

unified family us
8/94

AMERICAN BAR ASSOCIATION
STEERING COMMITTEE ON THE UNMET LEGAL NEEDS
OF CHILDREN AND THEIR FAMILIES
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
YOUNG LAWYERS DIVISION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
HAWAII STATE BAR ASSOCIATION
SECTION OF LITIGATION
NATIONAL CONFERENCE OF WOMEN'S BAR ASSOCIATIONS

RECOMMENDATION

BE IT RESOLVED, that the American Bar Association reaffirms its commitment to unified children and family courts adopted in 1980 and set forth in the American Bar Association Standards Relating to Court Organization and Administration, Standard 1.1 and adopted as well by the National Council of Juvenile and Family Court Judges.

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BE IT FURTHER RESOLVED, that the American Bar Association pledges itself to promoting the implementation of unified children and family court systems as described in Standard 1.1 of the Standards Relating to Court Organization and Administration and enunciated below, recognizing that the manner of administering these courts may differ among states and jurisdictions.

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BE IT FURTHER RESOLVED, that the American Bar Association endorses the following clarifications and additions to the components of unified children and family courts:

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- (1) Intake processes by which families will be initially assisted and expeditiously directed to the appropriate entity in the court system to meet their needs.

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(2) Provision and/or integration of comprehensive services and other assistance, as appropriate, for children and families in the courts. Appropriate services can include, but should not be limited to, representation, alternative dispute resolution, guardians ad litem, mental health services, substance abuse counseling, interpreters, and emergency financial and housing assistance. A unified children and family court must have all authority which is supported by its constitutional, statutory and equitable powers to order other government agencies, e.g., housing authorities, mental health agencies, etc., to provide services to families.	19 20 21 22 23 24 25 26 27 28 29
(3) Provision and encouragement of "alternative" dispute resolution techniques such as mediation, where appropriate, or where all parties request such an alternative, to resolve family issues. Such techniques are not meant to compromise legal protections and confidentiality and are subject to the development of standards and guidelines.	30 31 32 33 34 35
(4) Development and enforcement of time standards for cases involving the custody or out of home placement of children, e.g., foster care placement, adoption, etc., to prevent prolonged uncertainty that may adversely affect family members, particularly young children. To ensure speedy resolution of all cases in the children and family courts, sufficient resources should be provided to allow judges and social workers to devote adequate time to each case, including sufficient support personnel so that judges can devote their time to adjudicating adversarial issues while trained court staff review uncontested decrees, perform case management and so forth.	36 37 38 39 40 41 42 43 44 45 46
(5) An integrated management information system which includes monitoring, tracking, and coordinating all cases in the division to assure either that one judge be assigned to handle all matters pertaining to one family or that all judges presiding over matters affecting one family are made aware of other pending cases affecting that family and shall coordinate to the greatest extent possible all judicial efforts regarding that family.	47 48 49 50 51 52 53
(6) Assurance that judges and court personnel who work in the children and family court are adequately prepared for and receive on-going training in family court issues including, among other things, domestic violence, child psychology, and the value and methods of alternative dispute resolution.	54 55 56 57 58
(7) Adequate oversight of the new court system's performance and outcomes while keeping confidential all information which would tend to identify individual children except if the release of such information is necessary to assure provision of appropriate services for those children.	59 60 61 62 63

REPORT

Introduction

Unified family courts are not a new concept. The first model was created in Cincinnati, Ohio in 1914. Almost fifty years later a statewide system was established in Rhode Island, followed by Hawaii (1964), South Carolina (1968), the District of Columbia (1970), and Delaware (1971). Within the next twenty years, Louisiana, New Jersey, Florida, Vermont, Virginia, Nevada, Kentucky, and parts of California, Maine and Colorado all moved to institute versions of unified family courts.¹ These states have been motivated by a desire to create court systems where the public has greater access to and understanding of the legal system, which serve children and their parents holistically, and which make operations more efficient by assigning to a judge only those issues which must be addressed, directing all other matters implicated in family law cases to a social service and/or mediation team. None incorporates all elements of a completely unified system and some include more than others. New Jersey and Hawaii, for instance, provide for criminal jurisdiction. Nonetheless, all exhibit a deep concern for creating a system where the special needs of families guide the operations of the court and its staff.

There is no one system which can serve as a paradigm for states looking to create unified family court systems, and there may never be one. Theoretically, unified family court systems are always in process, adapting to meet the individualized needs of clients and concerns of public safety. Total reconfigurations of existing systems are expensive and time-consuming, and they may not be practical or possible. Regardless of whether a jurisdiction is in a position to undergo wholesale revisions, localities should always engage in reflective self-examination of their current system and be receptive to installing components of unified family courts when appropriate, as communities and needs change over time.

Involvement of the ABA

a. IJA/ABA Joint Commission on Juvenile Justice Standards

The ABA first addressed unified family court systems at its 1980 Midyear Meeting when it adopted volumes one through four of *Standards for Juvenile Justice* developed by the IJA/ABA Joint Commission on Juvenile Justice Standards.² These standards, and seventeen others adopted in 1979, resulted from "exacting and meticulous work following guidelines which have been well known for years."³ The Joint Commission sought innumerable comments from outside organizations and individuals during the eight years it devoted to the standards. Each volume proceeded through three levels of review which encompassed more than 200 experts from every relevant field.⁴ When volumes one through four were considered by the 1980 House of Delegates, each was reviewed separately. They had been presented and then withdrawn at the 1979 Midyear Meeting after a group of judges expressed dissatisfaction with some of their recommendations. Negotiations and revisions took place during the ensuing year and the remaining four volumes were

presented at the 1980 Midyear Meeting where they "command[ed] a true consensus."⁵ Standard 1.1, contained here in Appendix A and which the ABA is now asked to reaffirm, was written and adopted, according to its drafters, to remedy

the fragmentation and conflict that often results when jurisdiction over family matters is split among several courts. Both to upgrade the importance of the juvenile court and to expand the constructive and continuing influence of the family court, this volume proposes merger of the juvenile court into a family court division within each state's highest court of general trial jurisdiction. Such a fundamental reorganization of the state judicial system has long been advocated by experts and laypersons alike as necessary to remove duplication and inefficiency. The principle of consolidation has received the support of every group that reviewed the volume.⁶

b. 1989 National Family Court Symposium

Growing interest in unified family court systems prompted the National Council of Juvenile and Family Court Judges to convene a National Family Court Symposium in 1989. The goal was to create a new definition of the courts which would "recognize that child and family related proceedings are distinctively different from other legal proceedings."⁷ The symposium produced recommendations for a model family court, endorsed by the ABA Section of Family Law and used as the basis for the additional components to Standard 1.1. proposed by the current recommendation.

c. America's Children at Risk

In 1993, Immediate Past President Mike McWilliams convened his Presidential Working Group on the Unmet Legal Needs of Children and their Families to develop a national agenda for legal action. The Working Group published its widely-acclaimed report, *America's Children at Risk*, endorsing the establishment of unified family courts along with nineteen other recommendations. Members of the Working Group, which represented almost every entity within the ABA, urged that "every state should ultimately create a unified Family Court and provide it with appropriate resources."⁸ The Working Group noted that family and juvenile court personnel are too overextended to effectively serve children, and that families and children suffer from fragmented service systems which cause unnecessary delay, duplication and contradictory rulings.⁹ Many of the Working Group's specific suggestions for unified family courts are incorporated into the resolution and throughout this report.

In one of his first actions as ABA president, Bill Ide created a Steering Committee on the Unmet Legal Needs of Children to carry out the recommendations contained in *America's Children at Risk*. To underscore the importance of having ABA policy on unified family courts, the Steering Committee made, as one of its first

activities, the drafting of this particular recommendation for the 1994 Annual Meeting.

Need for this resolution

The public is increasingly dissatisfied with the cost and bureaucracy of the American justice system.¹⁰ Judges and practitioners are overwhelmed by lengthy dockets and what appears to be an evermore litigious society. Throughout our nation, people are becoming concerned about the violence within families that often leads to greater violence in our communities. Individually and collectively, these reasons are prompting reconsideration of our justice systems. Under particular scrutiny are family and juvenile courts where social, medical and emotional problems mix with legal in a way that demands new modes of review and resolution. Many states and localities are considering massive revisions or less radical adjustments to their family and juvenile court systems in an effort to make them respond to the very special needs of families and children in crisis. Attorneys, judges and legislators are increasingly looking to the ABA for guidance in this uncharted area. It will be important for the Association to have studied and spoken on the matter.

The Unified Family Court System

A unified family court system combines all the essential elements of traditional family and juvenile courts into one entity. It also contains other resources critical to the resolution of a family's problems. The physical plant of the unified family court reflects its comprehensive approach to helping families in crisis. Administrative, legal, counseling, and enforcement services are available in or near the court building so that a family's interrelated needs can be served easily and quickly. The environment is comfortable, cheerful and user-friendly, allowing litigants to locate the services they seek and to wait in comfort when they must.¹¹

Social and mental health counseling are an integral part of the unified family court system, as are alternative dispute resolution mechanisms. In this way, nonlegal issues and legal matters which do not have to be determined by a judge are resolved without reliance on the system's most expensive and scarcest resource. Expediting the work of social service professionals and more traditional court personnel are highly trained intake workers who sort out the issues presented by litigants and direct them to the services - legal and nonlegal - that they need. As befits a system which examines the many layers of a family's problems, family court judges are not only specialists in the law, but are schooled in the psychological and emotional aspects of family crises, the "developmental needs of children, and the nature of conflict in the break-up of families."¹² By identifying a family's problems and directing both social and legal assistance toward their resolution, the family court aims to give the family it serves the "skills and access to support services to enable [its

members] to resolve subsequent disputes constructively with a minimum need for legal intervention."¹³

a. Jurisdiction

Jurisdiction over all matters involving families and children must be consolidated into one court system of the highest court of the general trial division. Subjects addressed by unified family courts mandate a well-trained and smoothly-functioning entity that merits the respect of practitioners, litigants, and governmental agencies. Because the status of the court directly affects its "ability to obtain the resources and facilities necessary to perform most effectively, all jurisdictional case types should be combined at the highest judicial level...."¹⁴

Standard 1.1 recommends that unified family courts have jurisdiction over "juvenile law violations; cases of abuse and neglect; cases involving the need for emergency medical treatment; voluntary and involuntary termination of parental rights proceedings; adoption proceedings; appointment of legal guardians for juveniles; proceedings under interstate compacts on juveniles and on the placement of juveniles; intrafamily criminal offenses; proceedings in regard to divorce, separation, annulment, alimony, custody, and support of juveniles; proceedings to establish paternity and to enforce support; and proceedings under the Uniform Reciprocal Enforcement of Support Act.

The National Council of Juvenile and Family Court Judges includes, specifies and expands on Standard 1.1 by recommending that unified family courts contain within their ambit all matters affecting families and children: all aspects of divorce, including separation, annulment, and so forth, as well as dependency, children and persons in need of services; juvenile traffic matters, including driving while intoxicated and status offenses; adult and juvenile guardianship and conservatorships; mentally retarded and mental health matters including civil commitment and confinement; and legal-medical issues such as abortion, right-to-die, living wills, emancipation, and name changes.¹⁵

Such inclusive jurisdiction would also take in courts of special jurisdiction such as IV-D courts funded under the Social Security Act and Office of Child Support Enforcement to reduce the backlog in child support cases. Delaware and Rhode Island, for example, which have established unified family courts, have incorporated the relatively new IV-D courts within their family court systems.¹⁶

The jurisdictional reach of a unified family court system must be "broad-based with authority over all necessary persons, parties and agencies involved."¹⁷ As recommended by Standard 1.1 ("The exclusive original jurisdiction of this division should encompass...intrafamily criminal offenses..."), Hawaii, Virginia, Colorado, and New Jersey have given their courts limited or

concurrent jurisdiction over criminal matters, particularly intrafamilial abuse or domestic violence. This has obvious advantages for children, for example, where their testimony may be required in one or more hearing. In Hawaii, the court can take serious criminal cases such as murder when the perpetrator and victim are family members. Additionally, Hawaii and Rhode Island permit their courts to review actions of state agencies.¹⁸

The IJA/ABA Commission found, and jurisdictions that have implemented unified family courts since then have agreed, that a broad structure is necessary to prevent the piecemeal solutions to family crises that often require litigants to return to court for additional determinations of the same core problem. As the Judicial Council of Virginia observed: "families in a divorce suit are often also involved in one or more related cases before the juvenile court. In order to avoid fragmentation in the judicial system's resolution of multiple family problems, a comprehensive approach to family law cases must be developed."¹⁹

b. Operations

Many Family Division matters are generated by dysfunctional intra-familial relationships; the source of the problem must be addressed if the case is not to return to court again and again. These cases take up a disproportionately large percentage of the court's time and often require linkages with community services if there is to be any hope of an effective disposition.²⁰

Unified family courts must be social service delivery systems.²¹ Family court practitioners know that many of the problems faced by families in the legal system are not resolvable by a judge or a court of law. Youngsters in juvenile court hearings frequently have parents who are involved in family court matters - custody and child support disputes or allegations of abuse, for example. Mental health and social workers can help a family link up with community services such as housing, financial or substance abuse counseling which are often better equipped to deal with the family's basic dilemma than a court of law.

Access to social and mental health services can also expedite the legal process by allowing the judge to craft a more appropriate solution to the family's problem so that its members do not have to return to court for further determinations of the same issues. Speedier solutions also occur when courts integrate mediation and other nonadversarial alternatives into their process. As long as appropriate guidelines and standards are in place to govern the circumstances in which mediation should be used, courts and litigants can benefit from the opportunity it provides families to participate in the outcome of their legal disputes and to work through arguments in a noncombative manner.²² The ABA report, America's Children at Risk found that involving litigants in a

constructive way to resolve their problems can diminish the costs and litigation involved, and can expedite and strengthen acceptance of any settlement or determination that results.²³ These conclusions are also supported by individuals who have used mediation and other techniques in family law matters. In Virginia, for example, "every judge who had ADR [alternative dispute resolution] available used it, and every judge who used ADR said that it either frequently or occasionally resulted in resolving one or more issues."²⁴ Similarly, "47% of the litigants used at least one of the listed services [counseling, mediation, etc.]. More than two-thirds of the litigants who used the services indicated that they helped to settle one or more of the issues in their case."²⁵

c. One judge, one family; one staff, one family

A unified court requires that any judge hearing the case should be able to resolve all the family's problems whatsoever, including juvenile delinquency, support, custody, equitable distribution, divorce, and domestic violence. The training should include the delivery of social services as well as legal expertise.²⁶

To best serve the social and legal needs of families and children, a family should be assigned to one judge and one social services team, which remains with that family during their entire relationship with the court. When it adopted Standard 1.1, the ABA adopted this principle. ("Calendaring methods should follow the general principle that the same judge should consider the different legal issues that relate to all members of the same family. Further, the judge who presides at an adjudicatory hearing should conduct the disposition hearing of the case.")

Matching a judge with a family for the long-term prevents litigants from moving through a system seeking different judges and rulings on the same fundamental problem. New Jersey Family Court Presiding Judge Robert W. Page noted that prior to the creation of that state's unified family court, attorneys and their clients who were dissatisfied with a support order in one court would file for divorce and make a pendente lite support application in another, manipulating the inefficient system until they had gotten the decision they desired.²⁷ Observers of litigation patterns in Virginia courts have "conservatively" estimated that "20% of all couples who divorce have been in court before the filing of the divorce on a related family matter or will be afterwards."²⁸

Linking a family to one judge prevents forum shopping. It also does much to stop families from using the courts as a means to pursue personal vendettas or hold on to a spouse following a divorce. When a judge accompanies a family through its various crises, she will come to understand that family's dynamics and will make more appropriate and intelligent determinations about its

members. A judge will also be better able to direct them to the specific nonlegal resources which may be needed to resolve their problems.²⁹

The one staff, one family concept is based on the same reasoning: "to improve the consistency and quality of the decision-making process."³⁰ One team has responsibility for all matters involving a particular family, from beginning to end, including interviewing, screening complaints, recommending diversion where appropriate, custody investigations, predisposition reports in delinquency cases, and follow-up and monitoring.³¹ An example of a successful blend of legal and social service resources is found in Jefferson County (Louisville), Kentucky. There, each judge has a social worker on staff who is present in the courtroom and who assists in making determinations as well as linking the family to social services and other nonlegal public and private assistance.³²

While one judge/one family should be held up as the ultimate goal, we recognize that it may not be immediately feasible in some jurisdictions. Nevertheless, we believe that, "in all instances, all judges handling some aspects of a family's litigation and not others must be made aware of all pending matters in the courts that involve all family members."³³ So too with staff, where it is not feasible to immediately pair a family with the same staff resources each time they enter the justice system, there must be "a specific person who will be directly responsible for overseeing, coordinating, and guiding the development of each court's comprehensive responsive response to children and families in litigation, no matter what type of case has been filed."³⁴

d. Resolution of disputes quickly and inexpensively

Cumbersome court practices and overburdened judicial dockets can result in alarmingly long waits from the time litigants decide their problems need resolution by a court of law to the time resolution occurs. Matters brought to family and juvenile courts affect day-to-day living situations and may entail allegations of abuse, and so it is important that they be addressed rapidly and appropriately. Children's needs are of special concern. The ABA Working Group on the Unmet Legal Needs of Children noted that youngsters can be permanently damaged by delayed determinations that they must be returned to their natural parents, placed permanently in an adoptive home, or have special education services. They are not the only ones harmed when court proceedings take too long and cost too much. One litigant in Virginia wrote:

I was involved in 2 proceedings in 1990. One was a child support issue in Circuit Court. I was...appalled at the length of time it takes to get the estranged parent (non-custodial) to court to get an order for support....I was very dissatisfied at the decision made in my case and am in worse financial shape due to the cost of having to go to court several times for the same issue to the tune of a \$3,600 legal

bill. My second experience was in the family court. Although my initial custody hearing was a lengthy process due to an absentee defendant, I was very satisfied with the promptness of my final divorce decree. (My case involved two different fathers of my children.)

In summary, I find it quite ironic that the cost to get my divorce was approximately \$800 and only took about 3 weeks, and it was months of legal proceedings at a cost of \$3,600 to obtain token child support.³⁵

Attorneys, judges and court personnel also become exhausted by the effort it requires to move a case through the system. The emotional and social problems that frequently arise in the legal drama can also take their toll. Burnout is not an unknown phenomenon. The unified family court emphasis on assigning to social and mental health workers and mediators those matters which best suit their expertise removes such issues from the judicial arena. This frees decision-makers, making it possible for them to concentrate solely on those problems a judge is supposed to handle. It allows several issues to be addressed concurrently and brings about speedier and more effective determinations to the benefit of litigants, their attorneys, and court personnel.

Important to the efficacy and efficiency of the unified family court system is the willingness of the local bar to reorganize archaic rules and practices. Streamlining forms, condensing time limits that govern motions and discovery practice, and offering pro se classes and forms for those couples who wish to handle their own divorce will do much to make a family court system more responsive and accessible to the public. Some jurisdictions have seized on the creation of a unified family court system as a unique opportunity for lawyers and courts to make use of the resources available through modern technology. In Maricopa County, Arizona, for example, the court offers pro se training in divorce on computer terminals. Clark County (Las Vegas) Nevada has begun developing a "judge access" system which allows judges to draw up on terminals at their benches the file on the family appearing before them.³⁶

Hamilton County, Ohio, also benefitted from the opportunity presented by the unified system to improve the timing of court decisions affecting abused and neglected children. A recent study by the ABA Center on Children and the Law found that Hamilton County courts

have worked to change the court process so that decisions will be made when warranted by the facts and will not be substantially delayed by the court process itself. When this is achieved, children can more quickly be restored to their

families or placed with a new permanent family. The courts do not needlessly hold children in unstable patterns.³⁷

To achieve such efficiency requires a willingness to reinvent forms and practices to meet the special needs of family and juvenile court litigants. The commitment of the local bar association is essential to achieve this.

Responsibility of the judge

The most important person in the unified family court system is the family court judge. The judge decides critical legal issues and these decisions affect society's view of children and families. What Judge Leonard P. Edwards wrote of juvenile court judges can also be said of those in family court:

The juvenile court judge who removes a child for selling drugs, who refuses to hear a truancy petition because it is not important enough or who returns a child to her family in spite of drug abuse by one of the family members is setting standards which may have a significant impact on how policy, probation, social services and other service providers respond to similar cases in the future. Unless an appellate court overturns these decisions, the standards set in the juvenile court will remain as the community's standards...."³⁸

Judges serving in unified family courts "require special knowledge and skills beyond the interest and expertise of most of the judiciary."³⁹ One judge, one family means one judge will regularly handle a range of issues from family dissolution to juvenile delinquency to spousal abuse. Judges will need to know the law governing these varied matters. They will need to know about the nonlegal services that a family requires, and if these have been provided. They must also determine whether parties and issues will be better served by mediation or litigation.

Judges in unified family courts will be supervising staffs of professionals from different fields - mediators, social workers, intake personnel and attorneys. The comprehensive nature of the unified system and its user-friendly mandate means that diverse programs and their personnel will come under a judge's purview. Courts may offer classes for divorced parents and children of divorced families, pro se training for certain groups of litigants, special programs for children who are witnesses in abuse and criminal cases, and day care centers. Judges will have to be aware of how such facilities operate, how they meet the needs of litigants, and how they can be used to benefit both the recipient and the decision-maker.

One judge, one family gives judges an enormous amount of power. With recognition of this "should come an awareness that the persons making such decisions ought to be the most carefully selected and trained."⁴⁰ Continuous and high-caliber education

programs must be available to judges, who must be required to attend them on a regular basis. Topics covered must include the many issues about which a unified family court judge should be knowledgeable: family and juvenile law, family dynamics, child psychology, etc.

The ABA report, America's Children at Risk concluded that

A comprehensive approach can only work if all court personnel - judges, mediators, administrative hearing officers, attorneys (including prosecutors and appointed counsel), intake unit workers and those providing services - receive extensive and continuing education. Training should cover a wide range of topics, including child development, the appropriate use of nonadversarial techniques, and working with diverse populations. It should include information on new and existing community programs, so that all are familiar with resources designed for family preservation, treatment of substance abuse, family support, parenting education, special education and so forth. An interdisciplinary panel of experts should also be available to family court judges for regular consultation about particularly complex cases. Such a panel should include mental health professionals, pediatricians, and attorneys with expertise in children's matters.⁴¹

A unified family court system is a community resource and judges are the link between the court and the outside world. They represent the court in public, they must seek funds for it and explain any innovations it undergoes. They are the first line. People will assess the court on the quality of its judges and their experience in the courtroom. Whether judges are appointed or elected, they must be responsive and responsible to the public. Structures to help judges meet this trust will be part of any successful system; such structures must offer on-going training and other assistance for judges. Jurisdictions should consider the appropriate mechanisms for reviewing complaints and setting standards for unified family court judges, including such ideas as establishing community councils to carry out these tasks.

Special concern for the poor

The goal of unified family courts is to provide greater access and better services to all disputants who come through the courthouse doors, particularly the poor. Of special concern are the increase in pro se procedures for divorce and child support orders, mandatory divorce classes for parents and children, and mediation in family abuse matters. Those who design unified family court systems or components thereof must take care that the financial and psychological burdens of low-income people are given special attention. For example, while parent education programs can be valuable to low-income families, classes must be free for poor people, held at times convenient to those whose work hours (sometimes at more than one job) are inflexible, for whom public

transportation is costly and time-consuming, for whom childcare is nonexistent, and for whom educational situations have not been rewarding or supportive.⁴² Community groups which work with and inform family court systems should always include representatives of the area's low-income community as well as their legal services advocates.

Conclusion

In May, President Ide convened an ABA "Just Solutions" conference to air public concerns about the justice system and thoughts for change. Among the conclusions of the lay jury was that courts should be much more "user-friendly." Specific ideas included multi-door courthouses, more alternative dispute resolution opportunities, and making courthouses more accessible by providing such services as day care. In these and other areas, unified children and family courts respond to our communities needs of having justice systems which understand and react to consumer problems efficiently and effectively. Communities are asking for change; states are beginning to implement new ways of attending to families in crisis, and it is important for the profession to play a leadership role.

Respectfully submitted,

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APPENDIX A

PART 1: ORGANIZATIONAL STRUCTURE OF COURTS OF JUVENILE JURISDICTION

1.1 Organizational structure: general principles.

The traditional juvenile court jurisdiction should be included in a family court division of the highest court of general trial jurisdiction.

A. The exclusive original jurisdiction of this division should encompass: juvenile law violations; cases of abuse and neglect; cases involving the need for emergency medical treatment; voluntary and involuntary termination of parental rights proceedings; adoption proceedings; appointment of legal guardians for juveniles; proceedings under interstate compacts on juveniles and on the placement of juveniles; intrafamily criminal offenses; proceedings in regard to divorce, separation, annulment, alimony, custody, and support of juveniles; proceedings to establish paternity and to enforce support; and proceedings under the Uniform Reciprocal Enforcement of Support Act. Mental illness and retardation commitment proceedings concerning juveniles and adults should be governed by the law of the jurisdiction applicable to such proceedings for nonadjudicated persons.

B. Calendaring methods should follow the general principle that the same judge should consider the different legal issues that relate to all members of the same family. Further, the judge who presides at an adjudicatory hearing should conduct the disposition hearing of the case.

C. General intake procedures to determine the need for formal judicial consideration of juvenile delinquency referrals should be adapted and applied to the different types of cases within the jurisdiction of the family court division.

D. The court should encourage probation and social service agencies working with court clientele to maximize single staff member responsibility for an entire family.

IJA/ABA Juvenile Justice Standards Relating to Court Organization and Administration, Standard 1.1, Part 1 (1980), page 5, promulgated by the Institute on Judicial Administration and the American Bar Association Joint Commission on Juvenile Justice Standards and approved by the ABA House of Delegates in 1980. This position on unified family courts has also been adopted and approved by the National Council of Juvenile and Family Court Judges.

ENDNOTES

1. Robert E. Shepherd, Jr., *The Unified Family Court: An Idea Whose Time Has Come*, ABA Criminal Justice, Fall 1993, pp. 37-39.
2. Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards. According to the report accompanying the 1980 resolution, the IJA/ABA Joint Commission "was comprised of nationally known experts from various fields, with more judges serving as Commissioners than any other group." *105 Reports of the American Bar Association*, Chicago (1985) at 410. The Commission was chaired by Hon. Irving R. Kaufman. Among its members were Attorney General Janet Reno and Hon. Patricia M. Wald.
3. *Id.* n. 2, at p. 269. The report accompanying the resolution describes some of the complexity of the drafting: "The Commission resolved fundamental policy matters, and a staff of thirty reporters, each a recognized leader in his field, produced initial sets of standards and commentary. These were first circulated among the members of the drafting committees and were then presented to the Joint Commission for approval. Between 1973 and 1976, the Commission held seven plenary meetings, each lasting several days. ...Joint Commission members (then) traveled to numerous conferences and symposia to explain and discuss the countless issues addressed by the Standards.
The response was prodigious. More than 400 specific suggestions were submitted.... Nor was this all. Both the *New York University Law Review* and the *Boston University Law Review* published issues devoted solely to symposia on the proposed Standards, and the *Harvard Law Review* twice published reviews of the Standards. *Id.*, p. 411.
4. *Id.*
5. *Id.*
6. *Id.* at 413.
7. National Council of Juvenile and Family Court Judges, National Judicial College, American Bar Association, National Center for State Courts, *Families in Court: Recommendations from a National Symposium*, Reno, May 1989, p. 2.
8. ABA Presidential Working Group on the Unmet Legal Needs of America's Children and their Families, *America's Children at Risk*, Chicago, 1993, p. 53.
9. *Id.*
10. "President's Page," R. William Ide III, *ABA Journal*, Feb. 1994, p. 8; "President's Page," R. William Ide III, *ABA Journal*, Dec. 1993, p. 8. Additionally, the recently-released ABA survey results, *Legal Needs and Civil Justice*, concluded that "reasons for not turning to the justice system when faced with a legal need differ between low- and moderate-income households. A sense that legal assistance will not help and fear of the cost are the principal reasons given by low-income respondents. Moderate-income respondents are more likely to dismiss the matter as not all that serious a problem and think they can deal with it on their own. They are less likely to cite cost considerations than low-income respondents but share the view that the justice system would not help." ABA Consortium on Legal Services and the Public, *Legal Needs and Civil Justice*, Chicago, 1994, page 24.
11. Jeffrey A. Kuhn, *The Family Court*, 7 Nevada Family Law Report, Spring, 1992, pp. 3-4.
12. Family Court Pilot Project Advisory Committee, *Report on the Family Court Pilot Project*, Judicial Council of Virginia, June 23, 1992, p. 36.

13. Robert W. Page, *Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes*, 44 *Juvenile & Family Court Journal* 1, 1993, p. 12.

14. *Id.* at 8.

15. Sanford N. Katz and Jeffrey A. Kuhn, *Recommendations for a Model Family Court, A Report from the National Family Court Symposium*, National Council of Juvenile and Family Court Judges, May 1991, recommendations 13 through 17.

16. 11 *Delaware Lawyer* 2, Summer 1993; conversation with Jeffrey A. Kuhn, Director, Family Court Resource Center of the National Council of Juvenile and Family Court Judges, May 27, 1994.

17. Katz and Kuhn, p. 7.

18. Katz and Kuhn, p. 9.

19. Family Court Pilot Project Advisory Committee (Virginia), p. ii.

20. *Family Division Green Paper*, New Jersey, Draft Jan. 28, 1993, p. 21.

21. Because mediation requires that the parties involved work together to craft a solution to their problems, the technique is dependent upon mutual bargaining and exchange of information between parties. Where a pre-existing power imbalance exists, the technique is unlikely to be effective. Moreover, in such cases, the interests and needs of the weaker party - often the victim of abuse in domestic violence cases - cannot be fairly represented by a neutral mediator. Given these issues, it is clear that domestic violence must be treated with special care in the context of mediation. In Massachusetts, which explicitly includes domestic violence issues within the scope of its mediation statute, some mediation programs are designed to anticipate and screen cases for signs of abuse. Where abuse is suspected, the victim is protected by court order and then allowed to choose whether to proceed with mediation. If mediation is selected, the mediators who are appointed to the case are trained in equalizing the imbalance of power and in attempting to prevent future abuse in the relationship. Carol H. Lefcourt, *The Use of Mediation to Resolve Family Disputes*, New York L. J., Mar. 29, 1983. Other authorities recommend that "every court should declare, as a matter of policy, that domestic violence victims and their assailants should not be referred for family or couples counseling or mediation by any officer or clinic of the Court. This mandate should prohibit formal and informal mediation over issues like visitation, custody and child support. Family service officers should no longer be allowed to coerce victims with statements like, 'It won't look good to the judge if you refuse to cooperate with me or compromise with your husband.' Forcing victims to negotiate with their assailants puts them in a dangerous - and inherently unequal - position, and the courts should stop this practice immediately." Susan Schecter with Lisa Klee Mihaly, *Ending Violence Against Women and Children in Massachusetts Families: Critical Steps for the Next Five Years*, Massachusetts Coalition of Battered Women Service Groups, November 1992, pages 65-66.

23. Family Court Pilot Project Advisory Committee (Virginia), p. 31; *America's Children at Risk*, pp. 54-55.

24. Family Court Pilot Project Advisory Committee (Virginia), p. 35.

25. *Id.*

26. Robert W. Page, p. 26.

27. *Id.*

28. *Id.* p. 31.

29. Judge Leonard P. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 *Juvenile & Family Court Journal* 2, 1992, p. 38.
30. Robert W. Page, p. 27.
31. *Id.*, p. 27, n. 160.
32. Jefferson Family Court Development Project 1992-1993, *Interim Report to the Court: Jefferson Family Court Pilot Project*, Louisville, Ky., pp. 11-12.
33. *In Re: Report of the Commission on Family Courts*, No. 77,623, Florida S. Ct., Mar. 10, 1994, n. 2.
34. *Id.*, p. 4.
35. Family Court Pilot Project Advisory Committee (Virginia), p. 45.
36. Conversation with Jeffrey A. Kuhn, Director, Family Court Resource Center of the National Council of Juvenile and Family Court Judges, April 25, 1994.
37. American Bar Association, *Judicial Implementation of Permanency Planning Reform: One Court That Works*, ABA Center on Children and the Law and the National Conference of Special Court Judges, Chicago, 1992, p. 47.
38. Judge Leonard P. Edwards, p. 25.
39. Katz and Kuhn, p. 5.
40. Robert W. Page, p. 25.
41. *America's Children at Risk*.
42. Nancy S. Erickson and Rita Gerson, *Annual Review of Family Law*, National Center on Women and Family Law, NYC, undated, pp. 1-3.

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: ABA Steering Committee on the Unmet Legal Needs of Children

Submitted by: Hon. A. Leon Higginbotham, Jr., and Catherine J. Ross

1. Summary of Recommendation(s).

The American Bar Association reaffirms its commitment to unified children and family courts adopted in 1980 and set forth in the American Bar Association *Standards Relating to Court Organization and Administration*, Standard 1.1 and adopted as well by the National Council of Juvenile and Family Court Judges; that the American Bar Association pledges itself to promoting the implementation of unified children and family court systems as described in Standard 1.1 of the *Standards Relating to Court Organization and Administration* and enunciated below, recognizing that the manner of administering these courts may differ among states and jurisdictions; endorses the following clarifications and additions to the components of unified children and family courts: (1) Intake processes by which families will be initially assisted and expeditiously directed to the appropriate entity in the court system to meet their needs; (2) Provision and/or integration of comprehensive services and other assistance, as appropriate, for children and families in the courts. Appropriate services can include, but should not be limited to, representation, alternative dispute resolution, guardians ad litem, mental health services, substance abuse counseling, interpreters, and emergency financial and housing assistance. A unified children and family court must have the authority to order other government agencies, e.g., housing authorities, mental health agencies, etc., to provide services to families; (3) Provision and encouragement of "alternative" dispute resolution techniques such as mediation, where appropriate, or where all parties request such an alternative, to resolve family issues. Such techniques are not meant to compromise legal protections and confidentiality and are subject to the development of standards and guidelines. (4) Development and enforcement of time standards for cases involving the custody or out of home placement of children, e.g., foster care placement, adoption, etc., to prevent prolonged uncertainty that may adversely affect family members, particularly young children. To ensure speedy resolution of all cases in the

children and family courts, sufficient resources should be provided to allow judges and social workers to devote adequate time to each case, including sufficient support personnel so that judges can devote their time to adjudicating adversarial issues while trained court staff review uncontested decrees, perform case management and so forth; (5) An integrated management information system which includes monitoring, tracking, and coordinating all cases in the division to assure either that one judge be assigned to handle all matters pertaining to one family or that all judges presiding over matters affecting one family are made aware of other pending cases affecting that family and shall coordinate to the greatest extent possible all judicial efforts regarding that family; (6) Assurance that judges and court personnel who work in the children and family court are adequately prepared for and receive on-going training in family court issues including, among other things, domestic violence, child psychology, and the value and methods of alternative dispute resolution; (7) Adequate oversight of the new court system's performance and outcomes while keeping confidential all information which would tend to identify individual children except if the release of such information is necessary to assure provision of appropriate services for those children.

2. Approval of Submitting Entity.

The Steering Committee on the Unmet Legal Needs of Children approved this resolution on May 15, 1994 at its spring meeting in Washington, DC.

The Government and Public Sector Lawyers Division approved this resolution on May 19, 1994.

The Young Lawyers Division approved this resolution at their 1994 Spring Meeting.

The Section of Individual Rights and Responsibilities approved this resolution on June 2, 1994.

Hawaii Stat Bar Association approved this resolution on June 16, 1994.

The Section of Litigation approved this resolution on June 17-18, 1994.

3. Has this or a similar recommendation been submitted to the House of Board previously?

Yes. In 1980, the House of Delegates approved the IJA/ABA Standards for Juvenile Justice, which included Standard 1.1, policy which we are asking the House to reaffirm in 1994.

4. What Association policies are relevant to this recommendation and how would they be affected by its adoption?

IJA/ABA Standards for Juvenile Justice, Standard 1.1 would be reaffirmed, clarified and expanded by adoption of this policy.

5. What urgency exists which requires action at this meeting of the House?

The public is increasingly dissatisfied with the cost and bureaucracy of the American justice system. Under particular scrutiny are family and juvenile court systems where, social, medical and emotional problems mix with legal in a way that demands new modes of review and resolution. Many states and localities are considering massive revisions or less radical adjustments to their family and juvenile court systems. Attorneys, judges and legislators are more frequently than ever before looking to the ABA for guidance in this uncharted area.

6. Status of Legislation (If applicable.)

None.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

American Judicature Society
Judicial Administration Division
Commission on Legal Problems of the Elderly
Commission on Women in the Profession
Consortium on Legal Services and the Public
Criminal Justice Section
The Florida Bar
Hawaii State Bar Association
The National Council of Women's Bar Associations
Section of Family Law
Section of Individual Rights and Responsibilities
Section of Litigation

State Bar of Nevada
Standing Committee on Legal Aid and Indigent Defendants
Young Lawyers Division

10. Contact Person. (Prior to meeting.)

Catherine J. Ross
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 100119-6064
212/373-3198

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American Bar Association
1800 M St, N.W.
Washington, D. C. 20036
202/331-2291

11. Contact Person. (Who will present the report to the House.)

Hon. A. Leon Higginbotham, Jr.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 100119-6064

12. Contact Person Regarding Amendments to This Recommendation.
(Are there any known proposed amendments at this time? If so, please provide the name, address, telephone, fax and ABA/net number of the person to contact below.)

None.

EXECUTIVE SUMMARY

1. Summary of the recommendation.

Asks the ABA to reaffirm its adoption of IJA/ABA Standards for Juvenile Justice, Standard 1.1 pertaining to unified family courts, and to clarify and strengthen the standard in certain specific areas.

2. Summary of the issue which the recommendation addresses.

Families and children must use several different court systems when they seek remedies for the same core situations. The resolution asks the ABA to articulate its approval of combining and into one unit all systems and to enhance them with the addition of the nonlegal resources (counseling services, e.g.,) families in crisis may need as well as to offer alternative dispute resolution opportunities.

3. Please explain how the proposed policy position will address the issue.

The resolution reaffirms the ABA's initial approval of creating a unified family court with jurisdiction over all issues relating to families and children, including intrafamilial criminal issues. It clarifies and expands the 1980 resolution in several key areas: intake, social and medical services, time standards, alternative dispute resolution techniques, integrated information systems, training for judges and court personnel, oversight.

4. Summary of any minority views or opposition which have been identified.

None.

Bennett

PENNSYLVANIA BAR ASSOCIATION
CHILDREN'S RIGHTS COMMITTEE

RECOMMENDATION

Adopted: May 5, 1995

BE IT RESOLVED, that the Pennsylvania Bar Association endorses the concept of a unified family, juvenile and dependency court as a separate unit of each county Court of Common Pleas for those counties with more than one judge.

Such unit's jurisdiction should include the following:

- (a) all aspects of divorce and other marital dissolution matters, including, but not limited to, alimony pendente lite, alimony, special relief, equitable distribution and counsel fees and costs;
- (b) custody, partial custody, visitation and child support;
- (c) domestic violence including protective orders;
- (d) dependent, abused and neglected children, persons and children in need of legal services, termination of parental rights and adoption;
- (e) delinquency and juvenile status offenses;
- (f) adult and juvenile guardianships and conservatorships, emancipation, paternity and name change.

Such units should consider the inclusion of the following:

(1) Establish an intake process by which a family will be initially assisted and expeditiously directed to one adjudication unit to permanently meet the continuing legal needs of that family. In more populous counties, each such unit should, where possible, include one or more masters, each of whom will be assigned to handle, once commenced, all divorce, custody, support, abuse and/or dependency and delinquency trial matters for a given family. The masters shall be supervised by an assigned family court judge who shall be in charge of the unit, who shall hear all exceptions, appeals and issue sanctions.

(2) Provide to each such adjudication unit necessary services for support staff and other assistance, as are appropriate and cost effective, which should, where feasible, include, but not be limited to: mediation services and counsellors, computer literate, financial data input personnel; alternative dispute resolution services; guardians ad litem; mental health and psychological testing services; substance abuse

counseling; interpreters; and referrals for emergency financial and housing assistance.

(3) Develop and enforce for each such adjudication unit time standards for cases involving the custody or out of home placement of children (e.g. foster care placement, adoption, etc.) to prevent prolonged uncertainty that may adversely affect family members, particularly young children.

(4) Provide appropriate and cost effective resources which will allow judges, masters, mediators and counsellors, support personnel and social workers to spend adequate time on each case, so that masters and judges can devote their time to hearing appeals, contempt actions and setting court policy. Support personnel should input and calculate financial data, review uncontested decrees, perform case management and so forth.

(5) Develop an integrated management information system which includes monitoring, tracking and coordinating all cases in the division relating to each family or child.

(6) Provide judges, masters, mediators and court personnel on-going training in family court issues including, among other things, the latest information on caselaw and legislation, domestic violence; child psychology, computer software and other relevant matters.

(7) Provide adequate oversight of the new court system's performance and outcomes to assure provision of uniform services for children.

Respectfully submitted,

Elizabeth L. Bennett, Esquire
Co-Chair

Pennsylvania House of Representatives
Judiciary Sub Committee
Hearing on
Domestic Relations Problems

March 13, 1998

Good morning Representatives
Members of this Domestic Relations Task force
Experts and
fellow Victims of the Department of Domestic Relations.

This is My Daughter 12 years ago. One day I woke up to hear "I do not want to be married any more." "What about our daughter's family...?" "She will adapt."
(In one unbelievable instant you grasp the incredible concept that the person who asked you to trust them with your life, does not really have any concern for your right or for your child's right to hav a normal parent-child relationship.) (The "**Me Generation**" has unilaterally voided the concept of "parental obligation to the child and the extended family.")

I am here because 12 years ago, "enlightened" "societal gurus" degraded the idea of obligation to family and the idea of providing children with intact families to the realm of outmoded and obsolete thinking.
Personal gratification of the parent was socially justified as the path to optimize the life experience of the **Me Generation.** The dependent 2 year old had rights to a family only after the parent achieved self gratification and could then spare time for others

Because I was shocked by the valueless mentality of Domestic Relations Appointed Psychological Evaluators I encountered.

Because I was infuriated by the treatment which I received at the hands of the Chester County Domestic Relations Court, its Judges, and its Lawyers. Who are also known appropriately as "Actors" within the profession.

I am here because If the court can take my child without explanation, they can take anyone's child.

This is what I had going for me at the time:

I am privileged to have 25 years of formal education
I had an extremely stable life style.
I had a higher than average income
I had age and experience with intimidating systems
I had a computer on which to keep immaculate records
I had Time to confront the system &
The patience to persist until I get answers form a system which functions on “stonewalling”, lying, endless delays to dishearten its victims, blatant denial of known facts, “passive aggressive behavior” designed to ignore existing Domestic Relations problems into oblivion and Intimidation of unassertive law abiding parents who dare to question the omnipotent judges of “the system”

I am here because I was stunned by the **lack of value** which this system places on

1. attention to the best interests of the child
2. logical utilization of available facts,
3. accurate record keeping,
4. Morality
5. Knowledge of the cases before it.
6. Respect for the the spirit of existing laws.

I am here because as a 53 year old I think it is my duty to fight this system which has no compunction about evicting young 20 year old fathers from the lives of their children while screaming that men do not want to be involved with their children , have no innate ability to nurture children and are all deadbeats.

I am tired of the lies, and twisted statistics which are used to take fathers out of the lives of their children and redistribute funds in accordance with politically correct agendas

I want to make clear my personal situation: (So that you can see who can be separated from a child without any requirement for the court to explain its decision.)

I am a doctor,
I have 25 years of education
I have held the same respectable full time job for 20 years,
I had an 11 year old daughter who was extremely responsible and carried a 94 average in school.
I do not smoke or drink alcohol,
I do not have women running around my house,
nor do I have any history of legal problems or drug use.
I have not missed any support payments and in fact
I am the only parent actually paying real support payments (which interestingly makes

me, as the responsible support paying parent, the only parent who's name and face can appear on a deadbeat poster. There is no order for the mother to make payments on which she could subsequently default.)

I was the only single parent who worked full time and ran a house without help.

I also was required to pay support payments of \$450/ for one child. (15 days/mo.) to the mother to care for her own child while her decisions and actions were denying me daily access to my child. (I did not requesting help with child care)

I had 1/2 custody just as the mother did but no support order was entered against her. She chose not to have a job because under this system she could obtain support for her desires from 2 working men.

I was the only parent who was required to work during the week and I needed weekend time to be with my child, where as she had all week and all summer and was being given \$450.00 gratis each month to allow her not to work during the week.

I supplied Health and Dental Care for my child.

I paid for day care before she was old enough to attend school

By offering to pay to send my daughter to a private school, I solved the problem of who's township my daughter would go to school in when her mother moved out of the marital residence to a new township. This was done so that both parents could have EQUAL access to my child every week and she would not have to live in the township of only one parent during the entire school week. No one else bothered to worry about this when they walked out. This has cost me close to \$75,000.00 through 9th grade. In spite of all this, the Court managed to figure out how to make the Parenting time UNEQUAL without explanation.

My daughter and I were the only parties who never had any choice and were simply informed that we would henceforth not be allowed to see each other for 1/2 of our lives.

I was the parent who purchased the marital residence to stabilize my daughter's environment when my wife walked out. I lost about \$72,000 on this bargain.

I paid \$11,000.00 to have my facts heard and had my time given away in a back room deal because "the court expects us to do this"

I had 1/2 time physical custody of my daughter for 8 years during which time all school and psychological evaluations indicated that she was flourishing and wished the schedule to remain equal

I provided a swimming pool membership, the access to which was substantially impaired by the court decision to unexplainably decrease our contact.

This also affected existing access to winter swimming facilities.

I provided clothing and possessions at our home which were made essentially inaccessible by a schedule which gave me 1 & 1/2 weekdays every other week and sought to destabilize a child's residence and familiar environment of 8 years by making our home into a visitation sight. (it was made sufficiently inconvenient to promote repetitive difficulties)

I was expected as a working parent to exchange my daughter 1/2 way through a weekday which was obviously unreasonable and hindered the exchange of my daughters possessions which would have ppreviously facilitated continuity of activity.

At my home there are no maids, or house keepers.

I as a single working father cooked, cleaned, maintained the property, helped with the

homework, did the laundry and all other tasks which would normally have been shared by another parent

Apparently the Chester County Department of Domestic Rrelations finds this insufficient to allow us to maintain an EQUAL Parenting time Arrangement as requested by my daughter and I.

- Through all this my daughter
1. maintained a 94 average in school,
 2. Took the SATs in 7th grade
 3. Scored higher than 50% of the college bound Seniors
 4. Told the court that she wanted the custody schedule to remain equal
 5. Was misquoted by the Court appointed psychologist who was caught doing this in court.
 6. Was questioned through 27 pages of transcript by a female Judge who proposed method after method of altering the equal schedule but never once told my daughter that the schedule could remain EQUAL
When my daughter made one concession the questioning was terminated and that concession was elaborated upon to create a MOTHER Preferential Schedule.
 7. My daughter had an IQ well above 140 and was very clear about what she wanted.

History of Situation

The Alteration of our EQUAL PARENTING TIME Schedule was surrounded by the following peculiar circumstances

1. A female Judge, a female lawyer, and a female (Court Appointed Psychologist)
2. A Lawyer who is the wife of a Chester County Domestic Court Judge
3. A second Lawyer who is reported in the newspapers to have been in line for a possible appointment as a Domestic Court Judgeship in the same court where the opposing female lawyer's husband is a Judge.
4. We have a set of altered documents submitted by **the court appointed psychologist**

5. We have a portion of the transcript showing the court appointed psychologist reinventing the words of my daughter and making it appear that she had expressed a desire for a change of schedule when in fact, that was exactly the opposite of what this woman was told by the child that she was supposed to be representing. The psychologist was caught at this one.
6. We have 3 communications to my lawyer saying do not give away my weekend time
7. We have statements by my lawyer saying that the court "expected us to give away this time and we have to do it".
8. We have numerous requests by me for both a petition to review the decision and for further appeal of the matter.
9. We have a statement by my lawyer that "he can not appeal the case or he will be sanctioned as this would be unethical"
10. We have a court order which was signed on May 4, 1994 and reached me on May 12, 1994. It traveled only 20 miles which is a normally delivery time of 1 day. This is 8 days. (The time limit for a Petition to Reconsider was 10 days)
11. We have numerous letters saying do not delay this appeal and an ensuing 27 day delay which ended the day before Memorial Day Weekend. (The limit for an appeal is 30 Days)
12. We have a request for a copy of the submitted proposal which was requested by me on 2 separate occasions between March 25th and May 4, 1994 and which was not sent to me until the very day on which Judge Carroll signed the custody order.
13. We have a proposal which was neither endorsed or signed by me but, which was submitted in my name as though it was my idea and this proposal makes it appear that I have given away my own child in spite of 3 communications to my lawyer saying that I would not do this. This becomes a part of the permanent file.
14. We then have 39 complaints about the dishonesty of this situation submitted to both Judge Gavin and Ms. McAteer (Officials of the Domestic Court of Chester County) over a 4 year period, all except three have been ignored in a Court maneuver to ignore the problem and allow it to go on destroying the lives of other victims of the Lawyers and Judges of the Chester County Domestic Court's influence peddling hierarchy.
15. We have one complaint which is answered in standard legal fluff which tries to tell me that I am not entitled to know why a custody schedule which was EQUAL and FUNCTIONING for 8 years was altered to a Female Preferential Schedule without any proof that this was in the best interests of the child. "Because I did

not appeal the decision.”

16. We have a Chester County President Judge who says I must spend more money in his already corrupt court while allowing the same suspect judges and lawyers to once again jeopardize my life with my child if I want to get justice. This is the same system which for 4 years has not been able to explain its improper methods of "Back Room Deal Making" and influence peddling and which has already cost my daughter \$11,000.00 only to prove this court to be untrustable.
17. We have about \$75,000.00 of Private School Educational expense incurred by me, as the father, to make it unnecessary for the court to issue a Mother Preferential custody schedule. All of this problem solving by me was ignored in the court's attempt to violate the Supreme Courts Directive which says that decisions based on Sex are offensive to the spirit of the Constitution and law of Pa.
18. We then have a letter from Judge Gavin saying that I was represented by competent council and have no recourse while at the same time we have Judge Gavin sentencing my lawyer to jail time while revoking his license to practice law in Pa. as a result of events which Judge Gavin evidently felt made this man suddenly incompetent to practice law.
19. we have a dated bill from the court's psychologist asking for \$90 so the completed report could be released. Immediate payment by dated check of this invoice... A delay of over one month in receipt of the report... And an intervening meeting between the psychologist and the mother who arranged this visit without the child's knowledge. The psychologist says this did not influence her report however, she could not remember when she held the meeting and would not release the dates when requested to do so by letter. If she did not intend to alter the report after it had been written, why did it take a month to release the report and why was there an extra meeting when the report had already been completed? In fact, the contents of the meeting did have impact on the case as the psychologist reported in court that the child was angry about the way the meeting was conducted and stood up to the psychologist. This independent, mature, adult thinking and expression of her resentment was presented to the judge as the acts of a willful child with no mention of the child's reason for expressing her justifiable anger at the way this court appointed psychologist manipulated the situation and failed to mention that the mother had antagonized the child on the way to the meeting with an argument.
20. After closing comments were exchanged at the first hearing, someone requested and received authorization for a second court date for the mother to speak a second time. Who did this and why was one sided advertising session allowed after closing comments had been made and the hearing had been concluded?

MOST APPALLING OF ALL....

There has never been any attempt made to look into how this alteration of an EQUAL PARENTING SCHEDULE occurred. (What follows is a part of a letter which I sent to Judge Gavin, President Judge Common Pleas Court of Chester County and Ms. Melanie McAteer Court Administrator of Chester County Department of Domestic Relations)

“The parenting time is unequal by order of the Chester County Judicial System PERIOD.

THIS MEANS THAT EITHER:

1. Your judge made a mistake
2. She is intentionally or inadvertently bias
3. Your judge thought that the relationship between a father and child was “not as important” as the relationship between a mother and a child
4. Your Judge thought the issue of parent child relationships was not important enough to check the time calculation and had never been forced to do so in the past
5. Your judge made her decision based on faulty information
6. Your Judge was lied to by the opposing lawyer, her client and or the court appointed psychologist, in order to make it look like the situation was different than was actually the fact.

If this was the case, your judge was placed in the middle of a dishonest transaction by one or more of these three parties and this is an internal problem of Chester County which should not be impacting in the life of either my daughter or myself.

Furthermore, after what I have documented, it would greatly surprise me if I were the only person in Chester County who ever experienced this type of problem.

While I empathize with your lack of time to answer my simple question and deal with the problems which your court has placed in My Daughters life. I am a doctor and I am at least as busy as you are. Why should I have to take this much time out of my practice to repeatedly request the same piece of critical information or to determine why my daughter's and my own rights are not being protected by the Court of Chester County. I am the parent who has been ignored for 593 Days and who is being denied equal time to be with my one and only child at age 50.

I am loosing a life with my daughter and you are telling me to get a lawyer and expend more funds in our defense. DEFENSE OF WHAT. You can't seriously expect that I should go back to the same court that can not even now decide why this decision was made the first time. What do I as a Parent have to tell the court I will correct? If I were to go back to the court

without the answer to a few critically important questions, you know that the court and the lawyers could play musical chairs with my child's life once again and not be any more accountability for their actions than you are trying to tell me they are this time. Nothing would get corrected, My daughter and I would loose money, The court would wastes more time and no one would learn anything.”

End of Quote

What is this about

Under the new May 1994 Custody order the Supreme court's ruling in *Spriggs v. Carson* 470 Pa. 290, 300, 368 A. 2d 635, 639-40 (1977) was ignored by the court and the court is obviously not functioning in compliance with the spirit of the law.

As I understand it, this ruling said that favoritism on a sexual basis was "offensive to the concept of the equality of the sexes and the concept was embraced as a constitutional principal within this state's Jurisdiction. A plurality of the Pa. Supreme Court noted the doctrine of "tender years" to be at odds with the Equal Rights Amendment to the Pa. Constitution which prohibits gender based discrimination. This happened in 1997 The court further found the doctrine to be "equally offensive to the court's duty to analyze the individual merits of each case and render a best interests determination without resort to artificial legal constructs. According to Pa. Child Custody by Bertin the *Ellerbe v. Hooks case (1980)* "laid (the tender years) doctrine to rest". The concept of EQUALITY would seem to be very easy to understand.

Both the Federal and the State Constitutions demand equal protection of the rights of all citizens.

I was denied an appeal for over 30 days

The court now uses this "Catch 22" to deny me as a parent an explanation of why... **My Equal Parenting Time Schedule was altered to a Mother Preferential Custody Schedule in a courtroom with a Female Judge, a Female opposing lawyer who was the wife of a Chester County Family Court Judge and a Female psychologist who abridged legal documents and entered them as exhibits in a fact finding hearing when there was never any evidence that ALTERATION OF AN EQUAL SCHEDULE, was "in the best interests of the child" or "necessary".**

I was told that, "*Since you did not enter an appeal, the judge is not obligated to write a brief on why she chose to make this decision.*"

The question comes to mind, Though this Judge may not be obligated to explain this decision because of legal loopholes, why would she refuse to do this if things were on the up and up?

NO CHILD SHOULD BE TAKEN FROM ITS PARENT OR DENIED EQUAL EXPOSURE TO EACH PARENT WITHOUT REQUIRING THE COURT TO GIVE AN EXPLANATION OF THIS EXTREME ACTION. This is America Not Nazi Germany

Under this system a poor person can never determine why his child was taken away or what issues to address to correct misinterpretations or confront issues which are invalid.

WHAT I WANT TO KNOW IS THIS.

IF THE COURT WANTS FATHERS TO BE INVOLVED IN THEIR CHILDREN'S LIVES WHY DID IT ALTER MY EQUAL PARENTING SCHEDULE TO A FEMALE PREFERENTIAL SCHEDULE AFTER IT WAS TOLD AT THE HEARING THAT THE SCHEDULE WE HAD WAS ALREADY EQUAL.. AND ...WHY AM I HAVING SO MUCH TROUBLE REGAINING AN EQUAL PARENTING ALLOTMENT. This is an incongruous situation.

I have contacted approximately 45 Federal, State, and County Officials Trying to determine why this is still happening in 1998 and who is accountable within the court. It is obvious that only the Judge knows why this occurred and she has been made inaccessible. What I have found out is that... **NO ONE is accountable.**

When you ask any question of Domestic Relations personnel, you are told. "It would be unethical to tell you anything because that would be practicing law without a license."

For Example: "how long you have to file an appeal?"
"how was my alimony or support obligation calculated?"

The standard legal reply is that the complainant must..

1. Get a Lawyer and return to the same court which can not after 4 years explain its bizarre conduct and may decide to deprive us further of contact without any more accountability than they claim to have now. "Forget the improper conduct you have witnessed because that will never see consideration. There is no way to deal with that. Just start a new case."
2. Turn this over to the "ETHICS" COMMITTEE who's chairman in 1994 was implicated along with impeached Supreme Court Judge Rolph Larsen in case fixing. This committee, now contains 2 members whose appointment was controversial because of their past involvement in the "Roofers' Scandal". When confronted with this fact one of the proposed appointees said "this all occurred 10 years ago" and "I didn't believe that it would raise any eyebrows" This does not raise my confidence in the Ethics Committee.

This "Ethics Committee" prints a brochure containing the following data. "Disciplinary proceedings are confidential, unless or until the Supreme Court enters an order for public censure, suspension or disbarment" ... "Where the discipline is something less than disbarment, suspension or public censure, it is imposed following the decision of the Disciplinary Board and the matter is considered

concluded”

Less than 2% of all complaints result in any type of public reprimand and cases in which there is no public reprimand are then sealed in most states.

3. Refile another new law suit. Questions addressing complaints about old hearings never see the light of day on any written document
4. We suggest you contact another Government Agency (Which also denies any accountability for investigating this matter.)

For Example: Department of Health and Human Services. Division of Children Youth and Families says it has power only to follow up on support enforcement yet, custody is merely a more inclusive form of support in which the parent supplies all manner of needs to the child not limited to but including support funds. I was sent to these people by President Clinton's Correspondence Assistant.

SOLUTIONS:

There are many studies which have been done and are readily available on problems of

1. Custody,
2. Family Court Reform,
3. Achieving economic justice for the “Dependent Spouse.”

If you are interested I can get you articles on these topics and I will be willing to talk to you personally. What follows is a summary of some ideas from these articles.

Custody

I Personally think there are at least 3 kinds of Divorce

1. Walk outs who don't want custody
2. Conflicted custody where both parents want custody
3. Dangerous Situations (Claims of Abuse) (PFA's) which are either
Legitimate worries or
Attempts to gain custody with false accusations

Solution : Pre Marital Solution

Two forms of marriage. Standard and marital contract spelling out that this is a true enforceable contract entered into freely with ethical expectations and duties .

Solution: Post Marital Solution

1. Mandatory divorce counseling and Mandatory Mediation to spell out what to expect in a divorce (Property settlement, support, and custody) Wisconsin has a proposed bill requiring that potential fathers be notified of existing custody statistics and visitation practices in that state. New Jersey is considering Mandatory Divorce counseling, and both Utah and New Hampshire already require this in order to file for divorce.

If no solution is reached regarding custody in the Mandatory mediation session then ...

2. Mandatory Presumptive Joint 50/50 physical custody should be the alternative.

This solves many other problems. such as

1. the location of both parents for support enforcement
2. payment of support vs. failure to comply with custody orders.
3. Maybe.. no exchange of monies at all (each parent care for his time)
4. Parental custody involvement statistics show involvement promotes support compliance in the following proportions.

G.A.O. Data	Without custody involvement.....	45% Compliance
	With Joint Custody arrangement.....	90.2% Compliance
	With some timeshare access to children.....	79.1% Compliance

Exactly EQUAL Physical Custody time can be calculated by a computer and takes no effort on the part of the judge. The litigants would simply fill in their preferences and the computer could spit out 3 or 4 alternative 50/50 schedules.

Achieving Economic Justice for the “Dependent Spouse.”

1. Think about the concept of what a dependent spouse really is.
2. Under 50/50 custody, there is no dependent spouse based on arbitrary sexual preferences of a master or Judge who had no relationship with one of his own parents and thinks this is normal. Under 50/50 physical custody, each parent has the capability and time to work or if they wish, they can agree to work out an arrangement which is agreeable to both parties.
3. The dependent spouse is the spouse who is having their child taken away without any say in the matter. This person becomes the “slave spouse”. As long as courts deny the need to affix responsibility to broken contracts, the term “dependent spouse” is meaningless.
4. Use studies done on how much should a person pay for a child and when does child support become “raising the living standard of the other parent”
(See Scandinavian Plan and calculation formulas)
5. It is foolish to think that the standard of living is going to remain the same after a divorce. This concept flies in the face of logic. The benefits of division of labor are no longer present and duplication of effort is inevitable.
6. Consider the Mrs. Doubtfire Bill
7. Establish charts for joint custody support payments and spell out how support payments were calculated so that it is not a “black box” decision. Black box decisions can not be logically corrected if there is an error and no one knows or will admit where the error was made. This results in “buck passing” and “irrational excuse making” or “denial of responsibility” by people who understand that there is a problem but do not wish to become involved and feel helpless to do anything to rectify the situation. Understandably, this infuriates the payer who may simply refuse on principal to pay even if they love their children.
8. Require Accounting expert to evaluate decision
9. Require a parent trustee of a child’s money to be “legally accountable” for where that money went. Child support money is not alimony nor is it fair to use the child’s money to create equity in a home where the mortgage does not reflect the contribution of the child to this purchase. Such scamming under any other circumstances would be called “embezzlement of funds by a trustee”

We will never decrease the deleterious effects of excessive divorce rates on children as long as we allow rational thinking to

be replaced by failure to connect parental obligation to the concept that when you make a child you incur a life long responsibility. This responsibility extends not only to the child but also to the spouse, and the relatives who's life will be effected by the decision of one person to unilaterally void their responsibilities.

The Impact of Domestic Violence on Children

A Report to the President of the American Bar Association

August 1994

The ABA Steering Committee on the Unmet Legal Needs of Children
The ABA Young Lawyers Division, Children and the Law Committee
The ABA Section of Family Law, Domestic Violence Committee
The ABA National Conference of Special Court Judges, Domestic Violence Committee
The ABA Litigation Section Task Force on Children
The ABA Criminal Justice Section, Victims Committee

*Reporter: Howard Davidson, Director
ABA Center on Children and the Law
A Program of the Young Lawyers Division*

The views expressed in this report are solely those of the specific ABA entities listed above. This report has not been approved by the House of Delegates or the Board of Governors of the ABA, or by any of the Association's Sections or Divisions as a whole. The viewpoints contained herein do not necessarily represent the official positions or policies of the ABA, unless expressly stated.

Children's art work contained in this report has been provided courtesy of the Hawaii Family Court's divorce education project, located on the islands of Hawaii and Maui.

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Preface

This report was commissioned by American Bar Association (ABA) President, R. William Ide, III, in March 1994. As part of his tenure during the ABA 1993-94 year, Mr. Ide participated in the March 11-14, 1994 "National Conference on Family Violence: Health and Justice," a program sponsored by the American Medical Association with participation of many other medical and legal organizations, including the ABA.

During his presentation to the conferees, Mr. Ide challenged the ABA to conduct a swift review of the legal literature and reform proposals that had been developed in the area of domestic violence and to submit to him, before the conclusion of the ABA Annual Meeting in August 1994, a report focusing on domestic violence and its impact on children. He asked that this report contain recommendations for legislation and other policy action, as well as proposals for what the organized bar and individual attorneys should do to better address domestic violence and its adverse impact on children. This is that report.

This report should not, in any way, be construed as representing official American Bar Association positions related to domestic violence (such policies, as they existed in July 1994, are included in Appendix B of the report). It is hoped, however, that appropriate entities of the Association will now use this report as a starting point for consideration of future ABA policy recommendations to be brought before the ABA's House of Delegates.

The reporter for this publication would like to thank the following individuals whose contributions and support during the process of its development were invaluable. First, Bill Ide himself, who was moved by what he heard during the March 1994 AMA conference to decide that the ABA's first response should be this report. Second, within the ABA's various entities, a number of individuals provided critical feedback to various drafts of this report. These include Judge Rosemary Barkett, Mi-

chael Bedke, Frank Cervone, Bernardine Dohrn, Kim Hornak, Judge Pamela M. Macktaz, Martha Matthews, Pam Mohr, Lee Rosen, Catherine Ross, Deborah Segal, and Diane Yu. Linda Girdner of the ABA Center on Children and the Law staff has also provided essential input, and the editorial skills of Center paralegal Claire Sandt are also appreciated. The assistance of Center interns Joan Fina, Wendy Shulman, Kerry Stellberg, and Kate Terry was also helpful in the process of developing the report.

Outside the ABA, several experts on domestic violence provided invaluable comments on the content of the report as well as background materials used in its development. These included Judith Armatta, Lucy N. Friedman, Barbara J. Hart, Merry Hofford, Judith Hyde, Barbara Kaden, Susan Kelley-Dreiss, Judge Cindy S. Lederman, Anne Menard, Linda Oslmundson, H. Joan Pennington, Lynn Hecht Schafran, Judge Francis Q.F. Wong, Joan Zorza, and especially Susan Schechter—who in addition to commenting on an early draft of this publication invited the Reporter to attend an invitational Wingspread conference in June 1994 entitled "Domestic Violence and Child Welfare: Integrating Policy and Practice for Families."

Appreciation is further expressed to Judge Wong and her Hawaii Family Court colleagues, Judge Douglas S. McNish of the Second Circuit and Judge Ben H. Gaddis of the Third Circuit, who graciously provided children's art work from the Court's divorce education program. That program was started by Judges McNish and Gaddis, with participating children given an outlet to express their feelings about the divorce of their parents (and in the case of the art work examples used in this publication, their feelings about domestic violence in their families).

Finally, it is important to recognize Leslye E. Orloff, Director of Program Development for AYUDA in Washington, DC, for her drafting of the "Immigrant Women and Their Children" section of this report.

Introduction

“...it’s imperative that we really focus on the whole issue of domestic violence and family violence in its larger context. On many occasions, the child who sees his mother being beaten accepts violence as a way of life.”¹

Attorney General Janet Reno

Violence in all its ugly manifestations is now recognized as one of the most serious societal problems facing our nation. Violent behavior is not limited to the streets: it occurs regularly behind closed doors of households, among family members, relatives, and others who share intimate relationships. Violence within the home is referred to as *family violence*.

Unfortunately, too often public attention has only focused on family violence when it has surrounded a case involving a celebrity, such as O.J. Simpson. Such cases furnish vivid reminders that the legal system commonly fails to protect the victims of family violence.²

Family violence takes various forms. Domestic violence or “battering” refers to the use of physical force, or threat of such force, against a current or former partner in an intimate relationship, resulting in fear and emotional and/or physical suffering. (If the partners are married, this is commonly referred to as spouse abuse, but since many partners never marry, or may have ended their marriage through divorce, we will use the broader term, *domestic violence*, in this report.) *Child abuse* occurs when parents and other adult caretakers inflict injuries upon children. *Sibling abuse* occurs when older, larger, or stronger children assault and terrorize younger, smaller, or weaker brothers, sisters, or other children within the home. *Elder abuse* designates adult mistreatment of their aged parents.

The American Bar Association has long been involved in identifying appropriate legal responses to family violence, all forms of which have a destructive impact on children and their families.³ This report, however, focuses on one aspect of family violence: the impact of *domestic violence on children*.⁴ Domestic violence is a serious social issue that affects all communities.⁵ It cuts across race, ethnic, religious and economic lines.⁶

While state and local bar associations have increasingly developed legal services for victims of domestic violence,⁷ and several national groups have focused on effective responses to domestic violence,⁸ little attention has been paid to the traumatic effects of domestic violence on children. Many ignore the implications of

a child’s exposure to domestic violence in his or her own home. As a result, the impact of domestic violence on children has not always received the attention it warrants within the legal system.

Although some domestic violence involves the battering of men by women (as well as male-on-male or female-on-female violence among intimate partners), the overwhelming majority of domestic violence is committed by men upon women. Of all spousal violence incidents reported in the National Crime Survey, 91% were victimizations of women committed by husbands or ex-husbands.⁹ Women are 13 times more likely than men to be the victim in cases of spousal assault. Estimates of women victimized by domestic violence each year range from 1.8 to 4 million.¹⁰

It is unclear how many children annually witness domestic violence, but experts estimate the range at between 3.3 and 10 million children.¹¹ An estimated 87 percent of children in homes with domestic violence witness that abuse.¹² There is no doubt that children are harmed in more than one way—cognitively, psychologically, and in their social development—merely by observing or hearing the domestic terrorism of brutality against a parent at home.¹³ Experts report that the immediate impact of children’s exposure to domestic violence “can be traumatic—fear for self, fear for their mother’s safety, and self-blame.”¹⁴

Reports suggest that more babies are born with birth defects as a result of the pregnant mother’s being battered than as a result of all diseases and illnesses for which we now immunize pregnant women combined.¹⁵ Testimony before the Congress disclosed that nearly 50% of abusive husbands batter their pregnant wives, and that as a result these women were four times more likely to bear low birth weight infants.¹⁶

The National Council of Juvenile and Family Court Judges, in an introduction to their recent model state code on family violence, expressed concern that “children . . . learn from (domestic violence) that violence is an acceptable way to cope with stress or problems or to gain control over another person.”¹⁷ Family violence experts worry that children who live in homes where there is domestic violence are more likely than others to become batterers of their partners when they become adults, or to view violence among intimate companions as an acceptable or inevitable norm.¹⁸

Such detrimental effects of domestic violence on children have been noted at the federal level.¹⁹ Many

state legislative provisions and trial court decisions now recognize the adverse impact on children living with an adult who is, or has been, brutal in their treatment in the home.²⁰

In addition, some children caught in the "cross-fire" of domestic violence become the accidental victims of serious injuries. Children are harmed by blows or flying objects aimed at someone else, or while trying to protect their assaulted parent.²¹

The time has now come for the entire legal profession to scrutinize and respond to this problem. *The law must protect children who live in violent home environments. The law must work to save lives, to protect abused parents and their children by removing violent abusers, and to protect victim-parents from continued exposure to domestic violence without risking the loss of child custody to their batterers.* The following interim proposals are directed toward achieving these goals.

The proposals that follow are a starting point. Because of the complexity of the problem and the need for further information, additional inquiry is necessary. We therefore urge the President and

President-Elect of the American Bar Association to appoint a small multidisciplinary commission or task force that includes representation from appropriate ABA entities (including those that are the co-sponsors of this report), other organizations, and the domestic violence victim support community. This new body should study the problem of domestic violence further, and it should build on the ideas contained in, and issues raised in, this preliminary report.


RECOMMENDATION:

The ABA should appoint a multidisciplinary commission or task force on domestic violence, which should include representatives of each entity co-sponsoring this report, other organizations, and the domestic violence victim support community. The purpose of this body should be to further explore the issues raised here, develop new policy recommendations, and report to the ABA leadership.

Part I

Assure the Safety of Children

I am Scared
when they fight.
I am Scared
when they fight



Domestic Violence Laws Must Require Police and Courts to Adequately Protect Children

Too often, law enforcement and judicial actions fail to meet the needs of children. When police respond to a 911 call regarding a domestic dispute, the responding officers will likely speak with the adults involved and focus on the protection of the abuse victim and, hopefully, the removal of the abusive adult. However, the officers may fail to ask if they can see and speak with the children in the home.

Police may also fail to ask adult victims of domestic violence whether they are fearful for the safety of their children or how the children themselves feel about, and have responded to, the violence. They may further fail to ask victims about shelter options that can help them and their children stay, safely, together. Finally, they may fail to inform victims of the available protections for their children (e.g., the ability to obtain restricted custody and visitation orders to restrict the abuser from inappropriate access to the children, as well as support orders to make it more economically feasible for abused parents and children, as a unit, to find an alternative safe residence).

Unfortunately, in many cases where there has been a history of domestic violence, abusers disregard court orders of protection restricting contact with their children. In such cases, police often treat 911 calls from abused parents about violation of such court orders, or reports of threats by abusers to retaliate against children, as less important than other types of domestic violence reports. Police may see themselves having less authority to arrest abusers when victim parents report that *their children are at-risk* because of the abuser's behavior. Mothers who have been abused may be afraid to tell authorities that they cannot protect their children.

Courts that hear domestic violence or child abuse/neglect cases may have more limited authority than general domestic relations courts to grant a full range of custody, visitation, child support, and other protective orders to help assure the safety and security of children from homes affected by domestic violence. In addition, judges often lack any mechanism for retrieving information on all other judicial proceedings affecting the children and their parents as well as the current status of those cases. Finally, family members who have been violent in the home may extend that violence to the courthouse, jeopardizing the safety of litigants, their children, court personnel, and the public.

The efforts of national organizations and domestic violence victim support groups to assure a more

thorough, comprehensive response to the problem of domestic violence are to be applauded. Drawing on their work, the following steps are important to promote the safety of children in domestic violence cases.

(a) All law enforcement officers responding to domestic calls should be trained to address the immediate safety, shelter, and medical assistance needs of the *parental victim's children*, as well as the victim herself (with assistance rendered in a fashion that does not precipitously separate victims from their children, but rather attempts to keep them together). Law enforcement training should also help assure that victims of domestic violence are informed by police officers of their legal rights.

(b) Where it has not already done so, the law should give victims of domestic violence the right to seek and obtain a protection order on their own *and their children's* behalf. These orders should encompass, where necessary: (1) *removal of the abuser from the home*; (2) *child custody*; (3) *possession of their residence*; (4) *child support*; and (5) *appropriate safe visitation* (including, where appropriate, orders denying abusers visitation or requiring appropriately supervised visitation).

(c) Law enforcement officers should provide domestic violence victims with referrals to agencies that can help victims obtain necessary court assistance on their own and their children's behalf.

(d) In some states, the law supports mandatory arrest where there is probable cause to believe that an abuser has violated an order of protection (or a condition of probation or parole). Mandatory arrest should also be considered for violations of court orders or conditions of release that have required abusers to *stay away from their children, children's school, day care center, baby sitter, or any other*

places their children frequent. Mandatory arrest also should be available where abusers violate custody or visitation orders, and the effects of such mandatory arrests carefully evaluated in terms of the safety of all parties.

(e) Every party to a domestic violence judicial proceeding should be required to inform the court of all other actions *related to the family's children*, whether criminal (e.g., child abuse, child endangerment, assault), juvenile, domestic relations, child custody, adoption, child support, paternity, or other family-related court cases or dispute resolution processes, past and present. Courts should have an intra- and inter-court tracking system for all child-related cases, as well as a registry (accessible by both judges and law enforcement) of previously issued orders of protection.

(f) Courts should design their facilities and procedures to maximize courthouse security and the safety of parties, the children, and court personnel in all arenas in which domestic violence perpetrators are engaged in any legal process or court-based dispute resolution process relating to their spouses or ex-spouses and children.

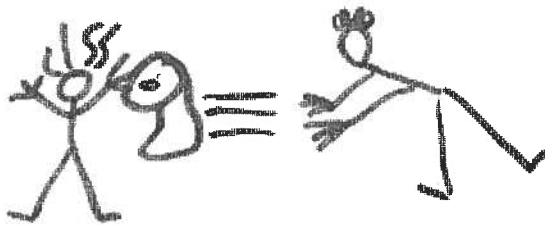
RECOMMENDATION:

Appropriate law enforcement, shelter, health care, and judicial system resources should be provided to promote the safety of parents victimized by domestic violence, and their children, and to safeguard children during the course of judicial and other proceedings, including the period that court orders are in effect.

Part II

Education, Treatment, and Awareness

I feel sad
when my mom
and my dad soane
fites he hit my
mom with the
electrick fan



Support Enhanced Education, Treatment, and Awareness Efforts Related to Domestic Violence and Children

Enhance the Ability of Attorneys and Courts to Identify and Address Domestic Violence

It is critical that all personnel involved in domestic relations, juvenile court, family law, and criminal cases (e.g., lawyers, including prosecutors, guardians ad litem, judges, court clerks, mediators, court investigators, evaluators, police, school personnel, social workers, protective service workers, parent educators, health care providers, and child care providers) receive training about domestic violence and how it affects children. Continuing education should be provided to all attorneys, judges, and allied professionals, such as mediators and custody evaluators, involved in juvenile and domestic relations cases on a range of special issues related to the impact of domestic violence on children. Among these should be the topic of incorporating safety provisions for children and battered parents into divorce/separation settlement agreements and court orders.

Criminal prosecutors should be trained in recognizing and responding appropriately to domestic violence, regardless of whether they are assigned to special units engaged in the criminal prosecution of domestic violence, child abuse, or sexual assault cases. Indeed, elected prosecutors should consider establishing Family Violence Units as an alternative to the separate, categorical prosecution units for child abuse, sexual assault, and domestic violence that have been favored in recent years.²²

Family Violence Units can help prosecutors assure proper recognition of the correlation among issues affecting children and their families, integrate safety efforts on behalf of children with those of other family members needing protection, and provide more effective strategies towards violence reduction generally. These units are consistent with the provision of *holistic child and family safety and support*, reflecting a recognition that society cannot protect children without also protecting their caretakers.

Attorneys representing children in juvenile delinquency, juvenile status offender (runaway, incorrigible child, and truancy), and child abuse and neglect cases, and judicial personnel hearing these matters, should be educated to: (1) better identify when children are victims of or witnesses to domestic violence; (2) how to assure a thorough investigation of the impact of such violence on these children; and (3) how the legal system can best pro-

tect them from further violence. Lawyers and court screening, intake, and probation staff need to ask the proper questions about domestic violence. For example, a chronic runaway child may repeatedly flee from a home with severe domestic violence, but an attorney may facilitate, or juvenile court judge may order, family reunification without inquiring into the underlying cause of the child's behavior. Further, court administrators should place domestic violence "identifiers" in the court computer system to help track cases where the violence is proven.

Once attorneys, judges, or other court personnel learn that children have been living in homes with domestic violence, it is critical that they have accessible mechanisms for addressing such violence, that such measures promote safety for both mothers *and children*, and that these actions avoid unnecessary intrusiveness. In the states without Unified Family Courts²³ (most of the U.S.), protocols and other mechanisms should be developed for cross-court and inter-agency referrals, case consolidation, protection against conflicting court orders, and other processes to assure appropriate safety and support for both adult and child victims of domestic violence.²⁴ "Court schools" for victims of domestic violence and their children,²⁵ as well as automated protection order registries, are other useful reforms. Attorneys and the organized bar should take the lead in encouraging such court reforms that can protect lives.

Some communities have created what the National Council of Juvenile and Family Court Judges calls "family violence councils"²⁶ or similar inter-agency teams or task forces designed to help coordinate the work of court and justice, public safety, health, welfare, and domestic violence agencies in offering services to domestic violence victims and their children. These councils or related bodies are also working toward reducing domestic violence in their communities. Lawyers and judges with expertise in domestic violence should support, and involve themselves in, such efforts. These councils can help promote effective prevention, intervention, service, and treatment approaches for victims of domestic violence and their children, as well as improve the overall systemic response to this problem.

Provide Education to Child Victims of Domestic Violence

Domestic violence has a powerful, destructive effect on children. Most children can best be helped in group educational programs that: (1) describe what domestic violence is; (2) help children understand

that they did not cause the violence; (3) enable children to grieve the losses resulting from such violence; (4) teach children empowerment strategies for preserving their safety; and (5) show children nonviolent methods of resolving their own conflicts.

The intervention of first resort with children of domestic violence is *education*. Indeed, many children exposed to domestic violence do not require mental health evaluations and long-term interventions. Children should, as a rule, be treated as resilient survivors, albeit sometimes targets themselves of stigmatizing diagnoses and labels.²⁷

Many shelters for women survivors of domestic violence have individual and group counseling programs for children in the shelters, as well as parenting groups that help parents understand and mitigate the impact of domestic violence on their children. Unfortunately, most shelters and other programs for domestic violence victims do not have the financial resources to develop and maintain special supportive programs for children affected by such violence. Public and private sector support for such programs should be encouraged, as well as similar services for children in foster care, detention centers, hospital facilities, and other out-of-home care settings.

Provide Specialized Mental Health Services for Appropriate Children

Some children who have been exposed to domestic violence develop serious behavioral, cognitive, and affective problems and need evaluation and treatment. Still other children not only witness domestic violence, but are abused themselves. Shelters and courts are increasingly identifying children and adolescents who are now perpetrating assaults on family members, dating partners, or other peers. Many of these children could benefit from more specialized mental health services.

Yet, in most communities, few—if any—appropriate services are accessible. Many battered women have sought specialized mental health services for their children, only to find that professionals know little about the impact of domestic violence upon children. Some battered women have discovered that waiting lists are long and services costly.

Children who have lived in homes with domestic violence, as well as their abused parents, should be able to easily access affordable special mental health services. One jurisdiction—Dade County, Florida—has a Domestic Violence Court which emphasizes helping children who have been subjected to such violence.²⁸ In partnership with a local medical school's child development center, the Court pro-

vides free counseling for children who have witnessed violence in their homes. The program includes a ten-week curriculum for children ages 5-15 designed to help remediate the adverse impact of domestic violence on their lives. Another program, in Honolulu, has developed two psychodynamic group counseling curricula for child witnesses (ages 3 to 13) and teenage witnesses (ages 14 to 17) of family violence.²⁹

Attorneys should work with courts hearing domestic relations, juvenile, and domestic violence matters to help assure that children impacted by domestic violence, and their parents, have access to needed group education, therapeutic treatment and support. At least one state legislature has directed the state's chief court administrator to establish programs for children affected by domestic violence.³⁰ State bars should encourage other states to follow this example. Attorneys and judges are further encouraged to use the authority of the courts to help assure that mental health departments and other executive branch agencies provide these services.

Where a child requires private counseling or therapy to help overcome the trauma of domestic violence, the court should have authority to order such treatment and to provide for reimbursement by the perpetrator of such violence. In cases where the perpetrator is unable to pay, the state should provide adequate resources.³¹ Further consideration should be given to the appropriate circumstances under which children should be able to receive such treatment without parental consent.

Make Students, Parents, and Professionals Better Aware of the Impact of Domestic Violence on Children

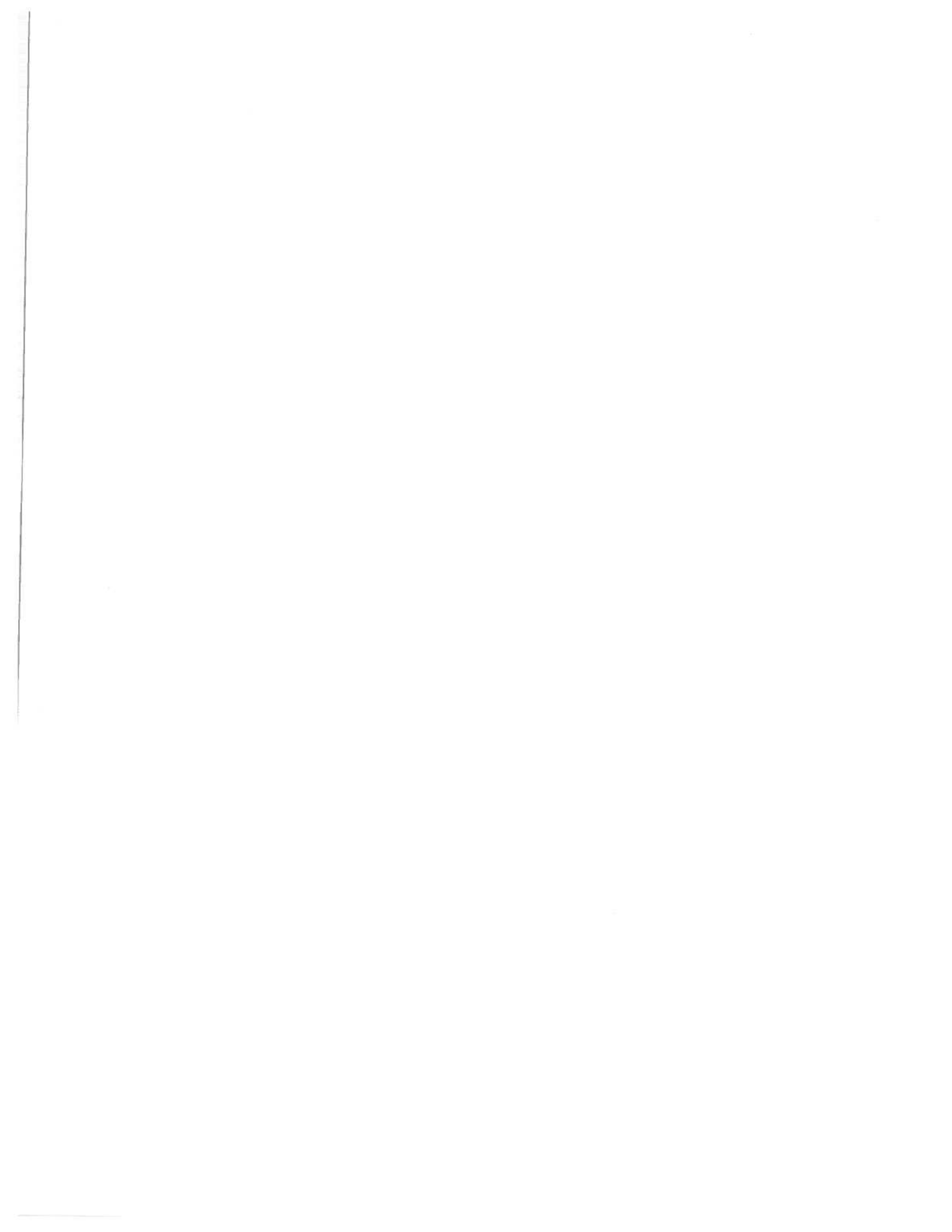
Elementary, middle, and high schools, as well as universities and professional schools (e.g., law schools³² and medical schools), should offer a curriculum that helps foster a better understanding of family violence, including domestic violence, child abuse, and elder abuse. Education should cover why such violence is pervasive, how it can be prevented, and resources available for both children who wit-

ness domestic violence and the adult victims and perpetrators of such violence.³³

Health classes in junior/senior high schools, violence prevention/conflict resolution curricula, and instruction on parenting issues should all include education on domestic violence and its effect on children. The issue of violence in dating relationships among both teens and adults should also be specifically addressed. In Minnesota, a domestic violence prevention curriculum has been developed for grades K-3 and 4-6.³⁴ Federal/state legislation and appropriations should support and fund development, implementation, and evaluation of all such curricula. Evaluations should focus on what works to promote safety and save lives.

Attorneys and judges should ensure that parents involved in any divorce or legal separation action are provided with information (available in multiple languages) on the effects of domestic violence on children. It is possible, and advisable, to go even further and use the resources of the legal profession for mass public education about this problem. The South Carolina Bar Association, for example, has produced public service television announcements on domestic violence and its impact on children, while the Pennsylvania Bar Association underwrote the costs of a television documentary about children of domestic violence.³⁵ Lawyers and judges, as well as other professionals (especially those trained in child development), should encourage and work with their local media to develop in-depth analyses of this issue. Such programs should emphasize *prevention* and resources available to victims and their children.

Settings where children are cared for outside of the home need to be prepared to address the consequences of domestic violence. For example, schools and child care programs should develop protocols for responding to domestic violence-related incidents affecting children in their care (e.g., how to respond if a court's order of protection is violated on their property, if a parent confides in a teacher a fear of a child's abduction by the other parent, or where a young parent or student discloses that her boyfriend beats her).



Part III

Legal Representation for Victims



Enhance Legal Representation for Victims of Domestic Violence and Their Children

Those who seek to protect themselves and their children from domestic violence require advocacy assistance. A National Institute of Justice study found that even when victims of domestic violence had access to the courts to obtain protection orders *pro se*, victims not represented by their *own legal counsel* were less likely to get such orders, or the orders were less likely to contain all appropriate provisions regarding such matters as child custody, support, and protective limitations on visitation by the batterer.³⁶

Fortunately, many lay advocate groups and *pro bono* (volunteer attorney) programs provide legal support to victims of domestic violence. There have also been many efforts, principally by domestic violence coalitions, the judiciary, legal services, *pro bono* lawyer programs, and other organizations, to train lay victim counselors in system advocacy. Increased efforts have also been made to encourage victims to take legal action on their own.³⁷ The organized bar should actively encourage and collaborate in these initiatives. The bar also should help assure that families experiencing domestic violence have easy access to the judicial system and to attorneys who can assist them effectively.

Attorneys and the organized bar should do more to *make assistance of legal counsel* more readily available and affordable to victims of domestic violence and their children.³⁸ The bar should offer specialized domestic violence training to all family law practitioners. Such training should provide instruction on the needs of victims and their children.

Special efforts should also be undertaken to: (1) develop and enhance support for domestic violence lawyer referral panels (bar-based, court-based, and associated with legal services agencies); (2) strengthen law school domestic violence clinical programs and substantive seminars; (3) design annual continuing legal education (CLE) training for the bar on domestic violence; (4) encourage and enhance *pro bono* lawyer programs that specialize in domestic violence; and (5) intensify the capacity of community legal services programs to represent domestic violence victims and their children. The end result should be a greater supply of *trained attorneys* available to competently represent victims of domestic violence and their children.

Lawyers also need to be more accessible to abused parents who seek custody, visitation, and child support orders, as well as orders of protection. There is a profound shortage of *community legal services program* staff to quickly and efficiently aid

low income parents in domestic violence cases. It is unconscionable that an indigent parent victimized by domestic violence is turned away from a legal aid office, or placed on a long waiting list, because of program capacity barriers.

Traditionally, family law matters have constituted the largest single category of cases handled by legal services programs. In the past, many of these programs often placed prompt response to the needs of domestic violence victims high on their list of priorities. In recent years, however, funding and service cutbacks have limited the capacity of community legal services to provide the representation that domestic violence victims so critically need.

One national domestic violence authority eloquently captured the need to re-invigorate legal services involvement in the domestic violence area by comparing the response to unlawful evictions:

Legal Services offices would not think of turning away all tenants with valid eviction claims. But if a battered woman will be killed, save for an attorney's help, an apartment will do her no good without protection from the abuser. Poverty law offices must follow the example of some extraordinary legal services programs, such as the House of Ruth Law Center in Baltimore, which are client-centered and place a priority on meeting the legal needs of abuse victims who have no place else to turn.³⁹

The federal Legal Services Corporation should study this issue and find ways of intensifying the legal support within LSC-funded programs for victims of domestic violence and their children. At the state and local levels, bar leaders should work with legal services program directors and existing *pro bono* (volunteer) lawyer programs to find ways the private bar and the legal services community can work together to strengthen this legal support. The private bar, foundations, and governments should also support development of *specialized legal centers* for victims of domestic violence and their children, as well as the sharing of ideas and resources among

such centers and specialized bar association programs.

Many adult victims of domestic violence are too poor (or have been denied access to financial resources by their abuser) to retain a private attorney. Where victims of domestic violence seek to protect themselves and their children legally from having inappropriate contact with the abuser after the family has separated, legislation should require abusers who have the financial means to pay the victim's court costs, attorney fees, and court-related expert witness and evaluation expenses.

At least one state has enacted a law on the assessment of costs, fees, and expenses to abusers.⁴⁰ Many states provide for reimbursement or assignment of court costs and attorneys fees.⁴¹ However, these financial remedies are likely to be of no use to resource-poor adult victims of domestic violence and their children, even when the perpetrator of abuse is quite wealthy, since such victims are often unable to lay out the money to pay attorney retainers or other legal costs and fees.

Bar associations, recognizing the importance of competent legal counsel in domestic violence-related cases for the victims as well as the potential benefits of court-appointed legal counsel or guardians *ad litem* for their children, should explore how such representation can best be assured. This might be achieved by providing a statutory right to representation, development of legal assistance voucher or loan programs, or through other ways of making legal assistance universally accessible. Such inquiries should consider, among other things: (a) how legal counsel can best be provided for battered indigent parents with children who are involved in custody, visitation, and child support proceedings related to the protection of those children from domestic violence; and (b) the proper role of court-appointed counsel or guardians *ad litem* for children in cases related to domestic violence, as well as how such children's legal representatives might be recruited, trained, and properly utilized.

Part IV

Limit Firearms Access By Batterers

When they first started
my dad wanted to
kill my mom. ^{he} he never
got to know he wanted to
kill himself. I ^{don't} it happen
before and it ain't now
glamour sight. Now I'm used to
it. its been going on for
19 years and I'm not scared
any more.

Prohibit Firearms Purchase and Possession for All Perpetrators of Domestic Violence and Child Abuse

Guns are six times more likely to injure a member of the owner's household than to protect that household.⁴² In fact, a recent study found that the risk of homicide within the home is markedly increased in homes where a person has previously been hit or hurt in a family fight.⁴³ In August 1991, the ABA House of Delegates recognized the all-too-real potential of children becoming the victims of firearms injuries or deaths when guns are left improperly safeguarded (i.e., unsecured) by adults within the home. It endorsed state laws that provide criminal penalties for adult failure to properly safeguard firearms they own or control.

In families with a history of domestic violence, especially where there are children, experts indicate that acts of violence against family members may not only continue, but may escalate in severity after the parents physically separate.⁴⁴ The batterer often becomes furious when faced with the reality that their partner wants to sever the relationship. This is when women are most likely to be killed by their batterers. The availability of a firearm or other weapons, especially a handgun, to a person who has committed domestic violence can be lethal and can even affect children.

The ABA has long supported legislation to disqualify persons convicted of any felony from legally purchasing, owning or possessing firearms. The ABA Task Force on Gun Violence has developed new policy recommendations, related to the above concerns, which will be presented to the ABA's House of Delegates in August 1994. Those recommendations, consistent with what is being proposed here, support legislation to amend the federal Gun Control Act of 1968 to prohibit the receiving or possessing of firearms by persons convicted of spousal abuse or child abuse, persons subject to a protective order, or persons convicted of any violent misdemeanor.

Whenever a court determines that there is a legal basis for issuing a protection order related to domestic violence (or where an adult is convicted of a crime of violence against a spouse, former spouse, or domestic partner), the court should inquire about firearms or other weapons in the perpetrator's possession. A part of the protection order or disposition of the case should require that any firearms in the possession of the abuser be turned over to the police immediately, as well as order the revocation of the perpetrator's license to carry firearms.

A criminal conviction for child abuse should carry with it the same prohibitions. Those registered to sell firearms should be provided with lists of individuals who have been the subjects of such protection orders or convictions, and firearms sales to these individuals should be prohibited.

State and federal legislation should require perpetrators of domestic violence subject to protection orders or convicted of crimes against family members—and adjudicated perpetrators of child abuse—to relinquish any firearms they possess to the police. Legislation should also prohibit convicted batterers from purchasing firearms.⁴⁵ To facilitate enforcement, after an adjudication or conviction, courts must make specific findings that domestic violence or child abuse occurred.

Upon the entry of such findings, the court should communicate this information to the appropriate



authorities responsible for ensuring that firearms purchase and possession are appropriately restricted. Employers of those who must carry firearms in the course of employment should be contacted by the court, and appropriate action should be taken to provide temporary duty that does not involve possession of firearms.

RECOMMENDATION:

State legislatures and Congress should take effective action to prohibit firearm purchase and possession by individuals found by a court to have committed domestic violence or child abuse.

Part V

Custody and Visitation

mom and dad having
a fight.
fighting a lot. 
mom and dad fighting a lot 

Ensure that Domestic Violence is Properly Considered in All Domestic Relations Actions Involving Custody and Visitation

“The judge gave my husband custody of the kids, declaring that his violence toward me had nothing to do with his ability to be a good father. ‘It’s between the adults involved’.”⁴⁶

A former battered woman

Judicial actions affecting the care, placement, and legal status of children are frequently guided by “the best interests of the child” principle. It is always appropriate, indeed vital, for judges and other judicial hearing officers to consider *any history of abuse toward an adult* in the home of one seeking custody, guardianship, reunification, or visitation rights over a child as a primary factor in the “best interests test.”

Anyone who has committed severe or repetitive abuse to an intimate partner is presumptively not a fit sole or joint custodian for children. Where there is proof of abuse, batterers should be presumed by law to be unfit custodians for their children.⁴⁷

There are three characteristics of such unfit custodians. First, the abuser has ignored the child’s interests by harming the child’s other parent. Second, the pattern of control and domination common to abusers often continues after the physical separation of the abuser and victim. Third, abusers are highly likely to use children in their care, or attempt to gain custody of their children, as a means of controlling their former spouse or partner.⁴⁸

At least 38 states and the District of Columbia now have laws making domestic violence a relevant factor in custody decisions by the courts.⁴⁹ Many states require courts to consider, and make findings of fact based upon, evidence of domestic violence before making custody or visitation awards.⁵⁰ In states where a statutory preference exists for joint or shared custody, some state laws negate that preference where there is evidence of domestic violence. A few states create a rebuttable presumption that custody or visitation should not be granted to a parent who has a history of inflicting domestic violence.⁵¹ In others, statutes specify that it is not in the best interests of a child to be in the custody of someone who has committed domestic violence.⁵²

State legislatures should require courts to inquire into and carefully consider domestic violence in making child custody or visitation decisions. To protect the safety and stability of children who have been living with domestic violence, judges and judicial officers should move quickly to enter temporary custody, safe visitation, and appropriate child sup-

port orders at the first possible opportunity in a civil protection order, custody, separation or divorce proceeding whenever the victim and abuser have separated.⁵³ The occurrence or recurrence of domestic violence should be an explicit basis of "material change of circumstances" that would justify a court's modification of existing child custody and visitation orders.

Visitation must reflect concern for the victim's safety and protect the child(ren) from witnessing abuse. When there is proof of severe or repetitive abuse to an intimate partner, or threats to inflict serious harm, laws should also establish a rebuttable presumption that any visitation with a child by the abusive parent be supervised.

Court orders related to supervision should contain appropriate protections for the child's abused parent related to the visitation process, such as specifying that visitation supervision *not* be performed by a family member or friend of the abuser and that pick-up and drop-off points reduce the need for contact between the parties.⁵⁴ The costs of any supervision necessary to assure this safety should be paid by the abuser whenever possible.

Consistent with the pending resolution before the ABA House of Delegates on Unified Family Courts, courts should exercise their authority to: (1) limit the exchange of a child for visitation to designated protected settings; (2) permit visits only if supervised by other persons or agencies (and that abusers pay those supervision costs); (3) require abusers to attend and successfully complete batterers' intervention or counseling programs before visitations are allowed; and (4) condition visitations on abusers abstaining from possession or consumption of alcohol or controlled substances for a period prior to and during visitations. Further, where appropriate, courts can prohibit overnight visitations, require abusers to post bonds that guarantee the safe return of children, keep the addresses of children and victim-parents confidential, and impose other visitation conditions necessary to promote the safety of children, victim-parents, or other household/family members.⁵⁵

Where there is proof of domestic violence, the court should issue very specific, highly structured custody and visitation orders. The court should leave no room for ambiguity or negotiation. If there have been threats by the batterer to abduct children, preventive measures should be included in the orders, including, for example, the posting of a bond and the supervision of visitation.⁵⁶ Furthermore, the court should clearly state, on the record, that violation of orders may be subject to civil and criminal penalties.

Laws—similar to the proposed federal "Child Safety Act" included in the U.S. Senate-passed 1994

crime legislation—should create and support "supervised visitation centers."⁵⁷ The varying levels of supervision provided in such centers should take into account the different degrees of security necessitated by the specific circumstances of each case, from highly secure to intermittently supervised. Where such special centers do not exist, training on safety strategies and technical assistance should be provided to child protective services and court staff to help protect parents and children against violence.⁵⁸

Many parents who are victims of domestic violence must flee their homes, either with or without their children, to protect themselves from the abuser. Therefore, proof of such violence should be a defense to charges of "child snatching" (custodial interference), as well as child abandonment.⁵⁹ Domestic violence should also provide a basis for a court to exercise emergency jurisdiction under the Uniform Child Custody Jurisdiction Act (UCCJA) to enter orders protecting the children from the violent parent and should serve as a defense to "unclean hands" charges under Section 8 of the UCCJA.

State amendments to Section 9 of the UCCJA would also be appropriate to provide a domestic violence exception to that Act's affidavit requirement which includes disclosing past and current addresses of the child. Disclosure to the abuser of where, and with whom, a child and parent fleeing from domestic violence reside, or have resided, can seriously endanger victim parents, their children, and the people who have sheltered them (friends, family, or shelter programs).

Frequent attempts to flee an abuser, time spent at a shelter, or the temporary transfer of custody by domestic violence victims to other family members for the purpose of protecting their children should not create any presumption of parental negligence. These actions may constitute the only ways in which victim parents can assure the safety of their children. Courts should certainly not consider such actions to be evidence of parental instability or otherwise used against a suitable parent in a custody action.

Domestic violence and parental abduction of children are related in many cases. Batterers, for example, may abduct their children as a way of retaliating against their former spouse or partner.⁶⁰ Conversely, battered parents may flee with their children.

Accordingly, judges hearing cases that involve parental flight with a child should always inquire whether domestic violence had any impact on that flight. If there seems to be a basis for a defense based on domestic violence, child custody orders should not be changed, or contempt findings issued,

until that inquiry is concluded. Useful insights may be gained from the 1993 U.S. Department of Justice report that addresses obstacles to the recovery and return of parentally abducted children.⁶¹ (The full text of the relevant section of that report is found herein at Appendix C).⁶²

In some cases, batterers murder their children and then kill themselves. Consequently, abductions by batterers or retention of children by batterers after a period of court-ordered visitation has elapsed should be given high priority by law enforcement.

Although many states have recently adopted what are known as “friendly parent” provisions in their child custody laws (generally requiring courts to give custodial preference to those parents most cooperative regarding liberal visitation with the other parent), such provisions are inappropriate in cases where there has been domestic violence. Such laws should be amended accordingly.

We reaffirm the position of an ABA panel, which last year recommended improvements in the handling of domestic relations matters in the courts, that cautioned about the inappropriateness of mediation where it would “pose a risk to a family member, for example, in cases involving domestic abuse.”⁶³ Neither the law, nor judicial practices, should recommend, refer to, or mandate mediation (or joint marital counseling) in cases where there is a history of domestic violence.

Mediation, to work successfully, should occur only when both parties have equivalent bargaining power. The domestic violence relationship is inherently unbalanced as to power, therefore making mediation inappropriate.⁶⁴

Some courts have, astonishingly, permitted fathers of children to be given custody in instances

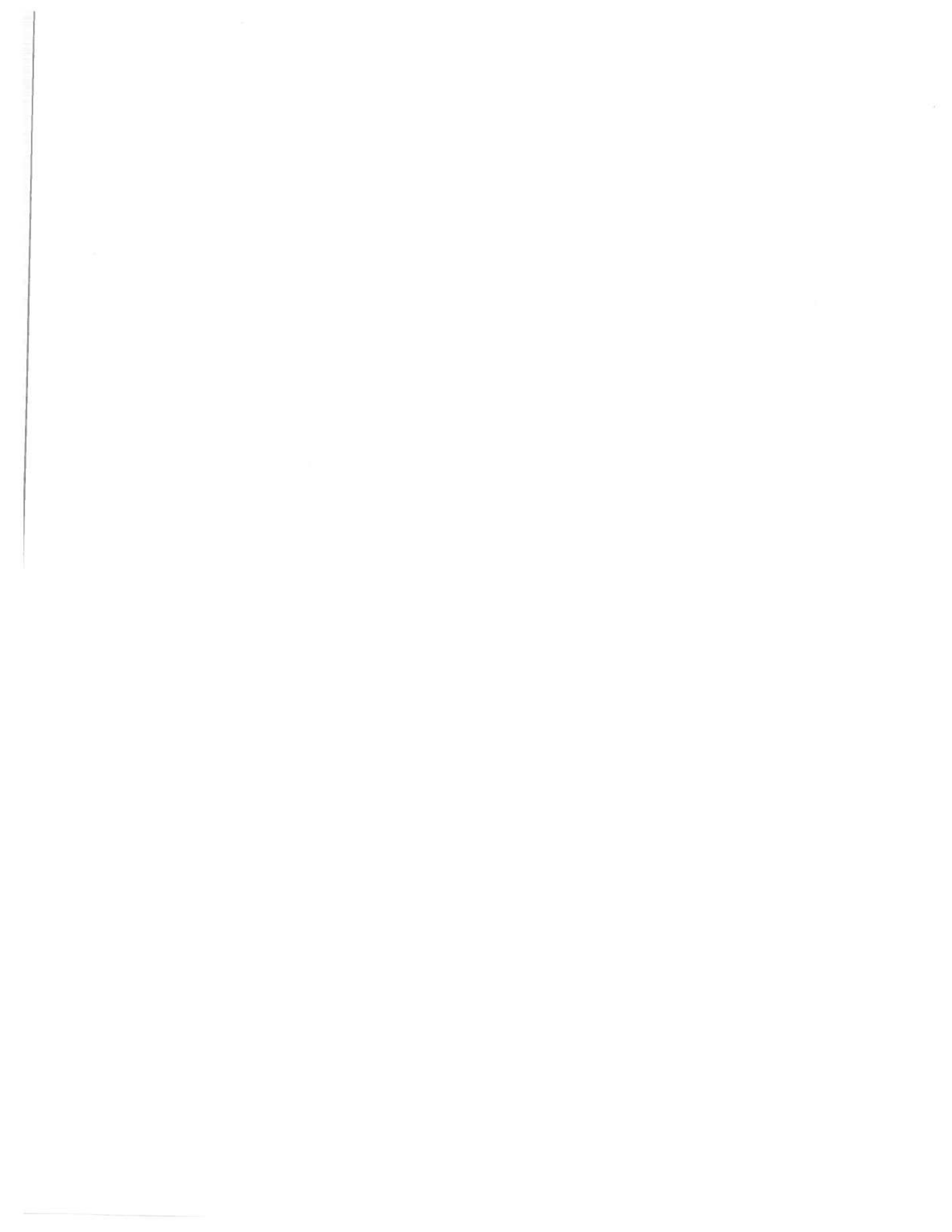
where the father had actually murdered the child’s mother.⁶⁵ When a parent kills the other parent of their child(ren), the law should create a rebuttable presumption against custody or visitation with that parent.

Criteria under which the surviving parent may effectively overcome the presumption might reasonably include that the parent had long been a victim of domestic violence, stalking, or terroristic threats from the deceased, or that the surviving parent had acted in self-defense. Further, state laws on termination of parental rights (many of which do not specifically address domestic violence-related deaths at all) should include this rebuttable presumption and the criteria for overcoming it.

RECOMMENDATION:

State legislatures should amend custody and visitation codes, creating custodial protections for abused parents and their children. These might include presumptions that custody not be awarded, in whole or in part, to a parent with a history of inflicting domestic violence, that visitation be awarded to such parent only if the safety and well-being of the abused parent and children can be protected, and that all awards of visitation incorporate explicit protections for the child and the abused parent.

State laws should direct the establishment of appropriate supervised visitation programs. Criminal custodial interference statutes should be amended to include flight from domestic violence as an affirmative defense.



Part VI

Explore the Child Abuse Nexus

I get really mad
when my dad
hits my mom
I yell at him
and I say do
not touch
my mom



Responsibly Address the Connections Between Domestic Violence and Child Abuse/Neglect

...one victim of domestic violence “was repeatedly severely injured, fled, and was hunted down by her abuser, only to find herself charged with parental neglect for placing her children at harm from the batterer who stalked her and fired shots into the home.”⁶⁶

The experiences of attorneys handling child welfare cases suggest that many battered women face punitive responses, including loss of custody, from child protective service (CPS) agencies and the courts, when these institutions and their personnel are apprised of only *a part* of the family’s problems. Indeed, concerns for their children led almost one-third of the women, in one study, to remain with their abusive partners. Women stayed in an abusive home, despite the violence, in order to ensure necessary financial support for their children or because of threats by their violent partners to harm the children or launch lengthy custody battles if they left.⁶⁷

In many child abuse/neglect cases, only mothers and children appear. Fathers and male partners are frequently absent from these proceedings, and their responsibilities ignored. Unwarranted litigation may be based on conclusions that a parent neglected her children by not doing enough to protect them from violence in the home, or that fleeing with her children from an abuser was irresponsible.

Parents who are victims of domestic violence too often face a terrible dilemma. If a mother with no financial resources flees the home of her abuser, she may have no choice but to find shelter in a setting that is not conducive to the health and welfare of her children, thus facing child protective intervention. However, if she recognizes her inadequate shelter choices and financial resources, and tries to cope with the violence while remaining in the home with an abuser, child protective services may charge her with “failure to protect” her children and forcibly place them in foster care.

Child protective service agency personnel, attorneys, criminal prosecutors, and judges are urged to exercise care so that their interventions do not become unintentional bludgeons used *against* children and their battered parents. These responses should not pit battered parents and children against each other or define “reunification” in a manner that forces battered parents to return to their abusers, rather than recognize that children may be safely reunified into a family unit that includes battered parents but *excludes* the abusers.

Child protective workers should always carefully inquire about the mother's *own* safety when investigating child abuse or neglect. Courts and agencies that deal with child protection cases should have access to supportive social services, shelters, counseling, and other resources that will *truly aid* adult victims of domestic violence and their children in creating a safety plan—rather than labelling and punishing them for having lived in such an environment.

Courts and child welfare agencies have an affirmative duty, *before* removal as well as in *reunification* decisions, to promote the safety of the victim-parent (typically the mother) and her children. Children should not be forced to return to harmful environments. The “reasonable efforts” to reunify families, which child welfare agencies are required to make under federal law,⁶⁸ should include efforts to secure the return of the child to a *violence-free* family.

Action by courts or child welfare agencies to reunify children who have been removed from their families pursuant to petitions alleging child abuse or other family violence should include provisions to promote and provide for the safety of the domestic violence victim-parent and victim-children from the abuser/perpetrator parent or partner. All risk assessment instruments or protocols used in the reunification decision-making process should include an appraisal both of the violent histories of all adults in the home and of the protective capacity and safety needs of each parent.

One vital legal reform is to assure that courts with jurisdiction over child abuse/neglect matters, as well as over delinquency and status offender cases (whether or not these are Unified Family Courts), have the statutory authority to issue (and enforce) protection orders with all appropriate remedies, including prohibiting the perpetrators of domestic violence from having contact with the adult and child victims of such violence. Court orders must be *directed to the abuser* rather than requiring the victim to control her abuser's behavior, as too often is the case. Such authority should include the ability to order abusers to vacate the family home and, where necessary, enjoin them from approaching, harassing, or intimidating the victims of their abuse and their children. Victims of domestic violence and their children should not have to be made *homeless* in order to have a safe haven for themselves.

When a CPS investigation determines that a parent is the victim of domestic violence, laws and child protective service agency policies should provide that services (e.g., housing alternatives and financial support, including public assistance) be made available to the victimized parent. Such laws and policies should not require that these services be contingent upon a finding that a parent is at fault or has failed to protect their child.⁶⁹ Laws should also be carefully crafted to provide for an affirmative defense to a civil or criminal charge of parental failure to protect a child from abuse. That defense should address situations where accused parents had a reasonable apprehension that acting to stop or prevent the child maltreatment would result in substantial bodily harm, to themselves or to their children.⁷⁰

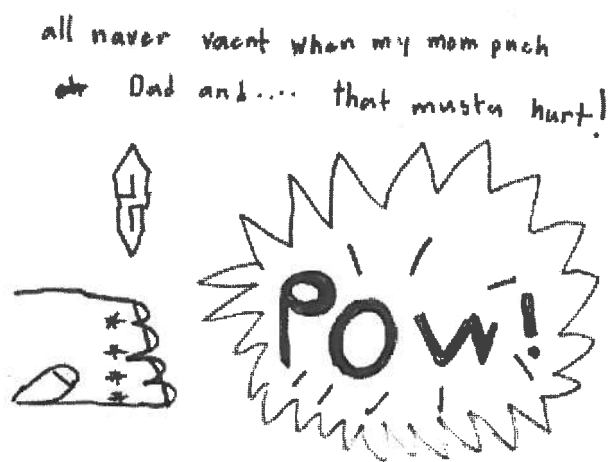
Children in homes plagued by domestic violence may themselves be abused within those homes at a rate much higher than the national average for child abuse generally. Although estimates of the overlap between households with both domestic violence and child abuse range from 40 to 60%,⁷¹ caution should be exercised in assessing the nexus between domestic violence and child maltreatment, because at present only preliminary empirical evidence about the interrelationship between these two problems exists. More research is needed concerning such linkages.

Specialized education for family law attorneys, guardians *ad litem* and court-appointed counsel for children, mediators, criminal prosecutors, child protective service personnel, and the judiciary, and carefully developed agency policies and protocols, are needed that thoughtfully address the relationship between domestic violence and child abuse and neglect. Research can help increase understanding of how domestic violence and child abuse are linked and how, if at all, they interact to create *greater* dangers to children. Research can track case outcomes and indicate which policies promote greater safety.

All child protective service agencies should develop or adopt written protocols for assessing whether abuse of adult household members has occurred or is still occurring. This inquiry should include relevant criminal records and orders of protection. When this inquiry determines imminent danger of domestic violence, the agency itself should seek removal of the alleged perpetrator.⁷²

Part VII

Special Groups: Immigrant Women and Children



Address the Special Needs of Immigrant Women and Their Children Who Are Victims of Domestic Violence

The legal system should reflect the understanding that several special populations are particularly vulnerable to domestic violence. In addition to the immigrant women discussed in detail below, such groups include spouses of military personnel, women with disabilities, parents with mental health problems, and substance abusers.⁷³ Each group requires particularized safety planning, services, and support.

As society has become more open about the problem of domestic violence, greater numbers of immigrant, refugee and non-English speaking domestic violence victims and their children learn about relief offered by the courts—from shelters, social service providers, employers, clergy, police, school counselors and social workers, including bilingual, multi-cultural programs.

Immigrant battered victims⁷⁴ and their children face unique obstacles to escaping violence. Immigration status exacerbates the level of violence in abusive relationships when batterers use *the threat of deportation and control of information about legal status and the legal system* to lock their spouses and children in violent relationships. Offering battered immigrant parents and their children a way out of violent homes requires that attorneys, judges, police, child protective service workers and advocates develop an understanding of immigrant parents' life experience, so that they may craft legal relief that will be effective in stopping violence while being respectful of their cultural experiences.⁷⁵

The reluctance of many immigrants and refugees to turn to the legal system for help grows out of experience with the legal systems in their home countries. Many come from nations with a civil law, rather than common law, based legal system, where oral testimony has little value as evidence. In countries where the judiciary is an arm of a repressive government, persons who prevail in court are persons with the most money and the strongest connection to the government. In many such legal systems, a man's word is inherently more credible than a woman's. Against this background, immigrant domestic violence victims may have difficulty believing the legal system can help stop the violence against them and their children.⁷⁶

Education about domestic violence should be accessible to persons of all racial, ethnic or language minority communities. Training efforts aimed at professionals who come in contact with battered parents and their children (e.g., lawyers, judges, police,

school personnel) should include a multi-cultural component focusing on culturally appropriate responses to family violence for all sizable minority, and language minority, populations in the community served by those professionals. Training should develop an understanding of immigrant expectations about the legal system, as well as the impediments and fears that they face.

The most significant barrier faced by non-English speaking parents and children when they seek help from the legal system is an inability to communicate effectively. Reliance on unskilled interpreters, friends, and family members can be both ineffective and dangerous. Thus, certified court interpreters should be available to assist non-English speaking litigants and their children throughout the judicial process.⁷⁷ In addition, greater numbers of bilingual and bi-cultural persons should be hired to work as court clerks, police, and shelter providers.

Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts. Experts who practice in the field inform us that these threats can be just as effective against victims who have all appropriate legal documents to remain in

the United States, because they may not know their rights. When the judicial system condones these tactics, children suffer. Victims of domestic violence who cannot receive relief from the criminal justice system, or who risk losing custody, return to their batterers. To remove the threat of deportation as an impediment to criminal prosecution of batterers, police should be encouraged to fully investigate domestic violence cases.

As recommended by judicial and domestic violence experts, prosecutors should adopt policies that allow them to prosecute perpetrators without having to rely on the testimony of domestic violence victims.⁷⁸ This approach has been found to be particularly important in cases involving immigrant victims.

In addition, parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings. This change will ensure that children of immigrant domestic violence victims will benefit from reforms in the laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.

What Attorneys And The Organized Bar Should Do

The ABA should establish a multidisciplinary task force or commission on domestic violence, including representatives from appropriate Association entities, members of other professional organizations, and advocates from within the domestic violence victim support community.

The ABA should work with the American Medical Association, American Academy of Pediatrics, the Child Welfare League of America, the National Association of Social Workers, and other organizations (and, state bars join with local counterparts of these groups) to enhance multidisciplinary, coordinated approaches to domestic violence and its consequences for children.

The ABA should encourage more empirical, qualitative research about the impact of domestic violence on children and which intervention strategies, including those that are court-based, are most successful in helping mitigate the effect of that violence. ABA entities should actively support, and where appropriate help in the implementation of, such research.

The organized bar should use the document *Family Violence: A Model State Code*, published by the National Council of Juvenile and Family Court Judges in 1994, as well as this report, as a framework for examining existing domestic violence-related laws, attorney practices, court procedures, law enforcement protocols, and prevention and treatment resources. Such state-by-state study should be followed by development of state-specific plans of action, and both the study and the plan should reflect collaboration with local and statewide domestic violence programs.

The organized bar should encourage and participate in family violence/domestic violence training/knowledge for court-appointed guardians ad litem, court-appointed lawyers, domestic relations attorneys generally, mediators, and expert witnesses.

The organized bar should assure that the subject of domestic violence, and in particular the impact of domestic violence on children, is given adequate attention. Special committees on this topic should be formed, or existing committees should be encouraged to make this issue a subject of priority attention, as should ABA and state/local bar publications.

The organized bar should encourage, and support, the formation of community-based supervised visitation centers with a range of supervision and security.

The organized bar should help get the topic of domestic violence and its effects on children into law school curricula, especially in family law, children's law, and criminal law courses.

The organized bar should include multi-cultural training in their continuing legal education programs and make efforts to identify and establish strong working relationships with organizations in the community that serve immigrant parents and their children. Recruitment of volunteer attorneys to participate in panels offering assistance to domestic violence victims and their children should include the identification of bilingual attorneys.

The organized bar should encourage formation of, and those judges and attorneys knowledgeable in domestic violence should be encouraged to participate in, community "family violence councils" or similar bodies.

ENDNOTES

1. Stephanie B. Goldberg and Henry J. Reske, *Talking with Attorney General Janet Reno*, 79 ABA Journal 48 (June 1993).
2. Michelle Ingrassia and Melinda Beck, *Patterns of Abuse*, Newsweek, July 3, 1994 at 26; Jill Smolowe, *When Violence Hits Home*, Time, July 4, 1994 at 18.
3. The American Bar Association, since the late 1970's, has supported the work of the ABA Center on Children and the Law and the ABA Commission on Legal Problems of the Elderly which have, respectively, worked on a variety of issues related to child abuse and elder abuse and have published voluminous materials.

Several ABA entities have committees addressing domestic violence education and policy issues. Resolutions on domestic violence were approved by the ABA House of Delegates as far back as the Association's 1978 Midyear and Annual Meetings. See, at Appendix B, the text of these and extracts from other ABA policy resolutions related to domestic violence.

4. This report was commissioned in March, 1994 by ABA President William Ide. Mr. Ide participated in a *National Conference on Family Violence: Health and Justice*, sponsored by the American Medical Association. The ABA was one of the cosponsors of that conference. The conference heightened the consciousness of Mr. Ide and his legal colleagues on domestic violence, and his decision—made at the conference—was to have the ABA more involved in educating the bar and otherwise addressing this issue.
5. A national survey of domestic violence disclosed that nearly 40% of domestic violence incidents against wives involved serious violence—punching with a fist, kicking, biting, beating, or an attack with guns or knives. Murray A. Straus and Richard Gelles, *How Violent Are American Families? Estimates From the National Family Violence Resurvey and Other Studies*, in *Family Abuse and Its Consequences* 17 (Gerald Hotaling, et al., eds., 1988).

When the term "serious" is used in this report in the context of domestic violence, we mean behavior beyond one or two instances of assaultive behavior throughout the course of a relationship (such as a shove, a push, or a slap not resulting in a puncture or bruise, or not requiring medical attention).

"Domestic violence" is *not* meant to describe those actions that a victim of assaultive behavior may take to protect him or herself from abuse (i.e., when there is evidence of self-defense).

6. Lenore Walker, *Terrifying Love: Why Battered Women Kill and How Society Responds* 101 (1989)
7. Of 88 state and local bar foundations responding to a 1993 ABA survey, 45% indicated they helped fund some form of legal services program for victims of domestic violence, while 15% supported such activities that were under the direct auspices of a state or local bar association. 1993 Survey of Bar Founda-

tions, American Bar Association, Division of Bar Services (1994).

A list of bar-supported or sponsored domestic violence programs is included as Appendix A.

8. See, e.g., Conrad N. Hilton Foundation, Model Code Project of the Family Violence Project, National Council of Juvenile and Family Court Judges, Model Code on Domestic and Family Violence [hereinafter Model Code] (1994); Bureau of Justice Assistance, U.S. Department of Justice, *Family Violence: Interventions for the Justice System (Program Brief)* (1993).
9. P.A. Klaus, and M.R. Rand, U.S. Department of Justice, *Family Violence: Bureau of Justice Statistics Special Report* (April 1984).
10. Antonia C. Novello, *From the Surgeon General, U.S. Public Health Service* 23 JAMA 267, at 3132 (1992).
11. Bonnie E. Carlson, *Children's Observations of Interpersonal Violence*, in *Battered Women and Their Families* 160 (Albert R. Roberts, 1984). Murray A. Straus, *Children As Witnesses to Marital Violence: A Risk Factor for Life Long Problems Among a Nationally Representative Sample of American Men and Women* (Paper presented at the Ross Roundtable on "Children and Violence," Washington, DC, September 1991).
12. Lenore Walker, *The Battered Woman Syndrome* 59 (1984).
13. Children who do not directly witness domestic violence also are strongly affected by it. Most of the children affected by domestic violence, even at very young ages, are aware of the violence—whether they observe it first-hand or not. To cite a conclusion of the State Justice Institute funded 1993 national conference on domestic violence: "children are *not* unaware of violence just because they don't see it: toddlers are *not* too young to understand what is happening." *Courts and Communities: Confronting Violence in the Family* 27 [Hereinafter *Conference Highlights*] (1993). One study even found that some perpetrators of domestic violence deliberately arrange to have their children witness the violence. R. Emerson Dobash and Russell Dobash, *Violence Against Wives: A Case Against the Patriarchy* 151 (1979).

For a comprehensive review of research and literature about the impact on children of domestic violence, see, Mildred D. Pagelow, *Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements*, 4 *Mediation Quarterly* 7, at 347-363 (1990).

A recent study by the Johns Hopkins Children's Center in Baltimore found that depression, hopelessness, and other forms of emotional distress in teenagers was strongly associated with exposure to domestic violence in the home. Don Colburn, *Teen Depression Tied to Violence at Home*, Washington Post, Health Section, April 5, 1994, at 5.

14. Adele Harrell, National Council of Juvenile and Family Court Judges, *A Guide to Research on Family Violence* 28 (1993).
15. Lawton Chiles, Report of the National Commission to Prevent Infant Mortality, *Death Before Life: The Tragedy of Infant Mortality* 16 (1988).
16. Hearings on Women and Violence, Committee on the Judiciary, U.S. Senate, *Ten Facts About Violence Against Women*, at 78 (August 29 and December 11, 1990).
17. Model Code, *supra* note 8, at v.
18. Mental health professionals express concern that children from homes with domestic violence have a tendency to identify with the aggressor and lose respect for the victim. Laura Crites and Donna Coker, *What Therapists See That Judges May Miss: A Unique Guide to Custody Decisions When Spouse Abuse is Charged*, Judges J. (Spring 1988).

Moreover, one of the major national studies of domestic violence found that men who had witnessed their fathers hit their mothers were three times more likely to hit their wives than those who had not seen such abuse in the home while growing up. Murray A. Straus et al., *Behind Closed Doors: Violence in the American Family*, [Hereinafter *Behind Closed Doors*] (1980). Another study found only one historical variable—witnessing domestic violence—to be strongly associated with men's later use of violence against female partners. Gerald Hotaling and David Sugarman, *An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge*, 2 *Violence and Victims* 1, at 11 (1986).

In general, domestic violence witnessed at home by children has been found to often be repeated later in life. Ellen C. Herrenkohl et al., *Perspectives on the Intergenerational Transmission of Abuse*, in *The Dark Side of Families: Current Family Violence Research* 305 (David Finkelhor et al. eds., 1983); Alan Rosenbaum, and K. Daniel O'Leary, *Children: The Unintended Victims of Marital Violence*, 51 *Am. J. of Orthopsychiatry* 692, 693-694 (1982).

Domestic violence has been found in 20 to 40 percent of the families of chronically violent adolescents. Jeffrey Fagan and Sandra Wexler, *Family Origins of Violent Delinquents*, 25 *Criminology* 643, 651 (1987). Seventy-five percent of boys who witness domestic violence have been found to have demonstrable behavior problems. Peter G. Jaffe et al., *Promoting Changes in Attitudes and Understanding of Conflict Resolution Among Child Witnesses of Family Violence*, 18 *Canadian J. of Behavioral Science Review* 356-366 (1987).

19. In 1982, the U.S. Civil Rights Commission, in its report *The Federal Response to Domestic Violence*, concluded that children in spouse abuse situations suffer at least as much as other family members. The 1984 report of the U.S. Attorney General's Task Force on Family Violence stated that children who "live in the homes where parents are battered carry

the terrible lessons of violence with them into adulthood."

In 1990 a concurrent resolution (H. Res. 172) was unanimously passed by both the U.S. House of Representatives and U.S. Senate. It expressed the sense of the Congress of inadequate recognition of the effects on children who witness domestic violence and the emotional and physical harm to children who live in violent households. It suggested that "for the purposes of determining child custody, credible evidence of physical abuse of one's spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse."

20. *See, e.g.*, N.D. Cent. Code § 14-05-22.3 (1993); *In re Jon M.*, 179 Cal. App. 3d 156 (1986).
21. Older children have been found to be frequently assaulted when they intervene to defend or protect their battered parent. Elaine Hibberman and Kit Munson, *Sixty Battered Women*, 2 *Victimology: An International Journal* 462 (1977-78). Another study found that 63 percent of all American males between the ages of 11 and 20 who are incarcerated for homicide were convicted of an offense involving the killing of their mother's batterer. H. Ackerman, Hazelden Foundation, *The War Against Women: Overcoming Female Abuse* 2 (1985).
22. An example of such a unit is the Family Violence and Sexual Assault Unit of the Philadelphia District Attorney's Office.
23. Creation in all states of Unified Family Courts was a key recommendation in the ABA report, *America's Children At Risk: A National Agenda for Legal Action*, [hereinafter, *America's Children*] 54 (American Bar Association Presidential Working Group on the Unmet Legal Needs of Children and Their Families 1993).
24. The Santa Clara County, CA court has a model protocol tailored specifically to domestic violence intervention.
25. Washoe County, NV provides a "court school" educational program for victims of domestic violence that offers assistance in preparing for court hearings, identifying necessary remedies, and learning about court order enforcement procedures.
26. *See*, Judge Leonard P. Edwards, *Reducing Family Violence: The Role of the Family Violence Council*, 3 *Juv. & Fam. Ct. J.* 43, at 1 (1992).
27. Peter Jaffe et al., *Children of Battered Women: Issues in Child Development and Intervention Planning* (1990).
28. *See*, Judge Cindy S. Lederman, *Dade County Domestic Violence Court: A Responsible Approach to the Treatment of Family Violence*, in *Defending Battered Women in Criminal Cases*, Section L (American Bar Association, Section of Criminal Justice and Division for Professional Education 1993).
29. *Aloha Nui Na Kamalil (With Great Love for the Children)*, curricula available from the Family Peace

- Center, 1370 Kapiolani Boulevard, Suite 201, Honolulu, HI 96814.
30. Connecticut Public Act No. 93-280 §1 (1994).
 31. La. Rev. Stat. Ann. § 9.367 (West Supp. 1984).
 32. See, e.g., Mithra Merryman, *A Survey of Domestic Violence Programs in Legal Education*, 28 New Eng. L. Rev. 383 (1993).
 33. A Louisville, Kentucky high school developed a course titled "The Prevention of Family Violence" that has been adopted by public school systems in Illinois, Arkansas, and Ohio. Note, *Developments in the Law: Legal Responses to Domestic Violence*, 106 Harv. L. Rev. 1501, 1550 (1993). Legislation in a number of states addresses the development of domestic violence curricula for school children. See, e.g., Alaska Stat. § 18.66.050(3) (1991); Neb. Rev. Stat. § 42-914 (1988); Iowa Code Ann. § 279.50 (West Supp. 1994).
 34. *My Family and Me: Violence Free* (1989, updated annually) (available from the Minnesota Coalition for Battered Women, 1619 Dayton Avenue, Suite 303, St. Paul, MN 55104).
 35. This documentary, entitled *Children of the Lie*, was narrated by Martin Sheen and produced by the Pennsylvania Coalition Against Domestic Violence. The Pennsylvania Bar persuaded all of the PBS affiliates in the State to show the documentary, and the Bar and domestic violence programs staffed hotlines for viewers to call to receive information and referrals.
 36. Finn, P. and Colson, S., National Institute of Justice, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement* (1990), at 19.
 37. We commend domestic violence-focused programs such as the Atlanta Volunteer Lawyers Foundation, which trains and certifies lay advocates in assisting victims of domestic violence in obtaining protective orders, the Hawaii Women's Bar/Hawaii Bar Association, which supports a domestic violence clearinghouse and hotline, and a number of legal aid programs that have developed *pro bono* projects (such as Greater Boston Legal Services leadership in working with area law firms to take on domestic violence cases).
For an example of model *pro se* representation materials in the marital dissolution area generally, see, e.g., *Responding to the Needs of the Self-Represented Divorce Litigant*, (American Bar Association Standing Committee on the Delivery of Legal Services, 1994). We note that this publication does not specifically address the needs of the divorcing parent who has been the victim of domestic violence. However, this book's appendices mention that several Washington State counties have "Protection Order Advocacy Programs" to assist *pro se* parties in obtaining protective orders in domestic violence cases.
 38. An example of a program offering *pro bono* lawyer assistance to abused mothers and their children is the Family Violence Project of the San Diego Children's Hospital's Center for Child Protection.
 39. Sarah M. Buel, *The Dynamics of Domestic Violence Cases in the United States: An Overview, in Defending Battered Women in Criminal Cases* 19 *supra* note 28.
 40. La. Rev. Stat. Ann. § 9.367 (West Supp. 1994).
 41. Twenty-three states include provisions in protection orders for reimbursement or assignment of attorney fee or costs, see, Barbara J. Hart, National Council of Juvenile and Family Court Judges, *State Codes on Domestic Violence* 16 (1992).
 42. Norman B. Rushforth et al., *Accidental Firearm Fatalities in a Metropolitan County (1958-1973)*, 100 Am. J. Epidemiology 499, 504 (1974).
 43. Arthur R. Kellermann et al., *Gun Ownership As a Risk Factor For Homicide in The Home*, 329 New Eng. J. of Med. 15, at 1084 (1993).
 44. See, e.g., Barbara J. Hart, *Gentle Jeopardy: The Further Endangerment of Battered Women and Children in Custody Mediation*, 4 Mediation Quarterly 7, at 324. The author cites several studies concerning escalation of violence following physical separation of the partners. One study revealed that "up to three-fourths of domestic assaults reported to law enforcement agencies were inflicted after separation of the couples." Another study showed that "73 percent of the battered women seeking emergency medical services sustained injuries after leaving the batterer." Additionally, in a study conducted in two metropolitan cities, researchers found that almost 25 percent of women killed by their male partners were separated or divorced from the men who killed them.
 45. A strong argument can be made for the seizure of other deadly weapons in the home, as well as firearms, in domestic violence matters. However, in our firearms-focused position we are influenced by research showing that domestic violence where a firearm is used is 12 times more likely to result in a death than domestic violence involving all other types of weapons. L. E. Saltzman, et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 22 JAMA 267, 3043-3047 (1992).
 46. Anonymous domestic violence victim, *quoted in* Susan Schechter and Lisa K. Mihaly, Massachusetts Coalition of Battered Women Service Groups, *Ending Violence Against Women and Children in Massachusetts Families: Critical Steps for the Next Five Years* 13 (1992).
 47. A study of court-ordered joint custody arrangements found that "...frequent contact with two angry, feuding parents is detrimental for children," that these children "seem to fare much worse than children raised in traditional sole custody families also torn in bitter fighting....," and that such children "look more depressed, more withdrawn or aggressive, and more disturbed." Judith S. Wallerstein and Sandra Blakeslee, *Second Chances: Men, Women and Children A Decade After Divorce* 272 (1989).
We would support rebutting the presumption of parental unfitness through appropriate evidence that the batterer has successfully completed a treatment pro-

- gram addressing the violent behavior as well as any alcohol or drug abuse that may have been a factor in the violent behavior, and that they have not re-engaged in abusive behavior for a significant period of time. *See, e.g.*, the "Post-Separation Family Violence Relief Act," La. Rev. Stat. Ann. § 9.364A (West Supp. 1994).
- We note that very few programs for men who batter specifically address the education of batterers on the impact of domestic violence on their children or provide training for them in non-violent parenting. David J. Matthews, *Parenting Groups for Men Who Batter, in Ending the Cycle of Violence: Community Responses to Children of Battered Women* (Einat Peled, Peter G. Jaffe, and Jeffrey L. Edleson, eds., forthcoming 1994).
48. Crites & Coker, *supra* note 18, at 12.
 49. Joan Zorza, *How Abused Women Can Use the Law to Help Protect Their Children, in Ending The Cycle Of Violence: Community Responses To Children Of Battered Women* (Einat Peled, Peter G. Jaffe, and Jeffrey L. Edleson, eds., forthcoming, 1994).
 50. Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 Vand. L. Rev. 1041, 1062 (1991).
 51. *Id.* at 1064-65.
 52. *Id.* at 1070-74.
 53. Judge B. Gaddis, *Domestic Abuse Protective Order Concepts*, at 708 (1992).
 54. Up to 75 percent of reported domestic assaults may take place after the separation of the parents, and the risk of additional, and more extreme, violence (as well as abduction of children by the abuser) is great during post-separation contacts (such as the transfer of children for visitation). *See*, Barbara J. Hart, *State Codes on Domestic Violence: Analysis, Commentary and Recommendations*, 43 Juv. & Fam. Ct. J. 34 (1992).
 55. Model Code, *supra* note 8, Sec. 405.
 56. Patricia M. Hoff, National Center for Missing and Exploited Children, *Family Abduction: How to Prevent an Abduction and What to Do If Your Child is Abducted* (January 1994).
 57. An example of such a program is the Duluth (MN) Visitation Center, which provides children with a safe and nurturing environment for visiting with a non-custodial parent who has a history of violence, gives custodial parents who have been abused a safe way of working out visitation and the exchange of their children, and offers both parents classes in which they can learn ways to help their children heal from the effects of domestic violence.
 58. We note that a national "Supervised Visitation Network" has been formed to aid in securing safe, secure environments for adult-child contact, including but not limited to provision of safety for adults and children where there has been a history of domestic violence. We urge judges, court personnel, and attorneys to familiarize themselves with this Network and its resources. The Supervised Visitation Network headquarters is located at 222 South Downey Street, Rm. 260, Indianapolis, IN 46219.
 59. *See, e.g.*, Fla. Stat. Ann. §§ 787.03(4)(a) and (6) (West 1992); Cal. Penal Code § 277 (Deering 1985) (the fleeing victim must contact the district attorney's office to claim the defense).
 60. It has been estimated that in more than half of the kidnappings of children by parents in this country, the abductions occur in the context of domestic violence. Geoffrey Grief and Rebecca Hegar, *When Parents Kidnap: The Families Behind the Headlines* 272 (1992).
 61. Linda K. Girdner and Patricia M. Hoff, eds., Office of Juvenile Justice and Delinquency Prevention, *Obstacles to the Recovery and Return of Parentally Abducted Children 3-46 - 3-54* (November 1993).
 62. Recent congressional recognition of the need to address domestic violence in child custody litigation resulted in an amendment to the federal State Justice Institute Act which authorizes the State Justice Institute to fund "research regarding State judicial decisions relating to child custody litigation involving domestic violence" and to develop "training curricula to assist State courts to develop an understanding of, and appropriate responses to, child custody litigation involving domestic violence." Pub. L. 102-528, Sec. 2 [adding 42 U.S.C. § 10705(c)(13)]. Such research and curricula are vitally needed, and the products resulting therefrom should have the widest possible dissemination.
- When President George Bush signed this law on November 2, 1992, his statement included the following observations:
- ...Domestic violence is a serious problem in our Nation. Each year more than 3 million women are the victims of domestic violence. Much of this violence is witnessed by children, often with devastating and far-reaching emotional and psychological consequences.
- ...But spousal abuse does not always end with divorce. In fact, the abuse can become worse, especially in connection with child custody litigation.
- ...This legislation will help send a strong message about our commitment, both to combatting domestic violence and to ensuring that the children of battered women are raised in safe, loving, and nonabusive environments.
63. *America's Children, supra* note 23, at 55.
 64. *See*, Lisa G. Lerman, National Woman Abuse Prevention Project, *Domestic Abuse and Mediation: Guidelines for Mediators and Policymakers* (1989).
 65. *Civil Images of Battered Women, supra* note 50, at 1079, 1080.
 66. *Conference Highlights, supra* note 13, at 28 (quoting attorney Barbara Hart).
 67. N. Zoe Hilton, *Battered Women's Concerns About Their Children Witnessing Wife Assault*, 7 J. of Interpersonal Violence 77 (1992).
 68. 42 U.S.C. § 671(a)(15).
 69. Model Code, *supra* note 8, Sec. 409(2)(b).

70. *See, e.g.*, Minn. Stat. Ann. § 609.378 (West 1987).
71. Terrifying Love, *supra* note 6. Nationally, 75 percent of battered women have stated that their children are also battered. Behind Closed Doors, *supra* note 18; Lenore E. Walker et al., *Beyond the Juror's Ken: Battered Women*, 7 Vt. L. Rev. 1 (Spring 1982).
72. *Model Code*, *supra* note 8, Sec. 409.
73. The legal issues related to these specific vulnerable groups should be studied by the new ABA group on domestic violence that is proposed earlier in this report.
74. For the purpose of this section, the term "immigrant battered victims" includes both immigrants and refugees with either documented or undocumented status.
75. Catherine F. Klein and Leslye E. Orloff, *Legal Protection for Battered Women*, 21 Hofstra L. Rev. 801 (1993).
76. United States Commission on Civil Rights, *Racial and Ethnic Tension in American Communities: Poverty, Inequality and Discrimination* 75 (1993). Based on testimony presented by Leslye Orloff of Ayuda in Washington, D.C.
77. D.C. Code §§ 31-2701- 2712 (1993).
78. Family Violence: Improving Court Practice, National Council of Juvenile and Family Court Judges (1990), at 36.

Appendix A

Bar-Supported or Sponsored Domestic Violence Programs

(Note: What follows is a listing of programs compiled in early July 1994. It is not meant to serve as a comprehensive directory of all bar-affiliated or funded projects throughout the country)

Following the list of programs is a listing of state domestic violence coalition contacts. Attorneys or bar associations interested in providing legal support to victims of domestic violence and their children may wish to contact the relevant coalition in their state

Organization	Contact	Profile of Services
Brooklyn Bar Association Volunteer Lawyers Project- Battered Women's Project	Florence Roberts Coordinator 123 Remsen St. Brooklyn, NY 11201 (718) 624-3894	The Brooklyn Bar Association's Battered Women's Project provides a legal hotline staffed by law students who receive approximately forty calls per week. Hotline volunteers refer callers to appropriate services. In addition, volunteers accompany clients to court for hearings and/or to speak on their behalf.
Chicago Bar Foundation	Betsy Densmore 321 S. Plymouth Ct. 3rd Floor Chicago, IL 60604 (312) 294-9611	The Chicago Bar Foundation supports seven programs for domestic violence victims. The Foundation provides direct funding, makes referrals to pro bono attorneys, and recruits volunteers to staff domestic violence programs. The Foundation also facilitates gatherings of domestic violence providers to improve the existing system's response.
Cooperative Restraining Order Clinic	Karen Elcaness 49 Powell St. San Francisco, CA 94102 (415) 627-0243	The clinic's primary purpose is to assist women seeking restraining orders. The clinic works in cooperation with a number of domestic violence organizations to put victims in touch with other care providers. The Bar Association of San Francisco provides outreach and training for clinic volunteers; the San Francisco Bar Foundation provides direct IOLTA (Interest On Lawyers Trust Accounts) funding to the clinic. The clinic counsels about 1,200 victims per year.
Dallas Assoc. of Young Lawyers— Dallas Lawyers Against Domestic Violence	Bonnie Barksdale Co-chair DLADV PO Box 50296 Dallas, TX 75250-0296 (214) 855-3000 or contact Elaine Hathcock (214) 855-3379	With funding from the Dallas Bar Foundation, the Dallas Lawyers Against Domestic Violence program works with the the Dallas Bar Pro Bono Project to provide attorneys for victims of domestic violence. The project offers free CLE courses on domestic violence for attorneys. In addition, DLADV holds "Shelter Nights" three times a month at area shelters, where a police officer and an attorney answer any questions women might have concerning domestic violence. DLADV is also very active in raising community awareness about domestic violence.

The Dove Program	Steve Scudder 112 Pleasant Street Concord, NH 03301 (603) 224-2910	The New Hampshire Bar Association's pro bono department began The Dove Program in response to the growing need for pro bono litigation for victims of domestic violence. The program recruits attorneys statewide who agree to serve on two pro bono domestic violence cases per year. Domestic abuse crisis centers refer victims of abuse to Dove attorneys. The Dove Program provides recruited attorneys and crisis centers with a training video to educate litigators and advocates on domestic violence.
Emergency Domestic Relations Clinic	Meshell Thomas Emergency Domestic Relations Project c/o Citizen's Complaint Center 515 5th St., N.W. Washington, DC 20001	This project receives the bulk of its funding from the District of Columbia Bar Foundation. The program counsels clients on their options, making suggestions for civil and criminal remedies. Their more than fifty active members aid about 3,000 domestic violence clients each year. The project provides training for its prospective volunteers.
Hennepin County Bar Foundation	Jane Schoenike Executive Director 514 Nicolette Mall Suite 350 Minneapolis, MN 55402 (612) 340-0022	The Hennepin County Bar Foundation funds five organizations which assist clients in orders of protection, divorce, and child custody matters. They also fund multi-lingual programs to reach out to domestic violence victims in non-English speaking communities.
Kansas Bar Foundation	Art Thompson Kansas Bar Foundation PO Box 1037 Topeka, KS 66601	The Kansas Bar Foundation has made domestic violence and children a top priority. They grant most of the state's IOLTA funding to Kansas Legal Services, with demands that a majority of the funding be allocated for domestic violence victim services. Kansas Legal Services' twelve offices statewide use the funding to provide pro bono legal representation to women and children in abusive homes.
Idaho Legal Aid Services	Ernesto Sanchez PO Box 913 Boise, ID 83701 (208) 336-8980	Idaho Legal Aid Services uses Idaho Bar Foundation IOLTA funds to retain a part-time attorney at each of their seven offices. ILAS works in conjunction with Idaho Volunteer Lawyers — also funded by the Foundation — to provide a range of family law services for victims of domestic violence. The two programs serve about 1,400 clients each year.
Legal Services of Upper East Tennessee—Legal Services Immediate Action Project	Anita Leger Pro Bono Coordinator 311 W. Walnut St. Johnson City, TN 37604 (615) 928-8311	Legal Services receives IOLTA funding for their Immediate Action Project for Abused Women. Volunteers encourage pro se actions for battered women needing orders of protection. Legal Services has worked with six area shelters, taking in over 200 calls last year; of these, 158 victims used their services.
Los Angeles County Bar Association—Barristers Domestic Violence Project	Patricia Andraeni Director PO Box 55020 Los Angeles, CA 90055 (213) 896-6491	Barristers Domestic Violence Project primarily provides aid in the pro se acquisition of temporary restraining orders. They have locations in two courthouses, one of which — downtown Los Angeles — has the highest volume of domestic violence restraining orders in the country. They maintain a roster of 125-150 volunteer attorneys, supported by several bilingual paralegals.

Loudoun Abused Women's Shelter	Elizabeth Pendzich Loudoun Abused Women's Shelter Legal Services 1 Loudoun Street, SE Leesburg, VA 22075	The Loudoun Shelter provides free representation for abused women and their children. They retain one full-time lawyer in addition to providing referrals to pro bono lawyers. The shelter receives funding from the state Bar Foundation.
Louisiana Bar Foundation	Linda Dodenhoff 601 St. Charles Avenue New Orleans, LA 70130 (504) 561-1046	The Louisiana Bar Foundation funds 11 independent projects throughout the state. Most of these projects assist women filing for protective orders and/or accompany the women to court hearings.
Montgomery County Bar Foundation	Barbara Golden Managing Attorney 27 W. Jefferson St. Rockville, MD 20850 (301) 424-2706	The Montgomery County Bar Foundation handles divorce and custody processes for victims of domestic violence. They hold two legal clinics for victims, Wednesday evenings and the first Tuesday of every month. Attorneys are present at these meetings to answer questions. The group also provides domestic violence education for members of the court.
Nevada Bar Foundation	Lisa Galindo Volunteer Service Coordinator The Committee Against Domestic Violence PO Box 2531 Elco, NV 89803	The Nevada Bar Foundation provides IOLTA funding for the Committee Against Domestic Violence, a group of organizations focused on controlling domestic abuse. The program helps fund the legal needs of low income women, as well as provide educational information to the community about domestic violence and sexual abuse.
New Hampshire Bar Foundation	Lucy Medding Director of the Bar Foundation 112 Pleasant Street Concord, NH 03301 (603) 224-6942	The New Hampshire Bar Foundation uses both IOLTA and undirected funds from contributions and memberships to sponsor various programs for domestic violence. The Foundation aids a coalition made up of advocacy groups and shelters in their efforts to educate the community about domestic abuse. Recent initiatives include a videotape shown in emergency rooms urging victims of domestic violence to get help. The Foundation also funds the coalition's provision of direct legal services to low-income women in violent homes and their children.
Oregon Law Foundation	Rich Cecchetti Oregon Law Foundation P.O. Box 1689 Lake Oswego, OR 97035 (503) 620-0222	The Oregon Law Foundation employs one attorney to provide legal services and representation for victims of domestic violence throughout the state. Service is provided through the central office of the statewide Coalition Against Domestic and Sexual Violence, made up of 31 separate programs serving the various needs of domestic violence victims.
Philadelphia Bar Foundation- Women Against Abuse Legal Center	Joyleen M. Hamilton Philadelphia Bar Foundation 1101 Market St. 11th Floor Philadelphia, PA 19107 (215) 238-6347	The Center provides legal representation, counseling, and information for abuse victims. Clients are able to receive aid with emergency protection orders twenty-four hours a day. The Center receives 12,000 calls and serves 10,000 clients annually.

Pro Bono Advocates- Legal Advocacy for Women	Barbara Kaden Executive Director 165 N. Canal St. Chicago, IL 60606 (312) 906-8010	Pro Bono Advocates receives funding from both the Illinois and Chicago Bar Foundations. The group offers assistance to domestic violence victims through several programs: maintaining a booth at the county courthouse to help women seeking immediate restraining orders; referring clients to attorneys for long-term custody and child support services; and hiring a counselor to provide services for mothers and their children. The group is also very involved in community education on domestic violence.
San Diego Volunteer Lawyer Program—San Diego Domestic Violence Prevention Project	Carl Poirot Executive Director or Kate Yavenditti 1305 7th St. Ste. 100 San Diego, CA 92101 (619) 238-8100	The San Diego Domestic Violence Project provides two restraining order clinics each day at the main Superior Courts as well as three clinics a week at two other court sites. They aid clients in filling out the forms for temporary restraining, custody, and support orders. Their volunteers also accompany victims to court hearings for moral support. Since 1989 the program has served over 30,000 clients.
San Francisco Bar Volunteer Legal Services Program	Tanya Newman Director, San Francisco Bar Association 685 Market St. Suite 700 San Francisco, CA 94105 (415) 764-1600	The San Francisco Bar Volunteer Legal Services Program offers weekly protection order clinics and a crisis hotline. Volunteer attorneys work with clients on a variety of family law issues. The group successfully campaigned to establish a separate mediation process so victims are not intimidated by their abuser during negotiations. Volunteers accompany clients into mediation and/or court.
Tennessee Bar Foundation	Barri Bernstien Executive Director Tennessee Bar Foundation 214 Second Avenue, Suite 104 Nashville, TN 372301 (615) 292-1531	The Tennessee Bar Foundation grants IOLTA funds to six programs for victims of domestic violence. Services provided include free legal representation and consultation, public education efforts, and auxiliary services such as day care for mothers attending court. The Foundation also funds one support program for batterers.
Tarrant County Bar Association—Lawyers Against Domestic Violence	Kathy Taylor Unit Manager 600 E Weatherford Fort Worth, TX 76102 (817) 336-3943	The program holds a monthly “Operation Protection” legal clinic for emergency orders of protection as well as long term family law assistance provided directly through the Tarrant County Bar Association. Free CLE training is provided for volunteer lawyers in exchange for accepting two cases. The course is taught by judges and attorneys experienced in this field.

State Domestic Violence Coalitions

Alaska	Cindy Smith	(907) 586-3650
Alabama	Carol Gundlach	(205) 832-4842
Arkansas	Schatzi Riley	(501) 663-4668
Arizona	Sharon Ersch	(602) 279-2900
California	Donna Garske	(415) 457-2464
Colorado	Jan Mickish	(303) 573-9018
Connecticut	Sylvia Gafford-Alexander	(203) 524-5890
District of Columbia	Donna Edwards	(202) 543-0773
Florida	N/A	(407) 682-3885
Georgia	Suzanna Pogue	(404) 524-3847
Hawaii	Carol C. Lee	(808) 595-3900
Iowa	Laurie Schipper	(515) 281-7284
Idaho	Sue Fellen	(208) 529-4352
Illinois	Vickie Smith	(217) 789-2830
Indiana	Laura Berry	(317) 641-1912
Kansas	Trish Bledsoe	(913) 232-9784
Kentucky	Sherry Currens	(502) 875-4132
Louisiana	Patsy Taylor	(504) 542-4446
Massachusetts	Carolyn Ramsey	(617) 248-0922
Maryland	Susan Mize	(301) 942-0900
Maine	Tracy Cooley	(207) 941-1194
Michigan	Julie Hagstorm	(517) 484-2924
Minnesota	Marsha Frey	(612) 646-6177
Missouri	Colleen Coble	(314) 634-4161
Mississippi	Emily Smith	(601) 981-9146
Montana	Jackie Garcia	(406) 245-7990
North Carolina	Kathy Hodges	(919) 956-9124
North Dakota	Bonnie Palecheck	(701) 255-6240
Nebraska	Sarah O'Shea	(402) 476-6256
New Hampshire	Grace Mattern	(603) 224-8893
New Jersey	Barbara Price	(609) 584-8107
New Mexico	Mary Ann Copas	(505) 296-7876
Nevada	Sue Meuschke	(702) 358-1171
New York	Sherry Frohman	(518) 432-4864
Ohio	Daryl Ann Kross	(216) 651-8484
Oklahoma	Georgie Rasco	(405) 557-1210
Oregon	Judith Armatta	(503) 239-4486
Pennsylvania	Susan Kelly-Dreiss	(717) 545-6400
Rhode Island	Mary Trinity	(401) 723-3051
South Carolina	Lynn Hawkins	(803) 254-3699
South Dakota	Brenda Hill	(605) 225-5122
Tennessee	Kathy England	(615) 386-9406
Texas	Debby Tucker	(512) 794-1133
Utah	Diane Stuart	(801) 538-4100
Virginia	Christie Van Audenhove	(804) 221-0990
Vermont	Judy Rex	(802) 223-1302
Washington	Mary Pontarolo	(206) 352-4029
Wisconsin	Kathleen Krenek	(608) 255-0539
West Virginia	Sue Julian	(304) 765-2250
Wyoming	Rosemary Bratton	(307) 235-2814

APPENDIX B

American Bar Association House of Delegates-Approved Resolutions Related to Domestic Violence

COMBATTING FAMILY VIOLENCE— FEBRUARY 1978

BE IT RESOLVED that the American Bar Association supports federal, state and local efforts to combat the incidence, causes and effects of family violence and supports the implementation of programs to protect the victims of family violence.

SPECIFIC FAMILY VIOLENCE REFORM PROPOSALS—AUGUST 1978

BE IT RESOLVED, that the American Bar Association recommends the following:

1. That shelters or other secure temporary residential facilities, together with counselling and other support services, be established for the victims of domestic violence.
2. That law enforcement officers who respond to domestic violence calls, after ensuring that the victims of domestic assaults and their dependents have been removed to safe places as provided in #1, investigate the incidents, prepare written reports, and, in the event they conclude no criminal charges are appropriate, file written statements of the reasons for the decisions.
3. That prosecutors who decline to file criminal charges in domestic assault cases referred to them by the police, state in writing the reasons for their decision not to prosecute, and provide the complainant with information as to alternative procedures.
4. That specific data related to the frequency, seriousness, and other characteristics of spousal assault, including disposition of complaints and the stated reasons for the particular disposition, as well as data on existing programs designed to respond to such assaults, be collected and analyzed by appropriate government agencies.
5. That the courts, in the determination of pre-trial release, sentencing or imposition or revocation of probation or parole, not treat the relationship between the parties as the primary factor.
6. That the state create a mechanism for responding to intrafamilial violence by

establishing diversion programs and by providing counselling and other support services.

7. That statutes providing for arrest for violation of protective orders (civil or criminal restraining orders) be enacted and enforced without regard to the relationship between the parties.
8. That the victims of domestic violence not be excluded from coverage under victim compensation legislation where they demonstrate the requisite quantum of injury and where they actually live separate and apart from assaulting spouses.

JOINT CUSTODY—AUGUST 1989

...Joint custody is inappropriate in cases which spouse abuse, child abuse, or parental kidnapping is likely to occur.

FAMILY PROCEEDINGS STANDARDS—FEBRUARY 1992

BE IT RESOLVED, that the black letter *Standards Relating to Trial Courts* be amended (as follows)...Section 2.71—*Proceedings Concerning Family Relationships*.

...In these proceedings, the court has an affirmative responsibility that its disposition is adequately warranted by the facts and is just and appropriate in all the circumstances. It should give due regard to the interests of the child or children or other persons involved, and the public interest in the quality and stability of family relationships. In carrying out this responsibility the court should:

- ... (e) In a domestic abuse situation, take steps necessary to protect the victim. Steps to protect the victim include: Confining the abuser, issuing proper restraining orders, suppressing the victims address, ordering abusers into counseling or treatment, and order family support. The court should understand the dynamics of domestic abuse, especially the psychological effects on the victim. The court should make decisions designed to stop the abuse. The court should expedite the hearings.

APPENDIX C

Family Violence Considerations with Regard to Parental Abduction Policies

Excerpted from:

Rollin, Miriam A. "Parental Abduction: Relevant State and Federal Statutes, Court Rules, and Recent Case Law," in Girdner, Linda and Hoff, Patricia (eds). *Obstacles to the Recovery and Return of Parentally Abducted Children*, Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, November 1993, pp. 3-46—3-54.

Note: The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association. Points of view or opinions expressed are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

E. Family Violence Considerations with Regard to Parental Abduction Policies

During the course of the project's research, it became apparent that current parental abduction-related laws—the Uniform Child Custody Jurisdiction Act (UCCJA), the Parental Kidnapping Prevention Act (PKPA), and state criminal parental kidnapping laws—do not squarely address the dilemma faced by victims of family violence¹ fleeing their abusers. At the same time, it also became apparent that current family violence-related laws did not fully take into account the extent to which the enforcement of the child custody orders which result from application of those laws depends on parental abduction-related laws.

For example, assume a woman has been battered by her husband, and then flees with her two children to a battered women's shelter in the neighboring state in violation of the joint custody provision in the custody order. Will she be able to get an emergency custody order temporarily modifying the original order, in a court of the state to which she has fled, that will be enforceable pursuant to the PKPA? Will she have to divulge her and the children's whereabouts through the affidavit required to get a custody order? Can a court of the state to which she has fled decline to exercise jurisdiction because of her "unclean hands" (taking the children in violation of the joint custody order)? Can a court of the state from which she has fled decline to exercise jurisdiction over her husband's modification petition there because of his "reprehensible conduct" (battering his wife), or on "inconvenient forum" grounds (as the forum in which he had previously abused her)? Will she be charged criminally for her conduct in violation of the order? Will the shelter staff risk criminal and tort liability as accessories to custodial interference if

they refuse to say whether she is living at the shelter with her children?

For example, assume a child is being sexually abused by the child's father during court-ordered visitations. If the mother does not intervene and report the abuse, will she be petitioned as neglectful for failure to protect the child? If she does report the abuse and the father retaliates by petitioning for modification of custody, does she risk losing custody to the abuser if the court is not convinced abuse has occurred? If she protects the child by leaving the area, does she risk being arrested for parental kidnapping (depending upon the state law) and having the child turned over to the abusive father?

To explore these problems and other aspects of the relationship between parental abduction laws and family violence laws, and to identify changes in parental abduction laws that would allow those laws to more appropriately address family violence flight situations, the project director convened a meeting of domestic violence experts and parental abduction experts at the ABA Center on Children and the Law, as well as a smaller follow-up meeting.² The goal was to reconcile the intent of parental abduction laws and due process safeguards with the need to protect victims of family violence. This section identifies several obstacles in parental abduction laws that relate to family violence situations, and recommendations to overcome those obstacles.

Current Law—Statutes

Most states have statutes which provide that civil protection orders can be obtained *ex parte* to protect victims of domestic violence and their children. Most of those statutes also provide for the award of temporary custody through such a protection order.³

California provides that the only valid reasons for seeking an *ex parte* order granting or modifying custody is a risk of immediate harm to the child (which is defined to include acts of domestic violence) or a risk of immediate removal of the child from the state.⁴

Pennsylvania has created a "harm to the child" exception to the UCCJA (9 ULA § 8) provision regarding declining jurisdiction if petitioner has violated a prior custody decree.⁵

Several states have enacted, as part of their custodial interference criminal statutes, defenses related to flight for protection of the child⁶ and of the fleeing parent.⁷

Commentary

If temporary protection orders that include an award of custody are obtained after notice and an opportunity to be heard, they may be enforceable under the UCCJA and the

PKPA (assuming a jurisdictional basis exists). *Ex parte* custody awards, however, made without proper notice, would be unenforceable in other states under the UCCJA and PKPA.

Ex parte custody awards, in cases of imminent harm to the child or imminent removal of the child from the jurisdiction, may be necessary avenues for obtaining custody in emergency situations, but are unenforceable in other states under the current UCCJA and PKPA. (Clearly, they may be enforceable within the decree state. This may be sufficient to protect the immediate interests of the party.)

The provision creating a "harm to the child" exception to the UCCJA, 9 ULA § 8 requirement that jurisdiction be declined if petitioner has violated a prior custody decree reduces the deterrent effect on abductions of UCCJA, 9 ULA § 8, but provides for greater protection of the child from violence.

A criminal custodial interference statute which addresses the appropriate defenses (such as family violence) clearly and concisely is desirable.

a. PKPA Amendments:

- (1) Obstacle:
Custody contestants with orders made in proceedings which did not conform with the PKPA cannot benefit from PKPA nationwide enforcement.

Recommendation:⁸

Amend the PKPA definition of "custody determination" [28 U.S.C. § 1738A (b)(3)] to specify, to the greatest extent possible, the various types of custody determinations to which the PKPA should be applied, including protection from domestic violence proceedings.⁹

- (2) Obstacle:
The current language of the PKPA does not specify that emergency jurisdiction may only be exercised to protect the child on a temporary basis until the court with jurisdiction to issue a long-term order can act.
In addition, the PKPA emergency jurisdiction provision does not explicitly protect children harmed by violence perpetrated by one parent against another parent, or against the child's sibling.¹⁰

Recommendation:¹¹

Amend the PKPA to eliminate the current section on emergency jurisdiction [28 U.S.C. § 1738A (c) (2) (C)], and to include a new section on emergency jurisdiction to issue temporary relief.

b. UCJA Amendments:

- (1) Obstacle:
The UCCJA § 9 affidavit provision, by requiring disclosure of address information, can endanger a parent and child who have fled family violence, and can result in the disclosure of the confidential address of a shelter for battered women and their dependent children.

Recommendation:

The National Conference of Commissioners on Uniform State Laws (NCCUSL) and individual states should consider amending § 9 of the UCCJA to: (a) mandate a waiver of disclosure by the court to the other contestant(s) of the present address of a child or of a contestant when such waiver is necessary to protect the child or the contestant from abuse; and (b) mandate waiver of disclosure by the court to the other contestant(s) of the present or prior address of a child or of a contestant if the address is a shelter for battered persons and their dependent children. [For a similar provision, *see, e.g.*, Mass. Gen. Laws Ann. ch. 209B, § 3 (1986).] In addition, a UCCJA amendment should be considered to require that an alternative means of communicating with that contestant be specified (*e.g.*, post office box or that persons attorney). [See, *e.g.*, Ariz. Rev. Stat. Ann. § 8-409 (1989).] (See § D of this chapter regarding affidavits, *supra.*) While these proposals restrict disclosure of address information to the other contestant, the affidavit requirement is not waived: the party must file the affidavit with the court, which then has the benefit of the information for purposes of its jurisdictional determination.

- (2) Obstacle:
The UCCJA § 9 affidavit provision requires (in most states) address information for the preceding five years, as well as the names and present addresses of all "persons with whom the child has lived." The law can be interpreted as requiring the names and addresses of all persons who have lived in the same household as the child, including other minors. This requirement can be overly burdensome, particularly on *pro se* litigants (such as many family violence victims).

Recommendation:

NCCUSL and individual states should consider amending § 9 of the UCCJA to: (a) shorten the number of years for which information is required [*e.g.*, to three years, as in N.M. Stat. Ann. § 40-10-10 (1981)]; and (b) decrease the amount of information required (*e.g.*, rather than requiring the names and current addresses of any person with whom the child has lived for the period of time, require only the names and current addresses of any adults who have lived in the same household as the child).

- (3) Obstacle:
UCCJA § 7(c) lists several factors to be considered by a court in making a determination as to whether it is appropriate for the court to decline jurisdiction as an inconvenient forum. None of the factors relate to family violence experienced by a contestant and/or a contestant's child in the forum, that caused the contestant to flee with the child to another state.

Recommendation:

NCCUSL and individual states should consider amending § 7(c) of the UCCJA to add, as another factor to be considered in an inconvenient forum determination, family violence experienced by a

contestant and/or a contestant's child in the forum, that caused the contestant to flee with the child to another state.

- (4) **Obstacle:**
UCCJA § 8 permits a court to decline jurisdiction because of an abduction or other "reprehensible conduct" by a petitioner for custody. However, § 8 does not define "reprehensible conduct" to include family violence by petitioner in that forum against another contestant and/or a child of another contestant, that caused the contestant to flee with the child to another state. Courts are, of course, free to interpret "reprehensible conduct" to include family violence.

Recommendation:

NCCUSL and individual states should consider amending § 8 of the UCCJA to clarify that "reprehensible conduct" includes family violence in the forum against another contestant or a child that caused the contestant to flee with the child to another state.

- (5) **Obstacle:**
If a fleeing parent brings an emergency action for temporary custody in the refuge state, UCCJA § 8 could be used by the abusive parent to urge the court to decline to exercise jurisdiction. If § 8 is applied in that way, the protective purposes of the recommended PKPA (and UCCJA) emergency jurisdiction provision would be undermined.

Recommendation:

NCCUSL and the states should consider amending UCCJA § 8 to exclude applicability to proceedings based on emergency jurisdiction to issue a temporary custody order.¹²

c. Amendments to Other Laws:

- (1) **Obstacle:**
A parent who takes a child out of state to flee family violence may be subject to criminal charges (felonies, in many states), even if such an action was necessary in an emergency situation to protect the child.

Recommendation:

Flight from family violence should constitute a defense to a criminal parental abduction charge. [See, e.g., D.C. Code Ann. § 16-1023(a) (1989).] However, the criminal statute should help ensure that appropriate civil action begins promptly to remedy the custody violation (e.g., by requiring the fleeing parent to file for a custody determination in the state with proper PKPA jurisdiction within a specified brief time period, in order to claim the family violence defense). Such an approach is being considered in at least one state.

- (2) **Obstacle:**
Staff of shelters for battered women and other dependent children may risk criminal and tort liability as accessories to custodial interference if they refuse to divulge the identity of shelter resi-

dents. However, shelter staff also have an obligation of confidentiality to their residents.

Recommendation:

Absent a court order to the contrary regarding a particular case, shelters for battered women and their dependent children should be permitted to maintain confidentiality as to the identity of their residents without risk of criminal and/or tort liability for custodial interference.¹³

d. Other Obstacles Identified (No Recommendations):

- (1) The role of the Federal Parent Locator Service (FPLS) and state parent locator services in discovering the addresses of abducting parents and children, without consideration of whether the abducting parents and children were fleeing family violence.
- (2) The role of National Center for Missing and Exploited Children (NCMEC), as mandated by the Missing Children Assistance Act, in assisting custodial parents in achieving the return of parentally abducted children, without consideration of whether the abducting parents and children were fleeing family violence.
- (3) The role of schools in providing address information to all parents, without consideration of whether certain parents and children have fled family violence.
- (4) The absence of trained, independent expert witnesses and legal representatives for children in many contested custody cases, including those which involve allegations of family violence.

e. Preventing Abductions Related to Family Violence: Recommendations Regarding Custody Determinations

- (1) Make visitation provisions in custody orders specific, include protections for parent and child (e.g., visitations supervised by neutral third-parties), and encourage the establishment of supervised visitation centers.
- (2) Because children are harmed by violence perpetrated by one parent against another, require that courts consider such violence in their custody determinations, and establish a presumption against awarding custody to perpetrators of such violence.

f. Conclusions:

Many obstacles experienced by parents in cases which involve both family violence and parental abduction (and many obstacles experienced by parents in other parental abduction cases) could be reduced or eliminated through training for attorneys and judges and through mechanisms for enhancing parental access to effective and affordable counsel. We therefore recommend the following:

- (1) Develop training for attorneys and judges:

- (a) regarding parental abduction (particularly UCCJA interstate evidence collection mechanisms);
 - (b) regarding family violence (particularly the adverse effect on children of violence perpetrated by one parent against the other); and
 - (c) regarding custody determinations, particularly
 - (i) to ensure that courts do not issue punitive decrees which modify custody to punish parents who allege family violence, and
 - (ii) to ensure that courts custody determinations are based on the best interests of the children, not on the “property” rights of the parents; and
- (2) Develop mechanisms for parental access to attorneys who are:
- (a) knowledgeable and experienced in parental abduction and family violence cases;
 - (b) willing to accept parental abduction cases; and
 - (c) not charging more than the clients can pay.

ENDNOTES

1. Victims of family violence include physically abused partners and their children, as well as physically or sexually abused children and their siblings.
2. The obstacles and recommendations provided here are the responsibility of the project staff and do not necessarily reflect the views of meeting participants.
3. *E.g.*, Alaska Stat. § 25.35.010(b)(5) (1983), Ark. Code Ann. § 9-15-205(a)(4) (Michie 1991), Cal. Civ. Code §§ 4359(a)(4), 7020(a)(4) (Deering 1984), Colo. Rev. Stat. § 14-4-102(2)(d) (1989), Conn. Gen. Stat. Ann. § 6b-15(b) (West 1989), D.C. Code Ann. § 16-1005(c)(6) (1989), Fla. Stat. Ann. § 741.30(4)(b) (West 1986).
4. Cal. Civ. Code § 4600.1(e) (Deering 1984).
5. 42 Pa. Cons. Stat. Ann. § 5349 (1977).
6. Cal. Penal Code § 277 (Deering 1985), Colo. Rev. Stat. § 18-3-304(3) (1990), D.C. Code Ann. § 16-1023(a) (1989), Fla. Stat. Ann. § 787.03(4)(a) (West 1976), Fla. Stat. Ann. § 787.04(5) (West 1976), Idaho Code § 18-4506(2)(a), (1987), Mich. Comp. Laws Ann. § 28.582(1) (West 1990).
7. D.C. Code Ann. § 16-1023(a) (1989), Fla. Stat. Ann. § 787.03(6) (West 1976), Idaho Code § 18-4506(2)(b) (1987), Ill. Ann. Stat. ch. 38, ¶ 105(c)(3) (Smith-Hurd 1980).
8. Further discussion of this obstacle and the recommendation to eliminate this obstacle are provided in Section IX. A. 5 of this chapter.
9. Expressly including domestic violence custody orders within the purview of the PKPA does not place any additional burden on such custody contestants. It merely provides for interstate enforceability of such orders if PKPA requirements are met when such orders are made.
10. In a Louisiana decision, the court held that violence and/or threats by one parent against the other parent do not involve harm or risk of harm to the child, and thus do not constitute a basis for emergency jurisdiction. *Hagedorn v. Hagedorn*, 584 So. 2d 353 (La. Ct. App. 1991).
11. Further discussion of this obstacle and the recommendation to eliminate this obstacle are provided in Section IX. A. 3 of this chapter.
12. Some family violence experts advocate amending UCCJA § 8 to provide that flight from family violence is not § 8 “reprehensible conduct” which could result in a court declining to exercise jurisdiction. [*See, e.g.*, a harm to the child exception to the § 8 provision regarding declining jurisdiction if petitioner has violated a prior custody decree: 42 Pa. Cons. Stat. Ann. § 5349 (1977).] The countervailing concern is that such a provision could be misused by abductors who are not (and whose children are not) victims of family violence.
13. The term “shelter for battered women and their dependent children” as used here includes any government-sanctioned shelter or safe house, and does not include any private home utilized as an *illegal* “safe house”. A further question was raised as to the definition of “shelter” (*i.e.*, whether it would apply to a shelter that was harboring a woman who was not alleging that she was a victim of abuse, but who was alleging that her child was a victim of abuse); no resolution to this question was reached.

