

## A Sequel to article "A Mother's Pain-The Trained Bully"

I received several written and oral responses to the previous article, "A Mother's Pain", which was published in the NH Bar News on March 13, 2009. I asked the responders if they could quote them, without attribution. Some of the responses which I received were very poignant. All of the written responses, with one exception, were from mothers and lawyers, one was from a father.

I realize that the subject is clouded with extreme emotion and several of the stories elicited were quite emotional in content. On the father's side the issues raised were equally emotional. In fact an article appeared in the online edition of the Portsmouth Herald on Friday, March 27, 2009, entitled: "Father knows bitterness." A second article by Lily Robertson appeared a week later entitled "Who will speak for the fathers?" The writer in the second article poses an important question after saying that the custody determinations are usually left up to the GAL (guardian ad litem). Here is what she wrote:

"Here's what it takes to become a guardian ad litem: \$100 and 44 hours of seminars. Would you trust your child's future to someone with those qualifications?" This writer in support of the fathers having equal or residential custodial rights goes over the top with emotion and quotes Dr. Larry S. Milner in a paper entitled "The History of Infanticide" as saying that "...infanticide is usually committed by the mother." Obviously I wasn't writing about paranoia or crazed people about to murder their child or children. Her articles are so filled with extreme and dire gloom and doom for the family unit and the children that she leaves on with the impression that mothers are to be scorned by the courts. And finishes with this profound wit: "When it comes to child custody cases, we may as well be holding them in Salem, Mass., ...in 1692."

In my experience of many years I have not identified any mother or father bent on infanticide if they didn't get custody or the time they requested, not have any of my clients ridden off on a broomstick. However the intensity of the rather extreme positions taken in defense of fathers is another indication of the emotion that pervades the child custody cases.

One lawyer who is completely dedicated to family law wrote to me: "It is our family courts who listen to underpaid and sometimes barely trying GALs who make the decisions. The law is not wrong as it requires the courts to deal with the issue of maturity. The reality is that they don't. The kid is 14, why bother, he's mature...it can be appealed but mom hasn't the money."

The NH Supreme Court has ruled that custody is an issue to be decided on a case by case basis and that an analysis must be done. An example of the Court missing the issues entirely: Read the opinion in *Larue v. (Larue) Bedard*, 156 N.H. 378 (2007). The court decided an important custody issue involving modification of a visitation schedule on contract grounds, dismissing the trial court's efforts to make a determination on traditional custody standards used by family courts and family lawyers in such cases. See *In RE Georgakilas*, 157 N.H. 662 (2008) When dealing with a parenting plan that said the parties would "equal or approximately equal" residential responsibility our Supreme Court said that: "in interpreting the meaning of a divorce decree we review the decree de novo *Sommers v. Sommers* 143 N.H. 686, 692 (1999). We consider the intent of the parties as expressed in the language of the stipulation."

I always am left to wonder why is it necessary for us who labor in the family law field to negotiate language in a stipulation which we lawyers understand and our clients understand, but which is often said to mean something different than the words used connote by an appellate court who doesn't know the parties the full circumstances as to why words were used to reflect the parties' understanding of a custody arrangement. The Court simply dismisses such efforts with a "We know better attitude" (those are my words). It seems that what the parties or their lawyers thought they had accomplished is different than what the Justices thought. Does it ever occur to those justices that the Family Court master and approving Judge has to understand those words when a stipulation is approved.

The Supreme Court ruled In The Matter of Huff, 2008-326 (N.H. 3-5-2009). The court performed an analysis where one parent, the father in this case was incarcerated, but fit, and distinguished between a n unfit incarcerated father and a fit incarcerated father. The court goes on to say that the right of parents to raise and care for their children is a fundamental liberty interest protected by Part I, Article 2 of the New Hampshire constitution, similarly, the United States Supreme Court has recognized that the "Due Process clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody and control of their children. Troxell v. Granville, 530 U.S. 57,66 (2000). In Nelson & Horsely, 149 N.H., at 548, our court said: "Parents have a natural entitlement to the exclusive....management of their children."

The legislature has also set out certain rules for parents despite their "exclusive parental rights." namely RSA 461-A., Parental Rights and Responsibilities. The legislature in section 2 Statement of Purpose recognizes that children do better when both parents are in their lives to the extent feasible after the parents have separated and divorced.. Section 6 sets out factors to be considered. Subject to the best interests of the child. The statute refers to the court throughout, meaning the Family Court or the trial court. So why does the Supreme Court come in and overturn so many decisions that have been well thought out by the parties, their counsel and the GAL and the Trial court. Now you may see where I am headed with all of this writing on the issue. I do not believe that Family law matters in general and child placement and custody matters in particular are suited to be adjudicated like the children are chattels (e.g., on contract grounds as cited earlier. So what can we do. We could deal with these sensitive issues in an entirely different format and forum if we really had the best interests of the children and the parents in mind. Mortal combat in an adversarial proceeding hardly furthers and nurtures the parents desire to work together in the parenting of their children. We, and I mean the lawyers and judges, and the professionals who assist, whether as expert witnesses or GALs should know better. But the easy way out is to say we cannot as a society afford to establish such a forum and layout a format to deal with the most critical issues of our day, while paying lip service as to how our children will develop and hence our society will develop. Years ago I went to a YMCA camp in Kingston and in the mess hall there was a saying: "young man you are now becoming what you are to be." Even as kids we understood that phrase, yet all the kings horses and men don't seem to be able to comprehend how essential these issues are to our future generations. Are we to raise trained bullies, bitter mothers, bitter fathers, kids who feel abandoned or manipulated by the system or by a parent, or can we do something about it?

To illustrate the effect of what we do with to our children I want to share some examples of responses to my previous article:

The first responder told me that “the pain I feel is unbearable at times. It bewilders me how I can actually have given birth to all of my children and still feel so much hardship and deep sadness I can mother them from the time they were infants and be there through the toddler stage right up through adolescence. I have devoted my whole life to the raising of my kids. I breast fed everyone for one year. I never left their side for their first six years. Rather than watching television we were outside every day discovering God’s great playground.” “My career was my children. I am very proud of the energy that I put into raising my family. I did not want them to be fathers or husbands like their father. I can only hope that I made a difference in their lives. Now they are told that I abandoned them. It is all a sophisticated manipulation by their own father. God, I miss them. I can only hope that something good comes from your article. Maybe a mother who suffers as I do every single day won’t feel so alone or isolated. What this system does is so unforgivable in my eyes. I can only hope for strength for the other mothers who endure this pain. It is a very lonely place to be in my shoes. Sometimes I think to myself ‘what am I doing here?’

Sometimes I think that I cannot take it any longer or that I will never win. He will continue to direct his poison at me through my children using them as his weapons because he knows that it hurts me so badly. I never knew how painful being a mother could be. If I did I might have thought twice.”

“Good luck with your article. I hope that it will help so many moms out there who feel the sense of hopelessness that I often feel. My children have been my world. Every single morning when I wake up, I roll over and look at the picture of all of them, with smiles on their faces in my loving arms. Then I pinch myself and remember that was then and this is now.”

From another reader: “It is terrible what some women have to go through and no matter how hard you struggle to gain control of your own life and that of your children’s to secure their well being, you are locked into a cycle of suffering. In my case and for the sake of my children, I hope that I can break the cycle. A great article.”

From another mother: “I have had the recent pleasure of reading your insightful commentary on the Trained Bully. You suggested that rarely can anything be done about this psychologically damaging behavior and modeling-which leads me to believe that occasionally something can..”

“I am potentially interested in being the poster child for your quest to bring attention to this egregious behavior. Unlike the women in your typical divorce, I am neither powerless nor depressive, but I am nonetheless suffering at the hands of brainwashing subsequent to an acrimonious marital split.” This responder tells how after the divorce her husband attempted to have her pay for their son’s college expenses. When he failed to accomplish that he then needed to exact revenge on her through “the only weapon at his disposal-our son” She continues on: “My son with whom I have always had a wonderful relationship, has suddenly decided not only not to visit me, but not to talk to me. My lawyer says there is nothing the state of NH will do. I am joint custodian. I am legally allowed joint medical decision making. I am a medical doctor and I think my son is screaming for counseling, yet the physical custodian dismisses my maternal, my

custodial, my medical opinion and refuses. I only pray that when he eventually moves out of the brainwashing environment, the profound damage can be undone.”

This mother then asked several questions including if I expect to address this subject further, which I do. She asks a perturbing question namely, “Is there any avenue through which these victims (the mother and the children can seek counseling?” She concludes her letter to me with this: “I would love to help champion this cause if your article foreshadows any intent to affect change in this horrific and harmful phenomenon.” I sincerely hope that my writing about these issues will affect change as to how we ,as a society, deal with such issues.

In my previous article (published in the NH Bar News on March 13<sup>th</sup>) I indicated that the pattern of behavior described is probably not exclusive to mothers of boys. I received a very detailed letter from the father of a son who wrote to me saying: “You do nothing to mention the persistent abuse and gender bias by the family court in primarily awarding mother’s sole legal and primary physical custody of the minor child.....I was given joint legal and physical custody, but deprived of my fundamental constitutional right to be involved in my son’s education by a legally incompetent and bigoted Marital master, Judge and Guardian ad litem. In my case, race and gender motivated bias were the sole factors that ultimately decided the case. It resulted in an unlawful court ordered racial segregation in education and denial of equal educational opportunity that adversely affected my son educationally and emotionally after languishing the substandard Haverhill (MA) public school system for two years while I engaged in a protracted battle. What happened to the best interest of the child? It seems that I was the only one interested in seeing that the statutory requirement was being met.” This father had gathered statistical evidence to prove his feelings about the inferiority of the public school system being challenged and filed an appeal to the NH Supreme court on several federal statutory and constitutional grounds including the very issues including the issue of court ordered Racial Segregation in Education ( violation of Title IV of the Civil Rights Act of 1964 and 20 U.S.C. 1703 Denial of Equal Education Opportunity. The supreme Court declined his appeal. He felt abused by the system.

I also had the opportunity to review the opinions of several members of the NH bar on the issues raised. One volunteered that “we should make people take a test and get a license to have children...but of course we can’t.” “Ugly and tragic cases. And if the parents do not have \$15-\$20K to fight the battle how do they win.”

Another practitioner wrote: “I do not subscribe to the philosophy that parents or courts can’t make a teenager do anything. Of course they can! Since when did turning 15 give anyone the right to rule the world and define their own destiny regardless of their best interest.” This attorney goes on to opine: “ The biggest problem with the existing statute is that the Courts appear to interpret the modification statute regarding ‘mature minors’ as NOT requiring there to be a ‘best interest’ determination. I think that is completely against the weight of the case law (as well as common sense) actually, but there are courts that are buying that interpretation.” this lawyer also says that teenagers are easy to manipulate, they can get great grades, be popular respected by teachers, excel in sports, and yet not be emotionally ready to make “adult decisions which have lasting effects. They simply cannot comprehend how those decisions will affect them the rest of their lives.”

I think that opinion points us in the right direction. Suppose one parent does not believe in counseling or fails to emphasize the obligation to respect and carry out a valid court order, the courts have the means to mandate such compliance by imposing certain penalties on the recalcitrant or errant parent. I do not like such remedies however, as the Family Courts and the Trial courts before them are inappropriate forums to resolve the compelling and live changing issues for families. I believe that this is such a pervading psycho-social problem of troubled children and troubled parents that significant effort must be made by our system to bring about change. The system of advocacy where each side has 15 minutes for a paid advocate, whether it be an attorney or a paid expert to rail against the other parent must be seen as an archaic and irrelevant means to resolve such deep seated and important issues. The adversarial system is no place for families, but we relegate them to a very poorly functioning system where these life altering decisions are brought to light in a few minutes before an over worked judicial officer, usually after waiting weeks and months to be heard.. As one attorney wrote: “ The courts do not want to hear these cases, they are way too difficult to hear and decide.”

Finally one other attorney most aptly wrote about alienation....”When it occurs, it hurts kids, ESPECIALLY the kids that firmly stand and shout that they HATE the other parent. In reality, they are hurting inside terribly. And it does affect them and their relationships with others the rest of their lives.”

Have I opened a “Pandora’s Box?” I think it is obvious that this issues which have been addressed by the legislature, in RSA 461 A, by setting up guidelines for Parental Rights and Responsibilities for parents in the stages of separation or divorce is good step.

All of us who manage the lives of these parents, and hence their children, whether as trusted counselors, GALs, judges or masters need to be aware that we are shaping a generation to come. We all hear the questions asked, why are kids today dropping out of school by the thousands, why are kids today so disrespectful to the older generations, why are so many kids on drugs or alcohol. Let us wake up. Over half, or more than half, of all marriages in this state wind up in the divorce courts. Those with children under eighteen years of age have the lives of those minor children managed in some part by our adversarial system. As a society our intentions need to be more thoughtfully vetted by our legal, judicial, legislative and psychological communities so as to develop a framework in which we can more effectively deal with how we parent our young children and deal with the a deeply rooted and legal and psycho- social issues that our system and society has created. It is said that we live in a nuclear age and an age of fear of terrorism. Terrorism has no place in our family adjudicative system, although historically the stronger the adversary the more “successful” the lawyer has been thought to be. How many times has a prospective client said to you, “I heard that you are a pit bull and that is why I selected you?”What was your response, think about it are we a big part of the problem? I know the system is. With that thought in mind I want to continue this dialog with both a child psychiatrist and a psychologist with the input of you family practitioners and even some in the court system. Where do we go to make it better?

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