

RUNNING THE CUSTODY GANTLET

by

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gantlet (gont'lit, gant'lit). n. [earlier gantlope; Sw. gatlope, a running down the lane, gata, street or lane + lopp, a course or run). 1. A former military punishment in which the offender had to run between two rows of men who struck him with clubs, etc. as he passed. 2. A series of troubles or difficulties.

run the gantlet. 1. To be punished by means of the gantlet; hence, 2. to proceed or act while under attack from both sides, as by criticism, gossip, etc.

- Webster's New World Dictionary

ACKNOWLEDGMENTS

The first version of this monograph was the result of a collaborative effort which consumed some eight months of the authors' time in 1980-81. The paradigm of the divorce/custody process then developed (see "Appendix A") was primarily the work of Neil Simon, C. S. W., and his staff, and is as true today (1993) as it was then. Special thanks are due to Jan Jaworski, J. D., for much of the legal research contained herein; other contributors are credited in the text and in the end notes.

After obtaining a favorable opinion from the Ethics Committee of the State Bar of Michigan, in 1984 I switched from teaching research at The University of Michigan to becoming a full-time consultant, legal assistant, and child custody strategist (see "Vita"). Gradually, it became obvious to me that the original monograph had become dated and needed revision, and I assigned myself that task in August, 1993. Thus responsibility for the greater part of the final product is solely mine.

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INTRODUCTION

If you are a man about to embark on a divorce/custody experience, and if you're feeling sharply depressed and frightened, don't read this monograph now. Instead, join a men's rights group such as The National Congress For Men and Children, attend the meetings, ask questions, listen carefully to the answers given, and let the men you meet there carry you through the first difficult hurdles of the experience. Slowly, as you learn how the vicious divorce/custody game is played, you will find yourself sturdy enough to read what follows.

What follows is a pretty grim picture. The monograph was originally (1981) intended to be placed in the hands of psychotherapists as a kind of warning to them which went "don't advise a male client to divorce, even implicitly, when there are children involved, until you've read this monograph." Because the monograph was intended as a warning, the story of "Mr. and Mrs. L" is very pessimistic, perhaps a little too dark, you might think after reading what "happens" to them.

However, the reality of the matter can be very dark indeed for men, although since the time of the original monograph things have somewhat improved (between 1985 and 1989 men, in Michigan, won custody 21% more of the time than ever in the past). Hence, this revised monograph, while still a warning, is essentially a primer, a history, a time-saver: most of the legal/psychological tactics ordinarily used in the bloody game are here.

If you and your spouse need good reasons not to divorce or, if you must divorce and wish to have a "good" divorce, the reasons for not fighting in court are here also. Running the custody gantlet, as you will see, can be a nightmare.

RUNNING THE CUSTODY GANTLET

Men do not think
Of sons and daughters, when
They fall in love.

- Elizabeth Barrett Browning

Mr. and Mrs. L had been married to twelve years. Their union had produced three healthy children, ages eleven (11), eight (8), and four (4): to friends, their marriage seemed a happy, stable, liaison.

Mr. L had worked for years as a traveling salesman, the family attended church together on Sundays, Mrs. L was active teaching Sunday school and in the PTA, the children appeared well-nourished, normal kids, did not get in trouble with the police or in the neighborhood.

Like some apparently “stable” marriages, however, their was not a relationship without problems. While Mr. L had pursued his sales career with moderate success and Mrs. L had remained at home, raising the children, she had also been inspired by friends in the woman's movement to dream of a career of her own. Mr. L felt threatened by his wife's emerging independence, avoided any serious talk with her about her ambitions and, without her knowledge, was secretly seeing another woman when supposedly away on business trips.

Their marriage, which had begun with dizzying romance and high hopes, had slowly deteriorated under these new pressures, and had become a silently civil war or angry conversations bristling with vague accusations, reciprocal blaming, veiled threats, and at times heated rationalizations of their respective behaviors and positions.

About a month ago, they had stopped making love and had moved into separate bedrooms “so that Daddy could work late without disturbing Mommy,” they had explained to the children. The behaviors of the children at home and at school soon became confused and rebellious, and Mr. and Mrs. L decided to seek the assistance of a psychotherapist regarding their children's puzzling angers and misbehaviors.

In therapy it soon became obvious that the children were mirroring the conflicts between their parents. During one of Mr. and Mrs. L's sessions with the psychotherapist the word “divorce” was uttered for the first time by the therapist: “Are you two thinking of getting a divorce?” the psychotherapist asked in an attempt to clarify matters. It was, as we shall see, a well-meaning,, but dangerous, question to ask.

The Adversarial Process

While no chauvinism or prejudice towards any person, group, or sex, is intended, in what follows we have made certain assumptions regarding the behaviors of our fictional characters “Mr. and Mrs. L” following the fictional counseling session, above. Mr. and Mrs. L are, of course, hypothetical: but their “behaviors” are intended to be accurate representations of the typical behaviors of literally millions of people over the last thirty (30) years in The United States (over seventy-four (74) million people and children have been divorced during that period of time). Our information regarding these typical behaviors comes from case histories gathered in our clinical practice, from actual divorce experiences of people other than clients, and archival research in clinical psychology and domestic law throughout the country.

Thus, while all of our “characters” are fictional, the various behaviors we describe are typical, the emotional[†] upheavals are “real,” as are the laws cited, and also real are the ways in

which the laws regarding divorce and child custody can be manipulated by the parties to a divorce.

Why was the psychotherapist misguided in even mentioning the word “divorce?” The reason is simple: troubled people all too often look for what they believe to be simple answers to complex problems and, poorly understood, “divorce” might look like just such an answer, particularly at a time in our history when divorce is not frowned on the way it used to be by society.

Let us assume that Mrs. L, for whatever reasons, believed in dramatically quick, solutions to problems, and that Mr. L, on the other hand, was a person who secretly believed and hoped that “things would work out” between he and his wife, that she would eventually “come to her senses,” give up her “hair-brained schemes of having a career,” that the kids would “pull out of the stage they were in,” and that their marriage would somehow magically “get back on track.’

Let us further assume that none of our characters had the faintest idea of how the “family court” system operates in Michigan. Most people prefer to avoid thoroughly researching something as distasteful as divorce and the divorce/custody system before they decide that a divorce will “cure” their problems; rather, acting out of fear, anger, frustration, they throw ordinary caution to the winds and put their futures in the hands of attorneys whose competence they may or may not have thoroughly researched.

Assuming that such is the case with Mr. and Mrs. L, our intention is to suggest that such behavior may be at best misguided, at worse, tragic: we believe, therefore, that some detailed information on how the adversarial “family court” system works will be of value to psychotherapists, marriage counselors, and their clients.² Our primary concern, furthermore, is for clients with children who may impulsively run from a counseling session with a therapist or marriage counselor to a legal consultation and legal action.

How does the Michigan divorce system work? Generally speaking, the divorce process dismantles the legal contract of marriage, rendering it null and void, and erases all the legal

obligations inherent in the contract. Divorce can be a simple, relatively speedy procedure, providing there are no children or large amounts of property involved: one party files the necessary papers, pays nominal attorney fees and court costs, appears in court to testify that “the objects of matrimony have been destroyed and there is no reasonable likelihood that the marriage can be preserved,” and in a matter of minutes the marriage contract is undone.

However, if there are large amounts of money and property involved, the proceedings can become lengthy, costly, and nasty - depending, in part, that is, on the attitudes of the divorcing parties (and their attorneys). If there are children, and the parties choose to fight for custody, that decision will open a Pandora's box of legal and extra-legal behaviors and consequences never dreamt possible by the divorcing parties. It is not unusual for the custody litigations to drag on for years, consuming thousands of dollars, depleting the estates of the parties and creating seemingly endless hours of emotional distress for them and their children (not to mention their immediate families and friends), even to the extremes of murder and suicide³.

Given these possible, tragic, consequences of a child custody dispute, the phrase “no fault” begins to sound like at best a misnomer, and in a custody suit, it is, for in a child custody suit one parent must in effect show the other parent “unfit,” or themselves “more fit” to be awarded custody, just as under the old “fault” system of divorce one party was required to show the other party “unfit” as a marital partner (abuse, adultery, alcoholism, etc.).

When custody is disputed in Michigan's “no fault” system, the “fit” winner of the dispute gets the kids, the “unfit” loser is required to pay child support, child care costs, health insurance (sometimes life insurance is also required to secure the “debt” of child support for years ahead), and, rarely, alimony.⁴

The language is tell-tale: “fit,” “unfit,” “winner,” “loser,” - these words have the distinct ring of the criminal - not civil - justice system, and it is not therefore surprising to meet divorcing parties acting as if they had committed some unforgivable horrid crimes, racked with guilt over

behaviors that, in other circumstances, would ordinarily be regarded as inconsequential (e.g., swearing).

Divorce and child custody disputes, however, are supposed to be civil, not criminal, actions. In civil and criminal actions there are detailed procedures and court rules to be followed, hearings are supposed to be (ordinarily) held in open court (as opposed to the judge's chambers), perjury is supposed to be harshly punished (10 years in jail or \$10,000.00 fine, or both), and hearsay evidence is supposed to be rigorously disallowed.⁵ As there can be severe punishments meted out in criminal court (life in prison, for example), these procedures are meticulously followed.

“Family” Court, a “civil” procedure, is supposed to be governed by the same stringent constitutional guarantees of a “fair and impartial” trial; however, “Family Court” is in reality a makeshift, mulish, creature, not by law, but by practice: perjury is rampant, rules of evidence are sometimes ignored, testimony is treated as if it were “hard,” factual evidence when it is not, vital records are lost or precluded, judges are given wide discretionary latitude by the law as well as virtual impunity from a lawsuit for monetary damages.⁶

While the abuses of civil law procedures are sometimes regarded as only convenient “short cuts” used by attorneys and judges, this attitude is an invitation, we submit, to subjective rulings. Often a case is decided, for example, in the judge's chambers where there is no court reporter present, and hence no official record of the decision made or the reasons for the decision: bargains can be struck behind closed doors, and the real reason for a judgment or order buried forever.

What about in “open” court? At least court rules there demand the presence of a court reporter, perhaps a tape recorder as well, and hence a written and/or taped record of any judge's subjectivity. However, sometimes the court (stenographic) record does not seem to be accurate, and sometimes it is, in fact, not accurate because court reporters often protect judges by not accurately recording judicial “slips” that would be appealable when such happens, or seems to

happen. Litigants often hope to consult the tape recordings: however, they will be usually told that tape recordings cannot be consulted from outside the court system itself.⁷

It is also very difficult to appeal open court decisions successfully even if there is damaging evidence against a judge, and a day in open court can sometimes be unsettling and disillusioning for the layman-litigant.⁹

“If you want justice,” seasoned attorneys often say, “go to church.”

The Gantlet

It is not likely that Mr. and Mrs. L, or their marital therapist, would know any of the above (or, if told, believe it to be true). It is, furthermore, extremely unlikely that they could foresee the alternative routes of behaviors that are automatically put into play should they decide to divorce and fight over the custody of their children: these routes are outlined in Appendix A (please take a minute to study this schema, thinking of the divorce experiences you've heard about, or know about personally, including your own).

It is possible for divorcing parties to follow pretty much a straight vertical line from the decision to divorce (top of schema) to the emancipation of the children (bottom of schema) if they move from their divorce decision straight down through mediation to the Judgment of Divorce and custody as mediated.

It is also possible that they could be buffeted around inside the schema, like rats ricocheting in a seemingly endless maze, or children lost at night in a sightless, pitch-black, forest. Experienced attorneys are fully cognizant of these alternative routes of behavior and may, if they are deficient in scruples or overly greedy - or both - unconsciously encourage the disputants to follow the most psychologically damaging of the possible routes, namely, the battle over custody in open court. To illustrate, let us assume Mr. and Mrs. L blindly chose attorneys

who (implicitly) encouraged them to take this most costly, most damaging, route - the custody gantlet.

The outcome of a custody suit can rest, in part, on the behaviors of the disputant between the time they decide to divorce and the final court decision: hence, preparations aimed at causing the parties to behave in ways detrimental to their cause are put into motion before trial.

Some of these preparations, or what we will hence forth call “legal steps,” have implicit in them the judgment (“unfit”) desired, and it is important to realize that all of these legal steps are in fact commonplace in the brutal world of the custody gantlet, and are entirely legal. In other words, it is best at this time, for the reader to discard all notions of “justice” and/or “fair play,” because such notions will interfere with the reader's impartial response to what follows.

Let us assume Mrs. L misread the therapist's intention in using the word “divorce,” assumed that a divorce was being recommended, and shortly after the counseling session went to see a divorce lawyer recommended to her by a friend.¹⁰ She might be informed that, say, a \$1000 (or more) “non-refundable” retainer was required for the divorce/child custody action (child custody cases can be extremely expensive). As a housewife with only splendid, sunlit dreams of a remunerative career, Mrs. L has been financially dependent on her husband's income and largess: she doesn't have the money for the retainer!

But all is not lost: there's a legal step available.

Mrs. L would undoubtedly be informed by the attorney that as a married woman in Michigan her “dower right” entitled her to at least one-third of all the “land” (read “property”) her husband had accumulated during their 12-year marriage.¹¹ Let us sat that Mrs. L guessed the value of her husband's holdings (which can include his professional degree, his pension, the marital home, other real estate, cash-value life insurance, savings accounts, cars, boats, motorcycles, etc.) - say she estimated the value at approximately \$100,000.00. The attorney might then decide to take her case on an unofficial quasi-contingency basis, assuming that the “lands”

would be liquidated by the divorce decree, Mrs. L would get her share of the monies realized, and his fee would be paid therefrom.

But this is not the only step the attorney could take to help Mrs. L afford his services.

When a Complaint For Divorce is filed, the economic assets of the parties are frozen, that is to say, the parties cannot sell their home, their cars, strip the savings accounts, and so on, because these marital assets will have to be divided by the court. Thus, Mr. L would be prevented from selling his land (or cashing CD's or selling stock) to finance his attorney, and Mrs. L's attorney would be assured that the money would eventually be there to pay his fees by Mrs. L out of her property settlement (as it is highly probable that Mrs. L's share of the property settlement will exceed that of Mr. L because Mrs. L has approximately a 90% chance of winning custody, Mr. L will not likely be able to find an attorney willing to extend to him the same windfall).

It is also perfectly legal for Mrs. L to draw monies - all of them, if she chooses - out of joint savings and checking accounts and run lines of credit before she files for divorce, further crippling Mr. L's financial capacities: such behavior would not be detrimental to her cause.¹² And there are also other, more damaging, legal steps available to Mrs. L.

For example, while her husband is away on a business trip, Mrs. L could file for divorce, state that the children were in her physical possession, and get an "Ex Parte Order" ("to one side only" - that is, without hearing the other party's "story") granting her temporary custody of the child, get an order restraining the sale of properties (after draining the joint accounts), and an order restraining Mr. L from attacking, beating, wounding, etc. her, and also an order restraining him from entering the marital home. All of these legal steps could be taken without Mr. L being notified that the legal steps were being taken and, therefore, no immediate opportunity to object to the legal steps and nip them in the bud.

Thus, Mr. L could arrive home from a business trip on a Saturday, the day after the orders were signed, to be met at his front door by a process server, presented with the Ex Parte orders, and discover that he was barred from his home and from seeing his children, barred from in any

way attacking his wife, had no money in his savings or checking accounts, and was barred from selling any of his assets: his world would have been dramatically - and unbelievably - altered, perhaps forever.

Mr. L. would find himself labeled the wrong-doing “Defendant” and, for a chilling moment, might suddenly feel like a young enlisted soldier of years past poised before a run of the “gantlet” between two rows of club-wielding superiors, to be punished for committing some unknown wrong. He might feel egregiously wronged, aghast at his wife’ (to him) inexplicable, cold, and indifferent ferocity; he might feel incredulous that such unjust things could happen to him behind his back in The United States of America; he might feel enraged - murderous rage - and worse, he might act on his rage, thus proving he is indeed an irrational man and that the Restraining Order was altogether justified.

If he prevented himself from acting on his rage, the rage might transform into an impotent, paranoiac sense of unreality, a world turned inside-out and upside down simultaneously, where “up” was “down” and “down” was “up,” or neither, or both. If this is the way things look to Mr. L, it’s important that he understand that he’s not going insane, that, in fact, his bizarre perceptions of a bizarre reality are correct: he’s has entered the world of the “family court,” has begun - just begun - to run the custody gantlet.

The club-wielding players along both sides of the gantlet are people on his wife’s “side,” using various legal steps to club Mr. L into giving up his home, his children, his property, his future, his sense of self and reality. How can he prevent these things from happening to him?

Most of the people in the court system, Mr. L will learn, believe that - for reason never stated - “only mothers have the instinct” to raise children, and it is his “job” to pay “interim” child support (from the date the order was signed by the judge until the date of another order).

Mr. L will most likely discover that there are players, from all sides, who will clobber him with contradictory advice “to give up,” to “kill the----” to “pay the piper,” to “lie in the bed” he’s “made,” to “grab the kids and vanish into the wilderness,” to “fight until the death.” To his

horror, he might discover that members of his own family - brothers, sisters, mother, father - have aligned themselves against him on both sides of the gantlet.

To make things worse, if she so chose, Mrs. L could take other legal steps by changing the locks on the doors of the martial home, by requesting that the family telephone number be changed to an unlisted number: the telephone company would grant this request, no questions asked, the changed locks would remain unchanged, and Mr. L could do nothing whatsoever to alter these legal steps.

In other words, Mr. L could find himself seemingly under relentless attack, stymied at every turn,¹³ and may feel that he is somehow being treated as if he were a criminal. And that feeling would be entirely justified, for the adversarial system is so constructed that it cannot but deal with Mr. L except as a potential criminal at this stage in the gantlet. (By the word "stage" we do not intend to suggest that there is a specific time frame, for there is not: the legal steps just outlined here could be taken over a period of days or months or years, or very quickly - with good luck all of the legal steps could be done in a week or even less¹⁴).

Whatever the time frame, Mr. L will have to choose to defend himself against all or part of the charges leveled against him, or admit them by not responding. If he chooses to defend himself, he will most likely have to hire an attorney.¹⁵ If there is an interim support order operative, Mr. L may find himself trying to operate on as little as 40 percent of his previous net income, and find it difficult to locate a ready \$1000 (or more) for a non-refundable retainer for a potentially losing cause.

It is important for the reader to realize that the various charges made against Mr. L are only allegations, not proofs of guilt; it is equally important to realize that the legal system must regard these allegations as at least potentially valid until such time as the charges are proven false. If Mr. L were indeed a criminal and in fact guilty as charged, the system would have worked admirably well; but what if he was innocent of most or all the charges?

If he feels wronged, Mr. L can fight the charges against him. He will be legally unable to do anything immediate about recovering monies taken from the joint checking and savings accounts (adjustments will be made in his share of marital assets), charge accounts “maxed out,” the changed locks, and the unlisted telephone number will remain unlisted. He can fight each and every accusation, petition for psychological evaluations of the parties (MCLA 722.27[d]), file his own accusations against his wife.

Or he can take some extra-legal actions.

For example, he could choose to fight the child support order by merely refusing to pay it on the moral grounds that since he is not being permitted to see his children because of the criminal charges against him, he is not paying for something he can't enjoy (“no visitation, no support”); within approximately four (4) weeks, however, a warrant would most probably be issued for his arrest, and he might find himself sentenced to sit in jail for 30 or more days.¹⁶ He could threaten his wife, he could hire someone to threaten his wife, he could hire a “hit man” to kill her, he could kidnap his children, run away with or without them (“skip out”).

Whatever courses of action (legal or extra-legal) Mr. L chooses to pursue, it will be incumbent on him to somehow “clear himself” of the charges against him if he wants to have even the faintest hope of winning custody. In other words, he is “guilty until proven innocent,” not the other way around as he learned in his high school civics class. The custody gantlet has, in fact, started with the desired judgment of custody already in place via Ex Parte and other orders: and the far-reaching consequences of our hypothetical custody gantlet have just begun for Mr. and Mrs. L and their now dismembered family.

“Our Happy Family”

The social and emotional consequences of our hypothetical tale, and the real-life stories it parallels, could and can not be outlined in Appendix A, or any simple schema of legal steps or extra-legal steps, and thus must be presented in a somewhat discursive manner.

What are the emotional consequences of all these legal steps to our once happy family?

Let us assume that Mr. L did his best to obey all the interim court orders and was himself counterattacking using his own legal steps and strategies. He would be hurting for money, of course, but that might be the least of his troubles. Like “K” in Franz Kafka's bizarre novel, *The Trial*, Mr. L might find himself obsessed at his new “home” and at work by the sudden changes to his once predictably docile wife, bewildering by a haunting sense that he might have forever lost his children, overwhelmed by the shocking, impersonal, power of the law, depressed about his future, tormented with shame for his extra-marital affair.

He would be lonely, might think of calling former friends, then hang up the telephone disgusted with himself for being “unmanly,” a “cry baby.” Or, if he did call, he might be astounded to discover that former friends have taken his wife's “side,” and have overnight become his “enemies” on her “side” of the gantlet. Like the manly “heroes” of his youth, he might then decide to “go it alone,” suffer in sullen, manly, silence, thus unwittingly becoming himself one of the players clubbing himself in the gantlet.

Mrs. L, of course, would be suffering as well. Like her husband, she would be strapped for money: even with, say, 60 percent of his income flowing to her and the children (usually far less), she might find life becoming increasingly difficult, frustrating, and depressing. Stringent budgeting would be called for; haircuts would have to be done at home; eating out would be out.

The children, too, might sense that their lives had taken an inexplicable and somehow unalterable change of direction: those extra dollars for a movie or a new dress or a baseball, and the sense of security those items represented, may have strangely vanished overnight.

The emotional loss of their father - assuming Mr. L was not a monster - may be a terrifying loss experience for them, almost as if he had died or had mysteriously and mercilessly contracted a terminal illness, and this emotional stress may be accompanied by a hushed, pervasive sense of ruin and shame when with peer who have two parents. Inexplicably, the children might also feel - and usually do feel - that the impending divorce of their parents was, somehow, eerily, insanely, caused by them, the children.

Socially, as time goes by Mrs. L may find herself subtly shunned by former friends: invitations to get-togethers may trickle off, then dry up completely. She may come to suspect, rightly or wrongly, that her former friends never really cared for her as a person and, in frustration and loneliness, she may turn to organizations such as Parents Without Partners for companionship. After twelve years of marriage, however, Mr. L may find that her social skills as a single woman are sorely lagging behind the fast pace of "singles" clubs, and a night promising a romantic adventure may turn into an embarrassment of incompetence. She may have "put on a happy face," laughed too easily, too loudly, and fooled no one except herself with her false front.

She will be justifiably anxious about her future and that of her children. What, she might wonder, if Mr. L decides to "skip out" on them? How would they survive? Who would hire a woman with only the skills of a housewife? And, if someone did hire her, how much money could she make? Who would care for the children if she had to work at night? What if the custody suit dragged on for years? How could she pay for it? Would she had to go on ADC ("Aid To Dependent Children")? What man would want to marry a middle aged woman with three children and crow's feet at the corners of her eyes? Was she getting too old, too sagging, to be attractive to men?

Faced with what might seem to him like an endless, grueling, future in the adversarial system, and perhaps having grasped the abject reality of the indisputable prejudice of the court system against fathers, Mr. L may decide that the custody suit is a rotten deal, his love for his children notwithstanding, and tell his attorney that he's "skipping out" - leaving the state, maybe the country, forever.¹⁷

Do doubt his attorney will advise against such a desperate move, and point out that if Mr. L leaves the country he leaves his children behind as well as his wife. Better that Mr. L borrow money from his parents or other family members or get a second job to pay his child support (and attorney fees).

Mr. L's relationship with his children may be suffering as well as his strained bank account. Most likely he has been awarded "visitation rights" with them, say, every other weekend from late Friday afternoon to late Sunday afternoon (if, that is, he has been able to find a place for himself large enough to permit overnight visitations of the three children), and one dinner period during the week before the weekend he does not have "visitation."

During the times between "visitations" he may or may not have telephone contact with his children. To compensate for a sense of growing loss, Mr. L may overcompensate and compromise his impoverished budget by providing the children with showy, expensive, dinners, trips to amusement parks, or flamboyant gifts. None of these behaviors, however, will change the facts that Mr. L no longer sees his children on a daily basis or that any stranger anywhere in the world has more "right" to see Mr. L's children than he, their father, does.

The depths of depression suffered by divorcing and divorced fathers are difficult to assess with anything remotely resembling accuracy. Mothers also suffer, but somehow seem better able to handle the stresses than do fathers.¹⁹ Available statistics seem to indicate that most non-custodial "loser" fathers simply give up fighting the gantlet, are sooner or later beaten to their knees. For example, child support starts dwindling usually after the second year following the divorce.²⁰ Suicide is not uncommon, although of course it is difficult, if not impossible, to

establish any direct causalities between divorce, custody suits, and suicide.²¹ Escape tactics are common, as are “blood kidnappings.”²³

Let us say, however, that Mr. L has decided to tough it out: he has found another legal step.

Enter, The Medicine Men

Michigan Compiled Laws 722.27(d) of the Child Custody Act permits Mr. L (or his wife) to petition to court to order psychiatric or psychological evaluations of all parties to the custody dispute. Having decided that his wife has gone crazy, Mr. L has decided to take this legal step.

A psychologist or psychiatrist acceptable to both parties is contacted, a contract signed, fees paid in advance, tests taken, the parties and the children interviewed, a written report made. If the report is unfavorable to one party, that party may seek another psychiatrist or psychologist who will hopefully find him/her perfectly “normal” in direct contradiction to the first report: a third expert may be brought in to resolve the conflict.²⁴

In addition to the psychological tests and the clinical interviews, the judge is required by Michigan law to interview the children in his chambers to hear their preferences, if any, as to which parent they wish most to live with (MCLA 722.23 [i]), and the children may, unwittingly, seal their fates for years to come with what they say - or what they have been coach to say - to the judge.²⁵

When the ordeal of the adversarial gantlet has reached the state of utter madness we have here arrived at, the parties might decide to exchange revenge for a compromise of some sort, or may even decide to drop their suit and reconcile. Or, they may begin to think about Joint Custody although, given the warfare that has gone on by this stage, they're going to be hard put to explain to the judge how two such hostile combatants could possibly cooperate as joint custodial parents

(MCLA 722.26A Joint Custody. (b) “Whether the parties will be able to cooperate and generally agree concerning important decisions regarding the welfare of the child.”)

Or, more frequently, the parent with the interim order may up and leave the state with the children (the counter move to “skipping out”): the parent left behind may retaliate by abducting the children back - there are approximately 100,000 such “blood kidnappings” per year.²⁶ Or finally, and most tragically, one party may murder (or attempt to murder) the other party, or a “hit” may be arranged, or, in the alternative, people can be hired to break arms and destroy other things, or engage in a reign of terror threatening (and delivering) all sorts of horror until the party on “the other side” gives up.²⁷

Clearly, none of the legal and extra-legal steps outlined here are in the “best interests of the child,” and, if anything, the custody gantlet is (usually) emphatically not in the best emotional interests of anyone. The Friend of the Court, which is primarily and incontestably a collection agency replete with a staff of bounty hunters, is not exempt from this charge.²⁸

Finally, should Mr. L choose to fight his way through the gantlet only broadly (and gently) sketched here, and assuming that there is no psychopathology discovered by the medicine men, the odds against Mr. L prevailing are approximately 9 to 1 and have been so since the year women got the vote (1920).²⁹

The Damages

According to Gerald and Myra Silver, one of the more sordid realities influencing behaviors in custody suits is simply “where the children go, so goes the money.”³⁰ The ostensibly innocent rationale for this formula goes something like this: children need a roof over their heads, ergo the house goes to the “fit” parent; a house without furniture is not a home, ergo the furniture (or most of it) goes to the “fit” parent; it is in the best interests of the child(ren) that the “fit”

parent have a car for errands and emergencies, ergo the car goes to the “fit” parent; children require food, clothing, medical care and other material goods, ergo monies to purchase same are supplied to the “fit” parent by the “unfit” parent; and so on. “To the winner belongs the spoils,” including the children, appurtenance, and the power to control the children's lives for years;. The costs, financially, can be very high indeed.³¹

How high? Let us suppose that Mrs. L “wins” sole physical and legal custody of the three children: this judgment gives Mrs. L almost absolute control not only over the life of the eldest child for seven years (until age eighteen), of the middle child for eleven years (until age eighteen), of the youngest child for fourteen years (until age eighteen), and unless Mrs. L dies or there is some other dramatic change of circumstances, essentially the award gives her dictatorial control over the life of Mr. L for the next fourteen years. For example, he would have little, or no say over the medical care (or lack thereof) of the children, and he would be expected to pay for choices over which he had no veto power of input into whatsoever.

The emotional anguish aside, what kinds of real dollar figures does this judgment of custody translate into? Assuming that Mrs. L chooses not to work, Mr. L's child support assessed at (say) \$40.00 per week per child could run something like this:

Three children at \$40 per child for 7 years: \$43,680.

Two children at \$40 per child for 4 years: 16,640.

One child at \$40 per week for 3 three: 8,240.

TOTAL: \$66,560.00

These figures are at best approximations: given inflation, and an almost automatic increase in child support every two years, the rising cost of health care (the “loser” is usually required to carry the children on his health insurance and pay a portion of the uninsured medical bills as well as a portion of day care costs when the children are very young), it is conceivable that the total figure, above, could quite easily double over the next fourteen years.

Furthermore, if Mr. L has a banner year in sales, he can expect to find himself back in court explaining why he can't afford a little more in child support for his children's increasing needs. Additionally, there are Christmas presents, birthday gifts, summer vacations (or camp), and various and sundry other costs attendant on raising children, perhaps even including college expenses (although that cannot be court-ordered because by then the "minor children" aren't "minors" any more and the court has no jurisdiction over them).

This is not to say, however, that all is economic roses for the "winner" of the custody suit.

Why? It is impossible to split a family income approximately in half and expect the survivors of the split to enjoy the same standard of living they had before the split. The custodial "winner," more than likely the mother, will most likely have to find some sort of work - under the table so that her child support is not lowered - which may, or may not, be readily found and, if found, may or may not be low-paying. While it is true that women now occupy over 50 percent of the work force, it is also true that they are still somewhat less well remunerated than are men.

And there are additional emotional and financial burden that go with being the "winner." For example, the behavior of the children is almost exclusively the responsibility of the custodial parent. If the custodial parent has the children 90 percent of the time, then the custodial parent is 90 percent responsible for the kind of adults the children become. The pressure of this heavy responsibility, as well as the economic deprivation that often follows divorce, may be instrumental, in part, in inspiring the "fit" parent to decide that another marriage would help ease the financial burden. Such a move, however, may or may not prove ill-advised.³³

Hence, it is difficult to assess or separate with any scientific accuracy the extent of the economic and emotional damages suffered by divorcing families at the hands of the adversarial court system; as this sketch may have suggested, however, the damages are potentially extensive.

Whose fault is this?

Attorneys sometimes - rightly - blame the divorcing parties: they're "irrational," "combative," "unreasonable," are explanations given, and this is certainly sometimes the case. However, not all divorcing parties either begin in an adversarial stance, or end in one, and it is difficult for us to imagine how decency, sanity, and "the best interests of the child" are served when each and every divorce and custody suit must, to one degree or the other, be tried via the adversarial system and the almost always brutal custody gantlet.

What is more damaging, an argument can be made that the adversarial system could conceivably "work" if it were not for what could be called "unseen focus" built into the system that, like deep ocean currents, work invisibly beneath the surface of the court system to render the adversarial custody gantlet the nightmare it of in fact is.

These "unseen forces" are as follows:

1. The wide, loosely defined, discretionary powers given judges unconscionable room for subjective interpretations of the "facts" of the case, and thus often biased judgments. Appeals of such biased judgments to the Court of Appeals is costly and for the most part ineffective; a complaint to the Judicial Tenure Commission³⁴ is difficult and results appear to be skewed in the favor of judges by the attorneys and judges who composed the majority of the Commission.

2. When a judge is assigned to a case (on a random draw) it is "his/her" case for its duration unless the judge becomes ill, dies, or is somehow disqualified (or disqualifies him/herself). It is extremely difficult for a litigant to disqualify a judge.

3. There is therefor little uniformity in custody decisions from judge top judge, and individual biases seem to rule the day. Additionally, while there is little uniformity, historically the statistics show a uniform bigotry in the custody decisions: women have "won" custody approximately 90% of the time (since 1920), although that has been gradually changing over the last 30 years with the emergence of men's rights groups, joint custody laws, and more women committed to career-track lifestyles.

Nonetheless, some judges appear to believe in the anachronistic “nuclear family,”³⁵ and other judges believe in a closely related concept, the notion of the “mother-child bond” resulting magically from a “mothering instinct” that has never been proven,³⁶ and thus perhaps unconsciously perpetuating pernicious and irrational myths that are destructive to men and women alike.³⁷

4. Michigan attorneys are untrained in domestic law because there are few - one or two - courses in Law Schools focused on domestic law and none of these courses are required for the J. D. degree: judges are attorneys with robes on and are therefore no more trained than the attorneys who appear before them or the litigants the attorneys represent - which is to say, not at all.

5. Attorneys are not financially accountable for the success or failure of their work (they are hourly employees), nor are they economically motivated such as in cases where their fees are contingent on “winning” (contingency fees are prohibited in child custody cases).

6. Neither judges nor attorneys take courses in law school in the fields of clinical or developmental psychology (none are offered), nor are such courses required of “family law” practitioners after law school (nor to graduate schools offering the Ph. D. in clinical psychology offer or mandate courses in domestic law for their Ph. D. candidates).

7. We live in an adolescently sexist society and few of us, including attorneys, judges, psychologists and psychiatrists, Friend of the Court workers, and so on, are free of or perhaps even vaguely conscious of our unconsciously skewed, sexist, views of human reality.

8. The Friend of the Court system in Michigan is heavily funded by a Federal Government program (PL 93647) which underwrites 75% of the costs of tracking down and jailing non-custodial parents who owe child support monies (overwhelmingly men).³⁸ The Friend of the Court is therefore an arm of the adversary system, and hardly a “friend” of the children of divorce.³⁹

Over 50 percent of the jail population in Michigan is composed of fathers who can't or won't ("no visitation, no support") pay their child support.⁴⁰

When the custodial parent, usually the mother, demands action from the adversarial system regarding a child support arrearage, the system has a vested economic interest in serving her needs; however, when visitation is denied there's as yet no economic reason for the Friend of the Court or any arm of the judiciary to act on behalf of the wronged non-custodial parent (90% of the time, the father).

9. The paucity of information available to divorcing parties regarding the workings of the adversarial system invites well meaning but misguided advice from "friends." We do not recommend anyone entering into the adversarial system with only a head full of ignorance and a heart full of hope to guide them down the custody gantlet.

10. The spiraling rate of divorce and custody cases has resulted in seriously overburdened "family court" dockets. The more custody cases, the more stress on the judge's time, patience, and equanimity, and thus the improved chance of more pressured, subjective, knee-jerk decisions.⁴¹

11. Child custody cases are big business: the longer the case drags on, the more money there is to be made. From this cold-hearted point of view, there is little incentive for attorneys to handle child custody cases expeditiously.

12. Hence, there is little hope that the inequities sketched here will be rectified from within the court system; even with the highest ideals, few people campaign to put themselves out of business.⁴²

Outside of the internal workings of the legal system, but integral, one should not expect attorneys to drop their remunerative custody cases and hand them over to the behavioral psychologists for the reason that the attorneys have little or no training in domestic law and no training whatsoever in clinical or developmental psychology or, for that matter, psychiatry.

Against these bleak realities basically decent human beings, such as our hypothetical couple, “Mr. and Mrs. L,” struggle against seemingly indifferent forces that appear to be, and for the most part are, insensitive to their human suffering. Fathers sometime come to behave as if they had been subjects of a cruel “learned helplessness” experiments and loose hope, stop paying support, drink excessively, become violent, or disappear forever from their beloved children's lives to heroically “spare the children any more pain.”

Sometimes the father's ex-wives and the children fare no better, and bear the scars of the custody gantlet for life. Sometimes the non-custodial parent commits suicide to end the seemingly endless and unendurable agony of the custody gantlet, as also sometimes happens with the beleaguered and broke non-custodial parent.

Divorce is sufficiently painful in and of itself, we submit, to obviate the necessity, for whatever gain, of running ordinary human beings through the gantlet of antiquated laws, mercenary attorneys, and the brutally manipulative legal steps sketched here. Who among us can enthusiastically cheer the fall of the legalistic clubs on the heads of the runners?

END NOTES

1. Nothing said here, therefore, should be construed as in any way relating to divorce and custody procedures in states other than Michigan. Divorce laws vary widely from state to state, and Michigan is not necessarily better or worse than any other state.

Appendix “A” was inferentially derived from case work experience: the story of the fictional “Mr. and Mrs. L” was designed to “flesh out” the abstractions of “Appendix A.” Any apparent sexist “slant” is reflective only of the realities.

The question mark following the downward line extending from “violence” is there because there are no clearly established behavioral “routes” that would be simple to diagram. For examples, beatings or other forms of physical response could lead to jail; law suites; reconciliations; “skipping out;” death; and so on.

2. It is not, however, our intention that this monograph be used as a kind of “do it yourself” manual for divorcing parties fighting over the custody of their children: each custody case is highly individualized. and the generalized comments here will most probably be of little help in individual cases. Furthermore, while the information here is correct as of 1993, laws change every day, and great care should be exercised in relying on the current accuracy of any laws cited in this monograph.

3. See Herb Goldberg, *The Hazards Of Being Male* (Signet: the New American Library, New York, N. Y., 1976).

Anna Freud, Joseph Goldstein, and Albert Solnit, in *Beyond The Best Interests Of The Child* (Signet, New American Library, New York, N. Y., 1976), simply ignore, for the most part, the disastrous consequences following the removal of a child or children from its/their father, for both the father and the child(ren). Their book is similarly marred by their apparent belief in a somehow automatic, instinctual, “mother-child bond” (which does not exist: see Kyle Pruett, M.

D., *The Nurturing Parent* [Warner Books: Warner Books, Inc, New York, N. Y., 1987, p. 230]; John Nicolson, Ph. D., *Men & Women: How Different Are They?* [Oxford University Press, Oxford and New York, 1984), writes: “Since there is no convincing evidence that women are governed by an instinct to have children, I think we should abandon the notion of a maternal instinct . . . (p. 125)]. Nicolson also correctly points out that it is women who have historically abused, battered, and killed their own children (p. 123ff). For a further, specific, critique of Freud et. al., see Mel Roman and William Haddad, *The Disposable Parent* (Penguin Books, New York, N. Y., 1978).

4. Child support paid to the “fit” parent “winner” is non-taxable income; child support by the “unfit” parent “loser” is not tax-deductible (alimony is, and is taxable income to the recipient). However, under certain circumstances, this inequitable situation can be negotiated to right the imbalance (by, for example, allocating part of the monies to alimony, part to child support). The dependant tax deduction goes to the parent who has the child(ren) six months or more per year.

Under joint custody arrangements child support may be ordered if it is determined the child(ren) need support (Michigan Compiled Laws Annotated, 722.26a[6]).

Probably the best treatment of joint custody, how it works and how to make it work, is still Isolina Ricci's *Mom's House, Dad's House* (Macmillan Publishing Co., Inc., New York and London, 1980).

5. See Gerard A. and Myra Silver, *Weekend Fathers* (Stratford Press, Los Angeles, Cal., 1981).

6. Judges may be sued in Federal Court for violating a litigant's constitutional rights and may be assessed such costs as attorney's fees, but not exemplary damages (Pullian, 104 Supreme Court, 1970).

7. We cannot verify that this is actually the law; but it is frequently said.

Michigan General Court Rules (Rule 917) provides that “an attorney or person appearing in propria persona” may, on application, receive permission from a judge to tape record and/or use “photographic recording” equipment so long as the use thereof does not “disrupt the proceeding.” Such recordings cannot be used publicly.

9. See William Haddad's Introduction to *The Disposable Parent* (n. 3., above). for a poignant description of his personal experiences in open court. Haddad's description, in our experience, is not atypical, although there are of course exceptions.

Donald T. Haller, Director, Family Counseling Services (Washtenaw County, Michigan, in testimony to the House of Representatives Judiciary Committee (November 2, 1981), described the world of divorce/custody litigation thusly:

The person filing for divorce enters a strange kind of world. It is a world of family law in which the critical life-shaping decisions are made for people and not with them. In this strange world, normal people are often regarded as “sick” - incapable of making decisions, as criminals who belong in jail, and self-determination is a strange and alien concept.

Although the person is not a criminal and is not involved in a criminal trial, the divorce court continues to use the language of criminal law. Frequent reference is made to the concept of “In the best interests of the child,” but no one seems to know what that really means. In this confusing world, two people trying to end their marriage in a non-adversarial way are often forced to become adversaries so that there can be a winner, when everyone knows there are no winners. Anger, a normal emotion in the crisis of separation, is not dealt with: rather, it is institutionalized both in the present and proposed systems, to the detriment of the entire family. It is a world in which one witnesses the strange and incredible phenomenon of children being divorced from their fathers and mothers. To say that this is “cruel and unusual punishment” will elicit a quick reply.

10. Monte Vanton, in *Marriage: Grounds For Divorce* (Victoria Press, Burbank, California, 1977), claims that, in California, it is wives who routinely first file for divorce. All statistics from

all States indicate that it is the wife who files first approximately 60% of the time. The Plaintiff in a civil suit is the “wronged party:” thus, this legal step put the husband on the defensive as the wrong-doing “Defendant.”

11. Michigan Constitution, Article 10, paragraph I (ML 552.19).

12. Mrs. L's desperate financial circumstances could therefore be read as an indictment of her parsimonious husband. The rule is: “anything you have ever done or said will be used against you in a court of law, rightly or wrongly.”

13. Mrs. L would also temporarily restrain Mr. L from seeing his children's school records or school work on the grounds, for example, that he “played destructive psychological games” with these materials, emotionally harming the children.

Mr. L might attempt to fight this bad by appealing said band under PL 93380, the “Family Rights and Privacy Act,” and (in Michigan) the Attorney General's opinion #5027. However, if the children are enrolled in a religious school there is no legal way to force the children's school records free of the school.

Mr. L could also find himself served with a set of Interrogatories, a set of questions about his finances and other matters; he and his attorney would return the favor to Mrs. L with their own set of Interrogatories. These questions can run into the hundreds and take hours to answer.

Another legal step available to Mrs. L - the “nuclear bomb of child custody cases” - would be to accuse Mr. L of sexually abusing one or all of his children. This accusation immediately throws the divorce/custody matter into criminal court (“Criminal Sexual Conduct”) in which arena nothing will most likely be decided for approximately six (6) months. Mr. L may, or may not, be allowed to see his children (if he sees them at all it will be “supervised visitation”), which in turn provides Mrs. L will the opportunity to set up “an established custodial environment,” which in turn means that if Mr. L is cleared of the criminal charges, the custody matter will then be under Section VII of the Child Custody Act requiring “clear and convincing evidence” to alter the established custodial environment (MCLA 722.27[C]). Accusations such as

this can cause incredible damage: see Lawrence D. Spiegel, *A Question Of Innocence* (The Unicorn Publishing House, New Jersey, 1986)

14. There is nothing fanciful about this presentation of these legal steps: see Silver (n. 3), Goldberg (n. 3), Roman and Haddad (n. 3).

If Mrs. L were real and actually took these legal terms without justification, our feeling is that her behaviors demonstrate a level of immaturity not compatible with good parenting. It is immaterial whether or not her attorney tacitly or directly recommended such behaviors: a litigant is an attorney's boss, not the opposite.

15. Mr. L does not have to hire an attorney: he can represent himself (“In Pro Per,” or “Pro Se”), or be defended by another non-attorney to whom he has given his “power of attorney.” If he represents himself, he will have to master all the relevant court procedures and laws, first, and then learn how to overcome the sometimes blatant dislike some judges have for “Pro Per” litigants (see Silver, n. 3).

16. When this monograph was first written (1981), it was not unusual for men to languish in jail, watching their child support arrearages mount, be released from jail and be re-arrested as they walked out for the child support arrearages racked up while in jail (see Bettie Kay McGowen, “Michigan Friend of the Court System: Why Is It Failing?” [The Michigan Citizen's Lobby, Lansing, Michigan, 1980]; David L. Chambers, *Making Fathers Pay* [The University of Chicago Press, Chicago and London, 1979]; *Sword vs. Sword* [399 Mich App 367]). Today (1993) men - or, rarely, women - can still be jailed for failure to pay child support; however, they can also be granted “the freedom of the jail” to seek or go to work during the day to erase arrearages and keep up with their current child support responsibilities.

17. If he does, there will be a warrant out for his arrest good throughout The United States and The Parent Locater Service will have his name and social security number on file.

19. See Herb Goldberg, Ph. D., *The New Male* (The New American Library, New York, N. Y., 1979), and *The Inner Male* (Signet: The New American Library, New York, N. Y., 1987).

20. See Chambers (n. 16). More recently, Lenore J. Weitzman's *The Divorce Revolution* (1985) has made the claim that on the average divorce women and their children suffer a 73 percent decline in their standard of living in the first year after the divorce, whereas their ex-husbands experience a 42 percent rise in their standard of living.

Jed H. Abraham, in his "The Divorce Revolution Revisited: A Counter-Revolutionary Critique" (*Northern Illinois University Law Review*, Volume 9, No. 2, 1989), states that "The truth about The Divorce Revolution is that it is not an objective, scientific treatise. It is a feminist tract with a political agenda" (p. 296).

21. See Goldberg, *The Hazards Of Being Male* (p. 3)

23. Silver and Silver, *Weekend Fathers* (n. 5, above), estimate the frequency of "blood kidnappings" to be approximately 100,000, but our information puts the figure closer to 250, 000, although this figure is no doubt incorrect.

24. The value of the input of behavioral scientists into child custody decisions has recently been recognized by the Family Law section of the Michigan Bar: "We lawyers and Judges," writes Norman N. Robbins, "do not have the background nor [sic] the professional experience to resolve this most difficult of all problems [child custody disputes] without the help of the behavioral disciplines. . . The expert witness is the anchor person." (*Family Law Journal*, January, 1989, pp. 4-5).

A caveat, however, is in order: the psychological community, throughout the world, is just beginning to realize that fathers play critical developmental roles in the lives of children. As Stanley H. Cath, M. D., recently put it, "That our particular school of thought [psychoanalysis] (with rare exceptions) has not thus far systematically looked at fathers is astounding." Preface, *Father And Child*, Ed. Stanley H. Cath, M. D., Alan R. Gurwitt, M. D., and John Munder Ross, Ph. D. (Little, Brown and Company, Boston, Mass, 1982), p. xx. (See also *Fathers And Their Families*, Ed. Stanley H. Cath, M. D., Alan R. Gurwitt, M. D., and Linda Ginsberg [The Analytic Press, Hillsdale, New Jersey, 1989]).

The most recent, and probably the most important, contribution to this area of child custody disputes is Richard A. Warshak, Ph. D., *The Custody Revolution, "The Father Factor and the Motherhood Mystique"* (Poseidon Press, New York, N.Y., 1992).

25. MCLA 722.23(i) The preference of the child, if the court deems the child to be of sufficient age to express preference. What is a "sufficient age"? Sixteen? Six? Why are children asked to make adult decisions? Are judges trained to spot a brain-washed child?

26. Silver (n. 5), and n. 23, above.

27. Roman and Haddad (n. 3).

28. "The Friend of the Court," writes Kate McGowan (n. 16, above), "is a friend to no one." For specific details on the collection agency aspect of The Friend of the Court, the percentage amounts paid the F. O. C. by the Federal Government for child support collections, see Public Law 98-378 enacted August 16, 1984 (98 STAT 1305), "Incentive Payments to the States," et passim.

There are, of course, situations in which the custody gantlet is the only way to help kids in trouble with a severely malfunctioning parent.

29. Before 1920, men almost always "won" custody of the children for the reason that women, who were at best "second class" citizens, economically dependent on men, simply couldn't support their children. Roman and Haddad (n. 3).

30. Silver (n. 3, above)

31. Chambers, McGowan (n. 16).

32. Chambers (n. 16); Weitzman (n. 20).

33. The "reconstituted family," or second-marriage "family" has a multiplicity of difficulties unknown to the "nuclear family." For example, who calls whom what if the family contains children from two or more previous marriages? Who has the legal responsibility for whose children?

34. See n. 8, above.

35. See Paul Glick, "Updating the Life Cycle of the Family," *Journal of Marriage and the Family* (February, 1977). Only approximately 7 percent of the population is organized in the "nuclear family" configuration according to the U. S. Department of Labor, Bureau of Labor Statistics, Special Labor Report 206, "Marital and Family Characteristics of the Labor Force in March, 1976," *Monthly Labor Review*, June, 1977. Some sixteen years since the date of this *Monthly Labor Review* article, it appears the "nuclear family" percentage has dropped to 4 percent.

36. See Roman and Haddad (n. 3), Pruett (n. 3), and Nicholson (n. 3).

37. See, for example, Diane E. Papalis and Sally Wenkos Olds, *A Child's World* (Second Edition: McGraw-Hill Book Company, New York, N. Y., 1979).

38. See MCLA 600.1821 which reads, in part: "No female shall be imprisoned on any process in any civil action." In *Carnahan vs Carnahan* (143 Mich 390 [1906]), this law was revised so that it did not (and does not) apply in cases where a non-custodial female is in arrears. However, since there are very few female payors of child support there are very few females in arrears and even fewer in jail.

39. See Thomas F. A. Plaut, Ph. D., Louis A. Wienskowki, Ph. D., and Robert Pardee, Ph. D., *The Department of Health, Education, and Welfare, Public Health Service Act, Section 301 (a) (3), as amended, P. L. 78-410 U. S. C., 241 (41 CFR part 52)*, Washington, D. C., 1979.

The authors list eight "circumstances or statuses" seriously affecting the children of divorce, and thus establishing those children as members of an "at risk" population:

- 1) Custody or visitation rights are in dispute.
- 2) Parents remain embattled in their interactions.
- 3) The custodial parent is seriously impaired due to mental illness, alcoholism, or addiction.
- 4) The child has a history of serious physical or psychological impairment.
- 5) The child is rejected by both parents (unwanted).
- 6) The child has practically no contact with the non-custodial parent.

- 7) Divorce/separation has resulted in severe economic distress.
- 8) An only child is involved.

The existence of “any one” of these circumstances of statuses is considered cause for alarm.

40. See McGowan (n. 16).

41. See Persia Wooley, *The Custody Handbook* (Summit Books, New York, N. Y., 1979), Chapters 14 and 15, which treat the subject of this monograph from a nationwide point of view. See also the authors listed in n. 16 regarding judges in Michigan.

42. Hence, the system must be changed by starting from without: see Wooly (n. 41), where the author notes that Ann Diamon,, a Marin County (California) attorney has observed that “between 30 and 49 percent” of Marin County divorces are being handled In Pro Per by the divorcing couples who “decide to do their own divorce themselves rather than risk having whatever tenuous rapport they have managed to achieve destroyed by the automatic adversary situation created by the legal system.”