is, "How can I find a job working with children or families?" Most law school career development offices have very little to offer these students, because the firms that conduct on campus interviews are predominantly focused on corporate and commercial matters. The student interested in family and children's issues must go knocking on doors to find that first job. The creation of a Family Relations Court would inspire the type of student I have been describing. As a teacher, I could point to the Court as the place where these valuable young lawyers can set their sights.

Attached you will find the manuscript of an article to be published in the Journal of Family Law. The article discusses the difficult issues that arise when allegations of child sexual abuse are made in the context of custody and visitation litigation. Section V of the article, beginning on page 33, discusses methods to improve the response of the courts to these complex cases. Most of the recommendations discussed in the article could be easily and effectively implemented in a Family Relations Court.

ALLEGATIONS OF CHILD SEXUAL ABUSE  
IN CUSTODY AND VISITATION LITIGATION

John E.B. Myers\*

Elizabeth Morgan, M.D. peers between the bars of her Washington D.C. jail cell, where she has languished more than two years. Doctor Morgan has committed no crime. She is incarcerated for civil contempt because she refuses to disclose the whereabouts of her six-year-old daughter to the judge presiding over custody litigation between Morgan and her former husband, Doctor Eric Foretich. Morgan claims that during periods of visitation, Foretich molested their daughter, a claim Foretich denies.<sup>1</sup>

Elizabeth Morgan is not alone in defying the law. Convinced that courts are failing to protect their children from sexual abuse by former spouses, a growing cadre of parents are hiding their children.<sup>2</sup> Some, like Morgan, go to jail when they refuse to comply with decisions regarding custody or visitation. Other parents disappear along with their children, vanishing into what some call the "new underground railway." Like its 19th Century counterpart that aided runaway slaves, the new railway is a loose affiliation of normally law abiding citizens who are willing to risk prosecution to help people flee what they perceive as an unjust system.

The fact that hundreds--perhaps thousands--of parents are giving up on the legal system to protect their children indicates that something is amiss, and that public confidence in law is eroding. The time is ripe to grapple with the tremendously complex issues that arise when allegations of child sexual abuse occur in custody and visitation litigation. To that end, section I of this article discusses the prevalence of child sexual abuse. Section II notes the harmful psychological effects of sexual abuse. Section III discusses evidentiary and constitutional issues cutting across all forums in which allegations of child sexual abuse are litigated.<sup>3</sup> Section IV focuses on issues of special concern in child custody and visitation litigation incident to divorce. Finally, Section V offers recommendations for improving the response of the legal system to allegations of child sexual abuse arising in custody and visitation litigation.

## I.

### Incidence of Child Sexual Abuse

It is impossible to say precisely how many children are sexually abused each year.<sup>4</sup> Estimates of sexual abuse come primarily from two sources. The first source of information is the child abuse reporting laws which exist in every state, and which require professionals who interact with children to report suspected abuse and neglect to law enforcement or child

protection authorities.<sup>5</sup> The American Humane Association compiled reporting statistics from a sample of states, and estimated that in 1986 there were 132,000 substantiated cases of child sexual abuse.<sup>6</sup> Most child sexual abuse is never reported,<sup>7</sup> however, and the true incidence rate is probably substantially higher.<sup>8</sup>

The second source of data on incidence of child sexual abuse comes from a small but growing number of sociological studies.<sup>9</sup> While the studies employ differing methodologies and definitions of sexual abuse, they consistently point to one finding: child sexual abuse is widespread. In 1986, Peters, Wyatt, and Finkelhor reviewed nineteen studies estimating the percentage of females subjected to sexual abuse.<sup>10</sup> The average rate of sexual abuse across studies was 22.7%. In other words, more than twenty percent of girls apparently experience some form of sexual abuse. Thirteen of the studies reviewed by Peters and her colleagues estimate the percentage of males subjected to abuse. The average rate for boys is 10.2%. Whatever the methodological shortcomings of individual studies, their cumulative weight cannot be ignored.

It is important to say a word about child sexual abuse in day care. In 1988, David Finkelhor and his colleagues published the results of a national study of sexual abuse in day care.<sup>11</sup> The "study attempted to identify all cases of sexual abuse in day care reported nationwide during the period January 1983 through

December 1985."<sup>12</sup> The research disclosed 270 substantiated cases of sexual abuse, involving a total of 1,639 child victims.<sup>13</sup> Extrapolating from available data, the researchers estimate that the actual incidence is "500 to 550 reported and substantiated cases and 2500 victims for the three-year period. . . . [W]e estimate that the risk to children is 5.5 children sexually abused for 10,000 enrolled" in day care.<sup>14</sup> Thus, while the percentage of children abused in day care is small,<sup>15</sup> the number of incidents and victims is cause for concern.

Age offers no protection from sexual abuse.<sup>16</sup> Victims range from infants<sup>17</sup> to adolescents.<sup>18</sup> One pedophile organization has a slogan, "Sex by year eight or else it's too late."<sup>19</sup>

## II.

### Harmful Effects of Child Sexual Abuse

Clinical and scientific research establishes that for many children, sexual abuse has serious short and long-term consequences.<sup>20</sup> In particular, sexual abuse is related to a variety of medical and mental health problems. Berliner and her colleagues describe research on the effects of child sexual abuse:

The earliest systematic reports focused on incest victims who were receiving psychotherapy, and found that incest victims have more severe

symptoms than patients who have not been sexually abused. Since then, a number of studies of women in the general population have confirmed that abuse survivors experience higher levels of symptomatic distress. Adult survivors are more depressed, more anxious, have more dissociative and somatic symptoms, and have lower self-esteem. Survivors are also at significantly higher risk of developing depression, various anxiety disorders, including post traumatic stress disorder (PTSD), substance abuse disorders, and sexual dysfunction. High rates of sexual abuse are found in the histories of patients with conversion reactions, suicidality, self-mutilation, multiple personality disorder, chronic pelvic pain, and in women with eating disorders. Childhood sexual abuse is found in a large percentage of adolescent prostitutes and runaways.

Since the late 1970s, numerous publications have described the negative effects of sexual abuse on children. These publications described certain general patterns of reaction found in clinical samples of sexually abused children. For the most part, children described in these studies were victims of incest. Numerous negative effects are described, including fears and anxieties,

feelings of guilt, shame and anger, self-destructiveness, and inappropriate sexual or aggressive behavior.<sup>21</sup>

The relevant literature refutes any notion that child sexual abuse is benign. While most sexually abused children go on to productive adult lives, there is no doubt that sexual abuse leaves lasting psychological scars in many victims.

### III.

#### Evidentiary and Constitutional Issues in Child Sexual Abuse Litigation

Child sexual abuse is often exceedingly difficult to prove. Medical evidence is lacking in most cases.<sup>22</sup> The victim is usually the only eyewitness, therefore, the ability to prove abuse and identify the perpetrator frequently hinge on the child's ability to testify. While the great majority of children age four and above possess the psychological capacity to testify, some are intimidated into silence, some recant, and others are poor witnesses. The paucity of evidence that plagues child sexual abuse litigation combines with the unique capabilities, limitations, and needs of child witnesses to create complex evidentiary and constitutional issues, six of which are discussed below.<sup>23</sup>

## A. Testimonial Competence of Children.

Many adults have doubts about child witnesses.<sup>24</sup> Psychological research conducted during the early years of this century fueled skepticism.<sup>25</sup> One researcher was moved to ask, "When are we going to give up, in all civilized nations, listening to children in courts of law?"<sup>26</sup> The picture is different today. Children testify with increasing frequency, and contemporary psychological research indicates that children are better witnesses than many adults think.<sup>27</sup>

There is no minimum age below which children are precluded from testifying.<sup>28</sup> In a minority of jurisdictions, children under certain ages (typically 10, 12, or 14) are presumed to be incompetent unless the trial judge determines after questioning that they possess the capacity to testify.<sup>29</sup> Under the influence of the Federal Rules of Evidence, a growing number of states hold that "[e]very person is competent to be a witness,"<sup>30</sup> including children.<sup>31</sup> Legislatures in a few states have gone a step further by enacting statutes designed to ensure that child victims of sexual abuse are always permitted to testify.<sup>32</sup>

To be competent to testify, a child must possess the capacity to observe,<sup>33</sup> sufficient memory to recollect events,<sup>34</sup> capacity to communicate,<sup>35</sup> an appreciation of the duty to tell the truth,<sup>36</sup> and an understanding of the difference between truth



and falsehood.<sup>37</sup>

Adults sometimes assume that young children are less observant than older children and adults. Psychological research discloses, however, that children are not necessarily less discerning observers. Even young preschool children possess the sensory capacity to observe the world around them and register accurate perceptions.<sup>38</sup>

Do young children have the ability to remember what they observe? The answer is yes for the great majority of children.<sup>39</sup> While older children and adults are better at some memory tasks than young children, psychological research discloses that "given simple, supportive questions, even young children generally have sufficient memory skills to respond to the recall demands of testimony."<sup>40</sup> Children are particularly good at remembering the central details of relatively simple events that have personal meaning for them.

Children generally possess the capacity to communicate with sufficient clarity to make themselves understood.<sup>41</sup> The fact that a youngster uses childlike language does not render the child incompetent.<sup>42</sup> Furthermore, a child is not incompetent because she hesitates to answer questions.<sup>43</sup> Even total refusal to answer some questions does not automatically lead to a finding of incompetence. In one case, for example, a six-year-old took the stand.<sup>44</sup> "Towards the end of her cross-examination, she

refused to listen to questions and placed her fingers in her ears."<sup>45</sup> Despite this rather emphatic unwillingness to communicate, the child was ruled competent.

When communication breakdowns occur with child witnesses, the problem usually rests with the attorney, not the child. Try as they might, attorneys have difficulty avoiding legal terminology that is lost on children. Psychologist Karen Saywitz reminds us that "[t]o young children, a case is something you carry papers in, a hearing is something you do with your ears, charges are something you do with a credit card, motion is like waving your arms, parties are for getting presents, a minor is someone who digs coal,"<sup>46</sup> a court is a place to play basketball, and jury is something women wear around their neck.

The great majority of children understand the obligation to tell the truth in court.<sup>47</sup> Furthermore, most children are sufficiently aware of the difference between truth and falsehood to testify competently.<sup>48</sup> Adults sometimes wonder, however, whether the rich fantasy life of childhood causes children to confuse the real and the imagined. While children use pretend in their play, they seem to know when they are pretending. During play tea parties, for example, preschoolers take imaginary sips from empty cups, but they do not attempt to eat plastic cookies. Modern research indicates that children may be less likely than adults to differentiate fact from fantasy in some situations, but not in others.<sup>49</sup> At this point in time, there is

insufficient scientific evidence to support an argument that children's testimony should be excluded because children cannot differentiate fact from fantasy. In the run of cases, children can distinguish the real from the imaginary.

With proper support and preparation, children as young as three testify effectively.<sup>50</sup> The fact that the individual on the stand is a child whose head is barely visible above the rail of the witness box, and whose feet dangle far above the floor should not cause alarm. Young children provide accurate, often compelling, testimony.

#### B. Admissibility of Children's Hearsay Statements.

Children's hearsay statements assume extraordinary importance in sexual abuse litigation.<sup>51</sup> The child's out-of-court description of abuse is sometimes the most important evidence in the case.<sup>52</sup> While there are many exceptions to the hearsay rule, only a handful play an important role in child sexual abuse litigation.<sup>53</sup> The most frequently utilized is the excited utterance exception.<sup>54</sup> Also important is the exception for statements to physicians providing diagnostic and treatment services.<sup>55</sup> In states that have a residual or catchall exception, reliable hearsay that does not fit within another exception is admissible.<sup>56</sup> Beginning in 1982, a growing number of jurisdictions adopted special hearsay exceptions for children.<sup>57</sup> The child hearsay exceptions authorize admission in

child abuse cases of reliable out-of-court statements by children under specified ages. The child hearsay exceptions have withstood constitutional challenge.<sup>58</sup> In child custody and visitation litigation incident to divorce, the state of mind exception plays an important role. Discussion of this exception is postponed for the moment, and is taken up in some detail in the subsection discussing evidentiary recommendations.

### C. Video Testimony and the Confrontation Clause.

Testifying is difficult for most witnesses, but when the witness is a child, the experience can be overwhelming.<sup>59</sup> In criminal trials especially, many professionals believe selected children should be spared the ordeal of testifying in open court before the defendant and a room full of strangers. Many states responded to this belief with legislation authorizing video testimony from young children. The video testimony statutes fall into four categories: (1) videotaped interviews, (2) videotaped depositions, (3) videotaped preliminary hearing testimony, and (4) live trial testimony via closed-circuit television. Most video testimony statutes contemplate circumstances in which children testify outside the physical presence of the defendant.

While video testimony raises several constitutional issues,<sup>60</sup> the question receiving the greatest judicial attention is the impact of video testimony on the criminal defendant's Sixth Amendment right to confront accusatory witnesses.<sup>61</sup> Does

the state interest in protecting children from the rigors of testifying ever outweigh the defendant's constitutional right to a face-to-face encounter with the child? With its 1988 decision in Coy v. Iowa<sup>62</sup> the U.S. Supreme Court made clear that face-to-face confrontation is the rule, and any exceptions must be based on an individualized showing of necessity.

Post-Coy decisions hold that the right to face-to-face confrontation is not absolute, and that in selected cases the Constitution permits children to testify outside the physical presence of the defendant.<sup>63</sup> Courts agree, however, that before face-to-face confrontation may be abridged, the state must make a convincing showing that the child requires the special accommodation of video testimony.<sup>64</sup> Courts take several views on the showing required for video testimony. Some hold that confrontation may be curtailed only when a face-to-face encounter would render the child unavailable as a witness.<sup>65</sup> A second approach links use of video testimony to a finding that face-to-face confrontation would impair the child's ability to testify accurately.<sup>66</sup> Courts adopting the second approach hold that the most important consideration must be accuracy of the child's testimony, not the psychological trauma of testifying.<sup>67</sup> A third approach focuses primary attention on the trauma to the child.<sup>68</sup> If the court is convinced testifying would be sufficiently traumatic, it may dispense with face-to-face confrontation.<sup>69</sup>

The Confrontation Clause does not apply in child custody and visitation litigation,<sup>70</sup> and the complex Sixth Amendment issues discussed above do not arise in family court. Most courts take the view that in custody and visitation litigation it is proper for the trial judge to interview children in chambers, outside the physical presence of parents.<sup>71</sup> The preferred practice is to permit counsel to be present and to question the child. A record is made of the testimony. Finally, it is advisable for the court to make a finding that testimony outside the parents' presence will serve the child's best interest, and will assist the child to be more forthcoming while testifying.

D. Expert Psychological Testimony.

Few aspects of child sexual abuse litigation generate more confusion and disagreement than expert psychological testimony.<sup>72</sup> Uncertainty abounds for several reasons. First, psychological knowledge about child sexual abuse is still developing, and many questions remain unanswered. Second, some professionals who are permitted to testify as experts on sexual abuse lack genuine expertise. Third, some attorneys, mental health professionals, and courts misunderstand what is often called "syndrome" evidence.<sup>73</sup> Finally, attorneys sometimes fail to articulate the specific purpose for which expert psychological testimony is offered. For example, is the testimony offered as substantive evidence of abuse? Or is the purpose of the testimony to rehabilitate a child witness' impeached

credibility? Certain types of expert testimony are admissible for one purpose but not the other.

In an effort to dispel some of the confusion surrounding psychological testimony, there follows a brief description of five categories of such testimony. A clear distinction is drawn between testimony offered as substantive evidence of sexual abuse, and testimony offered to rehabilitate children's impeached credibility.

1. Psychological Testimony as Substantive Evidence of Sexual Abuse.

Psychological testimony designed to prove sexual abuse takes two forms.

- (a) Psychological Testimony Describing Reactions Commonly Observed in Sexually Abused Children.

Many sexually abused children demonstrate behavioral, cognitive, and emotional reactions to their abuse.<sup>74</sup> There is no single reaction observed in all sexually abused children, and approximately twenty percent of children demonstrate no apparent reaction.<sup>75</sup> A substantial variety of reactions have been observed in sexually abused children, including anxiety, regression, sleep disturbance, acting out, depression, and nightmares, to name just a few.<sup>76</sup> An examination of these

reactions quickly reveals, however, that they are also associated with a wide range of psychological problems that have nothing to do with sexual abuse.

While some of the reactions observed in sexually abused children are consistent with a number of problems, others are more strongly associated with personal or vicarious sexual experience. Examples of abuse-specific reactions include age-inappropriate knowledge of sexual acts or anatomy, sexualized play, and genitalia in young children's drawings.<sup>77</sup>

The presence of behaviors commonly observed in sexually abused children can be probative of abuse, and expert psychological testimony describing such behaviors should be admissible in selected cases. The probative value of such testimony is highest when there is a coalescence of three types of behaviors: (1) a central core of sexual behaviors which are strongly associated with sexual abuse, (2) nonsexual behaviors which are commonly observed in sexually abused children, and (3) medical evidence of sexual abuse. Probative value declines as sexual behaviors and medical evidence decrease in proportion to nonsexual behaviors. When the only evidence consists of a number of ambiguous, nonsexual behaviors, the evidence may lack any probative value, or probative worth may be outweighed by the potential for unfair prejudice to the person accused of abuse.

Most appellate courts to consider the theory of substantive



proof outlined above reject it.<sup>78</sup> Across the board rejection is unwarranted, however. Evidence offered under this theory passes the test of relevance because presence of behaviors commonly observed in sexually abused children increases the likelihood that a child was abused.<sup>79</sup> Furthermore, the clinical and scientific literature supports cautious reliance on such evidence.<sup>80</sup> Rejection is particularly inappropriate in bench trials, where the possibility of jury confusion is eliminated. When the probative value of evidence offered under this theory is considered in light of the difficulty of proving sexual abuse of young children, the argument for admission persuades.

The theory of proof discussed above is based on assessment of behaviors commonly observed in sexually abused children. It is important to realize that this theory is not based on a psychological syndrome. At this point in time, a professional consensus does not exist on whether there is a psychological syndrome that detects or diagnoses child sexual abuse. Unfortunately, the theory of proof now under consideration is too often mislabeled syndrome evidence. In particular, the theory is confused with the child sexual abuse accommodation syndrome described by Dr. Roland Summit.<sup>81</sup> The accommodation syndrome was not intended as a diagnostic device, and the fact that a child demonstrates characteristics seen in the accommodation syndrome does not prove abuse. By contrast, the fact that a child demonstrates behaviors commonly observed in sexually abused children can be probative of sexual abuse. To reiterate, the

theory of proof discussed above should not be confused with child sexual abuse accommodation syndrome. Furthermore, the theory is not based on a psychological syndrome, and should not be called syndrome evidence.

(b) Psychological Testimony On Whether a Particular Child Was Sexually Abused.

This subsection discusses expert psychological testimony on whether a particular child was sexually abused. This form of expert opinion differs from the testimony discussed in the preceding subsection in one important respect. In the preceding subsection the expert did not venture an opinion on whether a particular child was abused. Rather, testimony was limited to behaviors observed in sexually abused children.<sup>82</sup> The testimony described in the present subsection goes the next step; to an opinion that a particular child was abused.<sup>83</sup>

The admissibility of expert psychological testimony on whether a child was abused is a divisive issue. Some courts take the view that such testimony is improper in all or nearly all circumstances.<sup>84</sup> Others reach the opposite conclusion.<sup>85</sup> The commentators are also divided.<sup>86</sup> In view of the current controversy surrounding expert psychological testimony on whether a child was sexually abused, it may be appropriate at the present time to eschew such testimony in criminal jury trials. Proceedings in family and juvenile court are another matter,

however, and psychological testimony on whether abuse occurred is sometimes appropriate in these forums. The clinical and scientific literature supports cautious reliance on the ability of qualified professionals to formulate accurate clinical judgments about sexual abuse.<sup>87</sup> It must be recalled that child sexual abuse is often very difficult to prove. The court needs all the relevant evidence that is available. Cases are tried to the court, thus concern about jury confusion is eliminated. In juvenile and family court, the need to consider all relevant evidence works in tandem with the compelling state interest in protecting children from abuse to justify admission of expert psychological testimony on whether sexual abuse occurred.<sup>88</sup> The New York courts admit such testimony in dependency cases, and there is much to commend the New York approach.<sup>89</sup>

## 2. Expert Psychological Testimony to Rehabilitate a Child's Impeached Credibility.

Courts are a good deal more accepting of expert psychological testimony designed to rehabilitate children's credibility than they are of psychological testimony offered as substantive evidence of abuse. The present subsection briefly discusses three types of rehabilitation testimony.

### (a) Psychological Testimony to Explain Behaviors Such as Delay in Reporting and Recantation.

In many child sexual abuse cases, the person accused of abuse hopes to impeach the child's credibility by pointing out that the child changed the story over time or recanted altogether. Another common mode of impeachment is to establish that the child delayed reporting the abuse. Such impeachment is legitimate. However, when the defense concentrates its attack on delay, inconsistency, and recantation, the party attempting to prove abuse has a legitimate need to rehabilitate the child's credibility. Such rehabilitation often takes the form of expert testimony, and the great majority of courts approve such testimony<sup>90</sup> to explain why sexually abused children delay reporting their abuse,<sup>91</sup> why children recant,<sup>92</sup> why children's descriptions of abuse are sometimes inconsistent,<sup>93</sup> why abused children are angry,<sup>94</sup> and why some children want to continue living with the person who sexually abused them.<sup>95</sup>

(b) Psychological Testimony to Explain  
Developmental Differences Between  
Adult and Child Witnesses.

Expert testimony in the present category is designed to rehabilitate children's credibility following impeachment which asserts that children are less credible than adults. The thrust of such impeachment is that children's developmental immaturity renders their testimony suspect. The impeaching attorney may seek to raise doubts about children's ability to resist

suggestive questioning or distinguish fact from fantasy. In light of psychological research indicating that some adults view children as less credible witness than adults,<sup>96</sup> such impeachment may be effective. In the face of such impeachment, it is fair to permit expert testimony which informs fact finders of psychological research indicating that children are not necessarily less reliable witnesses than adults.<sup>97</sup> For example, recent research indicates that children are less suggestible than many adults think.<sup>98</sup> When the defense seeks to capitalize on commonly held misconceptions about the testimonial ability of children, expert rebuttal testimony is sometimes appropriate.<sup>99</sup>

(c) Psychological Testimony Regarding Credibility  
of Children.

In child sexual abuse litigation, the child is often the most important witness. Thus, the child's credibility is critical. Is it proper for the proponent of a child's testimony to offer expert testimony regarding the truthfulness of sexually abused children as a class, or the truthfulness of a particular child? Unlike some aspects of expert testimony on sexual abuse, courts approach unanimity when it comes to expert testimony on credibility. The great majority of courts reject testimony which comments directly on the credibility of individual children or sexually abused children as a class.<sup>100</sup> The Oregon Supreme Court did not mince words in its condemnation of such testimony:

We have said before, and we will say it again, but this time with emphasis--we really mean it--no psychotherapist may render an opinion on whether a witness is credible in any trial conducted in this state. The assessment of credibility is for the trier of fact and not for psychotherapists.<sup>101</sup>

In the final analysis, the rationale underlying rejection of expert testimony on credibility is the well-settled belief that assessment of credibility is the exclusive province of the jury.<sup>102</sup>

#### IV.

##### Issues of Special Concern

##### In Child Custody and Visitation Litigation

This section discusses four issues that make child custody and visitation litigation involving allegations of sexual abuse particularly difficult.

##### A. Is There a Wave of Fabricated Allegations?

There is increasing concern that a wave of fabricated charges of child sexual abuse is sweeping the country. A newspaper story warns of a "wave of false allegations."<sup>103</sup> The

byline of a magazine article warns that "trumped-up charges of child abuse are divorce's ugly new weapon."<sup>104</sup> Is there a tidal wave of fabricated allegations? There is little doubt that an increasing number of parents embroiled in custody litigation are willing to broach the subject of sexual abuse. There is no systematic evidence, however, that the number of allegations has reached flood stage. Nor is there convincing evidence that a substantial portion of the allegations are fabricated. In fact, what research there is points the other way.<sup>105</sup> Allegations of child sexual abuse occur in a small but increasing number of custody cases.<sup>106</sup> It has been estimated that allegations occur in approximately two to four percent of cases.<sup>107</sup>

Several researchers have investigated the rate of fabricated reports of child sexual abuse. A few of the studies focus on fabricated allegations in custody disputes, while most concentrate on fabricated reports in the general population. One of the best studies in the latter group is by Jones and McGraw, who evaluated all cases of suspected child sexual abuse reported to the Denver social services department during 1983.<sup>108</sup> The research disclosed that 8% of the reports were probably fictitious.<sup>109</sup> Similar rates of fabricated allegations are found in other research.<sup>110</sup>

When the focus of research narrows to custody cases, several authors report rates of fabricated reporting that are much higher than those discussed above. Green evaluated eleven suspected

victims of child sexual abuse and concluded that four of the allegations were fabricated (36%).<sup>111</sup> Benedek and Schetky were unable to document abuse in ten of eighteen cases (55%).<sup>112</sup> Commenting on these studies, Quinn writes that "these are very small clinical samples with a selective pattern of referrals."<sup>113</sup> Berliner adds that these and similar studies "describe a limited number of cases referred for evaluation. . . . In most of the cases described, there were multiple evaluations and conflicting opinions among professionals. Ultimately, there is no way of knowing that the authors' assessments are accurate."<sup>114</sup>

Jones and Seig studied twenty cases in which sexual abuse allegations arose in custody disputes.<sup>115</sup> They found that 20% of the allegations probably were fictitious.<sup>116</sup> The researchers conclude that "the setting of the divorce and custody dispute does seem to raise the likelihood that clinicians will find an increased number of fictitious allegations. However, in this study nearly 3/4 (70%) were reliable, arguing strongly against the practice of dismissing allegations in custody disputes contexts as most likely false."<sup>117</sup>

Fabricated allegations of sexual abuse occur in custody and visitation litigation, and there is reason to proceed cautiously in such cases. As Jones and Seig point out, however, the higher percentage of fabricated allegations should not lead to exaggerated skepticism about such allegations. Many are true.



Part of the confusion over false allegations of sexual abuse comes from misunderstanding of data generated through state child abuse and neglect reporting statutes. In 1986, more than 2,000,000 reports of suspected abuse and neglect were registered in the United States.<sup>118</sup> The American Humane Association indicates, however, that only forty to forty-two percent of the reports were substantiated.<sup>119</sup> One might conclude from this low substantiation rate that more than half of all reports were fabricated. But this is not so. There is an important distinction between unsubstantiated reports and fabricated reports. A fabricated report is a deliberate falsehood. An unsubstantiated report, by contrast, is one where there is not enough evidence to determine whether or not abuse occurred. There are innumerable reasons why an accurate report may nevertheless find its way into the "unsubstantiated" column. In some cases no investigation is conducted of a reported case. In others an investigation is conducted but there is insufficient evidence to substantiate abuse. Perhaps the child is too young to describe what happened, or witnesses move away or refuse to cooperate. The fact that a majority of child abuse reports are unsubstantiated says little about the incidence of child sexual abuse, and less about the rate of fabricated allegations.

Deliberately fabricated allegations of child sexual abuse should be distinguished from what may be called misperception allegations. In some cases, parents acting in good faith

misperceive information about their child, leading to suspicion of sexual abuse where none exists. For example, Jones and McGraw describe a divorced woman with custody of her five-year-old daughter. The woman suspected that her former husband was molesting the child because the youngster experienced vaginal redness and irritation following weekend visits with her father. On the advice of her pediatrician, the mother reported her suspicion. Subsequent investigation uncovered no evidence of abuse.<sup>120</sup>

The likelihood of misperception allegations is particularly high among divorced and divorcing couples who experience continuing animosity. Already suspicious of one another, such spouses may misperceive innocent or ambiguous activity as evidence of sexual abuse. Coincidentally, the incidence of deliberately fabricated allegations is higher among divorcing parents. Thus, in custody and visitation cases it is doubly difficult to distinguish between true, misperceived, and fabricated allegations. Yet, every effort must be made to discover the truth. If the allegation is true, the child requires protection. And even when there is no abuse, it is important to determine whether an allegation was deliberately fabricated or based on misperception. There may be doubts about the custodial fitness of a parent who lodges a deliberately fabricated allegation, whereas, it may be entirely appropriate to award custody to a parent who makes a good faith but misperceived allegation.

Another factor contributing to misunderstanding and a resulting climate of fear regarding fabricated allegations is a by-product of the McMartin preschool case in Los Angeles, and other multiple victim cases. Such cases are exceedingly complex, and there have been serious problems with McMartin and other cases. Some articles in the popular press give the impression that the cases are a cruel hoax, and that the police, prosecutors, and mental health professionals involved are at least incompetent, if not corrupt.<sup>121</sup> The perception is inaccurate. Nevertheless, media fallout from McMartin and similar cases fuels concern about fabricated charges.

An additional ingredient in the fabricated charges conundrum is the appearance of opportunism that attaches when allegations of sexual abuse arise for the first time in custody litigation. It seems that if sexual abuse had really occurred, the innocent parent would have discovered it and acted sooner. The correspondence of charges of sexual abuse and a bitter custody dispute is intuitively suspicious. Couple this suspicion with the perception that angry parents will stoop to anything to gain custody, and the stage is set for disbelief.

While the stakes involved in custody litigation do push some parents over the edge of honesty, the fact that allegations of abuse arise for the first time when a family breaks up does not mean the allegations are false. Mental health professionals

confirm that many children first disclose or experience sexual abuse when their parents divorce. Corwin and his colleagues write:

There are several reasons abused children may be more likely to disclose abuse by a parent and to be believed by the other parent following separation or divorce. With the breakup of the parents comes diminished opportunity for an abusing parent to enforce secrecy as there is increased opportunity for the child to disclose abuse separately to the other parent. Decreased dependency and increased distrust between parents increases willingness to suspect child abuse by the other parent.

Additionally, the losses, stresses, and overall negative impact of separation and divorce may precipitate regressive "acting out" by parents, including child sexual abuse.<sup>122</sup>

A final aspect of the fabrication problem deserves mention. Skepticism regarding allegations arising in custody litigation may be reinforced through unwarranted comparisons between custody litigation and criminal litigation. In the aggregate, the evidence available in criminal cases seems stronger than the evidence offered in custody cases. One might

conclude that the paucity of evidence in family court results from a high rate of fabricated allegations. A moment's reflection exposes the error of this reasoning. In criminal litigation, charges are seldom filed when the evidence is weak. By contrast, a parent who suspects sexual abuse takes whatever evidence there is, no matter how thin, and attempts to protect the child. Unlike the prosecutor, parents cannot decline to press charges. Thus, the disparity between evidence presented in criminal and family court bears little relation to truth of allegations.

In the final analysis, the allegation most likely to be false is the one asserting there is a "wave of fabricated allegations." The problem of fabricated allegations is serious, but distorting the issue has the undesirable effect of casting a pale of unwarranted skepticism over all allegations of child sexual abuse.

#### B. The Long Shadow of John Henry Wigmore.

No scholar has had greater impact on the law of evidence than John Henry Wigmore. Wigmore's monumental treatise on evidence, first published in 1904, remains an important and viable work.<sup>123</sup> Like many others of his time, Wigmore was influenced by the emerging discipline of psychiatry, and in particular by Sigmund Freud. Through his Oedipus Complex, Freud theorized that adult neurosis was linked to childhood sexual

fantasy.<sup>124</sup> Freud's tremendous influence bolstered the belief that child sexual abuse was rare, and that allegations of abuse were often the product of fantasy. Since most allegations of sexual abuse are made by women, the aura of disbelief surrounding such claims affixed itself to women and girls. Caught up in this gender based suspicion, Wigmore wrote:

Modern psychiatrists have amply studied the behavior of errant young girls and women coming before the courts in all sorts of cases. Their psychic complexes are multifarious, distorted partly by inherent defects, partly by diseased derangements or abnormal instincts, partly by bad social environments, partly by temporary physiological or emotional conditions. One form taken by these complexes is that of contriving false charges of sexual offenses by men. The unchaste (let us call it) mentality finds incidental but direct expression in the narration of imaginary sex incidents of which the narrator is the heroine or the victim. On the surface the narration is straightforward and convincing. The real victim, however, too often in such cases is the innocent man . . . .

No judge should ever let a sex offense charge to to the jury unless the female complainant's

social history and mental makeup have been examined and testified to by a qualified physician.<sup>125</sup>

Wigmore's influence added scholarly support to judicial skepticism about women and girls as witnesses in sex offense cases. Courts frequently subjected females to psychiatric examination on the issue of credibility.<sup>126</sup> Furthermore, many courts ruled that testimony from sex offense victims was so suspicious that a conviction could not be based on a victim's uncorroborated testimony.<sup>127</sup> Psychiatric examination and corroboration were not required of victims of other crimes.

The influence of men like Freud and Wigmore led to what one psychologist describes as an official "endorsement of incredulity" regarding victims of sexual abuse.<sup>128</sup> The message went out: child sexual abuse does not occur with any frequency. Such claims are a product of fantasy or depravity. Whatever the case, they are not to be believed.

During the past thirty years, mental health professionals changed their views about the propensity of women to fabricate accusations of rape and molestation, and today, Wigmore's suspicions are flatly rejected as legally<sup>129</sup> and psychologically<sup>130</sup> unsound. Nevertheless, suspicion about the credibility of sex offense victims is deeply ingrained in the American psyche. Consciously or unconsciously, this suspicion

may contaminate decision making about sexual abuse. John Wigmore's shadow of doubt continues to obscure objective analysis of allegations of child sexual abuse, especially when such allegations are made by woman.

In addition to distrust arising from Freudian theory, other factors influence gender bias. For example, widening suspicion that allegations are fabricated sparks the belief that no male is immune from suspicion, and that it is not safe to hug or touch a child for fear of being reported to the authorities.<sup>131</sup> For some men, this very personal sense of jeopardy may engender undue skepticism of allegations of sexual abuse. Other men may unconsciously identify with the plight of their accused brethren.

Finally, consider the catch-22 faced by women who raise the possibility of sexual abuse. A mother is idealized as her child's natural protector--possessed of "women's intuition" about the welfare of her offspring. When allegations of sexual abuse arise for the first time at divorce, some may wonder, "How could you possibly fail to notice that your child was being sexually abused right under your own nose? Any decent mother would know that!" Thus, even if the allegation is established, there may be reservations about the woman's maternal competence. And if the allegation is not established, the woman is stigmatized as a false accuser. There seems no safe way to raise the possibility of sexual abuse.



### C. Society's Blind Spot.

Psychiatrist Roland Summit observes that society has a blind spot for child sexual abuse, a powerful desire to deny the problem. Summit writes:

Anyone proclaiming [the reality of child sexual abuse] imposes a dismal flaw in our hope for a just and fair society. All our systems of justice, reason and power have been adjusted to ignore the possibility of such a fatal flaw. Our very sense of enlightenment insists that anything that important could not escape our attention. Where could it hide? Parents would find it out. Doctors would see it. The courts would stop it. Victims would tell their psychiatrists. It would be obvious in psychological tests. Our best minds would know it. It is more reasonable to argue that young upstarts are making trouble. You can't trust kids. Untrained experts are creating a wave of hysteria. They ask leading question. No family is safe from the invasion of the child savers. It's time to get back to common sense.<sup>132</sup>

Translation? It is time to suppress the ugly reality of child sexual abuse. One avenue to suppression lies in disbelief.

The issues discussed above add a psychological veneer to the complexity of custody and visitation litigation involving allegations of sexual abuse--a psychic film which distorts objective analysis. It is important for professionals to increase their sensitivity to the historical, cultural, and psychological forces that may influence their views.

V.

Recommendations for Improving the Response of  
Family Courts to Allegations  
of Child Sexual Abuse

This section offers suggestions for improving the judicial response to allegations of child sexual abuse in child custody and visitation litigation. Subsection A summarizes the recommendations of a national research project on allegations of child sexual abuse in custody and visitation cases. Subsection B suggests substantive and evidentiary approaches to resolving certain cases.

A. Recommendations of the Sexual Abuse  
Allegations Project.

Concerned about allegations of child sexual abuse in custody and visitation litigation, the federal government's National Center for Child Abuse and Neglect<sup>133</sup> supported a national

research project known as the "Sexual Abuse Allegations Project." The research was conducted by the Association of Family and Conciliation Courts and the ABA's National Legal Resource Center for Child Advocacy and Protection.<sup>134</sup> The Final Report on the research was released in March, 1988.<sup>135</sup> The Report contains important recommendations for improving the judicial response to custody and visitation cases involving allegations of sexual abuse. The recommendations are summarized below.

1. Improving the Relationship Between the Family Court and the Child Protective Services Agency.

Numerous agencies respond to allegations of child sexual abuse, including law enforcement, the prosecutor's office, and child protective services (CPS). It is not uncommon for judicial proceedings to be underway simultaneously in juvenile court, family court, and criminal court. It comes as no surprise that when several complex bureaucracies become involved with the same family, opportunities for miscommunication abound.

The Final Report points out that the potential for misunderstanding is particularly high between CPS agencies and family court workers. The Report offers five recommendations to "improve the currently tenuous relationship between the domestic relations court and the child protective service agency."<sup>136</sup> Family court and CPS workers should receive cross-training to

increases understanding of respective "mandates, options and vocabulary."<sup>137</sup> Formal liaisons should be established between family law courts and CPS agencies to facilitate communication.<sup>138</sup> Formal policies should be established to facilitate communication between family court and CPS.<sup>139</sup> Professionals from the family court staff should be invited to participate in interagency, interdisciplinary committees which meet to discuss child abuse cases.<sup>140</sup> Training on child sexual abuse should be provided to family court personnel and the family law bench and bar.<sup>141</sup>

## 2. Improving the Relationship Between Family Court and Juvenile Court.

It is clear that family court and juvenile court must communicate. The Final Report suggests that formal policies be implemented to ensure such communication.<sup>142</sup> The Report also recommends that child advocates be used in family court as well as in juvenile court "to help promote expeditious and efficient case processing."<sup>143</sup>

## 3. Use of Mental Health Professionals in Family Court.

Mental health professionals play an important role in evaluating allegations of child sexual abuse. The Final Report offers several recommendations regarding consulting

professionals. The Report points to the possible benefits of court appointed clinicians, noting that

court-appointed professionals have a better likelihood of obtaining access to all the parties in a case--an important prerequisite for a useful evaluation. The use of court-appointed experts may also discourage each side from "shopping" for experts until someone is located who supports the client's position. These "shopping trips" are costly to the parent, stressful for the child who is repeatedly interviewed, and increase the risk that the court will be subjected to "battles of the experts."<sup>144</sup>

The Report suggests that judges and other professionals receive training on the elements of a proper psychological evaluation of suspected child sexual abuse.<sup>145</sup> Since the degree of relevant expertise varies considerably among professionals, the judge must know enough about the psychological literature to differentiate the real from and imagined expert.

The Report suggests that prosecutors provide training for mental health professionals to acquaint them with the forensic implications of their interaction with children. For example, mental health workers benefit from training on interview techniques that avoid overly leading and suggestive

questions.<sup>146</sup> Furthermore, clinicians need to know the types of information that have forensic relevance so they can frame appropriate interview questions.<sup>147</sup>

Finally, the Report reminds us that in many cases, no amount of expertise will determine whether abuse occurred.<sup>148</sup> It too often happens that it is impossible to be sure. There is no litmus test for child sexual abuse. In fact, the opinion of an "expert" who claims absolute certainty is worth taking with two grains of salt.

#### 4. Factors to Consider in Judicial Determinations.

The Report addresses two recommendations directly to family court judges. First, the Report recommends that courts consider alternatives to monitored or supervised visitation, suggesting that such visitation interferes with meaningful parent-child interaction, and leads to resentment.<sup>149</sup> One alternative is "therapeutic supervised visitation in which psychologists or graduate students provide family therapy and family observations, and well as supervision."<sup>150</sup> Second, the Report stresses the importance of avoiding generalizations about the validity of allegations of child sexual abuse that arise in custody and visitation litigation.

The Final Report of the Sexual Abuse Allegations Project provides concrete suggestions that can be implemented quickly and

without significant disruption of existing systems. The Report deserves serious study.<sup>151</sup>

B. Substantive and Evidentiary Recommendations  
for Selected Cases.

This subsection makes eight recommendations regarding evidentiary and substantive issues in custody and visitation cases involving allegations of child sexual abuse. The recommendations are not intended to apply in all cases. In some particularly difficult situations, however, one or more of the recommendations may assist the court.

1. Shifting the Burden of Proof When Evidence of Identity Fails.<sup>152</sup>

In civil litigation the burden of proof generally rests on the plaintiff. In child custody litigation, however, the burden of proof rests equally on both parents.<sup>153</sup> Each parent has the burden of proving that the child's best interests will be fostered by an award of custody to that parent.<sup>154</sup> This means that when one parent accuses the other of sexual abuse, the accusing parent bears the burden of proof on that issue. If the accusing parent succeeds in proving that sexual abuse occurred, but fails to establish that the accused parent committed the abuse, traditional burden of proof analysis dictates dismissal of the allegation, with the conclusion that nothing can be done that

interferes with the accused parent's right to custody or visitation.<sup>155</sup> This result may leave the child in jeopardy, however, because the accused parent may indeed be the perpetrator. It is also true, of course, that the accuser, or someone associated with the accuser, may be the perpetrator.<sup>156</sup> In a narrow range of cases, an alternative approach to the traditional allocation of burden of proof seems warranted. When abuse is established, but proof of identity is lacking, the court may require each parent--accuser and accused alike--to prove that they are not the perpetrator.

This approach was employed by the Appellate Division of the New Jersey Superior Court in a juvenile court protective proceeding. In In re D.T.<sup>157</sup> there was medical proof that the four-month-old child had been sexually abused. However, there was insufficient evidence to establish the identity of the perpetrator. Turning to principles of tort law, the court wrote:

Were this a tort suit brought against a limited number of persons, each having access or custody of a baby during the time frame when a sexual abuse concededly occurred, no one else having such contact and the baby being then and now helpless to identify her abuser, would we not recognize an occasion for invocation of [the doctrine requiring defendants to exculpate themselves from liability]? The burden would then



be shifted, and such defendants would be required to come forward and give their evidence to establish non-culpability. . . .

Shifting the burden is no less appropriate here, particularly as neither punitive relief nor damages are sought, but only continued limited monitorship of an admittedly abused child.<sup>158</sup>

The New Jersey court's allocation of the burden of proof finds support in the overriding public policy of protecting children from abuse. A similar approach is appropriate in child custody and visitation litigation incident to divorce when: (1) there is convincing evidence of sexual abuse, (2) both parents had the opportunity to abuse the child, and (3) the likelihood of further abuse is significant. If either or both parents fail to carry the burden of proof, the court may enter appropriate orders to ensure the child's safety.

The approach adopted in In re D.T. is not immune from criticism. In a partial dissent, Judge Shebell argued against shifting the burden of proof, writing that the court's solution "might unjustly serve to place guilt upon a parent for the heinous offense of sexual abuse merely because of the parent's inability to prove innocence."<sup>159</sup> Another concern is that parents may refrain from raising legitimate claims of sexual abuse due to fear that the burden of proving innocence will be

cast on them if they fail to convince the court of the accused parent's guilt.

2. Failure to Protect a Child as Justification for  
Temporary Supervision of Custody and/or Visitation.

In cases where sexual abuse is established, but proof of identify is lacking, there is an alternative to shifting the burden of proof. Parents have a duty to protect their children from harm. When parents fail to protect their child from sexual abuse, the court may properly subject both parents to temporary supervision or monitoring to ensure the safety of the child.<sup>160</sup> Under this approach, neither parent is stigmatized as a child abuser. While it is undoubtedly true that stigma accompanies a finding of failure to protect, such opprobrium is of a lesser order of magnitude than the stigma attached to a finding of abuse.

3. The State of Mind Exception to the Hearsay Rule.

The state of mind exception to the hearsay rule plays a minor role in criminal child abuse litigation.<sup>161</sup> In custody and visitation litigation, however, the exception occupies an important position.<sup>162</sup> The state of mind exception authorizes admission of out-of-court statements "of the declarant's then existing state of mind [or] emotion, . . . but not including a statement of memory or belief to prove the fact remembered or

believed . . . ."163

In custody and visitation cases, evidence of a child's state of mind is relevant to determination of the child's best interest, and hearsay statements describing the youngster's state of mind are admissible for that purpose.<sup>164</sup> For example, it is proper under the state of mind exception to admit hearsay statements describing a child's "intimidation by the father and desire to live with the mother."<sup>165</sup> Similarly, a child's hearsay statements describing parental misconduct are admissible insofar as the statements reveal the child's fear of a parent.<sup>166</sup>

When offering a child's out-of-court statement under the state of mind exception, care must be taken to ensure that the evidential purpose of the statement is limited to proof of the child's state of mind at the moment the statement is made. The exception does not apply to evidence of a child's memory or belief to prove the truth of facts remembered or believed. Thus, a child's out-of-court statement describing sexual abuse would be admissible under the state of mind exception to prove the child's fear or dislike of the perpetrating parent. However, the statement would not be admissible under this exception to prove that the child was in fact abused.<sup>167</sup>

The case of In re Custody of Jennifer<sup>168</sup> illustrates the limits of the state of mind exception. In this care and protection proceeding, the trial court determined that Jennifer

was sexually abused by her father.<sup>169</sup> Over the father's objection, the judge relied on the state of mind exception to admit testimony from teachers, social workers, psychologists, and others regarding Jennifer's statements describing the sexual abuse.<sup>170</sup> The Massachusetts Appeals Court ruled that the trial judge misapplied the state of mind exception. The appellate court wrote:

Under the state of mind exception to the hearsay rule an out-of-court statement of a declarant's then existing (i.e., at the time the statement is made) state of mind is admissible if his mental condition is relevant to a material issue in the case. . . . However, "[a]n extrajudicial statement of a declarant is not ordinarily admissible if it is a statement of memory or belief to prove the fact remembered or believed." . . . We have no question that a child's state of mind may be a material issue in a care and protection proceeding. The problem here is that the judge's findings make clear that he substantially relied on evidence as proof of critical past events which he, on admission, limited to state of mind (and used apparently at least to some extent on that question). The evidence was inadmissible for the former purpose. This is no less so because of the nature

of the proceedings.<sup>171</sup>

In child custody and visitation cases involving allegations of sexual abuse, the state of mind exception is particularly important.<sup>172</sup> For example, in some cases there is substantial evidence of sexual abuse, but it is impossible to determine who molested the child.<sup>173</sup> In other cases the evidence creates a strong suspicion of sexual abuse by a parent, but falls short of a preponderance of the evidence. In both scenarios the child is at risk of further sexual abuse, yet, under traditional notions of burden of proof, there is not enough evidence to justify a custody or visitation order that would protect the child from the likely perpetrator.<sup>174</sup> The court may fear that doing nothing consigns the child to further sexual abuse, yet feel powerless to do anything else. In a proper case, statements admissible under the state of mind exception can be relied on to protect the child despite the fact that sexual abuse or identity cannot be substantiated. For instance, the child's out-of-court statements expressing fear or dislike of the parent accused of sexual abuse can constitute sufficient evidence to support a custody or visitation order.<sup>175</sup> Similarly, if the child believes she has been molested by the accused parent, the child's best interest may be served by placing limits on interaction with the parent.<sup>176</sup> This use of state of mind evidence is not an end run around the requirement that allegations of sexual abuse be established. Rather, evidence of a child's feelings, beliefs, and fears constitutes an independent and sufficient source of

proof regarding a child's best interests.

#### 4. Temporary Custody.

Every state authorizes temporary child custody during the pendency of divorce proceedings. When a petition for temporary custody alleges sexual abuse, special considerations arise. Most importantly, the psychological literature convincingly establishes that a child who is sexually abused is at risk of serious harm. The harm is sufficiently grave that courts should award temporary custody to the nonabusing parent whenever there is reason to believe sexual abuse has, or is likely to, occur.

While the evidence needed to establish reasonable belief comes from many sources, it is important to remember that child sexual abuse is often very difficult to prove. Because a petition for temporary custody comes early in the proceeding, before complete evaluation is possible, courts should not place a heavy burden of proof on the petitioner. The threat to the child's welfare is so high if abuse is occurring that temporary custody should be granted when the petitioner raises "questions going to the merits so serious, substantial, difficult and doubtful, as to make a fair ground for litigation and thus for more deliberate investigation."<sup>177</sup>

In most cases, the court makes the correct decision on a petition for temporary custody. However, courts cannot ignore

the possibility of two types of errors. First, the judge may deny a petition when abuse is occurring, and a child is at risk. Second, the judge may grant a petition when there is no abuse and a child is not at risk. Bearing in mind the effects of sexual abuse, and the interim nature of temporary custody, it is better to err in the direction of protecting sexually abused children. That is, improvidently granting temporary custody is less likely to harm to a child than improvidently denying such custody.

When a parent alleging child sexual abuse is denied temporary custody, the parent should be permitted to re-petition on a showing that new evidence of sexual abuse is available. New evidence includes information coming to light following the hearing on the petition for temporary custody, as well as evidence that existed prior to the hearing, provided the alleging parent was unaware of the evidence at the time of the first petition.<sup>178</sup>

##### 5. Character Evidence and Uncharged Misconduct Evidence in Custody Litigation.

A basic principle of American law holds that evidence of a person's character generally is not admissible to prove that the person acted in conformity with character on a particular occasion.<sup>179</sup> In certain types of litigation, however, character is said to be "in issue," and in such cases character evidence is

admissible. Parental character is in issue in child custody litigation because the custody decision turns on parental fitness.<sup>180</sup>

When character evidence is offered in custody litigation involving allegations of child sexual abuse, the logical relevance of the evidence is predicated on the following inferences: (1) The accused parent has a history of sexual abuse of children. (2) Based on this history, an inference is drawn that the accused parent has a propensity for child sexual abuse. (3) Based on the intermediate inference of propensity, a further inference is drawn that the accused parent probably acted in conformity with that propensity, and sexually abused the child.

The character evidence described above is not the only evidentiary use of parental misconduct. Evidence of a parent's uncharged crimes, wrongs, or acts is admissible for non-character purposes as well. In particular, evidence of uncharged misconduct may be admitted to prove motive, opportunity, intent, preparation, plan, knowledge, identify, or absence of mistake or accident.<sup>181</sup> Each of these purposes plays an important role in criminal child abuse litigation.<sup>182</sup> At the present time, one finds little use of uncharged misconduct evidence in custody and visitation litigation involving allegations of sexual abuse. Counsel seeking to prove sexual abuse may want to consider expanded use of uncharged misconduct evidence.



## 6. Misinterpretation of Parental Behavior.

It is important to guard against misinterpreting the behavior of parents who make accusations of child sexual abuse. Such parents are under extraordinary, sometimes disabling, stress. At the outset, many parents believe the court will quickly come to their child's rescue. When the accused parent denies the allegation, however, accusing parents soon realize they carry a difficult burden of proof, and that if they fail to convince the judge, they may be branded mentally unstable false accusers who are unfit for custody. Desperate to protect their children, such parents may act in ways that appear irrational. For example, a parent searching for evidence of sexual abuse may take a child to one professional after another in hope that someone somewhere will supply the missing proof. In the context of a heated custody battle, such parental behavior is understandable. Unfortunately, a rare individual misinterprets such behavior, concluding that a parent who would shop around for evidence probably has none. Even worse, an extreme skeptic may conclude that a parent who takes a child to several professionals is herself guilty of child abuse for subjecting the child to "unnecessary" examinations.<sup>183</sup>

The supercharged atmosphere surrounding allegations of child sexual abuse sometimes breeds unusual and even bizarre behavior in parents. The professionals involved in such cases must step

back, and evaluate parental action with an understanding of the pressure experienced by both parents.

7. Modification of Custody Awards.

All jurisdictions permit modification of custody and visitation awards on a showing of substantial changed circumstances. When an allegation of child sexual abuse is made at the initial custody trial, the court's determination becomes res judicata regarding facts litigated at that time. If the parent alleging sexual abuse fails to establish the allegation, the parent cannot relitigate the issue on the basis of the same evidence. However, if further evidence regarding sexual abuse comes to light, the matter should be reopened. In other words, a showing of additional evidence should constitute the substantial changed circumstances required to relitigate custody or visitation. Once the matter is reopened, the court should consider the additional evidence as well as the evidence presented at the earlier trial. This is not to say that earlier evidence is relitigated. Rather, viewing new evidence in light of old allows the court to see the entire picture. Oftentimes new evidence is meaningless unless it is evaluated along with everything else that is known about the child, including facts developed in earlier proceedings.<sup>184</sup>

8. Transfer Selected Cases from Family Court to Juvenile Court.

In some cases involving allegations of child sexual abuse, the family court should transfer the matter to the juvenile court. The relationship between the family and juvenile courts is thoroughly analyzed in an excellent law review article by Leonard Edwards, a respected California jurist who has served both courts.<sup>185</sup> Judge Edwards concludes that in some cases, transfer from one court to the other is appropriate. Edwards writes:

Family court was designed to provide litigants with a forum in which to resolve the issues relating to the custody, care and control of children. Juvenile court was created to protect children from parental abuse or neglect.<sup>186</sup>

\* \* \*

[In California], the juvenile court is better equipped to investigate and try child abuse allegations, and subsequently protect and supervise an abused child.<sup>187</sup>

\* \* \*

When child protection is the issue, the courts should be prepared to work together to insure that adequate resources are available to protect the child. In most cases this means the juvenile court should have an opportunity to decide if it will intervene. If it chooses not to

intervene, the family court must use all of its resources to meet the child's needs. The family court should also be prepared to turn to the juvenile court for help in extraordinary cases in which the parties are in such conflict that the child is seriously suffering.<sup>188</sup>

### CONCLUSION

Decision making in custody and visitation litigation is always difficult, but when allegations of child sexual abuse arise, the task assumes Herculean proportions. Clear cut evidence of is seldom available. Some children cannot or will not testify. Others are inconsistent, ambivalent, and confused. The possibility of coaching and fabricated allegations cannot be ignored. And the perception of parental credibility is influenced by the very nature of the proceeding. But paucity of evidence and questionable credibility are not all. Added to these is the psychological dimension, including a legacy of skepticism of women who allege sexual offenses, distrust of children, unwillingness to believe that parents could seek sexual gratification from their children, and disgust that some do. The legal and psychological complexity of litigation involving allegations of child sexual abuse places extraordinary demands on bench and bar. Each professional must come to terms with the feelings generated by such cases, including the possibility of gender bias. As rumors circulate of a "wave" of false

allegations, it is increasingly tempting to dismiss allegations of child sexual abuse as the work of false accusers. Disbelief is one way to shut out the unpalatable reality of child abuse. Yet, the scientific and clinical literature refutes the rumors. The task is not to shut our eyes, but to respond with measured objectivity and neutrality, tempered with compassion.

## FOOTNOTES

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I wish to express thanks to David Corwin, M.D. and Ann Haralambie, J.D. for their valuable comments on drafts of this article.

1. For information on the Morgan case see Lewis, The Limits of the Law, New York Times, Dec. 22, 1988, at A23; Lewis, Judgment of Solomon, New York Times, Dec. 15, 1988, at A39; McGrory, Morgan's Choice, Washington Post, December 15, 1988, at A2; A Mother's Tale: Why I'm Taking No Chances With the Courts, U.S. News & World Report, June 13, 1988, at 30; Chin & Podesta, Stalemate for High Stakes, People, Jan. 23, 1989, at 84.

Dr. Morgan commenced a civil action in federal court on behalf of her daughter against Dr. Foretich. See *Morgan v. Foretich*, 846 F.2d 941 (4th Cir. 1988).

2. See Mothers on the Run, U.S. News & World Report, June 13, 1988, at 22; Saving the Children: Parents on the Run, People, January 23, 1989, at 70.
3. Allegations of child sexual abuse arise in at least eight

types of legal proceedings. (1) The past decade has witnessed a marked increase in criminal prosecution of child sexual abuse. (2) Because a significant number of perpetrators are minors, prosecution in juvenile court is also common. (3) Under its abuse and neglect jurisdiction, the juvenile court plays the key judicial role in protecting sexually abused children. (4) Allegations of sexual abuse arise in litigation to terminate parental rights. (5) An increasing number of victims are employing civil litigation to seek monetary damages from perpetrators. See, e.g., *Snyder v. Boy Scouts of America, Inc.*, 253 Cal. Rptr. 156 (1988)(action barred by statute of limitations); *E.W. v. D.C.H.*, 754 P.2d 817 (Mont. 1988)(same); *St. Michelle v. Robinson*, 52 Wash. App. 309, 759 P.2d 467 (1988)(action not barred by statute of limitations). (6) Civil actions are commenced against child protective service agencies and professionals for failing to protect children from sexual abuse. See *DeShaney v. Winnebago County Dept. Social Serv.*, 109 S. Ct. 998 (1989)(state not liable under 28 U.S.C. § 1983 for failure to protect child from physical abuse inflicted by parent. Child was not in state custody at time of abuse). (7) State regulatory agencies bring administrative proceedings against day care operators and professionals to suspend or revoke licenses. See, e.g., *Seering v. Department of Social Serv.*, 194 Cal. App.3d, 298, 239 Cal. Rptr. 422 (1987). (8) In a small but increasing number of cases, allegations of child sexual abuse arise in

custody and visitation litigation in family court.

4. See Peters, Wyatt & Finkelhor, Prevalence, in A Sourcebook on Child Sexual Abuse 15, 16 (D. Finkelhor ed. 1986)[hereinafter cited as Prevalence]("The reality is that there is not yet any consensus among social scientists about the national scope of sexual abuse. No statistics yet exist that fully satisfy the request that journalists and others so frequently make for an accurate national estimate").
5. See generally, J. Myers & W. Peters, Child Abuse Reporting Legislation in the 1980s (American Humane Association, 1987).

The approach of most reporting statutes is to require professionals who come in contact with children to report suspected physical abuse, sexual abuse, and neglect to designated law enforcement and/or child protection authorities. In addition to mandated reports from professionals, the statutes permit lay people to report suspected abuse.

6. American Humane Association, Highlights of Official Child Neglect and Abuse Reporting 1986, 23 (1988)[hereinafter cited as American Humane]. The Highlights indicate that the estimated rate of child sexual abuse is 20.89 cases per 10,000 children. Id.



One of the persistent problems in determining the incidence of child abuse is determining when a report of abuse is substantiated. American Humane acknowledges this dilemma, writing:

A precise definition of case substantiation cannot be offered because the definition and policy varies from state to state. Nevertheless, all definitions imply a degree of certainty that the involved child is in fact at risk, and in many states that some level of intervention is warranted in the child's behalf.

Id. at 11.

The American Humane report notes a continuing trend toward increased reports of child sexual abuse. "The percent of sexual abuse cases increased between 1983 and 1986, from approximately nine percent to 16 percent of all maltreated children . . . ." Id. at 22. The report goes on to state that "estimates of the number of children sexually maltreated and the rate of sexual maltreatment have increased significantly between 1976 and 1986. In particular, the increase in 1985 in the proportion of sexual maltreatment translates into an increase of about 27 percent from 1984 in the estimated number of children who are reported as sexually maltreated throughout the country."

Id. at 23-24.

7. See Russell, The Incidence and Prevalence of Intrafamilial and Extrafamilial Sexual Abuse of Female Children, 7 Child Abuse & Neglect 133 (1983).
8. See Prevalence, supra note 4, at 18, where the authors refer to American Humane Association estimates of sexual abuse for years through 1983, and write that "most people consider the scope of the problem reflected in such figures to be a substantial underestimate."

See also, D. Whitcomb, Exemplary Projects Assisting Child Victims of Sexual Abuse 1, 12 (1982)("As many as 100,000 to 500,000 children may be sexually abused each year").
9. The studies are discussed and critically analyzed in A Handbook on Child Sexual Abuse (D. Finkelhor 1986).
10. See Prevalence, supra note 4.
11. See D. Finkelhor, Sexual Abuse in Day Care: A National Study, Executive Summary (Family Research Laboratory, University of New Hampshire 1988).
12. Id. at 3.

13. Id.
14. Id. at 4 (original emphasis removed).
15. Finkelhor cautions that while the estimate of 500 to 550 cases is a "large number, it must be put in the context of 229,000 day care facilities nationwide serving seven million children." Id. at 3.
16. See American Humane, supra note 6 at 21, Table 5, which reads:

Comparison of Age Descriptions  
Child Abuse and Neglect

Age	All U.S. Children	Involved Children
0 - 5	34%	43%
6 - 11	31%	33%
12 -17	35%	24%

17. See In re D.T., 229 N.J. Super 509, 552 A.2d 189 (1988)(four-month-old victim).

Not only are there many young victims. A surprising number of perpetrators are children too. See Cantwell, Child Sexual Abuse: Very Young Perpetrators, 12 Child Abuse &

Neglect 579 (1988); Johnson, Child Perpetrators--Children Who Molest Other Children: Preliminary Findings, 12 Child Abuse & Neglect 219 (1988)(describing perpetrators ranging in age from four to thirteen).

18. See Powers & Eckenrode, The Maltreatment of Adolescents, 12 Child Abuse & Neglect 189 (1988)("Research clearly refutes the myth that young children are the main victims of abuse and neglect and that the risk of maltreatment declines as children grow older").
19. de Young, In Indignant Page: Techniques of Neutralization in the Publications of Pedophile Organizations, 12 Child Abuse & Neglect 583 (1988). Dr. de Young discusses American pedophile organizations, all of which "advocate similar goals: the abolition or lowering of age of consent laws, an end to the social harassment and legal prosecution of pedophiles; and the demythologizing of adult sexual behavior with children." Id. at 584.
20. See Lasting Effects of Child Sexual Abuse (G. Wyatt & G. Powell eds. 1988); Browne & Finkelhor, Initial and Long-Term Effects: A Review of the Research, in A Sourcebook on Child Sexual Abuse 143 (D. Finkelhor ed. 1986); Finkelhor & Browne, Initial and Long-Term Effects: A Conceptual Framework, in A Sourcebook on Child Sexual Abuse 143 (D. Finkelhor ed. 1986); Myers, Bays, Becker, Berliner, Corwin

& Saywitz, Expert Testimony in Child Sexual Abuse Litigation, 68 Neb. L. Rev. \_\_\_\_, \_\_\_\_ (1989)[hereinafter cited as Expert Testimony]("child sexual abuse often has devastating long-term consequences"); Sgroi, Porter & Blick, Validation of Child Sexual Abuse, in Handbook of Clinical Intervention in Child Sexual Abuse 39 (S. Sgroi ed. 1982); The Lasting Effects of Child Sexual Abuse, 2 J. Interpersonal Violence 347 (1987).

21. Expert Testimony, supra note 20, at \_\_\_\_ (footnotes omitted).

22. See id. at \_\_\_\_.

23. See generally, J. Myers, Child Witness Law and Practice (1987)[hereinafter cited as Child Witness].

24. For discussion of psychological research on the reaction of mock jurors to child witnesses, see Perspectives on Children's Testimony, S. Ceci, D. Ross & M. Toglia eds. 1989); Expert Testimony, supra note 20 at \_\_\_\_.

25. See Goodman, Children's Testimony in Historical Perspective, 40 J. Social Issues 9 (1984).

26. Varendonck, Les temoignages d'enfants dans un process retentissant, 11 Archives de Psychologie 129 (1911).

27. For discussion of relevant psychological literature see Expert Testimony, supra note 20 at \_\_\_\_.
28. See Wheeler v. United States, 159 U.S. 523, 524 (1895); Child Witness, supra note 23 at § 3.2 (citing cases).
29. See Head v. State, 519 N.E.2d 152 (Ind. 1988); Child Witness, supra note 23 at § 3.10.
30. Fed. R. Evid. 601.
31. See, e.g., State v. Dwyer, 143 Wis.2d 448, 422 N.W.2d 121, 126 (Ct. App. 1988)(following adoption of state counterpart of Rule 601 of the Fedal Rules of Evidence, the Court of Appeal wrote: "Our supreme court has specifically found that the former questions of competence are now credibility issues to be dealt with by the trier of fact"); Child Witness, supra note 23 at § 3.8.
32. See, e.g., Colo. Rev. Stat. § 13-90-106(1)(b)(II); Mo. Ann. Stat. § 491.060(2); Utah Code Ann. § 76-5-410; Child Witness, supra note 23 at § 3.11.

See also, State v. Williams, 729 S.W.2d 197 (Mo.), cert. denied, 108 S. Ct. 296 (1987)(upholding constitutinality of Missouri statute permitting all child victims to testify).

33. Child Witness, supra note 23 at § 3.12.
34. In re A.H.B., 491 A.2d 490, 492 (D.C. 1985); Child Witness, supra note 23 at § 3.14.
35. Rhea v. State, 705 S.W.2d 165 (Tex. Ct. App. 1985)(three-year-old child not competent; child could not communicate adequately); Child Witness, supra note 23 at § 3.15.
36. See In re R.R., 79 N.J. 97, 398 A.2d 76 (1979); Child Witness, supra note 23 at § 3.19.
37. See Heckathorne v. State, 697 S.W.2d 8 (Tex. Ct. App. 1985); Child Witness, supra note 23 at § 3.18.
38. See Child Witness, supra note 23 at § 3.12 (discussing relevant psychological literature).
39. See id. §§ 3.14, 10.17 to 10.27; Melton, Children's Competency to Testify, 5 L. & Human Behavior 73 (1981); Myers, The Testimonial Competence of Children, 25 J. Fam. L. 287 (1986-87); Expert Testimony, supra note 20 at \_\_\_\_; Saywitz, The Credibility of Child Witnesses, 10 Fam. Advocate 38, 40 (1988).
40. G. Melton, J. Petrila, N. Poythress & C. Slobogin, Psychological Evaluations for the Courts § 5.06 at 102

(1987).

41. See Jones & Krugman, Can A Three-Year-Old Child Bear Witness to Her Sexual Assault and Attempted Murder?, 10 Child Abuse & Neglect 253 (1986)(answering yes).
42. State v. Lairby, 699 P.2d 1187 (Utah 1984)(fact that six-year-old victim of sexual abuse used word "winky" to describe penis did not render her incompetent).
43. See State v. Armstrong, 453 So.2d 1256, 1259 (La. Ct. App. 1984); State v. Weisenstein, 367 N.W.2d 201 (S.D. 1985).
44. Pendleton v. Commonwealth, 685 S.W.2d 549 (Ky. 1985).
45. Id. at 551.
46. Saywitz, Bullying Children Won't Work, 10 Fam. Advocate 16, 18 (1988); Saywitz, Children's Conceptions of the Legal System: "Court Is a Place to Play Basketball," in Perspectives on Children's Testimony 131 (S. Ceci, D. Ross & M. Togliola eds. 1989).
47. See Child Witness, supra note 23 § 3.19.
48. See id. § 3.18.



49. See Expert Testimony, supra note 20 at \_\_\_\_ for discussion of psychological research on children's ability to distinguish fact from fantasy.
50. See State v. Hussey, 521 A.2d 278 (Me. 1987)(three-year-old competent).
51. See Note, A Comprehensive Approach to Child Hearsay in Sex Abuse Cases, 83 Colum. L. Rev. 1745 (1983). See generally, Child Witness, supra note 23 §§ 5.1 to 5.41.
52. It is important to note that many of a child's out-of-court verbal utterances and acts related to sexual abuse are not hearsay because they are not assertions. For discussion of the importance of nonassertive verbal and nonverbal conduct in child abuse litigation see Child Witness, supra note 23 at §§ 5.2 to 5.11. For a case discussing nonassertive utterances in child abuse litigation, see, e.g., In re Penelope B., 104 Wash.2d 643, 709 P.2d 1185 (1985).
53. The following hearsay exceptions play an important role in child abuse litigation: excited utterances, statements for purposes of diagnosis or treatment, state of mind, present sense impression, business records exception, the residual exception, and special exceptions designed to admit statements by child victim/witnesses.

Also of great importance in child sexual abuse litigation are children's statements that are admissible under the theory of fresh complaint of rape. Theoretically, a fresh complaint is not hearsay, thus fresh complaint evidence is not barred by the hearsay rule. For discussion of fresh complaint evidence see Child Witness, supra note 23 § 5.34.

54. Fed. R. Evid. 803(2). See *Morgan v. Foretich*, 846 F.2d 941 (4th Cir. 1988)(excellent discussion of excited utterance and other exceptions); Child Witness, supra note 23 § 5.33.
55. Fed. R. Evid. 803(4). See Mosteller, *Child Sexual Abuse and Statements for the Purpose of Medical Diagnosis or Treatment*, 67 N.C. L. Rev. 257 (1989); Child Witness, supra note 23 § 5.36.
56. Fed. R. Evid. 803(24), 804(b)(5). See Child Witness, supra note 23 § 5.37.
57. Wash. Rev. Code Ann. § 9A.44.120 (1987 Supp). See Child Witness, supra note 23 § 5.38.
58. See, e.g., *Cogburn v. State*, 292 Ark. 564, 732 S.W.2d 807 (1987); *Perez v. State*, 536 So.2d 206 Fla. 1988); *State v. Myatt*, 237 Kan. 17, 697 P.2d 836 (1985); *State v. Loughton*, 747 P.2d 426 (Utah 1987); *Buckley v. State*, 758 S.W.2d 339 (Tex. Ct. App. 1988); *State v. Ryan*, 103 Wash. 2d 165, 691

P.2d 197 (1984)(en banc); Child Witness, supra note 23 § 5.38.

59. See Schwartz-Kenny, Wilson & Goodman, An Examination of Child Witness Accuracy and the Emotional Effects on Children of Testifying in Court, in Understanding and Managing Child Sexual Abuse (K. Oates ed. Sydney, Australia: Harcourt, Brace, Javovich, in press).
60. For discussion of constitutional issues raised by video testimony see Child Witness, supra note 23 §§ 6.1 to 6.9.
61. The Sixth Amendment provides in part that "[i]n all criminal prosecutions, the accused shall . . . be confronted with the witnesses against him."

For a summary of recent cases see the 1989 supplement to Child Witness, supra note 23.

62. 108 S. Ct. 2798 (1988).
63. See, e.g., State v. Vincent, 768 P.2d 150 (Ariz. 1989). The Arizona Supreme Court upheld the constitutionality of an Arizona statute permitting videotaped depositions to be taken out of the presence of the defendant. The court emphasized, however, that dispensing with face-to-face confrontation must be based on an individualized showing of

necessity. It is not permissible to rely on generalized assumptions about the trauma of testifying. There must be specific evidence about the impact of testifying on the particular child.

See also, *Glendening v. State*, 536 So.2d 212 (Fla. 1988); *In re B.F.*, 230 N.J. Super. 153, 553 A.2d 40 (App. Div. 1989).

But see, *Long v. State*, 742 S.W.2d 302 (Tex. Cr. App. 1987), cert. denied, 108 S. Ct. 1301 (1988)(striking down on confrontation grounds a statute permitting admission of videotaped interviews). See also, *Powell v. State*, 765 S.W.2d 435 (Tex. Cr. App. 1988).

64. See, e.g. *State v. Vincent*, 768 P.2d 150 (Ariz. 1989); *In re B.F.*, 230 N.J. Super. 153, 553 A.2d 40 (App. Div. 1989)(state must carry burden of proving necessity by clear and convincing evidence).
65. See, e.g., *State v. Vincent*, 768 P.2d 150 (Ariz. 1989); *State v. Lindner*, 142 Wis.2d 783, 419 N.W.2d 352 (Ct. App. 1987); *State v. Black*, 537 A.2d 1154 (Me. 1988); *State v. Twist*, 528 A.2d 1250 (Me. 1987); *Wildermuth v. State*, 310 Md. 496, 530 A.2d 275 (Ct. App. 1987); Cal. Penal Code § 1347(b)(2)(West Supp. 1988).

66. See, e.g., *State v. Bonello*, 210 Conn. 51, 554 A.2d 277 (1989); *State v. Jarzbek*, 204 Conn. 683, 529 A.2d 1245 (1987), cert. denied, 108 S. Ct. 1017 (1988).
67. *Id.*
68. See, e.g., *Glendening v. State*, 536 So.2d 212 (Fla. 1988).
69. Recent psychological research on the trauma of testifying indicates several factors that appear to be related to the likelihood children will experience emotional problems following involvement in the legal system. Schwartz-Kenney, Wilson & Goodman compared the psychological well-being of sexually abused children who testified in court with sexually abused children who did not testify. The researchers write:

[O]n average children who testified fared worse than children who did not have to take the stand. This generalization was only true for a subset of children, however. That is, some children who testified did indeed improve over time whereas others did not. What factors distinguished the two groups? Children who were fortunate to have maternal support, whose cases were strengthened by corroborative evidence, or who only had to testify once were more likely to improve than children who did not have these benefits.

Surprisingly, a number of factors thought to affect children's reactions to legal involvement did not predict their well-being, including psychological counseling, abuse severity (e.g., length of abuse, type of sexual act), and number of times the children were questioned by authorities such as police or social workers, during the investigation. These findings suggest that courtroom testimony has adverse effects on the well being of a subgroup of children.

Emotional Effects, *supra* note 59 at \_\_\_\_.

70. For discussion of the right to confrontation in juvenile court proceedings to determine abuse and neglect, see *In re Mary S.*, 186 Cal. App.3d 414, 230 Cal. Rptr. 726 (1986)(persons accused of child abuse in juvenile court have a right to confront witnesses against them. This right is not without exception, however. Trial judge may permit children to testify out of the physical presence of parents when children testify they are afraid of parents); *In re Long*, 313 N.W.2d 473, 478-79 (Iowa 1981)(court stated that Sixth Amendment does not apply in neglect proceedings. Court assumed without deciding that persons accused of neglect have a right to confront accusatory witnesses); *In re James A.*, 505 A.2d 1386 (R.I. 1986); *In re M.W.*, 374 N.W.2d 889, 893 (S.D. 1985)("The constitutional implications of the confrontation clause . . . are not present in a civil

action. . . . We recently held that dependency and neglect proceedings are civil in nature).

71. See, e.g., *Diggs v. Tyler*, 525 So.2d 1263, 1266 (La. Ct. App. 1988)(in child custody litigation incident to divorce, the court may interview the child in chambers without the parents present). See also, H. Clark, *Domestic Relations* § 14.4, at 540-42 (2d ed. 1988).
72. For indepth treatment of expert testimony in child sexual abuse litigation see McCord, *Expert Psychological Testimony About Child Complainants in Sexual Abuse Prosecutions: A Foray into the Admissibility of Novel Psychological Evidence*, 77 *J. Crim. L. & Criminology* 1 (1986)[hereinafter cited as McCord]; *Expert Testimony*, supra note 20.
73. For discussion of "syndrome evidence" see *Expert Testimony*, supra note 20 at \_\_\_\_.
74. See *id.* at \_\_\_\_.
75. See *id.* at \_\_\_\_.
76. See generally, Sgroi, Porter & Blick, *Validation of Child Sexual Abuse*, in *Handbook of Clinical Intervention in Child Sexual Abuse* 39, 40-41 (S. Sgroi ed. 1982); *Expert Testimony*, supra note 20 at \_\_\_\_.

77. See Expert Testimony, supra note 20 at \_\_\_\_.

78. See State v. Moran, 151 Ariz. 378, 728 P.2d 248 (1986); State v. Hundnall, 293 S.C. 97, 359 S.E.2d 59 (1987). See also, Expert Testimony, supra note 20 at \_\_\_\_.

In Anderson v State, 749 P.2d 369, 373 (Alaska Ct. App. 1988), the court indicated that when expert testimony describing reactions commonly observed in sexually abused children is offered to prove abuse, the proponent must establish that the relevant scientific community accepts the ability of professionals to detect abuse in this fashion.

79. See Fed. R. Evid. 401, defining relevant evidence.

80. See Expert Testimony, supra note 20 at \_\_\_\_\_. For a contrary view see McCord, supra note 72.

81. Summit, The Child Sexual Abuse Accommodation Syndrome, 7 Child Abuse & Neglect 177 (1983).

82. When expert testimony is limited to reactions observed in sexually abused children, the testimony takes one of two forms: (1) The expert confines his or her testimony to a description of behaviors commonly observed in the class of sexually abused children, and lay testimony is adduced to



establish that the particular child demonstrates such behaviors. (2) The expert describes behaviors commonly observed in the class of sexually abused children, and then goes on to testify that the child in the case at bench demonstrates such behaviors.

83. Such testimony can take several forms. See Expert Testimony, supra note 20 at \_\_\_\_.
84. See, e.g., Johnson v. State, 292 Ark. 632, 732 S.W.2d 817 (1987); Russell v. State, 289 Ark. 533, 712 S.W.2d 916 (1986); In re Amber B., 191 Cal. App.3d 682, 236 Cal. Rptr. 623 (1987)(court determines that reaching a clinical judgment about whether a child was sexually abused on the basis of interviewing the child and the child's play with anatomically detailed dolls constitutes a novel form of proof. Before such evidence can be admitted, the proponent must establish that the technique is generally accepted in the relevant professional community); State v. Haseltine, 120 Wis.2d 92, 352 N.W.2d 673 (Ct. App. 1984).
85. See, e.g., Seering v. Department of Social Services, 194 Cal. App.3d 298, 239 Cal. Rptr. 422, 432 (1987); Glendening v. State, 536 So.2d 212 (Fla. 1988); Townsend v. State, 103 Nev. 113, 734 P.2d 705 (1987).
86. Compare McCord, supra note 72, with Expert Testimony, supra

note 20.

87. See Expert Testimony, *supra* note 20, at \_\_\_\_.
88. The state has a compelling parens patriae interest in protecting children from harm. See *New York v. Ferber*, 458 U.S. 747, 757 (1982); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Ginsberg v. New York*, 390 U.S. 629 (1968); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *State v. Jarzbek*, 204 Conn. 683, 529 A.2d 1245, 1253-54 (1987), cert. denied, 108 S. Ct. 1017 (1988); *People v. Kahan*, 15 N.Y.2d 311, 312, 206 N.E.2d 333, 334, 258 N.Y.S.2d 391, 392 (1965)(Fuld, J., concurring)(characterizing society's interest in the welfare of children as "transcendent").
89. See *Matter of Dona D.*, 141 Misc.2d 46, 532 N.Y.S.2d 696 (Fam. Ct. 1988); *Matter of E.M.*, 137 Misc.2d 197, 520 N.Y.S.2d 327 (Fam. Ct. 1987); *Matter of Donna K.*, 132 A.D.2d 1004, 518 N.Y.S.2d 289, 290 (1987). See *New York* approach is discussed in Expert Testimony, *supra* note 20 at \_\_\_\_.
90. See, e.e., *State v. Davis*, 422 N.W.2d 296 (Minn. Ct. App. 1988)(court approves expert testimony to inform jury that running away from home is common among sexually abused adolescents); *State v. Bailey*, 89 N.C. App. 212, 365 S.E.2d

651, 655 (1988)(expert could state why child would continue to cooperate with abuser); *State v. Robinson*, 431 N.W.2d 165 (Wis. 1988).

91. See, e.g., *People v. Bowker*, 249 Cal. Rptr. 886, 891 (1988); *People v. Gray*, 187 Cal. App.3d 213, 231 Cal. Rptr. 658, 660 (1986); *People v. Dunnahoo*, 152 Cal. App.3d 561, 199 Cal. Rptr. 796, 804 (1984); *People v. Hampton*, 746 P.2d 947 (Colo. 1987)(adult rape victim. Rape trauma syndrome admitted to explain delay); *Wheat v. State*, 527 A.2d 269 (Del. 1987); *People v. Matlock*, 153 Mich. App. 171, 395 N.W.2d 274, 277 (1986); *State v. Sandberg*, 406 N.W.2d 506, 511 (Minn. 1987); *State v. Myers*, 359 N.W.2d 604, 610 (Minn. 1984); *State v. Davis*, 422 N.W.2d 296, 299 (Minn. Ct. App. 1988); *Smith v. State*, 100 Nev. 570, 688 P.2d 326, 326-27 (1984); *People v. Benjamin R.*, 103 A.D.2d 663, 481 N.Y.S.2d 827, 831-32 (1984); *State v. Garfield*, 34 Ohio App.3d 300, 518 N.E.2d 568 (1986); *State v. Hicks*, 535 A.2d 776, 777 (Vt. 1987); *State v. Petrich*, 101 Wash.2d 566, 683 P.2d 173, 179-80 (Ct. App. 1984); *Scadden v. State*, 732 P.2d 1036, 1046 (Wyo. 1987).

But see, *Dunnington v. State*, 740 S.W.2d 896 (Tex. Ct. App. 1987)(delay in reporting not beyond ken of jurors, therefore expert testimony not needed).

92. See, e.g., *State v. Lindsey*, 149 Ariz. 472, 720 P.2d 73, 75

(1986); People v. Luna, 250 Cal. Rptr. 878 (1988); People v. Bowker, 249 Cal. Rptr. 886 (1988); Wheat v. State, 527 A.2d 269 (Del. 1987); State v. Middleton, 294 Or. 427, 657 P.2d 1215, 1220 (1983); State v. Davis, 422 N.W.2d 296 (Minn. Ct. App. 1988); Commonwealth v. Baldwin, 348 Pa. Super. 368, 502 A.2d 253, 255 (1985).

93. See, e.g., State v. Moran, 151 Ariz. 378, 728 P.2d 248, 255 (1986); State v. Lindsey, 149 Ariz. 472, 720 P.2d 73 (1986); State v. Black, 537 A.2d 1154, 1156 (Me. 1988); State v. Pettit, 66 Or. App. 575, 675 P.2d 183, 185 (1984); State v. Rogers, 293 S.C. 505, 362 S.E.2d 7, 8 (1987).
94. See, e.g., State v. Moran, 151 Ariz. 378, 728 P.2d 248, 253-54 (1986)(Defendant argued the child was angry due to his parental discipline. The expert supplied an alternative explanation for the child's anger at defendant).
95. See, e.g., State v. Moran, 151 Ariz. 378, 728 P.2d 248 (1986).
96. For a summary of this research see Expert Testimony, supra note 20 at \_\_\_\_.
97. The research is discussed in id. at \_\_\_\_.

98. For discussion of psychological literature on childhood suggestability see *id.* at \_\_\_\_.
99. See *United States v. Azure*, 801 F.2d 336 (8th Cir. 1986); *State v. Brotherton*, 384 N.W.2d 375 (Iowa 1986); *Head v. State*, 519 N.E.2d 151 (Ind. 1988).
100. See, e.g., *State v. Moran*, 151 Ariz. 378, 728 P.2d 248 (1986); *People v. Oliver*, 745 P.2d 222, 225 (Colo. 1987); *Head v. State*, 519 N.E.2d 151 (Ind. 1988). See Expert Testimony, *supra* note 20, at \_\_\_\_ (collecting and discussing cases).
101. *State v. Milbradt*, 305 Or. 621, 756 P.2d 620, 624 (1988)(emphasis in original). The Arizona Supreme Court was nearly as emphatic in *State v. Lindsey*, 149 Ariz. 472, 720 P.2d 73, 76 (1986), where it wrote that "we explicitly state at this time that trial courts should not admit direct expert testimony that quantifies the probabilities of the credibility of another person."
102. See *United States v. Barnard*, 490 F.2d 907, 912 (9th Cir. 1973), cert. denied, 416 U.S. 959 (1974)("the jury is the lie detector in the courtroom"); *State v. Lindsey*, 149 Ariz. 472, 720 P.2d 73, 76 (1986); *Townsend v. State*, 103 Nev. 113, 734 P.2d 705, 709 (1987); *State v. Holloway*, 82 N.C. App. 586, 347 S.E.2d 72, 73 (1986); *Commonwealth v.*

Davis, 514 Pa. 77, 541 A.2d 315 (1988); Commonwealth v. Seese, 512 Pa. 439, 517 A.2d 920 (1986); State v. Friedrich, 135 Wis.2d 1, 398 N.W.2d 763, 770 (1987).

For an argument in favor of a limited role for expert testimony on credibility in child sexual abuse litigation, see Expert Testimony, supra note 20 at \_\_\_\_.

103. Coleman, Therapists are the Real Culprits in Many Child Sexual Abuse Cases, Oakland Tribune, April 24, 1987, at B-6.
104. Hopkins, Fathers on Trial, New York, January 11, 1988, at 42. See also, R. Gardner, The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sexual Abuse 274 (1987)(in the author's experience with child custody, "the vast majority of children who profess sexual abuse are fabricators"); Gordon, False Allegations of Abuse in Child Custody Disputes, 2 Minn. Fam. L. J. 225 (1985)("For many parents engaged in seriously contested child custody disputes, false allegations of child abuse have become an effective weapon for achieving an advantage in court").
105. See Association of Family and Conciliation Courts, The Sexual Abuse Allegations Project, Final Report (1988)[hereinafter cited as Final Report]; Association of Family and Conciliation Courts, Allegations of Sexual Abuse

in Custody and Visitation Cases: An Empirical Study of 169 Cases From 12 States (1988)[hereinafter cited as Empirical Study]. Information on the the Final Report and the Empirical Study may be obtained by writing to Nancy Thoennes, Ph.D., Association of Family and Conciliation Courts, Research Unit, 1720 Emerson Street, Denver, Colorado 80218 (303) 837-1555.

106. See Final Report, supra note 112 at 6.

107. See Empirical Study at 3.

108. Jones & McGraw, Reliable and Fictitious Accounts of Sexual Abuse of Children, 2 J. Interpersonal Violence 27 (1987)[hereinafter cited as Jones & McGraw].

109. Among the small percentage of false reports, most were made by adults. Children very rarely made fabricated allegations.

110. The research is discussed in Expert Testimony, supra note 20 at \_\_\_\_.

111. Green, True and False Allegations of Sexual Abuse in Custody Disputes, 25 J. Am. Acad. Child Psychiatry 449 (1986). For criticism of Dr. Green's article see Corwin, Berliner, Goodman & White, Child Sexual Abuse and Custody Cases, 2 J. <sup>(Goodman)</sup> <sub>^</sub>

Interpersonal Violence 91 (1987).

112. Benedek & Schetky, Allegations of Sexual Abuse in Child Custody and Visitation Disputes, in *Emerging Issues in Child Psychiatry and Law* 145 (D. Schetky & E. Benedek eds. 1985).
113. Quinn, The Credibility of Children's Allegations of Sexual Abuse, 6 *Behavioral Sciences & L.* 181 (1988).
114. Berliner, Deciding Whether a Child Has Been Sexually Abused, in *Sexual Abuse Allegations in Custody and Visitation Cases* 48, 52 (B. Nicholson & J. Bulkley eds. 1988).
115. Jones & Seig, Child Sexual Abuse Allegations in Custody and Visitation Disputes, in *Sexual Abuse Allegations in Custody and Visitation Cases* 22 (B. Nicholson & J. Bulkley eds. 1988).
116. *Id.* at 29.
117. *Id.*
118. American Humane, *supra* note 6 at 6.
119. At a 42% rate of substantiation, it is estimated that 737,000 American children were abused or neglected during 1986.



120. Jones & McGraw, supra note 108 at 43, n.1.
121. Downing, Pioneer Case at McMartin Called Hoax, The Commercial Appeal, Memphis, TN, January 17, 1988.
122. See Corwin, Berliner, Goodman, Goodwin & White, Child Sexual Abuse and Custody Disputes, 2 J. Interpersonal Violence 91 (1987).
123. J. Wigmore, Evidence in Trials at Common Law (Chadbourne rev. 1970)[hereinafter cited as Wigmore].
124. Originally, Freud believed that neurosis was linked to actual childhood sexual experience. Freud presented this thesis, called the seduction theory, to the Vienna psychoanalytic circle in 1896, and was roundly criticized. He withdrew the seduction theory and replaced it with the Oedipus Complex. For discussion of Freud's turn about see J. Masson, The Assault on Truth: Freud's Suppression of the Seduction Theory (1984); Summit, Hidden Victims, Hidden Pain: Societal Avoidance of Child Sexual Abuse, Lasting Effects of Child Sexual Abuse 39 (G. Wyatt & G. Powell eds. 1988)[hereinafter cited as Summit]; Myers, Protecting Children from Sexual Abuse: What Does the Future Hold?, 15 J. Contemporary L. 31 (1989).

125. 3A Wigmore, supra note 123 § 924a, at 736-37 (emphasis in original).
126. See, e.g., Ballard v. Superior Court, 64 Cal.2d 159, 410 P.2d 838, 49 Cal. Rptr. 302 (1966); 18 A.L.R.3d 1433 (1968). See also, Child Witness, supra note 20 § 3.27. For criticism of court ordered psychiatric examinations in sex offense cases see Note, Psychiatric Examination of Sexual Assault Victims: A Reevaluation, 15 U. Cal. Davis, L. Rev. 973 (1982).
127. For discussion of the corroboration requirement see Child Witness, supra note 23 § 4.21.
128. Goodwin, Credibility Problems in Multiple Personality Disorder Patients and Abused Children, Childhood Antecedents of Multiple Personality 2, 5 (R. Kluft ed. 1985).
129. See, e.g., People v. King, 41 Colo. App. 177, 581 P.2d 739, 741 (1978); State v. Romero, 94 N.M. 22, 606 P.2d 1116 (Ct. App. 1980). See also the supplement to 3A Wigmore, supra note 123 § 924a, collecting numerous cases rejecting Wigmore's original position.
130. See Expert Testimony, supra note 20 at \_\_\_\_; State v. Romero, 94 N.M. 22, 606 P.2d 1116 (Ct. App. 1980).

131. For an interesting account of two explosive custody cases see Wilkinson, *Witchhunting in Hattiesburg*, *The American Lawyer* (May 1988)(One of the attorneys involved observed that "[f]rom a male standpoint, it's frightening").
132. Summit, *supra* note 124 at 51.
133. The National Center on Child Abuse and Neglect is part of the U.S. Department of Health and Human Services.
134. The National Legal Resource Center for Child Advocacy and Protection is sponsored by the Young Lawyer's Division of the ABA. The Center produces many valuable publications relating to children and the law. For information on the Center write to Howard A. Davidson, Director, or Robert M. Horowitz, Associate Director, ABA, National Legal Resource Center for Child Advocacy and Protection, 1800 M St., N.W., Washington, D.C. 20036.
135. For information regarding the final report and a related study, write to Nancy Thoennes, Ph.D., Association of Family and Conciliation Courts/Research Unit, 1720 Emerson St., Denver, CO 80218.
136. Final Report, *supra* note 105 at 86.
137. *Id.* at 86-87.

138. Id. at 87.

139. Id. at 88.

140. Id. at 87.

141. Id. at 88.

142. Id. at 89.

143. Id.

144. Id. at 90-91.

145. Id. at 91.

146. Id.

147. Id. at 92.

148. Id. at 92.

149. Id. at 92-93.

150. Id. at 93.

151. For information on obtaining the Report, see note 135, supra.
152. For discussion of methods to prove identity in child abuse litigation see Myers & Carter, Proof of Physical Child Abuse, 53 Mo. L. Rev. 189, 218-24 (1988).
153. See 3 J. McCahey, M. Kaufman, C. Kraut, D. Gaffner, R. Schwartz & M. Silverman, Child Custody & Visitation Law and Practice § 20.02[1], at 20-6 (1983), where the authors write:

The ordinary burden of proof on the plaintiff in a legal action does not apply to the plaintiff in a divorce action seeking custody of a minor child. In contested custody-visitation disputes, the true objective is the best interests of the child. The parents stand on equal footing at the outset of the proceeding . . . .

154. See 2 C. Markey, California Family Law § 22.111, at 22-76 (1978, 1988)("If the contest is between the parents at a hearing during their dissolution, the issue is the best interests of the child, and each party will have the burden of establishing that the best interests of the child require that custody be given to him or her").

155. Failure to prove that an accused parent sexually abused a child does not result in simple dismissal of the accusation, however. On the contrary, the accusing parent may be branded a false accuser, and denied custody or visitation for that reason.
156. In practice, the person alleging sexual abuse is usually the mother. In response, the father may allege that the actual perpetrator is a male associate of the mother.
157. 229 N.J. 509, 552 A.2d 189 (App. Div. 1988).
158. 552 A.2d at 192-93 (footnote omitted).
159. 552 A.2d at 193 (Shebell, J.A.D., concurring in part and dissenting in part).
160. If monitoring is required, it may be appropriate to transfer the case to the juvenile court.
161. See Child Witness, *supra* note 23 § 5.35.
162. For custody and visitation cases discussing the state of mind exception see Griffin v. Griffin, 81 N.C. App. 665, 344 S.E.2d 828 (1986); Crabtree v. Crabtree, 716 S.W.2d 923, 927 (Ten. Ct. App. 1986).

Hearsay issues do not often find their way into appellate decisions on child custody and visitation. There is no doubt, however, that the hearsay rule applies in such proceedings. See *In re Marriage of Williams*, 303 N.W.2d 160 (Iowa 1981)(report of court appointed custody evaluator was hearsay and should have been excluded); *In re Marriage of Cavitt*, 564 S.W.2d 53 (Mo. Ct. App. 1978)(social agency report was inadmissible hearsay, but its admission was harmless error in bench trial); *Murdoch v. Murdoch*, 200 Neb. 429, 264 N.W.2d 183 (1978)(statement of child to father expressing affection was not hearsay because it was not offered for the truth. The child's statement was relevant simply because it was made); *Fuhrman v. Fuhrman*, 254 N.W.2d 97 (N.D. 1977)(error requiring reversal to admit and consider hearsay report of social worker regarding custody); *Griffin v. Griffin*, 81 N.C. App. 665, 344 S.E.2d 828 (1986); *Crabtree v Crabtree*, 716 S.W.2d 923 (Tenn. Ct. App. 1986).

163. Fed. R. Evid. 803(3).

164. See *Griffin v. Griffin*, 81 N.C. App. 665, 344 S.E.2d 828, 831 (1986).

165. *Id.*

166. *Crabtree v. Crabtree*, 716 S.W.2d 923, 927 (Tenn. Ct. App.

1986)(visitation case involving allegations of sexual abuse by one parent).

167. The statement would be admissible as substantive evidence of the abuse if the statement fit the requirements of another hears y exception, such as the excited utterance exception. See, e.g., Morgan v. Foretich, 846 F.2d 941 (4th Cir. 1988).

168. 25 Mass. App. 241, 517 N.E.2d 187 (1988).

169. In In re Jennifer, the father was found to have abused two daughters.

170. 517 N.E.2d at 189.

171. Id.

172. See e.g., Crabtree v. Crabtree, 716 S.W.2d 923 (Tenn. Ct. App. 1986).

173. See, e.g., In re D.T., 229 N.J. Super. 509, 552 A.2d 189 (App. Div. 1988)(juvenile court protective proceeding. There was medical evidence that the four-month-old infant was sexually abuse, but insufficient evidence to identify the perpetrator).



174. See *Crabtree v. Crabtree*, 716 S.W.2d 923, 926 (Tenn. Ct. App. 1986)(visitation case involving allegations of sexual abuse. "While the simple allegation of sexual abuse sets off a strong reaction in each of us and galvanizes our determination to protect the child, the allegation of abuse still must be proved").

175. See *Crabtree v. Cratreee*, 716 S.W.2d 923 (Tenn. Ct. App. 1986).

In civil proceedings, the general rule is that hearsay is sufficient to support a finding of fact or judgment. See *Child Witness*, supra note 23 § 5.20. In criminal litigation, hearsay may not suffice to support a conviction. See *id.*

176. See *Crabtree v. Crabtree*, 716 S.W.2d 923, 927 (Tenn. Ct. App. 1986)("where the child's state of mind shows that he or she has a real fear of one parent based on the real or imagined mistreatment by that parent, that is sufficient to persuade this court to exclude the child from the company of that parent except under proper supervision").

177. *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953).

178. In ordinary civil litigation, when a party seeks relief on

the basis of newly discovered evidence, the party must establish that the evidence could not have been discovered with reasonable diligence. See Fed. R. Civ. P. 60(b)(2). In child custody litigation, the court's primary interest is the child's best interests. To protect the child, courts should not ordinarily deny the right to re-petition for temporary custody simply because the petitioning parent failed to exercise reasonable diligence. The parent's failure to discover evidence of sexual abuse must not be visited on the child. The court can remedy lack of due diligence through appropriate sanctions directed against the petitioning parent and/or counsel.

179. See *Michelson v. United States*, 335 U.S. 469 (1948); Fed. R. Evid. 404(a).

180. See 1A J. Wigmore, *supra* note 123 § 69.1, at 1457.

181. Fed. R. Evid. 404(b).

182. See *Myers*, *Uncharged Misconduct Evidence in Child Abuse Litigation*, 1988 Utah. L. Rev. 479 (1988). See generally, E. Imwinkelried, *Uncharged Misconduct Evidence* (1984).

183. See *Witchhunting*, *supra* note 131 (Describing a case in which a mother accused her former husband of sexually abusing their daughter. The trial court found that the father did

not abuse the child. But the court did not stop there. It went on to rule that the mother had abused the child by subjecting the youngster to numerous unwarranted visits to the doctor).

184. See Corwin, Early Diagnosis of Child Sexual Abuse: Diminishing the Lasting Effects, in *The Lasting Effects of Child Sexual Abuse* (G. Wyatt & G. Powell eds. 1988).

185. Edwards, The Relationship of Family and Juvenile Courts in Child Abuse Cases, 27 *Santa Clara L. Rev.* 201 (1987).

186. *Id.* at 204.

187. *Id.* at 235.

188. *Id.* at 269.

**ATTACHMENT I**



JERRY PLUMMER

STATEMENT OF PROGRAM ACTIVITY

CHANGES IN CHILDREN'S PROTECTIVE SERVICES 1980-1988

Calls to Emergency Response Lines:

1980	8,486		
1981	11,988	+ 41%	over 1980
1982	12,766	+ 6%	over 1981
1983	14,589	+ 14%	over 1982
1984	18,419	+ 26%	over 1983
1985	20,727	+ 12.5%	over 1984
1986	22,777	+ 9%	over 1985
1987	26,274	+ 15.4%	over 1986
1988	28,745	+ 9%	over 1987
Projected 1989	34,810		

New Emergency Response Cases:

1980	2,447		
1981	3,084	+ 26%	over 1980
1982	3,396	+ 10%	over 1981
1983	3,913	+ 15%	over 1982
1984	4,244	+ 8%	over 1983
1985	4,747	+ 12%	over 1984
1986	5,272	+ 11%	over 1985
1987	5,314	+ 1.5%	over 1986
1988	6,107	+ 14.9%	over 1987
Projected 1989	7,017		

Immediate Response Cases (2 hour):

1980	537		
1981	594	+ 12%	over 1980
1982	962	+ 62%	over 1981
1983	991	+ 3%	over 1982
1984	1,098	+ 11%	over 1983
1985	1,256	+ 13%	over 1984
1986	1,234	+ 0%	over 1985
1987	1,346	+ 9.1%	over 1986
1988	1,677	+ 24.6%	over 1987
Projected 1989	2,090		

Dependent Intake:

	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
Petitions	761	764	932	991
Number of Referrals (Families)	1,476	1,849	2,469	3,092

Court Investigations:

Families	842	792	910	922
Children	1,403	1,419	1,364	1,408

