## The four immutable principles of separation and divorce

n February 2007, the Indiana Supreme Court declared for the first time that protecting the best interests of children is the "overarching policy goal" in all family cases with children. See Lambert v. Lambert, 861 N.E.2d 1176 (Ind. 2007). This "Lambert Declaration," as we choose to call it, can be of genuine help to the work of family professionals, but only if they treat it as much more than passing words.

This article addresses a common problem at the heart of both parents' and professionals' attempts to serve children's best interests: understanding what those interests actually are.

Curiously, and tragically, often the worst injuries to children in family cases are inflicted in the name of protecting children. Parents may undermine one another's relationships with their children, psychologists may perform unnecessary and polarizing custody evaluations, and attorneys and judges may indulge unnecessary hearings, custody evaluations and trials – all with a sincere but mistaken belief that children are actually being helped.

We propose that understanding four immutable principles of separation and divorce can dramatically improve the way courts, attorneys and counselors serve children's best interests. Indeed, this understanding has already helped some courts, attorneys and counselors to use practices that better reduce parent conflict and protect children.

#### Principle 1

Conflict between parents injures children

As parents and attorneys approach St. Joseph Circuit Magistrate David T. Ready's bench, they are confronted with this transcribed

psychologist testimony affixed to the front of his bench: "Conflict between the parents is the best predictor of a child's later maladjustment." This warning about parent conflict should color every thought, statement and deed of family professionals.

The uniform research on families in transition has concluded that if parents wanted to injure their children, they could find no better way of doing so than by ongoing conflict with each other. One will search in vain to find any study concluding that parent conflict is anything short of uniquely injurious to children.<sup>1</sup>

Parent conflict can fill children's lives with invasive thoughts that are both immediately painful and developmentally deleterious.

- a. "I'm ashamed. Other kids' families aren't like this."<sup>2</sup>
- b. "My world is frightening. I don't know what will happen next."<sup>3</sup>
- c. "I need to fix my family. It's dangerous if I don't."<sup>4</sup>
- d. "This is *my* mom and dad. I must have the faults they point to in each other."<sup>5</sup>
- e. "I need to figure out who's right and who's wrong."<sup>6</sup>
  - f. "I need to pick sides."7
- g. "I need to tell people what they want to hear."8
- h. "I will anger or hurt one parent if I want, need or love my other parent."9
- i. "The fights are over me. If I weren't here, this wouldn't be happening." 10
- j. "I can't do anything right. I deserve whatever bad things happen to me."
- k. "I'd do anything to feel better or to fit in." 12
- 1. "I don't care anymore.

  It hurts too much to care. The

world doesn't care about me, and I don't care about the world."13

The developers of "parallel parenting" in high-conflict cases offer this clarifying observation for parents, one that should guide the work of family professionals as well: "The most important reason for working out a contentious relationship is that high conflict has far-reaching negative effects on children."14 We believe that the Lambert Declaration requires professionals to adopt cooperative, problem-solving processes precisely to avoid those same "far-reaching negative effects" that parent conflict has on children.

To be defensible and within any reasonable standard of care, family professionals' processes must, above all else, respect the primacy of good relationships between parents, help reduce any conflict between them, and certainly avoid expanding it.

#### Principle 2

Far from reducing parent conflict, litigation overwhelmingly tends to expand parent conflict

For far too long, most law students have been trained in the myth that a judicial decision is the same as a solution. "What's needed is a sound decision to solve the problem" – this may even be the core unspoken assumption of legal education by the case method. "The clients and their loved ones will be better off when we fashion a correct legal ruling for them."

Of course, experience in family cases teaches differently. Probably no seasoned family professional today expects two litigating parents to leave a visit to court with reduced conflict or improved trust, goodwill and cooperation between them. Florida attorney Sheldon

"Shelly" Finman helpfully describes a judge's decision in a custody case as "the starter's pistol to the family's odyssey of conflict." Prof. Seymour "Sy" Moskowitz of Valparaiso University School of Law adds a similar caution: "The real custody fight starts immediately following the court's custody decision."

The family mediation intake forms used at the Freedom 22 Foundation in St. Joseph County, Ind., have for several years asked separated parents whether they had used court and, if so, whether doing so had helped or hurt the way they relate. Of the hundreds of couples who had been to court, not one reported that doing so had helped, and the overwhelming majority described it as a highly destructive experience.

Significantly, in many of the cases there had been a custody evaluation, and parents reported virtually the same about custody evaluations' effect on the family's functioning: no reported cases of improved functioning between the parents, with the overwhelming majority of parents reporting that the evaluations had seriously harmed their interaction.

The most common defense tendered for having taken families to hearings, custody evaluations and trials is that the parents needed a decision they could not reach on their own. This defense commonly suffers from two problems:
(1) the already-mentioned tendency of litigation to expand rather than resolve conflict and (2) the widespread failure to educate parents about the dangers of, and wide range of alternatives to, legal conflict.

It is important to clarify that the tendency of litigation and judicial decision-making to injure children (and the co-parenting cooperation they necessarily rely on) has nothing to do with the quality of judges' decisions. Court decisions characteristically fail to help parents' functioning for four reasons beyond judges' control.

- 1. While nonlitigating parents can build better outcomes, judges can only choose from the poor outcomes available in the midst of parent conflict and litigation.
- 2. The adversary process necessary for parents to receive a judge's decision typically poisons

opportunities for cooperation and compounds interparental division.

- 3. Attempts to coerce solutions in any undertaking as personal and sacrificial as parenting are almost always doomed.
- 4. Reliance on judicial decisions tends to obscure more promising avenues of assistance to families, including better Web site and printed communication of courts'

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expectations of safe cooperation, good co-parent education, counseling, child-focused mediation, special classes and parenting coordination and other guidance for high-conflict parents, and the development of overall cooperative systems of family law.

For the Lambert Declaration to have meaning for children of divorce, these salutary resources and processes must be in place and, whenever feasible, must be used in preference to legal combat. To protect the best interests of family members, especially children, the law must reserve litigation (including any custody evaluations and contested motions) for genuinely unusual circumstances, such as where parents' interaction is too dangerous to allow for cooperative decision-making. When the law inserts litigation as a first, preferred or automatically defensible vehicle for restructuring a family, it characteristically does serious damage to the very persons it attempts to serve, most especially children.

The law rightly expects other professions to focus not only on the

hoped-for benefits of its processes (for example, cure following surgery), but also the costs and risks of their processes (for example, the scarring, disability and risk of complications from surgery). The law demands that other professions reserve invasive measures for the few cases where they are necessary and demonstrably likely to assist the overall well-being of the patient or client. If the law is truly to serve the best interests of family clients and their children, legal professionals must continuously and carefully notice the actual impact on families from aggressive legal processes like intemperate attorney exchanges, custody evaluations and court appearances.

#### Principle 3

Children's best interests depend on cooperative parenting, and this dependence only grows with separation or divorce

If children of divorce are in serious danger from parent conflict (Principle 1) and if judicial decisions are likely to expand rather than reduce that conflict (Principle 2), where should parents and family professionals turn?

The answer requires a measure of mature humility on the part of family professionals. Through no fault on their part, legislators, attorneys, custody evaluators and judges are powerless to compel good parenting - or good co-parenting. No judicial decision can stop the infinitely resourceful ways a hurt, fearful or alienated parent can find to inject conflict into a child's life or to attempt to undermine the child's relationship with the other parent. Professionals are incapable of outlawing disparaging comments, the withholding of important parenting information, or any of the infinite varieties of passive-aggressive behavior parents can inject into their children's lives, Parent-onparent litigation, therefore, not only often drives parents further apart, but characteristically does so in pursuit of an illusory goal: commanding good behavior and personal services. 15

Reliance on legal rights and duties to shape parent behaviors suffers from an additional, more subtle, and perhaps more serious, problem: the mismatch between the inherently supererogatory undertaking of parenting and the minimalist nature of legal compulsion. As a coercive agent, the law can merely attempt to order compliance with legal minimums

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(stop for these red lights, pay this child support, hand your children over to their other parent at these designated times). But both parenting and co-parenting are the furthest things from minimalist undertakings. Indeed, were society to rely on the law to command citizens to parent according to their legal duties, it might well succeed in producing the world's first generation of minimally nourished, minimally educated and minimally loved, protected and admired children.

Family law professionals must constantly grasp that the law can do nothing to compel most of the things that children of divorce need, including, to name just a few:

- A restrained and courteous relationship between their parents.
- Each parent's palpable support of the children's relationships with, and good opinions of, the other parent.
- Freedom from any adult roles (messenger, problem-solver, witness, advocate, confidant, judge or therapist).
- Parents' competence in handling their own grieving and in assisting the children with theirs.

Regrettably, in the business of divorce, many lay persons and professionals alike can succumb to an illusion that coercing legal minimums will suffice to serve the best interests of children. What often results is that otherwise giving and capable parents are turned into resistant minimalists. By introducing parents to the language of legal duties (the minimums required of them), the law can inadvertently convert many once-sacrificial parents into adversaries consumed with tallying, resenting and even withholding the very parenting contributions they once freely

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# Report of the Nominating Committee of the Indiana State Bar Association

June 12, 2009

The Nominating Committee of the Indiana State Bar Association met in Indianapolis on May 21, 2009 and determined to submit the following candidates for election to the respective Association offices at the Annual Meeting of the Association Assembly to be held in Indianapolis on Nov. 6, 2009. For the Board of Governors (term Nov. 6, 2009 through Oct. 15, 2011) District 1 ...... Michael N. Pagano, Crown Point District 4 ...... Kathleen M. Anderson, Fort Wayne District 5 ...... Todd J. Meyer, Lebanon District 10 ...... Judi L. Calhoun, Muncie District 11 ...... Melissa J. Avery, Indianapolis District 11 ...... Jon B. Laramore, Indianapolis Respectfully submitted by Thomas P. Yoder, Fort Wayne, chair; Amy K. Noe, Richmond; Alice A. O'Brien, Arcadia; Derrick H. Wilson, New Albany; John R. Maley, Indianapolis; Larry R. Fisher, Lafayette; Sheila M. Corcoran, Evansville; Timothy W. Woods, South Bend; and William F. Satterlee III, Valparaiso. 53

## Report of the Nominating Committee of the House of Delegates of the Indiana State Bar Association

June 12, 2009

ursuant to the provisions of Section B(2) of Bylaw V of the Indiana State Bar Association, notice is hereby given to all members of the Association and to all members of the House of Delegates that the Nominating Committee of the House of Delegates of the Indiana State Bar Association nominates the following candidate:

Carol M. Adinamis, Indianapolis

Such candidate, if properly elected as Chair-Elect at the 2009 Annual House of Delegates meeting, will serve one year as a member of the Board of Governors in the capacity of Chair-Elect of the House, and will then assume the office of Chair at the close of the 2010 Annual Meeting, serving until the close of the 2011 Annual Meeting.

Respectfully submitted by Roderick H. Morgan, Indianapolis, chair; Kristen G. Fruehwald, Indianapolis; Gary L. Miller, Indianapolis; Patricia L. McKinnon, Indianapolis; and Hon. Victoria M. Ransberger, Indianapolis. 63

offered without legal obligation. ("I have to pay \$100 a week in child support? Just see if I ever pay an extra cent!"; "I have to surrender my children four days out of 14? Just see if I ever offer an extra hour!").

To effect better outcomes for children during and after parents' separation, family professionals must look to more than these scarcely effective minimums. And the most important step is to be more realistically sanguine about the sacrifices that most parents are willing to make for their children if they are not competing with or litigating against each other. Too often, family professionals, perhaps out of a mix of both noble and selfinterested motives, can disparage parents' capacity for child protection and co-parenting cooperation. And, too often, this disparagement is at the heart of premature and

excessive diversion of parents to litigation instead of problem-solving processes like good co-parenting education, counseling and child-focused mediation.

Our overwhelming experience is that the attorneys, judges and mental health professionals who best serve the interests of both parents and children are those who recognize that parental imperfections, particularly ones manifesting themselves around the time and issues of separation, rarely equate with overall parental indifference or incapacity. These true helpers are as vigilantly observant for parent capacity as for parent deficits. They decline to use their professional remedies to define client or family needs. Perhaps most important, they understand that parents' love of their children is likely a far more promising problem-solving resource than resort to invasive

psychological evaluations or legal contests.

We believe, therefore, that, whenever possible, professionals' core responsibility in family crises should be (1) to help parents understand their children's fragility and true needs when the intact family comes apart and (2) to educate parents on the new skills necessary to help their children in their uniquely difficult hour. Along the way, instead of judging parents by their erratic behavior in the direst moments of their family disintegration, professionals should develop an awareness of, and respect for, the heroic tasks that grieving, hurt and fearful parents must (and with appropriate help usually do) negotiate.

#### Principle 4

In working with separated, divorcing or divorced parents, all professionals share an invisible client: the future co-parenting relationship between the parents

We are indebted to Dr. Timothy Onkka for this insight on the work of all family professionals (judges, attorneys and mental health experts alike): When working with separated parents, family professionals share a common responsibility to develop, and certainly cause no harm to, the future co-parenting relationship between the parents. Indeed, that future co-parenting relationship will be responsible for the resolution of innumerable future child-related issues unknown at the time of the pendency of the legal case. What is more, the quality of that future co-parenting relationship will be the chief determiner of the quality of children's outcomes, including their ability to trust their parents' interaction.

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A cooperative, child-focused relationship between the parents gives the children essential benefits that can come from nowhere and no one else: the reassurance that their parents will be a peaceful, predictable and reliable team for them. And ill will and conflict, including any ill will and conflict engendered by resort to legal processes, will produce precisely the opposite.

It is critical to remember that children's well-being will depend on co-parenting patterns completely beyond the ability of the law to order:

- How the parents will speak to and about each other.
- How the parents will support (or not support) each other's relationships with their children.
- How the parents will either accommodate or subvert each other's needs in modifying schedules and meeting other special needs of their children.
- How the parents will use either cooperation or antagonism in parenting their children.

Mindfulness for the interests of a relationship (the future co-parenting relationship) may challenge the thinking of some attorneys and judges, as they are trained to think of individuals, not relationships, as parties deserving of representation. However, many of the best family attorneys intuitively (and quite brilliantly) seem to act on an awareness that they can meet their clients' needs only by being attentive to interests and persons other than their named clients. 16 And while it is beyond the strict scope of this article, numerous legal authorities support both the role of the attorney as intermediary and peacemaker between clients17 and even the obligation of the law as a selfgoverning profession to choose processes serving the public's interests over ones serving the profession's interests.18

For present purposes, it is merely imperative to appreciate that if attorneys and judges are to be of actual assistance to the best interests of parents and children, they must accept the responsibility to promote — and never unneces-

sarily injure – parents' future co-parenting relationship. To be of assistance to families in crisis, all professionals must appreciate that they share an invisible client: the future co-parenting relationship between the parents.

## Some key consequences of applying these principles

It is difficult to overestimate the healthy revolution in family law that will follow from professionals' attention to these four principles. What ultimately will emerge will be comprehensively cooperative systems of family law.<sup>19</sup>

Here are some of the more obvious components of such a system.

- 1. Children's interests will be a constant focus of all aspects of family cases and practice, both because that focus is demanded by the Lambert Declaration and because that focus protects children and parents; every action and word contemplated by family professionals will be tested against this question: "Will this proposed step or communication advance the best interests of the affected children, including especially their need for the best possible relationship between their parents?"
- 2. Courts will communicate through rules, pamphlets and Web sites (a) information on the true challenges of parents in family crises and transitions, (b) the advantages and judicial expectations of safe child-focused cooperation, and (c) the availability of resources that can help parents succeed. A sample Web site can be found at www. FamilyCourtWebsite.org
- 3. Jurisdictions will be vigilant to offer the finest possible co-parenting classes, including (a) basic classes for parents in divorce and paternity cases, (b) a multi-session

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class for parents in prolonged conflict or repetitious litigation, and (c) a special class for survivors/victims of domestic violence for whom the cooperative messages integral to the other classes would be inappropriate. Processes will be in place to ensure that parents are promptly and successfully referred to these classes, including by a presumed referral of parents to a multisession class if they appear in court more than once.

4. Most of the family issues presently heard in court will be resolved through child-focused measures such as outstanding co-parenting education, cooperative lawyering, counseling, mediation and parenting coordination. Indeed, these issues will properly be seen as opportunities for parents to develop the new cooperative

skills they will need to resolve future issues, not as occasions to litigate.

5. Family professionals will routinely and predictably model the courtesy and cooperation that parents can adopt. Family professionals' injection of discourtesy or conflict into a family in crisis will be regarded as the legal equivalent of surgeons carelessly introducing infections into their patients.

6. Except in cases of emergency, danger or other exceptional circumstances making consultation unreasonable, courts will require attorneys to consult before filing any contested motions in family cases, and attorneys will welcome that requirement.

7. Issues of family safety, as well as avoidance of false allegations of domestic violence, will be the joint

responsibility of all professionals and clients.

8. Custody evaluations and trials will be reserved for the rarest of cases – and greater attention will be paid to the damage they commonly and predictably cause to children and the co-parenting relationships they necessarily rely on.<sup>20</sup>

Two Indiana counties, Wayne and Lake, deserve special credit for demonstrating the feasibility of many of these systemic changes. Both have adopted several features of an overall cooperative system of family law. One of their most forward-looking measures is the requirement that in most cases counsel speak with each other before filing motions in family cases. Since Jan. 1, 2008, Wayne County has required that, absent

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danger or other circumstances making it unreasonable, attorneys must speak with each other before filing motions in family cases. Significantly, if the attorneys are not able to resolve the matter at issue, their conversation must include two additional matters:

- 1. Confirmation that the parents are in compliance with all problem-solving measures required of them, and
- 2. Discussion of the attorneys' ideas on what problem-solving resources the parents should be referred to (additional classes, mediation, counseling, parenting coordination or other processes) for help to reduce conflict and successfully make future decisions.

We believe that the best outcomes for families require that if matters are not resolved in such conferences, motions must include a "Cooperation Update," detailing the substance of the conversation, including the attorneys' (joint or separate) recommendations about useful future problem-solving resources for the family.

According to Judge Gregory A. Horn of the Wayne Superior Court, the preliminary results of Wayne County's experience with its 2008 rule have been remarkably encouraging.

- 1. The number of adversarial motions is significantly lower.
- 2. When motions are filed, the hearings are commonly substantially more constructive and courteous (the attorneys' consultation and "Cooperation Updates" having steered everyone's attention toward solution-building).
- 3. Within six months of the rule's adoption, all attorney opposition had disappeared; in fact, at the June 2008 Wayne County bench and bar meeting, every attorney

expressed complete support for this new protocol.  $^{21}$ 

The uniform attorney approval for Wayne County's new rule suggests one final reason the bar should be interested in the four immutable principles of divorce we propose – and in the cooperative systems of family law necessary to serve clients and families better. It is possible that the law's very involvement in the bulk of family cases will depend on the extent to which it commits to helping separated and divorced parents to ensure safety, reduce conflict, build cooperation, and protect children.

If the bench and bar will commit to consistent service of those ends, the public, which in recent years has increasingly turned away from the use of attorneys in divorce and other family cases, will learn that it can safely rely on attorneys in times of family crisis for help in serving distressed families and in living up to the Lambert Declaration on the primacy of children's interests, &

- "Without question, the single biggest problem for children of divorce is being exposed to continuing parental conflict." Edward Teyber, Helping Children Cope with Divorce. San Francisco: Jossey-Bass (1992), p. 79.
  - "Empirical evidence consistently points to parental conflict as the factor that most consistently predicts maladjustment among children whose parents have separated or divorced." Robert E. Emery, Renegotiating Family Relationships: Divorce, Child Custody, and Mediation. New York: The Guilford Press (1994), p. 13.
  - "[I]'s clear that children of all ages regard fighting between parents as their number-one divorce-related problem." M. Gary Neuman, Helping Your Kids Cope with Divorce the Sandcastles Way. New York: Random House (1998), p. 197.
  - "High conflict between parents not only causes children immense suffering, it causes serious problems in their development." Judith S. Wallerstein and Sandra Blakeslee, What About the Kids? New York: Hyperion (2003), p. 204.
  - "The level and intensity of parental conflict is the most potent factor in children's postdivorce adjustment." Carla B. Garrity and Mitchell A. Baris, Caught in the Middle: Protecting the Children of High-Conflict Divorce. New York: Lexington Books (1994), p. 19.

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"Parental warfare is perhaps the most damaging environmental source of stress that can undermine [children's] successful adaptation to divorce." Neil Kalter, Growing Up with Divorce: Helping Your Child Avoid Immediate and Later Emotional Problems. New York: Fawcett Columbine (1990), p. 225.

"Conflict essentially stops kids in their tracks they are less free to go about the business of being a kid, meeting the developmental tasks that are essential to forming a healthy self." Mary Ellen Hannibal, Good Parenting Through Your Divorce. New York: Marlow and Company (2002), p. 58.

"Children who are exposed to more intense conflict between parents are more likely to suffer harm resulting from their parents' divorce. The lower the level of conflict between parents, the more likely those children will emerge emotionally whole." Andrew I. Schepard, Children, Courts, and Custody: Interdisciplinary Models for Divorcing Families. New York: Cambridge University Press (2004), p. 31.

"The thing that stresses children most, sometimes for many years, is lingering conflict between their parents." Constance Ahrons, We're Still Family: What Grown Children Have to Say about Their Parents' Divorce. New York: Harper Collins Publishers (2004), p. 80.

"Our data show that the long-term consequences of interparental discord for children are pervasive and consistently detrimental ... [and] have a broad negative impact on virtually every dimension of offspring well-being." Paul R. Amato and Alan Booth, A Generation at Risk: Growing Up in an Era of Family Upheaval. Cambridge, Mass.: Harvard University Press (1997), p. 219.

"One of the most important aspects of the family environment for children whose parents are divorcing is the level of parental fighting. In fact, parental fighting is actually a better forecaster of children's function after the divorce than the changes in the parents' marital status ... and the children's subsequent separation from a parent." E. Mark Cummings and Patrick Davies, Children and Marital Conflict: The Impact of Family Dispute and Resolution. New York: The Guilford Press (1994), p. 9.

"Some parents desperately hold onto the belief that children are not affected by the parents' conflicts. Sadly, this just isn't true. Unhappy homes make unhappy children, and every divorce will take its toll unless some corrective steps are taken." Archibald D. Hart, Children and Divorce: What to Expect—How to Help. Dallas: Word Publishing (1982, 1989), p. 121.

- "Children believe they are responsible for all of the major occurrences in their lives – including parental fighting." Edward Teyber, Helping Children Cope with Divorce. San Francisco: Jossey-Bass (1992), p. 82.
- "In a home marked by conflict and unpredictability, children do not have a deep and abiding trust in their caretakers." Elizabeth M. Ellis, Divorce Wars: Intervention with Families in Conflict. Baltimore: Port City Press (2000), p.49.
- 4. "[B]ecause they are often the centerpiece of their parents' argument ... these children feel responsible for causing the disputes, yet must feel helpless to control or stop the conflict." Janet Johnson, Karen Breunig, Carla Garrity,

- Mitchell Caris, Through the Byes of Children: Healing Stories for Children of Divorce. New York: The Free Press (1997), p. xv.
- 5. "Parental conflict not only sends kids messages about love, marriage, and relationships, it speaks volumes to them about who they are. To a child's ears, any comment about his parent positive or negative is a judgment of him. Any critical barb about your ex goes right to your child's heart." M. Gary Neuman, Helping Your Kids Cope with Divorce the Sandcastles Way. New York: Random House (1998), p. 202.
- 6. "[C]hildren experiencing intense conflict have to take sides because they can't manage the internal tension and anxiety they feel. ... This psychological 'splitting' as it is called ... is the most destructive emotional symptom that children might experience ... because of the confusion and anxiety it creates." Philip M. Stahl, Parenting After Divorce: A Guide to Resolving Conflicts and Meeting Your Children's Needs. Atascadero, California: Impact Publishers, Inc. (2000), p. 20.
- 7. "Children also find it difficult to talk about sensitive topics and feelings ... because they fear they might escalate the fight. ... Instead, some turn inward, trying to make do with their own meager resources." Janet Johnson, Karen Breunig, Carla Garrity, Mitchell Caris, Through the Eyes of Children: Healing Stories for Children of Divorce. New York: The Free Press (1997), p. xiv-xviii
- "In the battle between you, they learn to be polished diplomats. They'll tell each of you what you want most to hear — not because they're liars but because they want desperately

- to soothe each of you, to calm you down, to reduce their fears that you'll become enraged. They're afraid of your anger, they pity you, and they want you to feel better." Judith Wallerstein and Sandra Blakeslee, What About the Kids? New York: Hyperion (2003), p. 204.
- 9. "In divorce ... the choices that are put before children do not lead to a sense of control. Rather, they often lead to the child being placed in a position of feeling like they are betraying one parent or the other (or both). Jeffrey Zimmerman and Elizabeth S. Thayer, Adult Children of Divorce: How to Overcome the Legacy of Your Parents' Breakup and Enjoy Love, Trust, and Intimacy. Oakland, California: New Harbiner Publications, Inc. (2003), p 61.
- 10. "When you fight you put your child in an impossible position. ... To put it simply, you and your co-parent may hurl pain at each other, but the person you are hitting most squarely is your child." Mary Ellen Hannibal, Good Parenting Through Your Divorce. New York: Marlow and Company (2002), pp. 37-8.
- 11. "Children in high-conflict homes are more likely to view themselves ... in overly negative and hostile ways." E. Mark Cummings and Patrick Davies, Children and Marital Conflict: the Impact of Family Dispute and Resolution. New York: The Guilford Press (1994), p.5.
- "Conflicts between parents are likely to cause self-destructive behaviors in children." Philip M. Stahl, Parenting After Divorce: A Guide to Resolving Conflicts and Meeting Your Children's Needs. Atascadero, Calif.: Impact Publishers, Inc. (2000), p. 25.

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- 13. "Ongoing post-divorce conflict reinforces the child's belief that bad things will continue to happen to him or her in the future and that he or she is helpless to do anything about it." Elizabeth M. Ellis, Divorce Wars: Intervention with Families in Conflict. Baltimore: Port City Press (2000), p. 197.
- Carla B. Garrity and Mitchell A. Baris, Caught in the Middle: Protecting the Children of High-Conflict Divorce. New York: Lexington Books (1994), p. 26.
- 15. Contested family cases often detectorate into what the law otherwise recognizes as the futile business of trying to compel (or, as the law states, specifically enforce) personal services. American jurisdictions uniformly concur that attempting to compel someone to perform a personal service is such a clearly doomed undertaking that courts are prohibited from trying. See, for example, Board of School Trustees of South Vermillion School Corporation v. Benetti, 492 N.E.2d 1098, 1102-03 (Ind. Ct. App. 1986) and Smith v. General Motors Corp., 128 Ind. Ct. App. 310, 143 N.E.2d 441 (1957).

Ancient cases from our jurisdiction underscore the futility of "you-better-or-eise" orders in family circumstances. Courts have wisely reasoned that they cannot sensibly order persons to keep promises to attend to the needs of a disabled person (Ryan v. Summers, 81 Ind. Ct. App. 225, 142 N.E. 879 (1924)) or to "make a home" for an elderly relative (Hoppes v. Hoppes, 190 Ind. 166, 129 N.E. 629 (1921)). Some language in Hoppes is instructive for us today.

It is obvious that the court would have no means of compelling [the son] and his wife during the remainder of [the father's] life to perform all those intimate services due from a son and daughter-in-law which are implied by the undertaking to make a home for the father and to care for him. Hoppes, 129 N.E. at 630.

In that separated and divorced parents must "make a home and care for" their children, including in the thousands of acts of peacemaking, personal accommodation and gentility that courts can never command or supervise, the law must respectfully support that co-parenting relationship, not vainly seek to impose its authority on parents.

- 16. Attorneys' capacity to observe interests beyond those of their own clients must certainly draw strength from their well-established duties of honorable and healing conduct to courts, adversaries and even to witnesses. See, for example, this excerpt from Indiana's Oath of Attorneys: "I will abstain from offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged." Rule 22, Indiana Rules for Admission to the Bar & Discipline of Attorneys.
- 17. "As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client." Preamble, Indiana Rule of Professional Conduct.

- 18. "The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bat." Id.
- 19. On the "Professionals Corner" link of www. UpToParents.org is an introductory article on such a system, along with a model cooperative family law rule and an assessment instrument that can aid jurisdictions in determining where their systems need attention.
- 20. Steuben and Lake counties in Indiana deserve special credit for their rules strongly disfavoring custody evaluations except where they are shown to be necessary and all cooperative measures have been exhausted. Enlightened rules such as these build on the growing caution in the psychological community that custody evaluations are as inaccurate and destructive as trials. See Emery, Robert E., Renegotiating Family Relationships, New York: The Guilford Press (1994), 107; Tippins, Timothy M., and Wittmann, Jeffrey P., "Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance," Family Court Review, Vol. 43 No. 2, April 2005, 193; Kelly, Joan B., and Johnston, Janet R., "Commentary on Tippins and Wittmann's 'Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance," Family Court Review, Vol. 43 No. 2, April 2005, 233; Emery, Robert E., Otto, Randy K., and O'Donohue, William T., "A Critical Assessment of Child Custody Evaluations: Limited Science and A Flawed System," Psychological Science in the Public Interest, Vol. 6 No. 1.
- 21. More details about developing a cooperative system of family law are available on the "Professionals Corner" link of www. UpToParents.org, including a telephone interview where Judge Horn amplifies on the success of the Wayne County experience.

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