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UNIVERSITY OF ARKANSAS AT LITTLE ROCK LAW REVIEW

VOLUME 21

SUMMER 1999

NUMBER 4

THE BEN J. ALTHEIMER SYMPOSIUM
RACIAL EQUITY IN THE TWENTY-FIRST CENTURY
February 26-27, 1999

KEYNOTE ADDRESS

The Role of Assets in Assuring Equity
Cruz Reynoso

ESSAYS

Race and Tax & Business
Dorothy A. Brown
Alfred Dennis Mathewson
Beverly Moran

Race and Environment & Property
Ora Fred Harris, Jr.
Chester Hartman

Race and the Criminal Law
C. Antoinette Clarke
L. Darnell Weeden

Race and Culture
Larry Cata Backer
Timothy Davis
Wendell L. Griffen

Featured Speaker
Giving Birth to a Racially Just Society in the 21st Century
David Hall

Race and Higher Education
Raymond Cross
Pace Jefferson McConkie
Michael A. Olivas

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UNIVERSITY OF ARKANSAS AT LITTLE ROCK LAW REVIEW

SEPTEMBER 17 AND 18, 1999

THE BEN J. ALTHEIMER SYMPOSIUM CHILDREN OF EMBATTLED DIVORCE

HERSCHEL H. FRIDAY COURTROOM
UALR SCHOOL OF LAW

The Concept of High-Conflict Divorce
Janet R. Johnston, Ph.D.

The Concept of Child of Embattled Divorce
H. Patrick Stern, M.D., F.A.A.P.

The Best Interests of the Child
Catherine J. Ross, Ph.D., J.D.
Michael S. Jellinek, M.D.

Psychological Abuse Suffered by Children in High-Conflict Divorce
Andrew Shepard, J.D.
Kathleen Coulborn Faller, Ph.D.

Qualifications of Professionals Who Serve Children Involved in High Conflict Divorce and Procedures That Should be Used by These Professionals
Janet R. Johnston, Ph.D.
Robert L. Halon, Ph.D.
Barry Bricklin, Ph.D.

Protection of Families and Professionals Involved in High-Conflict Divorce
Dana E. Prescott, J.D.
Thomas E. Schacht, PsyD, ABPP

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Children of Embattled Divorce

The Ben J. Altheimer Symposium

U·A·L·R

School of Law

September 17 and 18, 1999



An interdisciplinary symposium to address protection of children from psychological damage in high-conflict divorce. A ground breaking event, the symposium will involve national experts from the behavioral/medical and legal professions.

Arkansas Continuing Legal and Medical Education credit of 7.5 hours.

U·A·L·R

SCHOOL OF LAW
Law Faculty

*Lenora -
pls talk to
me
about*

October 19, 1999

Ms. Nicole Rabner
Domestic Policy Advisor
2nd Floor, West Wing
The White House
Washington, D.C. 20502

*Ms.
Nicole*

Dear Ms. Rabner:

I am writing to follow up on the telephone conversation you had recently with Dean Rodney K. Smith, concerning the Children of Embattled Divorce Symposium held at our Law School on September 17 and 18, 1999. We are very pleased to know that Mrs. Clinton is interested to get materials about the symposium.

Attached, therefore, are the following materials:

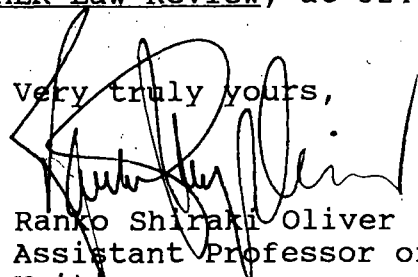
1. Brochure of the Symposium;
2. Program of the Symposium;
- ✓ 3. Bound volume of Draft Essays for Publication in the University of Arkansas at Little Rock Law Review;
- ✓ 4. Article entitled "The Toll of Marital Conflict-Rethinking Divorce," published in the Arkansas Democrat-Gazette, sec. J, pp. 1 and 8, on October 10, 1999; and
5. Volume 21, Issue 4 of the UALR Law Review in which the proceedings of the Ben J. Altheimer Symposium on Racial Equity in the Twenty-First Century were published. The proceedings of the Ben J. Altheimer Symposium on Children of Embattled Divorce will be published in Volume 22, Issue 3 of the UALR Law Review, whose distribution is scheduled for May 29, 2000. The Editorial Board will send Mrs. Clinton a copy at that time.

- What they come up with / research and analysis in the field
- see what is in there and give a review.

Ms. Nicole Rabner
October 19, 1999
Page 2

Please let us know whether we can answer any questions Mrs. Clinton might have about the symposium or otherwise. You may direct your questions to Dean Smith at (501) 324-9434, Ms. Julie Speed, Director of External Relations, at 324-9924, Ms. Julie Zamacona, Editor-in-Chief of the UALR Law Review, at 324-9920, or me at 324-9944.

Very truly yours,


Ranko Shiraki Oliver
Assistant Professor of Legal
Writing

- OK to see what
they come up with / research
analysis in the field

- See what is in there
and give to her in
the form of a memo.

c: Dean Smith
Ms. Julie Speed
Ms. Julie Zamacona



INSIDE
Tim
Gautreaux
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the blurry
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Perspe

Arkansas Democrat

THE TOLL OF MARITAL CONFLICT

Rethinking D-I-V-O-R

Divorce is never easy for kids, but "most kids . . . end up functioning pretty well. They're not doomed for significant problems," says a pediatric psychologist. Most, but not all. New findings show that 10 percent to 25 percent of the children whose parents divorce are caught in a continuing feud after the marriage ends. They are

sium to the topic, a "volatile subject" that will require a shift in the way all professionals who work with divorcing families operate, according to law school dean Rodney Smith.

"If we are not revising our thinking, we may not be clinically dead, but we will be intellectually dead," Smith told the 100-plus in attendance during his introduction of the two-day event. The papers presented at the symposium by authors

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▲ ● ● SUNDAY, OCTOBER 10, 1999

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Gazette

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longest-lasting problems.

BY J.J. THOMPSON

SPECIAL TO THE ARKANSAS DEMOCRAT-GAZETTE

More than one million children a year go through the trauma of their parents' divorce, making the dissolution of families not only a reality for more than a third of the children in the United States, but a—if not the—major event of their childhoods.

Divorce is never easy for kids, research shows, especially at first. Most children, in fact, need up to a couple of years to adjust to their new circumstances, but "the good news in all this," says Dr. Nicholas Long, a pediatric psychologist with the University of Arkansas for Medical Sciences and Arkansas Children's Hospital who has done research in this area, "is that most kids who go through a parents' divorce end up functioning pretty well. They're not doomed for significant problems."

Most kids, but not all.

Recent findings show that 10 percent to 25 percent of the children who've gone through a parental divorce are caught between parents who continue feuding even after the marriage ends. They are the ones who suffer the most significant and the longest-lasting problems.

In addition, professionals concerned with children's welfare, from doctors and counselors to lawyers, judges and educators, are recognizing that the system surrounding divorce often exacerbates rather than alleviates the problems for these troubled youth.

The complexity of the issue, and some would say its urgency as well, led the University of Arkansas at Little Rock School of Law (in conjunction with the UALR Law Review, the UAMS College of Medicine and the State Chapter of the American Academy of Pediatrics) to dedicate its recent Ben J. Altheimer Sympo-

to grasp the complexity of both the issues and the system surrounding divorce, it's helpful to look at how they have evolved over the last decades.

While the divorce rate has declined slightly in recent years, the drop is insignificant when compared to the climb between 1970 and 1990, when a phenomenal 67 percent increase occurred, according to symposium presenter Andrew Schepard, director of the Center for Children, Families and the Law of Hofstra University and North Shore-Long Island Jewish Health Systems in New York.

Part of that steep climb has always been blamed on "no-fault divorce," which, ironically, Schepard says, the state of California introduced in the early '60s as a means of staving off divorces.

The reasoning was that before the concept of no fault was introduced, only virtuous spouses could obtain divorces. This naturally meant that the spouse who wanted the divorce had to prove the other had irredeemable qualities, thus setting the stage for enormous conflict, as the accused was bound to fight back. That these matters were handled publicly in an adversarial legal system only magnified the tumult.

(Arkansas, by the way, has never gone to a complete no-fault divorce, with necessary grounds for the action being such things as adultery, impotency or habitual drunkenness or long-term separation.)

Yet, Schepard says, someone forgot to apply the reasoning of "no-fault" to the custody arena, where the court, buoyed by the then latest research, pursued "the best interest of the child" by granting sole custody to one parent during the child's "tender years," with the other parent limited to set periods of visitation.

The young, tender years, Schepard says, were considered the time a child most needed his mother, so in most cases

See **SOME KIDS**, Page 8J

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KIDS, Page 8J

USTRATION BY JOHN DEERING

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Some kids fare worse than others

• Continued from Page 1J

before the 1970s, the mother—unless deemed unfit—won custody.

Custody trials therefore, were fairly rare as everybody knew who would win. When they occurred, however, custody trials were intense acts of adversarial battle involving counter accusations of fault that usually would have qualified as grounds for divorce under the repealed regime, according to Schepard.

As women's fight for equal rights revolutionized all areas of life in the '70s, however, neither the custody arena nor the tender-years doctrine escaped the jolt. Because research at the time, Schepard says, still suggested that it was better and less confusing for children of divorce to have one "psychological parent," the idea of sole custody remained, but the automatic granting of it to the mother did not.

Therefore, the courts saw more and more custody battles. Because there had to be a winner and a loser, a third party—usually mental health professionals—were invited to throw their supposedly neutral observations into play.

In the courtroom, "parents vigorously disputed which of them had closer emotional bonds with their child while also contesting which was more morally fit to parent," Schepard says.

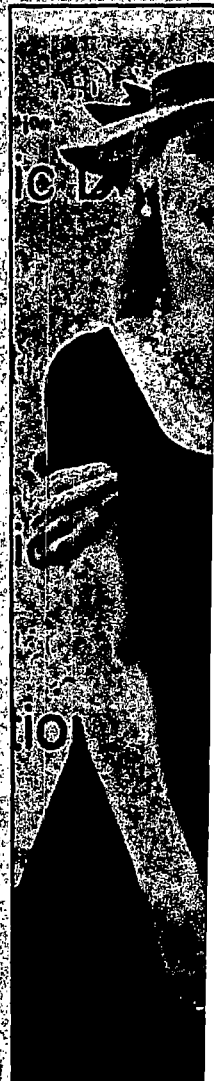
Not a pretty sight, especially for children watching the disputes, carried on both in the private home and in the public courtroom.

By the 1980s, the courts that handled divorce cases—family courts in some states, chancery courts here in Arkansas—grew overwhelmed with such cases. Schepard says this is one of the primary reasons that many states changed the courts' original role in these disputes from being a fault finder to that of being a conflict manager, the latter being accomplished through such processes as mediation and parent education.

Both venues are still relatively new and infrequently used in Arkansas, according to Ken Gallant, director of clinical programs at the UA's Law School. In fact, a statute passed this spring by the Arkansas General Assembly is the first in the state to allow a judge to require a divorcing couple with minor children to attend parenting classes or to submit to mediation.

"Whether it will be systematically applied or not remains to be seen," Gallant says.

Though judges had their own motives



High-profile divo and actress Carmel Perelman and Pat

The prevailing thought now is that the presence of conflict "seems to be important whether through a divorce situation or in an intact marriage. But divorce plus conflict, the two together, is like a double

says Stern, children suffer psychological abuse when parents use them to deliver messages to or spy on one another. The same is true when a parent tries to get children on his or her side by saying meaningful things about the other. Even more detrimental is when one parent physically abuses the other in front of the child or, obviously, when the child is abducted or illegally maintained by one of the parents.

Even the seemingly least harmful of these is quite troubling to children, Lo says. "Especially when the children are young, it is hard to understand why one parent is putting the other down. It creates

than others when parents divorce



Associated Press

High-profile divorces include (clockwise from left) Dennis Rodman and actress Carmen Electra, Mick Jagger and Jerry Hall, Ronald O. Perelman and Patricia Duff.

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Even the seemingly least harmful of these is quite troubling to children, Long says. "Especially when the children are young, it is hard to understand why one parent is putting the other down. It creates a lot of insecurity for those kids."

Divorces can get even uglier, Stern says. Other hostile behaviors professionals observe by parents in high-conflict divorces

Want to make matters worse? Move all this high emotion to the courtroom, she says, where attorneys are "advising their clients not to talk to the other spouse, making extreme demands to increase the bargaining advantage and filing motions that characterize the other parent in a negative light," none of which are usually taken without several mean volleys from the other side, she says. After all, "the public shame, guilt and fury motivates the other's need to set the record straight."

Throw into this mix mental health counselors, "often who then do the greatest damage by seeing only one party," Johnston says, and therefore, because they fail to understand the family dynamics, much less hear another perspective, perpetuate the myths that are forming about the other spouse.

most stability as soon as possible, should temporarily live with his father while the mother gets her affairs in order may be interpreted by the parents as a public statement that the mother is unfit, she explains.

Mediation, in which a third, neutral party helps the divorcing couple come to an agreement over parenting plans, has been shown to alleviate some of these problems.

California was the first state to mandate mediation in child custody cases in 1980, according to Schepard, and now 33 states have court rules or statutes requiring mediation. (As mentioned above, the Arkansas statute doesn't mandate mediation; it only allows judges to require that the divorcing parents submit to such a process.)

Couples who go through mediation reach agreement in less than half the time and at half the cost, Schepard says. In addition, they—and their children—benefit from mediation's confidential nature because no dirty laundry is flaunted publicly.

Arkansas judges now can also require the divorcing parties to attend parenting classes that focus on issues facing children of broken homes. These, too, have been found to be beneficial, though, as with mediation, professionals must be cautious with divorcing families in which physical violence or abuse are known to be factors, Schepard says.

Eighty percent of the parents who have participated in parenting courses report that their knowledge about families and divorce increased because of attendance, and more than 95 percent say that they will use what they had learned, according to Schepard.

He teaches such a program in New York, where participants have said the class was most helpful in providing information about shared custody and how to focus on the children's best interests.

About a year ago, Long and a colleague offered to teach such classes for free for the Pulaski County courts. In addition, the Centers for Youth and Families offers a class specifically for divorced families, but Long says attendance at such classes is that desirable when it is not mandatory.

The point of the education, Long says, is not that "they need to have this wonderful relationship after the divorce, but they just don't need to be constantly at each other."

In addition, by requiring them, "the court at least knows that the parents know that constant yelling and conflict after the divorce have a long-term effect on the child's adjustment."

Mediation, and family education have worked elsewhere, research shows. In Idaho, for example, the whole system around divorce has changed in attempt to remove the adversarial nature and to create cooperation among all disciplines involved.

...because the level of conflict a child must deal with seems to be the biggest factor in the amount of trouble they have in coping with and recovering from their parents' divorce.

"When you look back at the history of divorce and children," says child psychiatrist Long, "you find that the early research tried to identify a divorce personality" that typified the child of divorced parents. "That was hard to identify. Children respond differently, just as adults do, to stress. Some may withdraw while others act out."

Then research focused on "what factors moderate or mediate a child's reaction to divorce," he says. The studies showed that such things as age and sex of a child were not nearly as influential as other factors, with the "leading factor being the amount of conflict the child is exposed to. Not just physical conflict, but lots of arguing and yelling" seemed to predispose these kids for negative outcomes such as depression, withdrawal, unacceptable or high-risk behaviors, lower school performance and difficulty in forming and maintaining relationships.

Long says five main findings support the idea that a high level of conflict is actually more harmful to a child's psychological health after divorce than is the actual separation of the parents.

One is that children from divorced homes have more behavior problems than do those in which a parent has died. Also, children from broken homes where there is little or no arguing between the biological parents have fewer problems than do those where conflict exists.

Third, children who live in intact homes where parents fight a lot behave similarly to children of high-conflict divorces. Fourth, more problems are observed in children whose parents continue to battle even after the divorce. Finally, many of the problems observed in children from broken homes were evident long before the parents' separation occurred.

Therefore, Long says, the prevailing thought now is that the presence of conflict "seems to be important whether through a divorce situation or in an intact marriage. But divorce plus conflict, the two together, is like a double whammy for the child."

The problems the children of high conflict divorce face are so significant and so distinct that Patrick Stern, chief of developmental pediatrics at East Tennessee State University School of Medicine, proposes following the model of the battered child syndrome and creating criteria by which professionals can define and diagnose children who "are at high risk for psychological abuse" because of divorce.

Stern points out that before the battered child was recognized in professional literature in the 1960s, society pretty much accepted a parent's right to beat or neglect his or her child. Only after that recognition was made were professionals legally required to report suspected abuse and law enforcement agencies

um, however, creating an official diagnosis for what Stern would call "children of embattled divorce," or CDEs, would have far-reaching implications, most notably into the legal arena where lawyers say it would become just another bullet in the custodial crossfire.

Even so, simply considering the addition of such an entry to the bible of mental health diagnoses—the Diagnostic and Statistical Manual of Mental Disorders—calls needed attention to the reality of the problem, Stern and others say.

Much of the stress for children develops because so much of the conflict after divorce has to do with them—custody, visitation and financial support, for instance.

In addition to the frequent trips back to court and the constant arguing of parents,

are verbal attacks in front of the child, threats of physical or emotional violence to the other parent, stalking or harassment of the child or other parent, refusal to allow the child's visitation with the other parent and failure to pay alimony or child support even though the parent is financially able to do so.

Into all this hostility marches the polarizing forces of the culture, says Dr. Janet R. Johnston, executive director of the Judith Wallerstein Center for the Family in Transition in Menlo Park, Cal., creating what she calls a modern day tribal warfare.

The hurt and blame that most always accompany divorce often find fertile ground in which to flourish among each partner, family members and set of friends, Johnston says.

Divorce today is often

BY DIANE LACEY
NEW YORK TIMES NEWS SERVICE

When Susan Riffle's 22-year marriage ended, she realized she needed help. Her attorney suggested she talk to a professional.

Someone who understood money.

In the world of no-fault divorces, a new financial expert has evolved—the certified divorce planner. There are 363 such planners across the United States.

Riffle found Iva Hauck Girtman, a certified public accountant who realized the need for documentation and projections during her own messy divorce. Girtman, 51, is now a certified divorce planner in Lakeland, Fla.

"She's been there, done that. She knew what I was going through," says Riffle, a secretary and the mother of three children. "She knew how devastated I was and how lost I was to the financial situation."

Girtman sorted through the Riffle's finances and worked them into charts and graphs. She was organized and aggressive.

"She gave me options and explained the options to me," Riffle says. "Then I would make the choice based on her information and my attorney's information."

Richard Mars, a Bartow, Fla., divorce lawyer, says a couple with a low joint income and no children probably wouldn't need a divorce planner, although they can be helpful in some divorces.

"With major divorce cases with tax implications and property implications, there are just a great deal of financial complications," Mars says. "And a certified divorce planner would be very useful in that type of case."

The planner's financial projections help in the long term as well as the immediate future, Mars says.

The Institute for Certified Divorce Planners in Boulder, Colo., was founded in 1986 by Carol Ann Wilson, a certified financial planner who made divorce a specialty after counseling many women who found their divorce settlements less than adequate.

Divorce planner courses, which rotate around the country, are reserved for people with financial backgrounds—meaning they must understand "defined benefits" and tax calculations. Most are accountants, certified public accountants and certified financial planners.

Girtman was a CPA before she had three children. She became a stay-at-home mom who put her energies into raising her family. While she still did some work during tax season, her career essentially was on hold.

But when her marriage of 27 years ended four years ago, Girtman found herself fighting for an equitable settlement. To help her case, she graphed disputed credit card charges over five years to show a consistent pattern of spending—using her children's magic markers to color in the data.

"It has been said divorce is 70 percent finances, 20 percent emotion and 10 percent legal," says Girtman, who has a degree in business administration from the University of South Florida.

"And I agree with it. When you think about it, with divorce, what you're doing is boiling it down to who gets what."

Last summer while surfing the Internet Girtman learned of the divorce planner seminars. She took the classes, got her certification and began using software programs designed to project divorce settlements into retirement.

The number-crunching, which is on conservative inflation and investment increases, gives couples a better idea of what the decisions they make today will mean later in life.

"Equal is not equitable," Girtman says. By that, Girtman means splitting

the child's visitation with the other parent and failure to pay alimony or child support even though the parent is financially able to do so.

Into all this hostility marches the polarizing forces of the culture, says Dr. Janet R. Johnston, executive director of the Judith Wallerstein Center for the Family in Transition in Menlo Park, Cal., creating what she calls a modern day tribal warfare.

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the technicalities, in addition to the fact that they have intruded on the family to make a so-called objective observation in the midst of the high stress, damaged self-esteem and extreme pain of a divorce.

And then there's the appearance in court.

"Not only is the court considered by many as a forum where the private marital fight is exposed to humiliating public scrutiny, but it is potentially invested by its clients with a quasi-divine moral authority," Johnston writes in her book, *In the Name of the Child*. For example, a judge's ruling that a child, in order to have the

professor involved in the proceedings warned the symposium's attendees.

"The main point I hope people would take away from the symposium," says the law school's Gallant, who is a member of the Arkansas Alternative Dispute Resolution Commission, is that the state needs a multi-disciplinary effort "in which we can come together to develop a system that will make it easier for the large number of these children caught in high conflict divorces to have a better life and to grow up in the healthiest environment possible."

J.J. Thompson is a free-lance writer who lives in Little Rock.

Day is often just about m-o-n-e-y

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"Equal is not equitable," Girtman says. By that, Girtman means splitting assets



Associated Press

A couple look over a list of questions during a pre-marriage class in Marietta, Ga. Counseling is an effort to slow the divorce rate.

down the middle may sound fair—but it can penalize the spouse with a lesser income over time.

Girtman, who charges \$100 an hour, helps to make decisions based on tax implications.

For example, if a couple were to split \$100,000 in AT&T stock and \$100,000 in IBM stock, the concern would be the initial stock cost. If the AT&T stock had cost \$50,000 and the IBM had been \$80,000, then the tax would largely be based on the difference between the initial cost and profit of the sale.

In this case, the client would be better

served to take the IBM stock.

Girtman advises a person considering divorce to tuck some money away first to help with temporary support. A court date can take months. But, she cautions, never put money over safety if there is an abusive situation.

She reminds people in the middle of a divorce not to sign anything without having a professional look over the paperwork.

"You're never going to come out of a divorce with what you went in with," Girtman says. "There's only one pie to cut."

Sometimes, though, it can get particularly sticky.

One woman, who asked that her name not be used, called on Girtman during a divorce that involved a considerable amount of money. A stay-at-home mom with two children, she wanted what she believed she was entitled to.

She sought the advice of a divorce planner "not so much to take advantage of my husband but so he wouldn't take advantage of me," says the former corporate wife. "Girtman tells me when I'm about to do something stupid."

Not everyone is fighting over a big cash settlement. Many times women want to keep the house to make the split easier on the children.

But even staying in the lovely, familiar home may have a downside: Too little cash may be available for a woman supporting a family if the bulk of the settlement consists of equity in a house.

Girtman helps her clients reduce the sentiment surrounding the family home to hard, cold fact. "You can't buy groceries with it."