Approved 3/19/85
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Representative Joe Knopp at
Chairperson

3:30 ~~a.m.~~/p.m. on March 18, 1985 in room 526-S of the Capitol.

All members were present except:

Representatives Adam, Duncan, Douville, Luzzati, Shriver and Teagarden were excused.

Committee staff present:
Jerry Donaldson, Legislative Research Department
Mike Heim, Legislature Research Department
Mary Ann Torrence, Revisor of Statutes Office
Becca Conrad, Secretary

Conferees appearing before the committee:

Marjorie Van Buren, Office of Judicial Administration
Professor Nancy Maxwell
Representative Aylward
Penny Geis, Professional Mediator
Dr. Charles Kunce, Executive Director of the Association of Community Mental Health Centers of Kansas
Judge White, Associate District Judge for Franklin, Osage, Anderson and Coffey Counties
Miguel L. Acosta, Fathers Demanding Equal Justice
Bernard Dunn, President and Director of Dispute Alternative Resolution Center
Representative Williams

SB 24 - Relating to the district courts; concerning the establishment of district magistrate and associate district judge positions.

Representative Harper explained how this bill originated.

Representative Solbach made a motion to pass SB 24 favorably and Representative Fuller seconded the motion. It carried.

SB 65 - Concerning judges of the district court; relating to terms of certain judges.

Marjorie Van Buren, Office of Judicial Administration, spoke in favor of this bill as shown in Attachment No. 1.

Representative Solbach made a motion to report SB 65 favorably and placed it on the Consent Calendar. It was seconded by Representative Fuller and carried.

SB 153 - Concerning courts; relating to qualifications of justices and judges.

Marjorie Van Buren, office of Judicial Administration, spoke in favor of this bill. Representative Solbach pointed out that he thought the system would work without this law because the Supreme Court has the power to remove the person from office at any time it is appropriate to do so.

SB 33 - Concerning children and minors; providing for court ordered mediation of issues relating to child custody and visitation; concerning reporting of suspected child abuse.

Professor Nancy Maxwell, explained the proposals of the Judicial Council for court ordered mediation of child custody and visitation issues. See Attachment No. 2.

Members discussed the confidentiality of mediation and the purpose of it. Professor Maxwell said there are three things that can be disclosed as follows: 1.) child abuse; 2.) admission of a crime during the mediation session; and 3.) an express intent to kill in the future.

Representative Aylward explained the amendments she proposed on SB 33 as shown in Attachment No. 3.

Penny Geis, a professional mediator, presented Attachment No. 4 which shows her education and experience in mediation; standards for the profession; and a copy of the Oregon HB 2362.

Paul Klotz introduced Dr. Charles Kunce, Executive Director of the Association of Community Mental Health Centers of Kansas, who spoke in favor of SB 33 with amendments. See Attachment No. 5.

Judge White, Associate District Judge for Franklin, Osage, Anderson and Coffey Counties, spoke in favor of SB 33. He had some concern about the qualifications of a mediator, especially in smaller towns and in matters concerning child custody. He presented amendments to this bill, (Attachment No. 6) which would clarify the qualifications. There was further discussion on qualifications, confidentiality of mediation, and the costs of hiring a mediator.

Miguel L. Acosta, representing Fathers Demanding Equal Justice, spoke in favor of SB 33. He suggested the following: 1.) mediators should be trained similar to that of a labor mediator; 2.) mediators, if court appointed, should be appointed on a round robin basis; 3.) mediators should be regulated by the State instead of the bar association; 4.) a mediator should not be a lawyer or a psychologist; 5.) mediators should not advise anyone to legal counsel; and 6.) the costs should be taxed to both parties of a divorce instead of just the father. He presented Attachment No. 7 which has to do with joint custody.

Bernard Dunn, President and Director of Dispute Alternative Resolution Center, supported SB 33. He said he also represents a group from Kansas City who is changing their name to Mid-America Association of Mediation. He said mediation is two parties negotiating for a third party to facilitate that. It differs from a settlement conference in a lawsuit in that a settlement conference the judge basically applies a little bit of pressure to get a settlement on that lawsuit. In mediation, the parties themselves are negotiating their settlement and they control it.

SB 82 - Relating to the vesting of title to abandoned property belonging to any Assembly of God Church or religious organization in the Kansas District Council Assemblies of God, Inc., its successors or assigns.

Representative Williams briefly explained SB 82.

A motion was made by Representative Vancrum to pass SB 82 favorably and send it on to the Consent Calendar. It was seconded by Representative Solbach and the motion carried.

Representative Buehler made a motion to approve the minutes of March 4 and 5 and it was seconded by Representative Snowbarger. The motion carried.

The meeting adjourned at 5:25 p.m.

TESTIMONY ON SENATE BILL 65
OFFERED BY MARJORIE VAN BUREN
OFFICE OF JUDICIAL ADMINISTRATION
MARCH 18, 1985

This bill would provide that in an elected district, a judge appointed to fill a vacancy would serve until the 2nd Monday in January after the election, whereupon the duly elected person would take office.

Under current law, a district judge appointed to fill a vacancy serves only until the next general election occurring more than 30 days after the vacancy. At that election, electors vote for a candidate to fill the unexpired term, a term which may be as short as a month and a half.

At the same election at which the unexpired term is filled, the voters will also be electing a judge for the next regular term of office. The same judgeship position appears on the ballot twice: once for the unexpired term and once for the regular term.

The current situation can be extremely confusing to voters and disruptive to the administration of justice. Potentially four judges could fill the same position in as short a period as a half year: the judge whose resignation, death or removal caused a vacancy; the appointed judge; the judge elected for the unexpired term; and the judge elected for the regular term.

Such a scenario is not farfetched: last year in Wichita, a judge appointed to fill a vacancy was elected to fill the next regular judicial term while another candidate won the right to fill the unexpired term of two months.

Other problems with the current legislation include voter confusion when faced by two nearly identical provisions on a ballot, and the necessity of candidates for the judgeship positions to file twice and pay two filing fees if they seek to fill both terms.

We believe Senate Bill 65 will help ensure judicial effectiveness by encouraging smooth transitions in the offices of elected judges and will also decrease voter confusion.

Attached to this testimony is a letter from the Honorable Robert L. Gernon, Administrative Judge of the 22nd Judicial District.

Attachment

Attachment No. 1
House Judiciary
March 18, 1985

February 1, 1985

Marjorie Van Buren
Office of Judicial Administration
Kansas Judicial Center
Topeka, Kansas 66612

Dear Marjorie:

Re: Senate Bill 65

I thought I might write to you as a judge from an elected district who supports Senate Bill 65.

The present law requires a judge appointed in an elective district to in effect be placed on the ballot twice, pay two filing fees, and run the potential risk of being elected for one or the other of the terms as placed on the ballot. This, in my view, could lead and has led to voter confusion, and adds very little to the continuity of the appointment and elective process.

Senate Bill 65, in my view, would remedy the problems associated with the current procedure, and I hope we'll see favorable treatment by the legislature.

Sincerely,

Robert L. Gernon
Administrative Judge
22nd Judicial District

RLG:ckh

As Amended by Senate Committee

Session of 1985

SENATE BILL No. 33

By Committee on Judiciary

1-16

AN ACT concerning ~~actions for divorce, separate maintenance and annulment of marriage~~ ***children and minors***; providing for court-ordered mediation of issues relating to child custody and visitation; ***concerning reporting of suspected child abuse;*** amending K.S.A. 1984 Supp. 38-1522 and repealing the existing section.

PROPOSAL OF THE JUDICIAL COUNCIL FOR COURT-ORDERED MEDIATION OF CHILD CUSTODY AND VISITATION ISSUES

Attachment No. 2
House Judiciary
March 18, 1985

Introductory Comment

In recent years there has been increased criticism of the use of the adversarial method for resolving domestic relations cases. Many view the adversarial approach as resulting in increased hostility and conflict between the parties. The parties often perceive that any final decision as to custody and visitation has been imposed upon them, whether that decision has been achieved through negotiation by attorneys or at trial.

Mediation is frequently offered as an alternative means of resolving family disputes. In mediation, the disputing parties attempt to resolve their differences with the help of a neutral third party and arrive at a mutually acceptable agreement. Since the parties are the actual decision-makers in the mediation process it is anticipated that there will be greater identification with and adherence to any agreement which may be reached.

The following proposal is the result of a study by the Family Law Advisory Committee of the Judicial Council. The proposal provides for court-ordered mediation of disputes concerning child custody and visitation. The proposal does not provide for court-ordered mediation of financial matters in divorce cases nor does the proposal address the voluntary use of mediation. The Judicial Council was hesitant to involve the court in the ordering of mediation of financial matters due to the increased danger that the mediator would be unable to protect a less financially sophisticated or less dominant spouse from overreaching. In regard to child custody, the Judicial Council was impressed with the results reportedly achieved in California under mandatory mediation of child custody disputes. West's Ann.Cal.Civ.Code § 4607. Child custody mediation has apparently resulted in significant decreases in litigation and post-divorce disputes.

The Judicial Council views the proposal for child custody mediation as a logical extension of the court's authority to order counseling with regard to child custody and visitation under K.S.A. 60-1617.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Mediation under this section is the process by which a neutral mediator appointed by the court assists the parties in reaching a mutually acceptable agreement as to issues of child custody and visitation. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties and not the decisions of the mediator.

Section 1 defines the mediation process to avoid confusion with other forms of dispute resolution such as arbitration and conciliation.

In arbitration, the parties agree to submit their dispute to a neutral arbitrator who is empowered to decide the issues involved. In conciliation, a conciliator will typically offer options for the parties to consider and will actually encourage the parties to adopt an option rather than to remain at an impasse. In mediation, the goal is to achieve a "mutually acceptable agreement". Consequently this section clarifies that the parties, not the mediator, are the decision-makers in mediation. It is the parties' responsibility to examine and decide the issues. While the mediator assists in the identification of the issues and the availability of alternatives, the mediator does not encourage the adoption of any particular option.

Even if the parties cannot resolve all the issues through the mediation process, mediation can reduce the number of litigated issues. Only those issues unresolved by the mediation process need to be submitted to the court for determination.

New Sec. 2. ~~In any action for divorce, separate maintenance or annulment,~~ The court may order mediation of any contested issue of child custody or visitation at any time, ~~whether~~ ***including*** prior to or subsequent to an alteration of marital status, upon the motion of a party or on the court's own motion. The court shall appoint a mediator who meets the minimum qualifications required under section 3.

Section 2 enables the court to determine when mediation will be ordered and the selection of mediators. This act applies to any custody or visitation dispute, regardless of whether the parties are married. If the parties are or have been married, mediation may be ordered prior to or subsequent to an alteration of the parties' marital status.

New Sec. 3. (a) If the court orders mediation under section 2, the mediator appointed by the court shall be a person who:

(1) Has at least two years' experience as an attorney handling domestic relations cases, such as divorce, annulment ~~and~~, separate maintenance ***and child custody***; or

(2) has at least two years' experience as a counselor or psychotherapist handling marriage and family relationships and either is a physician specializing in psychiatry or has a master's degree in psychology, social work, counseling or other behavioral science substantially related to marriage and family relationships.

(b) In appointing a mediator under section 2, the court shall consider:

(1) The nature and extent of any relationships the mediator may have with the parties and any personal, financial or other interests the mediator may have which could result in bias or a conflict of interest;

(2) the mediator's knowledge of (A) the Kansas judicial system and the procedure used in domestic relations cases, (B) other resources in the community to which parties can be referred for assistance, (C) child development, (D) clinical issues relating to children, (E) the effects of divorce on children and (F) the psychology of families; and

(3) the mediator's training and experience in the process and techniques of mediation.

Section 3 sets forth minimum qualifications for persons who may serve as court-appointed mediators. As an alternative to licensure of mediators by the state and the associated costs of such licensure, the Judicial Council proposes that the court serve the function of insuring that mediators are qualified individuals.

Subsection (a) creates two general categories of persons qualified to serve as court-appointed mediators: (1) attorneys experienced in handling domestic relation cases and (2) behavioral scientists with at least a masters degree in the area of marriage and family relationships. In selecting a mediator from one of those categories, subsection (b) directs the court to consider certain other criteria to insure that the mediator is neutral and competent.

New Sec. 4. (a) A mediator appointed under section 2 shall:

(1) Inform the parties of the costs of mediation;

(2) advise the parties that the mediator does not represent either or both of the parties;

(3) define and describe the process of mediation to the parties;

(4) disclose the nature and extent of any relationships with the parties and any personal, financial or other interests which could result in bias or a conflict of interest;

Section 4 enumerates those duties of the mediator which the Judicial Council perceives to be essential for the proper functioning of the mediation process. In addition to promoting the parties' understanding of the process, the costs involved, and the advisability of independent legal advice, the section stresses to both the mediator and the parties that the mediator is not acting in a representative capacity.

(5) advise each of the parties to obtain independent legal advice;

(6) inform the parties of the right to terminate mediation at any time after the initial session;

(7) allow only the parties to attend the mediation sessions;

(8) disclose to the parties' attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by the parties;

(9) ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children; and

(10) inform the parties of the extent to which information obtained from and about the participants through the mediation process is not privileged and may be subject to disclosure.

(b) The mediator may meet with the children of any party and, with the consent of the parties, may meet with other persons.

(c) The mediator shall make a written summary of any understanding reached by the parties, which shall be signed by the parties and the mediator. The mediator shall advise each party in writing to obtain legal assistance in drafting any agreement or for reviewing any agreement drafted by the other party. If the parties are not represented, the mediator shall provide to the court the written summary of any understanding reached by the parties.

(d) The mediator may act as a mediator in subsequent disputes between the parties. However, the mediator shall decline to act as attorney, counselor or psychotherapist for either party during or after the mediation or divorce proceedings unless the subsequent representation, counseling or treatment is clearly distinct from the mediation issues.

Subpart (9) of subsection (a) imposes upon the mediator the duty to ensure that the parties take into consideration the best interests of the children. To facilitate the performance of this duty, subsection (b) allows the mediator to meet with the children of any party, including children whose custody or visitation is not in dispute. This provision was added because the mediator may need to interview children whose custody is not in dispute in order to understand the best interest of a child whose custody is disputed.

Subsection (c) directs the mediator to prepare a written summary of any understanding reached by the parties, which is to be signed by the parties and the mediator. However, it is not the mediator's role to draft an agreement. Where the parties are not represented, the mediator is directed to provide the summary of understanding to the court. The court is then in a position to review the understanding with the parties.

Subsection (d) permits the mediator to mediate subsequent disputes between the parties. If the parties are satisfied with a mediator's prior service, the Judicial Council sees no reason why the parties should not be able to utilize that mediator in regard to subsequent disputes. However, the proposal restricts the activities of a person who has mediated the parties' dispute if that person takes on a new role by acting as an attorney, counselor or psychotherapist for a participant of the prior mediation. The Judicial Council recognizes that such later professional relationships have the potential to create the appearance of impropriety and to arouse suspicions as to the neutrality of the mediator. However, a total prohibition on such relationships would likely deter many qualified professionals from serving as mediators. Additionally, in some areas of the state, the availability of needed professional services to former mediation parties could be severely restricted. Subsection (d) attempts to strike a balance by limiting future professional relationships to matters clearly distinct from the mediation.

New Sec. 5. (a) At any time after the initial session, either party may terminate mediation ordered under section 2.

(b) The mediator shall terminate mediation whenever the mediator believes that: (1) Continuation of the process would harm or prejudice one or more of the parties or the children or (2) the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely.

(c) The mediator shall report the termination of mediation to the court. The mediator shall not state the reason for termination except when the termination is due to a conflict of interest or bias on the part of the mediator.

Due to the costs involved, the negative attitudes which may result from continued mandatory mediation, and the possibility that in some cases a party may perceive more accurately than the mediator that the process is fruitless, the Judicial Council was hesitant to force a party to undergo more than one mediation session. It is anticipated that many initially hesitant parties will, following the initial session, view mediation as preferable to an adversarial resolution of a dispute concerning the parties' children.

Subsection (b) places a duty on the mediator to terminate the mediation if the interests of the children are not being protected or if negotiations are not being carried on in good faith or a party is engaged in overreaching. Although this is a difficult task for the mediator, a fair and acceptable agreement is unlikely to be achieved if these conditions exist.

Subsection (c) directs the mediator to inform the court if mediation is terminated and generally prohibits the mediator from informing the court of the reasons for termination. Reports by the mediator to the court might be viewed as coercive by the parties and would be contrary to the confidentiality necessary for effective mediation. An exception is made where termination is due to conflict or bias on the part of the mediator. In such cases mediation might still be successful with a different mediator.

New Sec. 6. A mediator appointed under section 2 shall treat all information obtained from and about the participants through the mediation process as confidential and shall not disclose any such information except as necessary for the conduct of the mediation or as required by law.

Section 6 places a general duty of confidentiality on the mediator. The mediator is directed by section 4(a)(10) to inform the parties of the instances in which information obtained in mediation may be disclosed. See also section 7, regarding the mediator-party privilege.

New Sec. 7. (a) A party ordered to participate in mediation under section 2 has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the mediation. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege. There is no privilege under this section as to a communication relevant to: (1) Information the mediator is required to report under K.S.A. 1984 Supp. 38-1522 and amendments thereto, (2) the commission of a crime during the mediation process or (3) an expressed intent to commit a crime in the future.

(b) No person appointed as a mediator under section 2, nor that person's agent, may be subpoenaed or otherwise compelled to disclose any matters disclosed in the process of setting up or conducting the mediation except as to matters not privileged under subsection (a).

Section 7 creates a mediator-party privilege except as to communications relevant to reports of child abuse, the commission of a crime during the mediation, or an expressed intent to commit a crime in the future. The Judicial Council viewed provisions concerning confidentiality and privilege as necessary to promote the frank and open discussions required for effective mediation.

Subsection (b) extends to court-appointed mediators protection from forced disclosure of mediation matters similar to that which the Legislature has granted in cases of voluntary mediation, arbitration or conciliation. See chapter 212 of the 1984 Session Laws of Kansas.

New Sec. 8. The costs of any mediation ordered under section 2 shall be taxed to either or both parties as equity and justice require, unless the parties have reached a reasonable agreement as to payment of the costs.

In the absence of a reasonable agreement between the parties, section 8 permits the court to tax the costs of mediation in the same manner as costs and fees in divorce cases. See K.S.A. 60-1610(b)(4).

Sec. 9. K.S.A. 1984 Supp. 38-1522 is hereby amended to read as follows: 38-1522. (a) When any of the following persons has reason to suspect that a child has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsection (c): Persons licensed to practice the healing arts or dentistry; persons licensed to practice optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; certified psychologists; ~~Christian Science practitioners;~~ licensed professional or practical nurses examining, attending or treating a child under the age of 18; teachers, school administrators or other employees of a school which the child is attending; chief administrative officers of medical care facilities; persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child; licensed social workers; firefighters; emergency medical services personnel; *mediators appointed under section 2;* and law enforcement officers. The report may be made orally and shall be followed by a written report if requested. When the suspicion is the result of medical examination or treatment of a child by a member of the staff of a medical care facility or similar institution, that staff member shall immediately notify the superintendent, manager or other person in charge of the institution who shall make a written report forthwith. Every written report shall contain, if known, the names and addresses of the child and the child's parents or other persons responsible for the child's care, the child's age, the nature and extent of the child's injury (including any evidence of previous injuries) and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the persons responsible for the injuries.

(b) Any other person who has reason to suspect that a child has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse may report the matter as provided in subsection (c).

(c) Reports made pursuant to this section shall be made to the state department of social and rehabilitation services. When the department is not open for business, the reports shall be made to the appropriate law enforcement agency. On the next day that the state department of social and rehabilitation services is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to subsection (a) of K.S.A. ~~1983~~ *1984* Supp. 38-1524 and amendments thereto. The reports may be made orally or, on request of the department, in writing.

(d) Any person required by this section to report an injury to a child and who has reasonable cause to suspect that a child died from injuries resulting from physical, mental or emotional abuse or neglect or sexual abuse shall notify the coroner or appropriate law enforcement agency of that suspicion.

(e) Reports of child abuse or neglect by persons employed by or of children of persons employed by the state department of social and rehabilitation services shall be made to the appropriate law enforcement agency.

(f) Willful and knowing failure to make a report required by this section is a class B misdemeanor.

Sec. 10. K.S.A. 1984 Supp. 38-1522 is hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

As Amended by Senate Committee

Session of 1985

SENATE BILL No. 33

By Committee on Judiciary

1-16

AN ACT concerning ~~actions for divorce, separate maintenance and annulment of marriage~~ ***children and minors***; providing for court-ordered mediation of issues relating to child custody and visitation; ***concerning reporting of suspected child abuse;*** amending K.S.A. 1984 Supp. 38-1522 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Mediation under this section is the process by which a neutral mediator appointed by the court assists the parties in reaching a mutually acceptable agreement as to issues of child custody and visitation. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties and not the decisions of the mediator.

New Sec. 2. ~~In any action for divorce, separate maintenance or annulment,~~ The court may order mediation of any contested issue of child custody or visitation at any time, ~~whether~~ ***including*** prior to or subsequent to an alteration of marital status, upon the motion of a party or on the court's own motion. The court shall appoint a mediator who meets the minimum qualifications required under section 3.

New Sec. 3. (a) If the court orders mediation under section 2, the mediator appointed by the court shall be a person who:

(1) Has at least two years' experience as an attorney handling domestic relations cases, such as divorce, annulment ~~and~~, separate maintenance ***and child custody***; ~~or~~

(2) has at least two years' experience as a counselor or psy-

The mediator shall not consider issues of property division, maintenance or child support in connection with the mediation of issues of child custody and visitation except upon the written approval of both parties or their counsel.

Attachment No. 3
House Judiciary
March 18, 1985

chotherapist handling marriage and family relationships and either is a physician specializing in psychiatry or has a master's degree in psychology, social work, counseling or other behavioral science substantially related to marriage and family relationships; or (3) has 100 or more hours of mediation training, at least 40 of which are in divorce and child custody mediation

(b) In appointing a mediator under section 2, the court shall consider:

(1) The nature and extent of any relationships the mediator may have with the parties and any personal, financial or other interests the mediator may have which could result in bias or a conflict of interest;

(2) the mediator's knowledge of (A) the Kansas judicial system and the procedure used in domestic relations cases, (B) other resources in the community to which parties can be referred for assistance, (C) child development, (D) clinical issues relating to children, (E) the effects of divorce on children and (F) the psychology of families; and

(3) the mediator's training and experience in the process and techniques of mediation.

New Sec. 4. (a) A mediator appointed under section 2 shall:

(1) Inform the parties of the costs of mediation;

(2) advise the parties that the mediator does not represent either or both of the parties;

(3) define and describe the process of mediation to the parties;

(4) disclose the nature and extent of any relationships with the parties and any personal, financial or other interests which could result in bias or a conflict of interest;

(5) advise each of the parties to obtain independent legal advice;

(6) inform the parties of the right to terminate mediation at any time after the initial session;

(7) allow only the parties to attend the mediation sessions;

(8) disclose to the parties' attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by the parties;

(9) ensure that the parties consider fully the best interests of

What guidance is provided by the American Bar Association's Standards of Practice for Family Mediators?

Mediation Standards: An Ethical Safety Net

Thomas A. Bishop

lines do impose such a duty on the mediator.

The mediator has a duty to ensure that the participants bring all necessary decision-making information to the process and that each sufficiently understands the information before agreements are reached. The notion that agreements should be based upon the evaluation of information suggests there

is no place in mediation for the idea that what feels good is good. Those would-be mediators who are not skilled in the area of asset evaluation, appraisals, taxation, and so on may claim this standard limits the field of mediators to lawyers. That is not its intention. A mediator who ensures that the participants have this information meets this requirement. The mediator may do this in a number of ways. While the mediator must certainly obtain training to understand the agenda items for discussion in divorce and have some basic understanding of finances or evaluation, it is only necessary that such expertise be brought to the participants' attention before decisions are made. This may be accomplished by appropriate referrals, by outside appraisals and evaluations, and by ensuring that each participant obtains legal consultation throughout the process. The appended standards reflect a particular concern that the lawyer-mediator understands and reveals to the participants the difference between the roles of mediator and independent counsel.

Ethics, Standards, and Professional Challenges

John Allen Lemmon, *Editor*

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John Allen Lemmon, *Editor-in-Chief*
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MEDIATION TRAINING:

MEDIATING IN INTER-PERSONAL AND CONGREGATIONAL CONFLICTS; March 27, 28, 29, 1984; Oakbrook, IL; Mennonite Conciliation Service of Akron, PA; Ron Kraybill, Ph.D., Harvard, with emphasis in conflict management under professors who now train senior diplomats from U.S. and U.S.S.R.

NATIONAL CONFERENCE ON PEACEMAKING AND CONFLICT RESOLUTION; September 18-23, 1984; St. Louis, MO; National Institute for Dispute Resolution with the Academy of Family Mediators, American Arbitration Association, American Bar Association, Harvard Law School Program on Negotiation, United States Department of Justice, et al.

Mediator's Toolbox; 1/2 day workshop, Jennifer Beer and Eileen Stief, authors of Mediator's Handbook,

Crisis Management for Mediators; 1 day workshop; Leviton and Greenstone, author of Crisis Intervention; A Handbook for Interveners,

Establishing a Divorce Mediation Practice; 1/2 day workshop; Linda Girdner, Sara Grebe, and Robert Benjamin.

Conference sessions, including: "Protecting the Consumer from the Mediator", "Peacemaking and the Law", "Settlement of Consumer/Business Disputes through the Better Business Bureau", "A Question of Ethics", and four sessions on environmental mediation.

DIVORCE AND CHILD CUSTODY MEDIATION; October 30 - November 3, 1984; Center for Dispute Resolution, Denver, CO; Chris Moore, Ph.D., Rutgers, emphasis on mediation; author, A General Theory of Mediation: Dynamics, Strategies and Moves, and Chairman, National Interdisciplinary Committee on Standards and Practices for Family and Divorce Mediation; Mary Margaret Golten, Federal Mediator, Susan Widlau, Bernard Mayer, MSW.

SETTLEMENT CONFERENCE MEDIATION: FIRST ANNUAL JUDICIAL WORKSHOP; October 1984; United States District Court, Wichita, KS, Judge Patrick Kelley; Judge Lee West, and former Chief Justice Irwin of Oklahoma, mediators for the Oklahoma Courts.

MEDIATION INTERNSHIP; January 9-29, 1985; Neighborhood Justice Center of Honolulu; Peter Adler, Ph.D., (then Executive Director, now State Mediator, Supreme Court of Hawaii, Office of Judicial Administration); David Matteson, Director of Conflict Management Program and environmental mediator. Included observation, classroom work and actual mediation in a wide variety of cases: child custody and support, neighbor-neighbor, small-claims, victim-offender restitution, and environmental land-use disputes.

EDUCATION:

Attended American University, and received a BA in political science and sociology from Kansas Wesleyan - 1963.

EXPERIENCE:

Worked as a social worker one year for SRS and two years at Norton State Hospital.

Seven years experience teaching communication skills including active listening, peer counseling, problem solving, assertiveness and group dynamics, and trained others to teach these skills. Has trained hundreds of people throughout the United States and five foreign countries, in groups of two to ninety-nine. Has also had ten years experience leading a support group for young mothers.

Director of Human Relations for La Leche League International, Chairman of the Salina Zoning and Planning Commission, Chairman of the Long-range Planning Committee for the Domestic Violence Association of Central Kansas, and Vice-chairman of the Salina School Facilities Task Force.

PROFESSIONAL MEMBERSHIPS:

Association of Family and Conciliation Courts; Associate, Academy of Family Mediation; Associate, Society of Professionals in Dispute Resolution.

Standards for Family and Divorce Mediation

By THOMAS A. BISHOP

In recent months, the Association of Family and Conciliation Courts (AFCC) and a task force of the Mediation and Arbitration Committees of the American Bar Association's Family Law Section have each formulated standards of practice for family and divorce mediators.

In connection with its annual meeting in May, the AFCC convened a two-day symposium, the last of three symposia on the subject over an 18-month period. At each of these meetings, representatives from national and regional organizations shared their concerns and perspectives in developing a consensus view of the reasonable parameters of mediator behavior. While the debate in the drafting session was spirited, at the conclusion of the May workshop the attendees agreed that the document they drafted fairly described appropriate mediator behavior.

The result of these workshops, a document titled "Model Standards of Practice for Family and Divorce Mediation," is now being circulated among the organizations whose representatives participated in its drafting. The expectation is that it may be endorsed by the organizations' governing bodies.

During the same period, the task force of ABA's Family Law Section was meeting periodically to formulate standards of behavior for family and divorce mediators. While professionally homogeneous, task force members represented a spectrum of interests and experience. The group included law school professors and practicing lawyers with mediation experience ranging from none to substantial mediation practices.

Thomas A. Bishop is a lawyer and mediator in private practice in New London, CT. He is a fellow of the American Academy of Matrimonial Lawyers and a member of the mediation task force of the American Bar Association's Family Law Section and of the board of directors of the Association of Family and Conciliation Courts.

Having briefly defined divorce and family mediation, we should next discuss the nature of a standard. Is it a specific rule of conduct or is it a general statement of normative behavior? If it is a statement of reasonable behavior, is it implied that behavior not in conformity with the standard would be unreasonable? In this context, is the term "reasonable" equated with the term "ethical" so that conduct which is unreasonable would al- be viewed as unethical?

I believe

for

of

X. TRAINING AND EDUCTION

A. Training

A mediator shall acquire substantive knowledge and procedural skill in the specialized area of practice. This may include but is not limited to family

and human development, family law, divorce procedures, family finances, community resources, the mediation me process, and professional ethics.

eral **B. Continuing Education**

ing A mediator shall participate in con-
tions tinuing education and be personally
were responsible for ongoing professional
equate growth. A mediator is encouraged to
term "s join with other mediators and
intendec members of related professions to
preferrea promote mutual professional development.

This ex offers little solace to those wno believe the standards constitute rule-making and are restrictive. In some instances the language which describes mediator behavior is couched in mandatory terms. If adopted by a body with regulatory control over a mediator's practice, it would have a coercive influence. Commands directing that a mediator "shall" proceed in a specified manner imply that the mediator who does not act accordingly is behaving unethically. And, language indicating that the mediator "should" take certain action, being advisory, would not suggest a sanction for noncompliance. So and dissemination alone is not likely to have any immediate or direct impact on mediator conduct. I envision the standards as having a possible coercive influence on mediator behavior in two possible ways:

- The standards may be adopted in whole or in part by government or professional bodies that are authorized to regulate the conduct of mediators.
- Some or all of the standards may become acepted as normative behavior for mediators by judicial or administrative bodies called upon to evaluate claims or requests concerning specific mediator behaviors.

In either case, the essential value of the standards is educational. Whether to adopt any standards at all remains a decision for the constituent organizations of mediators, for state and local bar associations, for judicial rule-

> . . . the formalization and emination of practice dards for family and ce mediators . . . aids blic's ability to measure ess mediation . . ."

akers, and for legislators. The standards that have been developed merely express the thinking of those task force and symposia members who participated in the drafting processes. To the extent the standards may contain infirmities, they may be brought to public and professional attention through journal articles and in the councils of those who ultimately shape the parameters of mediation practice.

There are those who claim that the practice of divorce and family mediation is too unformed to define. Some believe that the promulgation of standards will restrict the growth of mediation even though standards developed on a national level may not directly affect local practice. Additionally, some are concerned that the imple-

December 1984

DISPUTE RESOLUTION forum

Published by NATIONAL INSTITUTE FOR DISPUTE RESOLUTION

Family and Divorce Mediation Issue

The approval by the American Bar Association's House of Delegates and the distribution by the Association of Family and Conciliation Courts of standards of practice for family and divorce mediation mark a watershed in this rapidly expanding area of dispute resolution. To promote understanding and debate of the standards, the FORUM in this issue publishes the standards along with a commentary by attorney Thomas A. Bishop. Readers are encouraged to submit their observations on the standards to the FORUM for publication in subsequent issues.

The Editor

CENTER FOR DISPUTE RESOLUTION

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new idea, invention or procedure is then "colonized" by professionals and turned into an industrial fee-for-service system that must ultimately be subsidized to keep it available to those with less resources. The legal system is a good example. As American jurisprudence has developed and become more complex so too has the legal profession become more elaborate, specialized, and expensive. To make it accessible federally funded legal assistance (legal aid) was created for the disadvantaged. Legal aid has now become a specialized area of professional concentration.

Bureaucracy is a powerful imperative. As an innovative alternative to many kinds of litigation, mediation might easily be expected to follow the same pattern of professionalism. The Hawaii model, however, keeps mediation a voluntary activity done by volunteers. Integral to this is the notion that the benchmark of true professionalism is not level of salary but quality of training. To that extent, the Hawaii model builds on the basic notion of people helping others in their own community. Communities may be geographic or based on common interests or both. The equation remains the same. Volunteers are offered professional training and education in dispute resolution. In exchange, they are asked to help settle real conflicts in their own area (or area of interest) free-of-charge. Skills are disseminated, cases are settled, and the rise of a mediation bureaucracy is short-circuited.

Organized on a volunteer basis, mediation may also have consequences that go beyond the settling of disputes. Mediation is inherently good social process. Within the mediation forum itself, disputants observe and participate in procedures that acknowledge and honor diversity. People see, and perhaps in some cases learn, that social control can be internally created rather than externally imposed. Communication is maximized; emotional, perceptual and conceptual differences are aired; and the notion of a safe and neutral ground for bargaining is demonstrated. Beyond the confines of the conflict, people trained in mediation and some of those who use the service become "responsible." Responsibility, a notion that is often left in the abstract, is made behaviorally concrete. Neighbors become responsible for what goes on in their own neighborhood and people in conflict situations become responsible for the outcomes of their own disputes. The skills and procedures used to develop this are readily transferable. People trained in mediation find themselves using the same skills in their daily interpersonal life, at home, in the workplace, and with friends and acquaintances.[18]

As the Neighborhood Justice Center has evolved, volunteers have been trained and integrated into three different program areas. The *Family Mediation Service (FMS)* assists both immediate and extended families caught in conflicts related to divorce: custody, visitation, juvenile problems, settlement issues, and domestic violence. Cases may be referred by the courts or by social service agencies or self-initiated straight from the community. (Adler)[19]

Previously mediators have done all types of disputes without specialized family mediation training, but commencing in 1983, separate and specialized training for family mediators will result in a distinct group of mediators highly trained for this demanding and time-consuming process with a greater knowledge of the family law process.

The *Neutral Ground program (NG)* offers mediation services to people involved in neighborhood disputes, landlord-tenant conflicts, consumer-merchant disagreements, and problems that take place in local schools. Neutral Ground is a decentralized neighborhood program which organizes trained volunteers on a neighborhood by neighborhood basis to identify conflicts, explain mediation, and help the parties in conflict to reach resolution.

The *Conflict Management Program (CMP)* utilizes a small number of highly trained volunteers to help government agencies, private developers, and community action groups negotiate solutions to public policy disputes. Most of these center on environmental and land-use issues. Although procedures in the area of environmental mediation are still highly experimental, the idea of volunteer professionals doing *pro bono* service as mediators holds great promise.

The Neighborhood Justice Center, through its Conflict Management Program (CMP), has recently trained 25 Associates in the methods and techniques of mediation and is currently engaged in cases that involve geothermal operations, transportation planning, the siting of hotels and care homes, and the conversion of native forests to agricultural uses. In addition to these site-specific

[18]Adler, P. *Teaching Peace: Training Volunteer Mediators*, Neighborhood Justice Center of Honolulu, 1981
[19]Ibid

cases, the CMP is developing proposals for mediated policy dialogues in the areas of geothermal energy development and the location of shelter homes. Working with consultants to the City and County of Honolulu, the Center has recommended that the proposed SIMS (Social Impact Management System) include a "triggering" mechanism in the permit granting process that identifies potential development disputes at an early stage and provides mediation and collaborative problem solving as formal options.

Reducing frictions and creating more broadly supported solutions to complex environmental problems are both grand goals. While mediation is not a panacea, it is a worthy and much needed social experiment. The protracted nature of litigation, the high cost of contention, and the complex and interlocking webs of affiliation that accompany life in an island society would all seemingly mitigate in mediation's favor. Hawaii, perhaps more than other regions, provides an ideal laboratory for testing and researching its utility. Such experimentation should be strongly encouraged in the hopes that new insights about local social process will be revealed.

State-wide System of Justice Centers in Hawaii

In Hawaii the active involvement and support of the Judiciary branch of government has led to a focal point for discussion of funding and a vehicle for coordinating a unified funding approach for mediation programs in Hawaii. Lester Cingcade, administrator of the Hawaii Courts has served ably as a Board of Directors President during the transition to the new Hawaii model, and it is hoped that the Judiciary will continue to serve in the future as a coordinating point for all state-wide mediation programs in Kauai, Maui, Hawaii and Honolulu counties. The success of the Honolulu Neighborhood Justice Center led in 1982 to its being a co-recipient of the Liberty Bell award from the Young Lawyers branch of the Hawaii Bar Association.

Effectiveness of Mediation in Hawaii

Case-load effectiveness and evaluation of the Hawaii NJC by the Institute for Social Analysis in Reston, Virginia, showed consistently high rates of success and satisfaction by those using the Center's services. Eighty-five (85) percent of all cases reaching mediation were settled.

Cost/Benefit Analysis of Mediation

Although it is early in the formative history of the Justice Center movement in the U.S., the NJC of Honolulu has attempted a cost/benefit analysis as a part of the intensive evaluation of this new aspect of Hawaii's dispute resolution environment.

In summary, in 1980-81, the cost per case was estimated for four agencies that work with the types of disputes that were then mediated in Hawaii. Figures per case were: Family Court—$322.00 per case; Office of Consumer Protection—$238.00 per case; Office of Prosecutor—$250-$500.00 per case; and mediation at the Neighborhood Justice Center—$114.00 per case.

The attached two-page cost-benefit analysis shows the assumptions behind the calculations, and supports the conclusions that $131,256 public dollars were saved by utilizing mediation in Hawaii from November 1979 to December 1981. (Appendix A)

Much more sophisticated analysis needs to be done as mediation is applied to new and varying types of complex disputes. This rough information is offered as a beginning toward making such evaluations.

VI. MEDIATION AND THE CULTURES OF THE PACIFIC

Mediation in China: the overall legal system

To understand the role of mediation in China we must take a look at the legal system existing in this vast country of over one billion people. Just by looking at the number of lawyers in China and the U.S. we can rather quickly grasp some of the basic differences in the legal systems. The U.S. has over 400,000 lawyers (a rapidly increasing number) for a society of 200 million, while China has only 11,000 lawyers for its population of 1.3 billion people.[20]

Cohen,[21] one of the leading American scholars on Chinese law, identifies the unusual importance of mediation as one of the most striking aspects of the Chinese legal system. Litigation

[20]Li, Victor H. *Law Without Lawyers: A Comparative View of Law in China and the U.S.* at 10. Westview Press, Boulder, Colo. (1978). *Chinese Look at U.S. Legal System*, 3 California Lawyer 64 (August 1983)
[21]Cohen, J. *Chinese Mediation on the Eve of Modernization*, 54 Cal. L. Rev. 1201, 1966

Mediation and Lawyers:
The Pacific Way: A View from Hawaii*

*Cite as: 18 Haw. BAR JOURNAL 37 (1983)

BRUCE E. BARNES**
PETER S. ADLER**

September 1983

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MEDIATION AND LAWYERS: THE PACIFIC WAY: A VIEW FROM HAWAII

Mediation as an Alternative to Social Study in Child Custody Disputes

From the office of:
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Technical Report

of

University of Hawaii
Psychology Department
Laboratory for Divorce Research

Margaret M. Watson, MA and Teru L. Morton, PhD

Submitted on: April 20, 1983

Submitted to: First Circuit Court of Hawaii
Adult Services Branch of Family Court
Neighborhood Justice Center

The cooperation and support we received from both the First Circuit Court of Hawaii, Adult Services Branch and the Neighborhood Justice Center of Hawaii is gratefully acknowledged.

ABSTRACT

This study examined mediation as an experimental alternative to the usual and customary method of social study for resolving custodial disputes. Two major questions were addressed: (1) Is there any difference between mediation and social study for resolving custodial disputes? and (2) What variables might predict satisfaction with the custody resolution process? The subject pool consisted of couples who indicated to the Family Court of Hawaii that custody resolution would be a problem for them. Couples were assigned to either mediation or social study to resolve their custodial problem. The 78 individuals who agreed to be interviewed before and after the resolution process (at the time of this preliminary data analysis) were given both structured and standardized questionnaires. It was found that the two custody resolution methods do differ on a number of dimensions. Specifically, mediation was found to be to some degree more effective than social study in: taking one-third the amount of time and reporting more satisfaction with the mediator. However, it was found that about 42% were unsuccessful in mediation. Data analysis suggests that these success versus non-sucess cases could be predicted from the following variables: maintaining communication with the former spouse, having less marital disruption, agreeing to mutually end the relationship and taking a short amount of time to resolve the custody issue.

62nd OREGON LEGISLATIVE ASSEMBLY–1983 Regular Session

Enrolled

House Bill 2362

Sponsored by COMMITTEE ON JUDICIARY (at the request of Commission on the Judicial Branch)

CHAPTER.....671.....

AN ACT

Relating to domestic relations suits; creating new provisions; and amending ORS 21.112 and 107.615.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 5 of this Act are added to and made a part of ORS chapter 107.

SECTION 2. (1) Subject to the approval of the Chief Justice of the Supreme Court, the circuit court in a judicial district, by an affirmative vote of a majority of the judges of the court, may provide mediation under sections 2 to 5 of this 1983 Act for child custody and visitation disputes in a domestic relations suit not including proceedings under ORS 107.700 to 107.720. The court, as provided in ORS 3.220, may make rules consistent with sections 2 to 5 of this 1983 Act to govern the operation and procedure of the mediation provided.

(2) A circuit court may provide mediation for child custody and visitation disputes in connection with its exercise of conciliation jurisdiction under ORS 107.510 to 107.610, but a circuit court need not provide conciliation services in order to provide mediation under sections 2 to 5 of this 1983 Act.

SECTION 3. (1) In a domestic relations suit in a circuit court providing mediation under sections 2 to 5 of this 1983 Act, where it appears on the face of one or more pleadings, appearances, petitions or motions, including any form of application for the setting aside, alteration or modification of an order or decree, that either custody or visitation of a child, or both, are contested, the court shall refer the matter for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. The purpose of the mediation shall be to assist the parties in reaching a workable settlement of the contested issues instead of litigating those issues before the court. The mediator shall not consider issues of property division or spousal or child support, in connection with the mediation of a dispute concerning child custody or visitation, or otherwise, without the written approval of both parties or their counsel.

(2) The mediator shall report in writing to counsel for the parties any agreement reached by the parties as a result of the mediation, and the agreement shall be incorporated in a proposed order or decree provision prepared for the court. If the parties do not reach an agreement, the mediator shall report that fact to the court and to counsel for the parties, but shall not make a recommendation to the court as to child custody or visitation without the written consent of the parties or their counsel.

SECTION 4. (1) A circuit court providing mediation under sections 2 to 5 of this 1983 Act may obtain mediation services, with the prior approval of the governing body of each county involved, by:

(a) Using personnel performing conciliation services for the court under ORS 107.510 to 107.610;

(b) Contracting or entering into agreements with public or private agencies to provide mediation services to the court; or

(c) Employing or contracting for mediators directly.

What guidance is provided by the American Bar Association's Standards of Practice for Family Mediators?

Mediation Standards: An Ethical Safety Net

Thomas A. Bishop

lines do impose such a duty on the mediator.

The mediator has a duty to ensure that the participants bring all necessary decision-making information to the process and that each sufficiently understands the information before agreements are reached. The notion that agreements should be based upon the evaluation of information suggests there

is no place in mediation for the idea that what feels good is good. Those would-be mediators who are not skilled in the area of asset evaluation, appraisals, taxation, and so on may claim this standard limits the field of mediators to lawyers. That is not its intention. A mediator who ensures that the participants have this information meets this requirement. The mediator may do this in a number of ways. While the mediator must certainly obtain training to understand the agenda items for discussion in divorce and have some basic understanding of finances or evaluation, it is only necessary that such expertise be brought to the participants' attention before decisions are made. This may be accomplished by appropriate referrals, by outside appraisals and evaluations, and by ensuring that each participant obtains legal consultation throughout the process. The appended standards reflect a particular concern that the lawyer-mediator understands and reveals to the participants the difference between the roles of mediator and independent counsel.

Ethics, Standards, and Professional Challenges

John Allen Lemmon, *Editor*

MEDIATION QUARTERLY
Journal of the Academy of Family Mediators
John Allen Lemmon, *Editor-in-Chief*
Number 4, June 1984

Jossey-Bass Inc., Publishers
San Francisco • Washington • London


CORIGLIANO

Association of Community
Mental Health Centers of Kansas
820 Quincy, Suite 416/Topeka, Kansas 66612/913 234-4773
Paul M. Klotz, Executive Director

Remarks to:

House Judiciary Committee — Representative Knopp
By: Charles S. Kunce, Ph.D. — Date: March 18, 1985
Re: SB 33

Based on the belief that mutually agreed upon arrangements for child custody and visitation have a better long term outcome than non-mediated arrangements, the Association of Community Mental Health Centers of Kansas supports the passage of Senate Bill No. 33.

However, the Association further believes that specialized skills are required for successful mediation that may not be acquired in law school, graduate school in psychology, or professional experience in these areas. For this reason, the Association recommends that SB 33 be modified to require specialized training in divorce mediation for these professionals. The following wording is recommended:

0045 add: and has successfully completed specialized training in divorce mediation techniques approved by the Kansas Bar Association.

0051 add: and has successfully completed specialized training in divorce mediation techniques approved by the Secretary of Social and Rehabilitation Services.

The Association recommends these changes to help assure that the mediation services offered are uniformly of high quality.

Attachment No. 5
House Judiciary
March 18, 1985

As Amended by Senate Committee

Session of 1985

SENATE BILL No. 33

By Committee on Judiciary

1-16

AN ACT concerning ~~actions for divorce, separate maintenance and annulment of marriage~~ ***children and minors***; providing for court-ordered mediation of issues relating to child custody and visitation; ***concerning reporting of suspected child abuse;*** amending K.S.A. 1984 Supp. 38-1522 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Mediation under this section is the process by which a neutral mediator appointed by the court assists the parties in reaching a mutually acceptable agreement as to issues of child custody and visitation. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties and not the decisions of the mediator.

New Sec. 2. ~~In any action for divorce, separate maintenance or annulment,~~ The court may order mediation of any contested issue of child custody or visitation at any time, ~~whether~~ ***including*** prior to or subsequent to an alteration of marital status, upon the motion of a party or on the court's own motion. The court shall appoint a mediator who meets the minimum qualifications required under section 3.

New Sec. 3. (a) If the court orders mediation under section 2, the mediator appointed by the court shall be a person who:

(1) Has at least two years' experience as an attorney handling domestic relations cases, such as divorce, annulment ~~and~~, separate maintenance ***and child custody***; ~~or~~

(2) has at least two years' experience as a counselor or psy-

Attachment No. 6
House Judiciary
March 18, 1985

chotherapist handling marriage and family relationships and either is a physician specializing in psychiatry or has a master's degree in psychology, social work, counseling or other behavioral science substantially related to marriage and family relationships; or (3) is acting in his or her official capacity as a court services officer and either has a master's or bachelor's degree in psychology, social work, counseling or other behavioral sciences substantially related to marriage and family relationships; or has been engaged in mediation under the direction of the district court prior to the effective date of this bill.

(b) In appointing a mediator under section 2, the court shall consider:

(1) The nature and extent of any relationships the mediator may have with the parties and any personal, financial or other interests the mediator may have which could result in bias or a conflict of interest;

(2) the mediator's knowledge of (A) the Kansas judicial system and the procedure used in domestic relations cases, (B) other resources in the community to which parties can be referred for assistance, (C) child development, (D) clinical issues relating to children, (E) the effects of divorce on children and (F) the psychology of families; and

(3) the mediator's training and experience in the process and techniques of mediation.

New Sec. 4. (a) A mediator appointed under section 2 shall:

(1) Inform the parties of the costs of mediation;

(2) advise the parties that the mediator does not represent either or both of the parties;

(3) define and describe the process of mediation to the parties;

(4) disclose the nature and extent of any relationships with the parties and any personal, financial or other interests which could result in bias or a conflict of interest;

(5) advise each of the parties to obtain independent legal advice;

(6) inform the parties of the right to terminate mediation at any time after the initial session;

(7) allow only the parties to attend the mediation sessions;

(8) disclose to the parties' attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by the parties;

(9) ensure that the parties consider fully the best interests of

such information except as necessary for the conduct of the mediation or as required by law.

New Sec. 7. (a) A party ordered to participate in mediation under section 2 has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the mediation. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege. There is no privilege under this section as to a communication relevant to: (1) Information the mediator is required to report under K.S.A. 1984 Supp. 38-1522 and amendments thereto, (2) the commission of a crime during the mediation process or (3) an expressed intent to commit a crime in the future.

(b) No person appointed as a mediator under section 2, nor that person's agent, may be subpoenaed or otherwise compelled to disclose any matters disclosed in the process of setting up or conducting the mediation except as to matters not privileged under subsection (a).

New Sec. 8. The costs of any mediation ordered under section 2 shall be taxed to either or both parties as equity and justice require, unless the parties have reached a reasonable agreement as to payment of the costs.

No costs shall be taxed if the mediator is a court services officer acting in his or her official capacity.

Sec. 9. K.S.A. 1984 Supp. 38-1522 is hereby amended to read as follows: 38-1522. (a) When any of the following persons has reason to suspect that a child has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsection (c): Persons licensed to practice the healing arts or dentistry; persons licensed to practice optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; certified psychologists; ~~Christian Science practitioners;~~ licensed professional or practical nurses examining, attending or treating a child under the age of 18; teachers, school administrators or other employees of a school which the child is attending; chief administrative officers of medical care facilities; persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are

Joint Custody is meaningless!

A Survey of Child Custody in the 18th Judical Dist.

Preliminary Study Ending November, 19.4

Conducted by
John A. Ackerd
K. F. Johnson

Real → Actual Custody

Theoretic ↓ Custody

Cases Covered	# Involving Children	Custody		Shared*		Custodial Parent		
						Man		Woman
		Sole	Joint	Judge ordered	Out of court	Judge ordered	Out of court	Did not separate
83D1 - 83D520	215	39	176		12		20	183
83D1000 - 83D1360	134	21	113		7		12	115
83D2001 - 83D2190	66	12	54		1		8	57
8401 - 840266	86	17	69		4		9	73
Totals	501	89	412		24		49*	428
Percentages		17.7%	82.2%		4.8%		9.8%	85.4%

* In five cases, it could not be determined from the court file if it was agreed to out of court or the judge ordered it.

★ Shared means that each parent had the children an equal amount of TIME

Attachment No. 7
House Judiciary
March 18, 1985

Did You Hear the Story
of the
Smartest Lawyer
In the World

One day an airplane carrying the President of the United States, Pope, the Smartest Lawyer in the World, and a Boy Scout, was flying along an one of the wings fell off. They all started looking for parachutes an only found four.

So the pilot came back and said, I'm the captain of the ship and we're going to crash, so he grabbed a parachute and jumped.

That left three parachutes for four people, they all agreed the President should be saved. So that left two parachutes for three people So the Smartest Lawyer thought he should be saved, because there wouldn't be anyone to Litigate, so he took a parachute and jumped.

That left only the Pope and the Boy Scout, and one parachute. The Pope said, I've lived my life, and served god, your a young man so you take the last parachute and jump.

PUNCH LINE

Boy Scout said,
Don't worry Holy Father,.
The Smartest Lawyer just jumped with my Back Pack.

Author:
Unknow

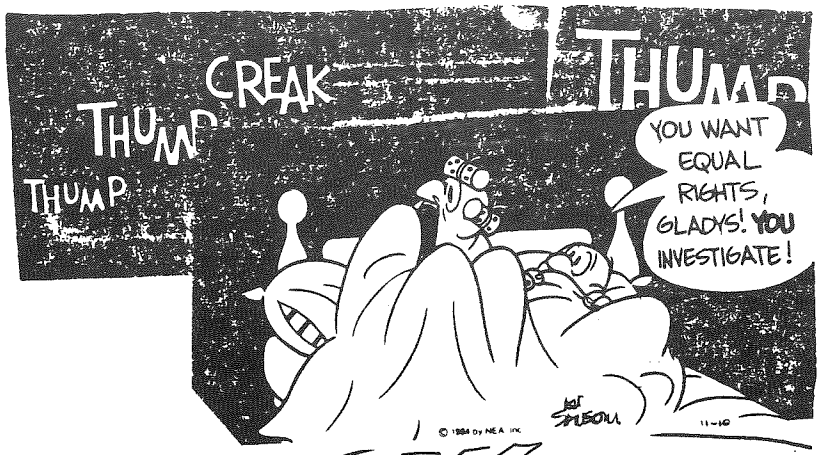
Alimony is when two people make a mistake-

And one person pays for it.

By Bill Hoest

"Goodbye, Henrietta. I'm leaving you."

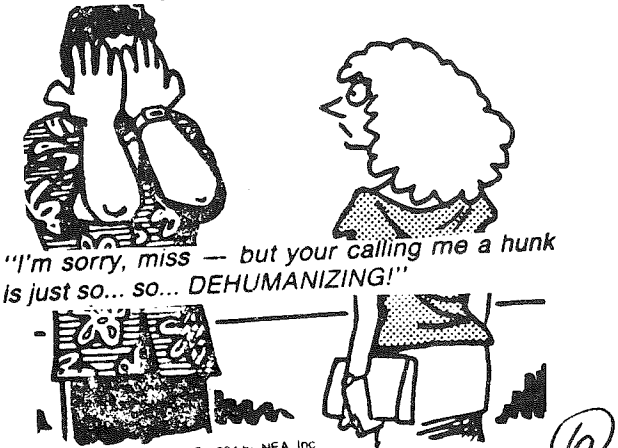
BORN LOSER



"She had one helluva good lawyer."

"What do you think of the women's movement?"

He wants a lawyer... Which cell do we keep the lawyers in?"



"I'm sorry, miss — but your calling me a hunk is just so... so... DEHUMANIZING!"

TWO PARENTS - NOW & FOREVER

Dear Judge, legislator and attorney:

My child was born with two eyes, two ears, two arms and hands, and two legs.

When my spouse and I divorce, which eye will you remove from my child?
Which ear will you slice off?
Which arm or hand will be amputated?
Which leg will he be permitted to retain?

Will you let my child keep his right leg because it is stronger?
Will he be permitted to keep his right hand because he favors that hand best and is able to do more with that hand?
Will he lose his left eye because his right eye is the predominant one?
Which one, left or right, will you choose to let him have?

Will you Let him continue to have both eyes, because while he can see with one, the second gives depth to his perception?
Will you let him use both of his ears equally, because two ears will permit him to hear sound with added dimension?
May he keep both of his hands and arms, because, while he may be predominately right-handed, there is no doubt the left hand and arm assist the right in accomplishing his tasks.
Will you let him keep and use both legs EQUALLY? For while he may be able to use a crutch and get around with only one leg, with two legs he can accomplish so much more.

My Child was born with two legs, just as he was born with two parents.
Which will you permit him to keep?
Which leg can he keep and use daily?
Which parent will he be permitted to keep and draw from daily, as a resource?

You are faced with this Solomon-like predicament.

Our children were born with two legs and with two parents.

Just as you would not consider removing one leg at divorce, do not consider removing one parent from my child's life.

Do not limit my child's access to one of his parents to just one or two days a week or every other week.
Let him have EQUAL and CONTINUING ACCESS to both of his parents, no matter what custody decision is made.
Let my child have the opportunity to draw upon all of his resources to the fullest extent possible.
In that way, our most prescious resource will grow up to become the fullest human being possible.

Sincerely,

A FATHER AND A MOTHER

COLORADO CONCERNED PARENTS FOR CHILDREN'S RIGHTS
PO BOX 38538, COLORADO SPRINGS, CO. 80937

Some Reflections for Father's Day

Karen DeCrow

WASHINGTON, D.C. — I am at the National Gallery. It is Sunday and there is a large crowd to see the Rodin show. My companion and I head for the cafeteria for a cup of tea. In the lobby in front of the restrooms a young man is changing his baby's diaper. He has spread the equipment on the floor and as the baby gurgles, he juggles bags and containers, and diverts the mob from stepping on father and child.

As I enter the women's room I notice a small room off to the right: changing room. Tables and chairs are there, a private and convenient place for changing diapers. I float out into the lobby and strike up a conversation. I tell him about the changing room. "Is there not one in the men's room?" Of course not. "You may have a federal case," I say. "This is a government facility, and you are being disadvantaged because of your gender."

There are many babies at the museum, riding happily on parents' backs. A casual glance shows that male parents and female parents take their children to the museum in about equal number; the Department of Public Restrooms has not noticed.

Here is a party game for those summer barbecues: A 3-year-old toddles over to a new person. If that person is female, and begins to cuddle the child, the prevailing wisdom will dictate that she is a warm, caring individual, nurturant as women should be. If the new person is a male, who begins to cuddle the child, look out! The other guests may well wonder why he is touching this child. The women's movement has been asking for (read demanding) sensitive, nurturant men for a decade, but a man at this party could be in big trouble for heeding the call.

A client approached me with a potential custody battle. She had sole custody of their child, and her husband wanted joint custody. She brought the child with her to the appointment. Within 30 minutes he had thrown an entire roll of toilet paper down my toilet, causing a major flood; had spilled apple juice all over himself and the kitchen; had destroyed a bag of electronic toys brought along to amuse him; and had threatened to throw himself off my deck into the ravine below. "Are you certain you don't want his father to have equal time wth him?" I inquired.

Another client, divorced with sole custody of three children, called me with a non-legal but very pressing problem. She was desperate for a sitter so she could fulfill her professional responsibilities. Because of unusual hours involved, it was difficult to find a person to fill the job. "What about their father?" I asked. "Is he willing to be with them during those hours?" "Their father!" she exclaimed, "That's just what he wants!"

I FULLY SUPPORT joint custody after divorce, both as an attorney and as a feminist. The New York State Legislature passed a joint custody bill, and it was vetoed by then-Governor Carey. It should pass the bill again, and Gov. Cuomo should sign it.

A joint custody bill provides that the court may give joint custody, and it may give sole custody, depending on circumstances. Of course the court may do anything it pleases — without such a bill — but it is essential for New York State to enact such a guideline. It is important for the Legislature to go on record supporting shared parenthood, or at least, its possibility.

It is clear from the evidence that women will never have the opportunity for full participation in the professional and public spheres if they are designated as those solely responsible for the care of children. Of course men can also nurture the young. Why do we assume that women, because they give birth to children, have a natural instinct to take care of children, a talent lacking in male persons?

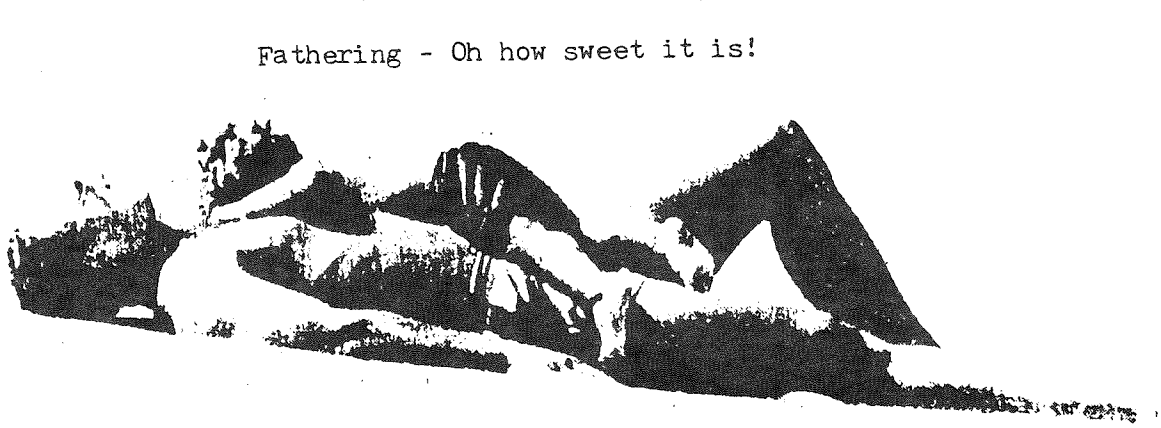
Today, across the country, mothers are awarded child custody in 90 percent of the cases. No woman can possibly have equal employment opportunity if this role definition does not change. It is to the advantage of women to provide, in the law, for shared responsibility for children. Until women and men share the parenting function, there is no possibility that they will be able to share political, economic, and social functions.

A correspondent from Liverpool writes: "I would rather deal with a man than a woman under any circumstances, any time." One can only presume that persons of such philosophy will be in Albany next session, to testify in favor not of joint custody, but of paternal presumption in custody disputes.

KAREN DeCROW IS PAST NATIONAL PRESIDENT OF N.O.W.

Our thanks to Equal Rights for Fathers of New York State, Inc. from the June 15, 1984 issue of the Syracuse Post-Standard.

Fathering - Oh how sweet it is!



SECOND WIVES AND SECOND FAMILIES ARE NOT SECOND CLASS CITIZENS!

The Flaw in Our Law Schools

MY TURN/JAMES R. NIELSEN

It is a fact that a student can graduate from this, the fourth largest law school in the United States, without ever having written a pleading, a contract, a will, a promissory note or a deed. It's worse than that. It is a fact that most students graduate from this law school without ever having *seen* a real honest-to-God pleading, or contract, will, promissory note or deed. A student can graduate without ever having set foot in a courtroom and without ever having spoken to, or on behalf of, a person in need of advice or counsel. A student can graduate without once being exposed to the operation of the rules of court.

It is a fact that such students and those similarly trained at most other schools do pass the bar examination and are certified as competent to render advice and to represent others in court. Whatever else may be said about this license issued by the state bar, let it be said that for these students and their clients it is a cruel hoax.

Law professors are not appalled by these facts mainly because they are products of the same type of education. Unlike the general population, they usually have access to the more prestigious local law firms to handle their problems, problems they don't often handle because it is perfectly possible to become a law professor without ever having seen a pleading, contract, will, promissory note or deed.

Not to put too fine a point on it, if one asks just what is taught during the three years at law school, one is likely to be told that students learn some substantive law while great emphasis is placed upon analytical and cognitive skills. "We teach them to think like lawyers."

Nuts and Bolts: This is the common response, yet one that always reminds me of a cartoon I saw in the late '30s when commercial aviation was still a novelty. As I remember it, a pilot strolled nonchalantly up the airplane aisle past the nervous passengers, holding a book entitled "How To Fly" under his arm. We laughed because no sane person would entrust his life or his airplane to someone who had never flown—even if he had been taught for three years how to think like a pilot.

Such a legal deficit has not gone unnoticed. The dean of a large Western law school threw in the towel recently and suggested that law firms rather than law schools should teach the "nuts and bolts" of law practice to their newly graduated employees. Although law firms have been doing just that in self-defense, there are several problems with this abdication of academic responsibility: what about graduates who start off on their own and what about graduates who learn their "skills" from Stumble, Bumble and Crash?

During the past decade many law schools began to close this gap by adding clinics to their curricula. Clinics were proposed to provide practical training in a law-office atmosphere. And they grew like weeds. There were clinics for the disadvantaged, the discriminated against, the farm workers, the environmentalists, the aged and nonaged. You name it: there was a clinic. Some continue to do a superb job. Some are a joke. It is quite true that some clinics were political recruiting and action centers. It is also true that the practical experience provided to students varied widely depending upon the organizer's conception of the lawyer's function in society. Largely recruited from the practicing ranks, the clinical faculty served as part-time "professors" whose academic status lay somewhere between administrative and custodial personnel.

> Please, God, if I need a lawyer to write a contract or will, don't make mine the first one he's seen.

Of late, partly because of the restrictions placed on the Legal Services Corporation, there has been a diminution in the growth of clinics and a tendency by law schools to create clinic courses, thereby increasing the law school's supervision. Students are encouraged to get "real" experience in trial objections, client interviewing and negotiation. These classes are often videotaping sessions: a set of exercises performed by the student with predigested facts. They are, of course, immensely popular—sort of a graduate school "show and tell." The disturbing feature of these courses is that they are presented as "the real world of lawyering."

Just imagine a medical student being brought blindfolded to an anesthetized patient whose stomach has been previously opened by a surgeon. The surgeon removes the blindfold, points out the clamped-off appendix and tells the student to cut between the clamps. He does, and the student is told he has performed a "real" appendectomy. By omitting the preliminary and closing procedures, the student is given a completely false concept of his role. So is the law student whose "real" experience is limited to a single elective course in trial objections.

Computers: People, ordinary people in business, need all the legal help they can get. They need competent lawyers whose perception of their role is realistic and who have been taught the tasks they are paid to perform. Since modern law students, alumni of "Sesame Street," are remarkably adept at assimilating information presented visually, the new educational technology can be used to teach practical skills at modest cost, provided law schools are willing to change.

In my classroom clinic, for example, we use sophisticated tape-and-slide programs to demonstrate a pleading and computer-assisted legal programs which are uniquely capable of providing students with the opportunity to draft documents under electronic supervision. Yet these pioneering efforts have been given a tepid reception by a traditional law faculty transfixed by a fear of educational innovation.

An integrated core of academic and practical skills should be required as part of every lawyer's education and will be only when schools of law accept responsibility for the professional competence of their graduates. Until then, I freely offer a Client's Prayer: *Please, God, if I need a lawyer to write a contract pleading, don't make mine the first one the lawyer has ever seen. While you're at it, could you ask around and see if there's any agreement up there about what experience a person should have before he calls himself a lawyer and takes my money—that is, if there are any lawyers around to ask.*

Nielsen is a full-time professor at Hastings College of the Law in San Francisco.

KANSAS CUSTODIAL PARENTS RESTRICTED
RIGHT TO TRAVEL
Court of Appeals of Kansas

A custody order providing that the Mother would have custody only if she resided in McPherson County, Kansas, was valid, the Kansas Court of Appeals rules. "While we recognize that citizens of this nation ordinarily have the constitutional right to travel from one state to another and to take up residency in the state of one's choice, we also recognize a legitimate state interest in restricting the residence of a custodial parent" the Court says. Upholding the trial courts ruling, the appellate court notes that the mother's right to travel or to establish residence elsewhere is limited only by her desire to remain the custodial parent. "It is apparent that a divorced person may ordinarily move about without restraint or limitation imposed by the desires or the wishes of a former spouse" the court observes. "However, as to a divorced parent to whom custody of minor children has been entrusted, such person may be required to forego or forfeit some rights to custody or visitation, as the case may be, consistent with the best interests and welfare of the children and the rights of the other parent." (Carlson v. Carlson; Kan CtApp, 4/21/83)

Wyoming has fewest awyers in practice

In March 1984, nearly 630,000 lawyers were in practice in the USA, an increase of 2.5% from 1983. Average hourly fees for lawyers with 6-10 years experience: West (excluding California), $99; California, $116; Midwest, $87; Southwest, $100; South, $83; Northeast, $91. (Story, 1A)

	Lawyers in practice*		Lawyers in practice*
Ala.	5,941	Mont.	1,702
Alaska	1,763	Neb.	4,305
Ariz.	6,812	Nev.	2,084
Ark.	3,800	N.H.	2,002
Calif.	79,115	N.J.	22,243
Colo.	9,911	N.M.	2,968
Conn.	9,025	N.Y.	68,073
Del.	1,100	N.C.	9,097
D.C.	21,091	N.D.	1,281
Fla.	25,816	Ohio	31,273
Ga.	11,198	Okla.	7,889
Hawaii	2,858	Ore.	6,848
Idaho	1,800	Pa.	31,319
Ill.	38,247	R.I.	1,846
Ind.	8,319	S.C.	4,672
Iowa	4,977	S.D.	1,124
Kan.	4,685	Tenn.	8,165
Ky.	7,790	Texas	36,310
La.	10,291	Utah	2,926
Maine	1,982	Vt.	1,010
Md.	12,274	Va.	11,953
Mass.	20,971	Wash.	11,339
Mich.	19,994	W.Va.	2,780
Minn.	11,951	Wis.	9,785
Miss.	4,507	Wyo.	940
Mo.	11,275	Puerto Rico	6,360

Sources: Altman & Weil, American Bar Association — *estimate

From USA Today

USA TODAY

The Kansas City Times Wednesday, June 20, 1984

Do-It-Yourself Divorce

Divorce between parties who agree to it and who have no children ought to be a simple affair, granted quickly and without anyone making a buck off it. With about half the marriages in the U.S. ending in divorce, it would suit many Americans just fine if the procedure could be less difficult and costly.

However, in some courts the judges still like to lord it over applicants, putting down strict requirements before a man or woman can become single. And many lawyers find that divorce cases are a good source of income, particularly those which cost a lot compared to the little they have to do, so they aren't much help when it comes to any push for change.

In a new law, Florida has attempted to help poor couples by allowing them to split up without use of an attorney. The cost is less than $100 for those who file a do-it-yourself form and obtain a final court order. The procedure is available to couples who are childless and who have agreed on how to divide their assets.

Lawyers will argue that such a system may result in the loss of rights unwittingly by one of the parties in the division of property. Certainly anyone who has any question at all about that should go the usual route in obtaining a lawyer. But there is no sense in requiring most people who are agreed on the terms to pay a fat fee to get themselves out of marriage.

The current no-fault divorce trend across the country is only the first step needed to reform most of the states' divorce statutes. Concepts such as joint custody need to be written explicitly into our laws to protect rights of all involved, including the fathers. Florida's new law is another way of improving an outmoded system. It ought to catch on elsewhere.

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Wichita, KS 67207

The Pains of Divorce Are Often Suffered by Grandparents

I have a choice.

I can either do a funny column today on the couple in Dallas who ended a six-month divorce battle by granting visitation rights to the wife to more than $4,000 worth of toy trains . . .

Or I can do a report on the deluge of mail I got from grandmothers across the country on a column I did on the pain of divorce where they are left with "nothing but memories and longing" for their grandchildren.

Maybe the stories belong together.

Under the terms of the settlement in Dallas, the woman will get the right to visit the trains her husband received twice a year as long as she gives 24 hours' notice by telephone and the time is convenient.

A grandmother in Iowa wrote, "I am enduring the divorce of my twin sons. One daughter-in-law moved to Florida and I get to see my grandchildren two hours at Christmas and take them to lunch in the summer for a total of an hour and a half."

The train enthusiast said the first train set was a Christmas gift to her son, who is now 22.

A grandmother from Ohio wrote, "As a child growing up, I never had the warmth and comfort of grandparents. I always said that when the time for grandchildren came along, I would always be there if they needed me. My grandson is three years old. I had him for the first time on Grandparents Day. His parents are divorced."

The wife from Dallas was awarded custody of a tin-plated 1935 Comet aqua-and-silver engine, three passenger cars, and a three-piece green bridge, a standard gauge tunnel, two streetlights, toy baggage men and baggage worth $500 to $1,000.

A grandmother from Georgia wrote, "We were given custody of our grandson for four years after the mother left and our son tried to 'find himself.' The new wife moved 2,000 miles away where our grandson could 'break the child's dependency on us.'"

The laws are very explicit about the custody and visitation rights of inanimate things like trains. When it comes to human beings, we're not so clear-cut.

FATHERS DEMANDING EQUAL JUSTICE
ROBERT A. WOLFF
689 S. MISSION ROAD
WICHITA, KANSAS 67207
686-5871

EQUALITY—WE DEMAND NO MORE, WE EXPECT NO LESS

In the Best Interest of the Child
FATHERS DEMANDING EQUAL JUSTICE
Wives and Grandparents Coalition

NEWSLETTER
KANSAS CHAPTER

Meetings 2nd Monday in each month — 7:30 p.m.
689 S. Mission Rd.
Wichita, Kansas 67207
316/686-5871

Member
NATIONAL CONGRESS FOR MEN

PRESIDENT'S

CORNER

Quotes
"An eye for an eye, will only make the whole world blind"

Mahatma Gandhi

LAWS AND LAW - GIVING
Taken from the book
The Wanderer
By KAHLIL GIBRAN
PUBLISHER N.Y. Alfred A. Knopf

Ages ago there was a great king, and he was wise. And he desired to lay laws unto his subjects.

He called upon one thousand wise men of one thousand different tribes to come to his capitol and lay down the laws.

And all this came to pass.

But when the thousand laws written upon parchment were put before the king and he read them, he wept bitterly in his soul, for he had not known that there were one thousand forms of crime in his kingdom.

Then he called his scribe, and with a smile upon his mouth he himself dictated laws. And his laws were but seven.

And the one thousand wise men left him in anger and returned to their tribes with the laws they had laid down. And every tribe followed the laws of its wise men.

Therefore they have a thousand laws even to our own day.

It is a great country, but it has one thousand prisons, and the prisons are full of women and men, breakers of a thousand laws.

It is indeed a great country, but the people thereof are descendants of one thousand lawgivers and of only one wise king.

IN 1984 SESSION LAWS OF KANSAS

The legislature passed a book with 1956 pages of new laws. With approximately 5 1/2 pages, dedicated to Domestic Relations, which is suppose to be in the best interest of the children.

I think it is time that we had one wise Law maker, and far less Laywers.

Robert A. Wolff

Robert A. Wolff

When you come across a squashed snake and a squashed lawyer on the highway, how do you tell which one is which?

Answer: The snake has skid marks in front of it.

"If it seems to you that I am unduly hard on lawyers today, let me close...by acknowledging that, at times, we judges are part of the problem." Chief Justice Warren Burger, 1984.

I know my life is not a crime, I'm just a person of this time.
No one has the right to be the judge of what is right for me.
Tell me if you can,
What it is that makes a Man?

A-MAN

2. The Public Interest.

Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of the court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.

"Judges ought to remember that their office is *jus dicere* not *jus dare;* to interpret law, and not to make law, or give law." . . .

10. Courtesy and Civility.

A judge should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court.

He should also require, and so far as his power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to the court and to jurors, witnesses, litigants and others having business in the court.

PLEASE COMPLETE AND RETURN WITH DONATION.

Knowing a movement of this size will take a considerable amount of money, I would like to donate the following.

$24.00	Donation for a year membership to cover cost of news letter.	Donation for the Purchase of law books.	$20.00 10.00 5.00 2.00

Donation for membership $ _____
Donation for law books _____

Total Donation $ _____

Name_____

Address_____

City, State_____

Zip_____

MAIL TO: F.D.E.J.
689 South Mission Rd.
Wichita, Ks. 67207

We hear continuously from the female parent, I don't get enough child support to take care of the kids. Male parents are forced to try and support two households, we now have two households in trouble, the mothers don't make enough to take care of the home and kids so they get assistance. I think in the best interest of the children, the court should give primary custodial care to the parent who can best care and provide for them. The male parent being a capable and caring and loving parent, could use the child support to maintain one household for him and the kids, the female parent could find a good enough job to take care of her needs. The children are happier because the male parent now has enough money to feed and clothe and provide a few good things for the kids. We now have the primary money maker providing for his kids and if both parents and the courts are interested in the best interest of the children this is how the court should rule. I think fathers can soothe a scrape, kiss a hurt away, lend a lap to one who is tired or find a shoulder to cry on. Because our hands are calloused does not mean our hearts and emotions are calloused. It might surprise the court to find out male parents have the same feeling and emotions as female parents. We just don't use them for sympathy. We use them to improve an unjust and unequal system.

I must now make a comment on our elections. I saw one judges campaign signs and I could not understand why he was campaigning I saw no apponent campaigning agaist him, I called the election commisioner's office to see if he had an apponent, and he did. I wonder if it was an apponent for cosmetic purposes. I think we should call our party chairman and see why we can't find some party competition for these judgeships. We have a advasorial system, I think we must make our elections for these judgeships, advasorial party wise, apponent wise, we have 22 judges and 10 are democrat and 12 are replublican I think no more competition then we have for these positions would be a good question to ask the party chairman. I think this should be a good question for party members to ask.

CANDID COMMENTS BY: JAMES TOOMBS

Dear Bob, 7-20-84

This is the type of journalistic drivel that really escalates my emotions. It is totally biased and subjective. Perhaps something can be done about it. What, I don't know.

This article is from USA Today Newspaper, July 19, 1984, Page 6A.

Again, thanks for your courageous efforts and support for the rest of us.

Cordially,
Cullum Henry
Cullum Henry
724 14th Terrace
Hutchinson, Ks
67501

...ent.
Other efforts:
■ Earlier this month, Alas-
's Gov. Bill Sheffield signed a
ll allowing child support
encies to tell credit bureaus
out parents — usually men
who fall behind in support
yments.
"We feel this is another way
tightening up loopholes," said
ine Fromm, president of
. Organization for the En-
cement of Child Support in
isterstown, Md. "He or she
uld not be allowed to have
ditional credit if they aren't
ing care of basic responsi-
ities."
Fromm said stronger efforts
needed because 65 percent
single parent families enti-
d to child support receive
rtial payment or none at all.
ere are about 8.1 million sin-
parent families in the USA.
Michigan publishes the
mes of delinquent parents.
Growing complaints from
n-welfare mothers that exist-
child-support efforts aren't
ough has prompted both
uses of Congress to pass bills
ling for state wage liens for
ld support. A version is ex-
cted to become law.

D.K.O.
Wichita, KS
67218

Fathers Demanding Equal Justice
Robert A. Wolff
689 S. Mission Rd.
Wichita, KS
67207

UNSOLICITED TESTIMONY

Dear Mr. Wolff,

Enclosed is a dues payment of $24.00 and also a $6.00 donation for law books.

Two years ago I wrote to you desperate for some means of fighting the crime that is being committed against my husbands children. I have yet to find that solution, but in those years I have at least come to understand the complexity of the war going on between divorced parents over the custody and visitation of their children.

I commend you and your organization for bringing this matter to the attention of our court system, but as my husband and I have been a casualty in the battle for joint-custody, I feel there is much yet to be said and many changes yet to be made.

Joint custody I am sure your realize has not measured up to what it was intended to be. My husband fought for joint-custody in the hope of securing the right to remain his children's father. None of the provisions included in the agreement have been followed, as, short of dragging the children through a court battle equivalent to world War III we could not enforce them.

For those who are blessed with the ability to cooperate with an X-spouse, joint-custody I am sure is a milestone. But for those who's reason is clouded by the bitterness and anger that frequently follows divorce, the best of intentions are easily over powered by personal vengence. Everything and anything becomes reason enough not to live up to the joint-custody agreement, and in essence, a father is handed a support payment with no enforcible rights of visitation, while at the same time the children's mother is given a means to manipulate and control her X-husband, by using visitation priviledges to blackmail and extort him, with the child caught in the middle and left to pay the price if he doesn't.

For all the things we could not afford to give them (or her) above and beyond their support, they paid the price —— and the price was high. Not only did it cost them the desecration of their father, a man who had raised and loved them for most of their young lives, but also the right to continue to love him in return, and to see him in spite of their mother's distorted perception of him.

Although it may be too late to make right the wrongs that have been committed against my step children, I hope my contribution will be of some help to your organization in continuing your quest to change what is presently considered justice, to "equal justice" for all of us, our kids included.

Sincerely, DKO

Wichita, KS