

LEGAL PROFESSIONALS' PERCEPTION OF CRITICAL INFORMATION  
IN CHILD CUSTODY DISPUTES

by

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(ABSTRACT)

The purpose of this study was to better understand which components of available information are used by legal professionals when making a child custody recommendation/decision in Virginia. Further, the study was undertaken to determine the assistance needed by legal professionals involved in such disputes to help them determine a child's best interests.

The sample consisted of 24 lawyers and 16 judges who participate in child custody disputes in Virginia. The research included an ecologically valid case study and a two part open-ended questionnaire.

The results indicated a wide variation in what is considered crucial to determining a child's best interests and some uncertainty as to why certain factors are more important than others indicating that specific statutes are of little help to the legal professionals. When asked, most of the respondents felt legal professionals lacked the necessary training to determine a child's best interests

indicating the need for the incorporation of social science coursework in their education. The responses also indicated that the parents rather than the child were often the focus in these proceedings indicating a need for increased use of guardian ad litem provided they have social science training. Finally, there is a strong desire on the part of the legal professionals to have more input from social scientists when involved in child custody disputes indicating that a team approach using social scientists and legal professionals to determine child custody be utilized in Virginia.

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## TABLE OF CONTENTS

	PAGE
ABSTRACT .....	ii
ACKNOWLEDGEMENTS.....	iv
LIST OF TABLES.....	viii
CHAPTER	
I. INTRODUCTION.AND REVIEW OF THE LITERATURE.....	1
Purpose .....	3
Justification.....	5
Definitions.....	8
Historical Perspective of Child Custody.....	9
Changes in Law:Judge's Decision-Making.....	11
Current Statutes:Judge's Custody Decisions.....	13
Discipline Comparisons:Custody Decision-Making	16
Demographics and Custody Decision-Making.....	20
II. METHODOLOGY.....	25
Sample.....	25
Instrument.....	26
Data Collection.....	28
Analysis.....	29
III. RESULTS.AND DISCUSSION.....	32
Results.....	32
Summary.....	54
Discussion.....	55

TABLE OF CONTENTS (Cont.)

	PAGE
IV. CONCLUSIONS AND RECOMMENDATIONS.....	70
Conclusions.....	70
Recommendations.....	79
REFERENCES.....	81
APPENDIX A: Case Study.....	84
APPENDIX B: Lawyer's Questionnaire.....	88
APPENDIX C: Judge's Questionnaire.....	92
APPENDIX D: Letter to Lawyers.....	96
APPENDIX E: Letter to Judges.....	98
APPENDIX F: Reminder Letter to Lawyers.....	100
APPENDIX G: Reminder Letter to Judges.....	102
APPENDIX H: Coding Key.....	104
APPENDIX I: Data Entry Key.....	134
APPENDIX J: Data.....	140
VITA.....	143

## LIST OF TABLES

<u>Table</u>		<u>Page</u>
1	Percentage of Identified Child Factors by Group	35
2	Frequency of Explanations by Group Using Human Development Categories	37
3	Frequency of Identified Child Factors Using the Best Interest of the Child Criteria	42
4	Frequency of Explanation by Group Using the Best Interest of the Child Criteria	44
5	Perceptions of Training	50
6	Sources of Information on Divorce and Child Custody	52



## CHAPTER I

### Introduction and Review of the Literature

Much of the research on divorce has focused on the effects divorce has had on the children involved. Researchers have specifically examined divorce's effects on children's social, emotional and cognitive functioning (Hetherington, Cox, & Cox, 1978, 1982; Wallerstein, 1985; Wallerstein & Kelly, 1980). This research has indicated that divorce can be very devastating to children and potentially threatens their optimal development. In fact, based on the work of Holmes and Rahe (1967), Charnas (1981) stated "divorce and its subsequent sequelae is a trauma of such proportions that it is considered to be second only to death in terms of stress which is placed upon the individuals involved" (Charnas, 1981, p.57). However, according to Belsky, Lerner, and Spanier (1984), Hetherington and Camara (1984) and Hetherington et al. (1982), the research has also indicated that it is not the divorce itself that seems to result in the negative effects but instead the adjustment to the post divorce living arrangements.

In divorce situations where the custody arrangements cannot be agreed upon by the parents, a third party must make this decision. This study was aimed at better understanding, how custody decisions are made by legal

professionals.

## PURPOSE

The object of this research was to understand, in an ecologically valid way, the perceptions of judges and lawyers in regard to child custody disputes. More specifically, the study was designed to answer the following research questions:

1. What specific facts and issues do legal professionals focus on and why do they see these as being critical in making a custody recommendation/decision?
2. Which components of the best interest of the child criteria listed in the Code of Virginia are used most often to classify the legal professionals' responses?
3. Given a case-study, what was the custody recommendation/decision?
4. Why did the respondents feel this was the most appropriate arrangement for the children in the case-study?
5. What, if any, additional information about the family in the case-study did the respondents perceive as being important for making a decision and why was it important?
6. How adequately do these professionals perceive they are trained to decide what is in the best

interests of a child?

7. What are the judges' and lawyers' sources of information concerning the effects of divorce and custody arrangements on children?
8. What information/research would the judges and lawyers find helpful in determining the child's best interests?
9. How would they like this additional information made available to them?

## JUSTIFICATION

Literature and research has indicated that those making custody decisions do so using vague criteria determined by state statutes. Such critical decisions are made with little guidance from law other than to make such decisions in "the best interests of the child " and little if any training in the behavioral sciences. Because of this, judges must make custody decisions relying on subjective opinion and intuition as to what these best interests are (Goldstein, Freud, Solnit, & Goldstein, 1986; Marafiote, 1985; Pearson, Munson, & Thoennes, 1982; Pearson, & Ring, 1982/1983;).

According to Marafiote (1985), "judges typically have little upon which to base their far reaching [child custody] decisions other than unsubstantiated assumptions and presumptions, inconsistent case law, vague and indefinite statutes and criteria, and personal biases" (p. 4). Although Marafiote spoke only of the judges' difficulty in such a situation, lawyers are also placed in a difficult position regarding child custody decisions. They play a crucial role in the case as they must provide the information the judge will use to make his/her final decision. Unfortunately, lawyers must also perform their role with little if any training in the behavioral sciences and few guidelines concerning child custody.

Lawyers have thus far been virtually overlooked in the research on child custody decision-making. According to decision-making theory, a person's decisions rely heavily on the information available on which to base such decisions (Baird, 1978; Sternberg, 1985). According to Hogarth (1980), people attach meaning to the information and such meaning is often the key to understanding how decisions are made. Custody decisions then depend on the information provided by the lawyers and the meaning the judge attaches to such information. Lawyers are also the potential judges of the future. Thus, it was crucial to include lawyers and judges in research on child custody decisions so that we could better understand the perspectives of those actually making or potentially influencing such decisions.

In order to understand their reasoning for choosing certain factors as more important than others, it is crucial to know the sources of information about the effects of divorce and child custody arrangements on children. Furthermore, research (Lowery, 1981; Settle & Lowery, 1982) has shown that many of the legal professionals involved in child custody disputes are uncomfortable with their roles in these cases. Determining how adequately legal professionals think they are trained for such roles, what information is readily available to them about child custody and what information and/or

research they feel is lacking is the foundation needed if policy is to be formulated that can be used to help these professionals with their difficult roles.

Most importantly, this study can be justified by the fact that, in the United States, approximately 1.2 million children are affected by divorce each year (Hetherington, & Camara, 1984). Approximately, 60,000 to 135,000 of these children are involved in custody disputes (Pearson, Munson, & Thoennes, 1982) and it is expected that these numbers will rise. The custody decision will directly affect the future development of these children. As such, research that is designed to better understand how these far reaching decisions are made and what information is needed by legal professionals involved in custody disputes is warranted.

REVIEW OF THE LITERATUREDefinitions

In order to have an accurate understanding and interpretation of some of the research presented, it is necessary to define the following terms.

1. Sole custody: A parent is awarded all rights and responsibilities of decision making concerning the child (children). The child (children) lives with this parent and may or may not have visitation with the other parent depending on what the judge feels is best for the child (children). (Belsky, Lerner, & Spanier, 1984).
2. Joint custody: Parents have equal rights and responsibilities concerning the child (children). It often includes an arrangement of joint physical custody which means that the child (children) spends approximately equal time in each parent's home. (Belsky et al., 1984).
3. Split custody: Each parent acquires custody of a (some) child (children). An example would be where the father acquires custody of the male children and the mother acquires custody of the female children. (Belsky et al., 1984).
4. Third party custody: Someone other than the biological parents is (are) awarded custody. (Belsky et al., 1984).
5. Tender years presumption: A concept that presumes that a child is of such "a tender age" that the mother is best able to care for it. Tender age is never defined thus giving the judge complete discretion to determine. This is found in many cases as the basis for the judges decision. There is supposedly a movement away from relying solely on this since it is not necessarily true that a mother is better able to care for a child based only on that child's age. (Ex parte Devine, Ala. 1981; cited in La Budde, 1982).
6. Psychological Parent: A concept originated by Goldstein, Freud, & Solnit (1973) to describe the



person who "through day to day interaction, companionship and shared experiences not only fulfills the child's physical needs for comfort and gratification but also his demands for affection, companionship and intimacy" (p 18-19). The psychological parent does not have to be a biological parent. Criteria to determine this person were not provided by the originators of this concept.

7. Best interests of the child: Judges making custody decisions must do so "in the best interests of the child." It is not defined for them and they are left with the discretion to determine what it is. (Marafiote, 1985). In the code of Virginia it is stated as follows.

"The court, in determining custody and visitation of minor children, shall consider the following:

- a. The age and physical and mental condition of the child or children;
  - b. The age and physical and mental condition of each parent;
  - c. The relationship existing between each parent and each child;
  - d. The needs of the child or children;
  - e. The role which each parent has played, and will play in the future, in the upbringing and care of the child or children;
- and
- f. Such other factors as are necessary to consider the best interests of the child or children.

In awarding the custody of the child or children to either parent, the court shall give primary consideration to the welfare of the child or children, and, as between the parents, there shall be no presumption or inference of law in favor of either." (Divorce, Affirmation and Annulment Act, 1950).

8. Guardian ad litem: Legal council who represents the child rather than the parents in child custody proceedings.

### Historical Perspective of Child Custody

Until about 150 years ago child custody was not even a dispute issue. At this time, children were considered

property and as such the father in the family claimed all rights and control over them. In the case of marital separation it was a given that the father would raise the children and the mother would lose access to them (Pearson, Munson, & Thoennes, 1982).

Later when industrialization occurred, the legal status of the father as sole custodian began to diminish. Fathers were forced to work away from the home leaving the children there with their mothers. It was also at this time that the emerging field of psychology emphasized the "maternal instinct" which indicated that "good mothering produced emotionally healthy children" (MacDonald, 1986, p.11). In addition, it became the practice of the courts to award custody to the "innocent party." Because women were predominantly the ones filing for divorces from their "at fault" husbands, fathers did not receive custody.

In the preceding discussion, one sees that in the past, deciding custody of a child was a relatively easy task. Today, however, this is not so.

Over time, the laws have evolved from fathers' right to sole custody to a reversal resulting in maternal preference and currently to sex-neutral standards that emphasize the "best interests of the child". These new standards are "far more elusive" and allow those making the decision more freedom and discretion than ever before (Pearson, Munson & Thoennes, 1982, p.5 ).

Changes in Law: Judge's Decision-Making

Given the changes in law, Sanford (1977) made a comparison of child custody awards prior to and after the passing of the "no-fault" legislation in Florida. She compared records from two counties in Florida using records from April, May, and June in 1970 and in 1976. Sanford also followed her investigation with an interview with ten circuit court judges from urban areas of Florida. She found that the records indicated that the changes in custody statutes had little impact on the judges' final decision. The pattern of mothers as preferred custodian with father acquiring visitation privileges persisted. Her findings were duplicated in the interviews she conducted. The judges acknowledged that the fathers' custody rights in the legislative change were not being supported. The judges also said their decisions were often guided by personal family experiences and that they liked the high degree of discretion the broad statutes allowed them.

Sanford's (1977) findings indicated that when making the custody decision little information other than personal opinion was used. In the current study, the subjects' responses to the questions of why they think certain information was most important were used to provide insights into what these opinions are.

Pearson, Munson, and Thoennes (1982) also conducted a study to determine the impact changes in law had on judges'

custody decisions. In their study they compared the custody award patterns of 60 child custody dispute cases in Denver, Colorado in 1966 and in 1976. This ten year period included the time prior to and following the establishment of sex-neutral statutes. Their results indicated that although men became more assertive in their attempts at gaining sole custody, the change in legal standards has had little impact on the final custody decision. Mothers were still the preferred custodians and it still seemed necessary for men to prove their wives unfit before they were given custody. Women, however, did not have the burden of proving their husbands unfit to be awarded custody. The results of this study also indicated that the number of sole custody awards declined as alternatives such as split, joint and third party custody awards become more popular. When looking at all types of custody awards it appears that men gained more access to their children through split/joint custody arrangements (Pearson, Munson, & Thoennes, 1982).

The current study was designed to provide insight into the trends of custody award patterns found by Pearson, Munson, & Thoennes (1982). More specifically, by looking at what information judges and lawyers used regarding the family, the research was aimed at providing some indication why the chosen parent or arrangement was the preferred custodial parent/ arrangement.

Current Statutes: Judge's Custody Decisions

Lowery (1981) examined the importance judges attach to each of the criteria listed in the broadly written state statutes in Kentucky. Based on the premise that "given a multiplicity of factors to be considered, individuals seldom actually use more than a few criteria" (p.492) to make a final decision, Lowery hypothesized that the judges would rely more heavily on some factors than others. Her subjects included 57 judges and 23 commissioners responsible for making child custody decisions. These legal professionals used an 11 point scale to rank 20 items which elaborated the Kentucky child custody statutes. The twenty items included such things as: mental stability of parent, professional advice, parents' affection, biological relationship and placing child with same sex parent.

Lowery included ten open-ended questions to elicit further information on the criteria chosen by the subjects. She also provided the judges the opportunity to make comments regarding child custody adjudication. Settles and Lowery (1982) analyzed the responses to these open ended questions in a follow-up study.

The results of Lowery's (1981) study indicated that judges did attach greater importance to some factors than to others. The judges were most concerned that the custodial parent was mentally stable, responsible, had conventional values, and provided stable community

involvement.

The ranking of criteria resulted in an interesting finding. There was a contrast between what the judges reported as important criteria and the implications of findings from social science research. For example, judges assigned the least importance to keeping the child with the same sex parent whereas research by Santrock and Warshak (1979) and Santrock, Warshak, and Elliott (1982) has indicated that children may adjust better to a divorce when placed in the custody of the same sex parent. Lowery (1981) concluded that "additional research is needed to investigate the specific nature of discrepancies between the legal standards for custody and the standards indicated by psychological research" (p. 497).

In their follow up study, Settle and Lowery (1982) submitted the responses to the open ended questions and the "additional comments" of Lowery's (1981) work to a content analysis. This analysis of the open ended questions also revealed some discrepancies between what social science research, as compared to judges, indicated as important. For example, when the parents interests were in conflict judges preferred mothers over the fathers based on the idea that young children belong with their mothers. The reason given for this preference was usually the "Tender Years Doctrine."

The Tender Years Doctrine refers to the belief that:

where a child is of such tender age as to require the care and attention that a mother is especially fitted to bestow upon it, the mother, rather than the father, is presumed to be the custodian, unless for some reason she is unfit for the trust." (Ex parte Devine, Ala. 1981, cited in La Budde, 1982)

This presumption has been replaced by sex-neutral standards. However, it is still used in child custody disputes even though, as Lowery (1981) stated, research has indicated that single-parent fathers do not appear to experience greater difficulty than single-parent mothers.

In addition to the discrepancies between what social science research has indicated and what judges indicated as important, the follow-up study (Settle & Lowery, 1982) revealed two themes in responses to the open ended questions. The first theme was that all cases must be decided on an individual basis and that the decision was never clear cut. The second theme revealed that this area of law was the most difficult for them. Many judges felt untrained and helpless in making a good decision. The current study addressed this issue by assessing judges and lawyers perceptions of adequacy of training, determining what information was available to them and what information was lacking that could help them in making the custody

decision.

Discipline Comparisons: Custody Decision-Making

Charnas (1981) investigated whether mental health professionals and judges differed in their choice of psychological parent as the custodial parent. Psychological parent is a concept devised by Goldstein, Freud, and Solnit (1973) to describe the parent who "through day to day interactions, companionship and shared experiences not only meets the child's physical needs for comfort and gratification but also his demands for affection companionship and intimacy" (p 18-19). Charnas also examined criteria judges and mental health professionals used to make their decision, degree of satisfaction with choice of custodial parent and whether the inclusion of a young child gave custodial preference to mothers (reliance on tender years doctrine).

Charnas (1981) found that there were no significant differences between the professions in regard to selecting the "psychological parent" as custodian. Also, there were no significant differences between what the professional groups indicated as the most important criteria in the selection of a custodial parent. Both professional groups stated "best interests of the child" as the most important criteria for their choice. There were no differences between professions in degree of satisfaction they felt with their custodial choices or comfort with their



professional roles. Also, in contrast to previously discussed findings, neither group of professionals gave automatic preference for the mother when the child was young.

The only significant difference found between the professional groups was in the satisfaction they experienced with their choice of additional criteria used to make a decision. Mental health professionals reported a higher degree of satisfaction than judges reported in regard to the criteria they used to make a decision.

The above findings indicate that, overall, legal and mental health professionals hold similar perspectives when given the same information to evaluate. The differences in satisfaction with criteria may be related to the fact that mental health professionals are trained to know what is necessary for healthy or optimal development whereas judges are not trained in this area. To provide insights into what is needed to alleviate the uncertainty legal professionals experience the current study examined legal professionals' perceptions of their training to determine what, if any, further information/research they desired about children and custody in general.

In a study by Woody (1977) lawyers, psychologists, psychiatrists, and social workers use of criteria when involved in child custody disputes was compared. He did this via a four-part questionnaire. Section I of the

questionnaire was designed to investigate how the subjects' decisions compared with the decision patterns predominant in the past such as automatic preference for the mother or automatic placement with siblings.

Section II required a ranking of 18 factors intrinsic to the Michigan Child Custody Act of 1970. The Michigan Act is similar to the guidelines used in most states to determine child custody disputes and lists the following as the courts responsibility to evaluate and determine in such disputes: the love and affection between parent and child; the emotional ties between parent and child; the capacity of parent to give the child guidance; the capacity of the parent to continue the child's education and also his/her training in religion and creed; the capacity for parent to provide food, clothing, medical, remedial care and other material needs; the length of time lived in an emotionally stable and satisfying environment and desirability of continuity; permanence of proposed custodial home; moral, mental, and physical fitness of parent; home, school and community record of child; and child's preference if the child is deemed of sufficient age by the court to state his/her preference (Marafiote, 1986).

Section III consisted of choosing the best parent in each of nine parental circumstances with each description being based on one of the factors of the Michigan Act.

Section IV required subjects to rank 20 factors provided by

published accounts, the Michigan Act and recommendations from professionals. Demographics such as professional discipline, sex, age, professional experience, marriage history, divorce history, parenthood history, and the number of times professional information or expert testimony was provided were collected to see if any of these variables accounted for differences in responses.

The majority of subjects favored placement of the child with his/her natural parents and siblings. Placing the child with parents of the same sex was not highly regarded. The majority of respondents indicated love and affection between parent and child, length of time in a stable environment and mental health of parent as the important factors in making a custody decision. Custody was given to the parent who could provide geographical stability, had good mental health and had traditional morality.

Subjects from all the disciplines chose the same five factors as being the most important for the mother and the father. The order of importance of these for the mother were quality of relationship, mental health, childrearing attitudes, child care history and personal behavior. The same order with a reversal of the latter two factors was indicated as important when considering the father.

The author concluded that overall there were no significant differences between professional disciplines.

Although some distinctions were found between the professional groups, Woody (1977) stated that these could probably be explained by socioeconomic status rather than professional philosophies or "theoretical postures" (p. 16).

Discipline comparisons between legal professionals and social scientists were not undertaken in this study since previous research (Charnas, 1981; Woody, 1977) indicated that the perspectives of the professions are not significantly different. Instead, this research focused on legal professionals as they are the individuals most directly involved and responsible for the decisions made regarding child custody.

#### Demographics and Custody Decision Making

Pearson and Ring (1982/1983) studied the effects demographics such as age of the judge and location of the judges and families, structure of the decision-making system and specialization of the judges caseload have on the judges custody decisions. They did this by comparing three counties in Colorado over a four-year period. To make such comparisons they examined records from 100 court cases from each for the years 1973-1977. The results indicated that the different systems of assigning judges and the amount of specialization of the caseload yielded few significant differences in the child custody resolution process. Again, even though sex-neutral standards existed,

it was found that overall mothers were the preferred custodian and fathers had to prove their wives unfit before they acquired custody. The results also revealed that the demographics studied seemed to affect the final decisions made. The county which employed younger judges had a significantly higher incidence of father only custody awards than the other two counties which were less urbanized, employed older judges and exhibited the most traditional custody award patterns (for example assuming younger children need their mothers more than they need their fathers, mother preference overall). The county which employed younger judges also had a higher incidence of third party awards.

These researchers also interviewed the judges to examine what criteria they used to determine the "child's best interest." Results of these interviews indicated that most judges in this study relied on the tender years presumption. Older judges emphasized morality considerations more than younger judges and younger judges focused more on temporary or prior custody arrangements more than the older judges did.

By examining the criteria used to determine "the best interests of the child" the authors strived to understand how the final decision was made. However, the authors examined this by asking questions such as, "How important are \_\_\_\_\_?" By doing so the researchers assumed that

the judges attach some importance to this issue. Presenting the question in this way may have biased the judges towards an affirmative response. The judges may have reported that they used this information simply because it was included in the questions presented to them.

The current study provided a case study from which the respondent chose specific facts that s/he perceived as the most important to consider. Further s/he was required to provide explanations for the importance of these factors. An in-depth case study which required respondents to identify the facts they considered to be the most important, was used in the current study to alleviate the problem of automatic affirmative responses.

Pearson and Ring (1982/1983) also investigated the judges' attitudes about child custody adjudication. The authors found that with few exceptions judges especially disliked child custody disputes and named the crowded dockets, the emotionalism, pettiness, and the absence of true legal issues as the reasons. Despite this the judges almost unanimously indicated that the legal system is the proper arena for such decisions. Furthermore, the judges preferred the broad statutes which permitted the discretion needed to address each case individually.

Although such information is valuable it falls short of determining potential improvements. The current study was designed to investigate what judges and lawyers view as

being needed to alleviate much of the stress and uncertainty experienced in child custody cases.

In Kray's (1977) study regarding child custody decisions, age, gender, and the sexual behavior of the parent were studied to determine their effects on the final decision. In this study, 26 female and 26 male judges made custody decisions regarding a hypothetical case study with several variations. First, they made a decision using a case study described as follows: a suburban Los Angeles couple with one child were divorcing after eleven years of marriage. This case was varied using two other pieces of information. The first concerned sexual activity. The second involved a piece of "favorable information." The sexual behavior took one of four forms: homosexual with a live-in companion; homosexual promiscuity; heterosexual with a live-in companion; heterosexual promiscuity. The supplementary favorable information also took one of four forms: parent was a P.T.A. officer; parent was a pediatrician; psychiatric report describing parent-child relationship as being beneficial; and opposite sex grandparent being available to assist with child care.

All judges/commissioners received all possible combinations. Half of the sample had in its information a male child and half had a female child. The results indicated that there was an overwhelming preference among judges for the mother and this preference was significantly

more likely if the child was a girl. When unconventional sexual behavior was an issue preference for the alternative parent increased. The only type of "favorable information" to influence this was that of the psychiatric report. A favorable psychiatric report consistently decreased the negative impact produced by sexual behavior information.

Kray's (1977) study clearly indicated how crucial the judge's use of information is in the final decision. However, because the researcher was specifically interested in the effects of age, gender and sexual activity on the decision, this study used limited information.

Rather than focusing on the importance of specific information as Kray did, the current study provided more in-depth information on the family involved in the custody dispute (e.g., parent's income, living arrangements, sex of the children, ages of the children, child-care arrangements, parent-child interactions, etc.). The study was designed to determine, given in-depth information, which facts are deemed as most important by the individuals who play a crucial role in child custody adjudication.



## CHAPTER II

### Methodology

#### Sample

The sample for this study was composed of judges and lawyers from the Commonwealth of Virginia. The decision to limit the sample to one state was made because legal guidelines regarding child custody vary from state to state.

In Virginia, the Circuit Courts are used for divorce and corresponding child custody proceedings unless there are extenuating circumstances such as child abuse and/or neglect. As such, the sample of judges was drawn from the Circuit Courts of Virginia. The names of the judges were taken from the most recently published Report of the Secretary of the Commonwealth.

The membership list, organized by geographic area, of The Family Law Division of the Virginia State Bar was used to obtain the names of practicing Virginia lawyers involved in child custody cases. Systematic sampling of the list was used to identify potential participants. These lawyers were then contacted by telephone to secure their participation in this study. A total of 89 lawyers were contacted to obtain the target sample of 40 lawyers.

It was possible to contact twenty-five of the thirty-one circuit courts in Virginia by telephone. Judges' names

and correct addresses were clarified. Because it was not possible to contact judges directly, the clerk/secretary was given an explanation of who the researcher was, what the study was about and how it was to be conducted. S/he was also told that the questionnaire was being sent out and s/he was asked to forward the questionnaire to the judge(s). Questionnaires were sent to ninety-eight judges.

A total of twenty-four lawyers and sixteen judges responded to the questionnaire. This represents a sixty percent return rate for the lawyers, a sixteen percent rate for the judges and a twenty-nine percent return rate for the sample of legal professionals as a group.

A possible explanation for the significant difference between judges and lawyers in return rate might be the direct contact between the researcher and the lawyers. Lowery (1981) obtained a high rate of return using the telephone contact method. As discussed, it was not possible to directly contact the judges. As such, they may have felt less motivation/obligation to return the questionnaire.

### Instrument

An ecologically valid case study (Appendix A) was used as the stimulus for eliciting subjects' responses to the most important criteria used when making a child custody decision. This case study was formulated by summarizing

the court records and briefs of a 1980 Virginia Supreme Court case. A case that did not involve serious extenuating circumstances was chosen since this research was designed to investigate the decision making process when both parents are fit. The actual names of the individuals involved were changed to reduce the likelihood of the case being recognized or the Supreme Court decision remembered. Also, the children's actual identities as four-year-old twin boys were changed to be brothers four and four years and eleven months of age.

A two part open-ended questionnaire was developed for this study. The case study and questionnaire were pilot tested by two attorneys. Comments were made on the length of time necessary to complete it as well as clarity of the questions. Suggestions were also asked for how to improve the case study and questionnaire to ensure as high a return rate as possible. The comments and suggestions made were incorporated into the final case study and questionnaire that were sent to the subjects.

The questionnaire differed slightly between lawyers (Appendix B) and judges (Appendix C). The first part of the questionnaire included questions regarding the case study itself. Lawyers were asked to answer from three perspectives: as the lawyer for the mother (M), for the father (F), and for the child(C). To minimize the effects of order on response, the order of the questions were

varied so that each possible combination and order was sent out. Thus, six variations of the questions were sent (M,F,C; F,M,C; M,C,F; F,C,M; C,M,F; & C,F,M) to the lawyers. The questionnaire for the judges did not require a shift in perspective-taking. They were asked to respond in the role of the custody decision-maker only. As such, the effects of order were not a concern and all judges received the same questionnaire.

The second part of the questionnaire was the same for the judges and the lawyers and included open-ended questions about their training, their sources of information on divorce and child custody, what other information they would like, and how they would like it made available to them.

#### Data Collection

Data collection began with the phone call described previously. It included information on how the subject's name was obtained, who the researcher was, what the research was about, and how it was to be conducted. Subjects were assured of confidentiality of responses. For the lawyers the phone call ended with a request that they agree to participate. As affirmative responses were obtained the questionnaires were mailed with the accompanying letter of explanation (Appendix D for lawyers, Appendix E for judges). For the judges the phone call

ended with a request that the secretary or court clerk forward the questionnaire to the judge when it arrived.

Reminders were sent to the lawyers (Appendix F) and judges (Appendix G) who had not, after three weeks, returned their responses. No further contact was made.

### Analysis

The answers to the questions were used to generate a list of responses for each question. Two coding systems were developed allowing both a social science and legal interpretation of the data. The first employed Spradley's (1979) technique of formulating a domain structure to determine main and sub-categories which were used to classify the data. (Appendix H)

The headings and sub-headings that emerged from the data using this method involved a combination of those broad terms social scientists often use to describe a child or adult being (e.g. social, physical, emotional etc) and the aspects from Maslow's (1954) hierarchy of needs which were particularly applicable to the young children in the case-study (e.g. fundamental needs, safety and security needs, and love, belongingness and relationship needs). For example, the main categories or "cover terms" (Spradley, 1979, p. 100) used to classify the subject's explanations concerning the importance of considering the child factors they indicated were: material/fundamental needs; physical

needs; social/cultural needs; and emotional needs. In additions there was a category of legal aspects for responses that only focused on legal statues and experience and a category other for those comments which were not classifiable into the above system.

The sub-headings or "included terms" (Spradley, 1979, p. 100) were as follows. Material/ fundamental needs included home/physical accomodations; income; routine; childcare; and parenting ability/skills. Physical needs included: age of the children. Social/cultural needs included: neighborhood/community; peer interaction; and role modeling. Emotional needs included: security/ stability; and relationships (family/ loving/ affectionate). Legal aspects included: statutes and precedents; and reasons based on legal/professional experience.

Coding the data using the above system allowed for interpretation of the legal professionals responses from a social science perspective.

The second coding system involved classifying the data according to the best interest of the child criteria listed in the Code of Virginia to allow an interpretation the subjects responses from the legal perspective. These criteria were specifically outlined previously.

Frequencies of responses and frequencies of categories were determined. The Chi-square statistic was used where

appropriate to make comparisons between lawyers and judges.

## CHAPTER III

### Results and Discussion

#### Results

This study was aimed at understanding which factors/ information legal professionals focused on and why they were perceived as critical in child custody disputes. Following are the results of the questions presented to the subjects the research used to achieve this understanding.

**Research Question 1:** In answering the question, what specific facts and issues do legal professionals focus on and why do they perceive these as being critical in making a custody recommendation/decision, judges responded to the question "List up to four factors about the Doe children you think were most significant in making your custody decision. Give your reasons for choosing these as the most important factors to consider when deciding custody in this case" whereas lawyers responded to the statement "please list up to four factors about the Doe children you think are the most important for the judge to consider when making a custody decision. Give your reasons for choosing these factors as the most important and indicate how you would use them in your briefs or oral arguments."

It is important to note that the respondents were also asked to list factors about the mother and factors about the father which were important to consider in this case.



However, they had difficulty focussing on the children and the responses given were often parent focused regardless of the perspective they were answering from. Responses were therefore repetitive between questions. Due to the redundancy in the responses factors and explanations were only analyzed for the question requiring them to focus on the children.

All of the subjects responded to the question requesting a list of important factors although some listed less than four factors. Based on the responses given, the main categories that emerged from the data were: material/fundamental factors; physical factors; social/cultural factors; emotional factors; behavioral factors; legal factors; and other, for those comments not readily classified.

In regard to the category material/fundamental factors, responses were coded as: household/physical accommodations; finances/income/economics; routine/ (stability of environment/primary caregiver/work schedules/time available for the children); parenting (capability/ability); and childcare.

Physical factors included: physical condition of the children; age of the children; sex of the children; age of the caregivers/parents; and physical condition of the caregivers/parents.

Social/cultural included: social conditions/

opportunities for peer interaction; social support/network; religion; educational plans for the children; neighborhood/location.

Emotional factors included: stability of parents; parent-child relationship (love/affection/time spent with children); child's adjustment/happiness/ adaptability; children's desires; sibling relationship; children's relationship with caregivers; and interparental attitudes/relationship.

Behavioral factors included behaviors of the children.

Responses coded as "other" included those comments that were not classifiable into the above categories.

Inter-rater reliability for the above classification system was calculated by determining the number of responses the coders agreed on relative to the total number of responses given. The coders agreed on 117 out of a total of 130 responses representing a 90 percent agreement rate.

#### **IDENTIFIED CHILD FACTORS**

As shown in Table 1, the four child-pertinent factors the lawyers listed most frequently were routine, parent-child relationship, child care, and home. Judges most frequently listed age of the children, parent-child relationship, sibling relationship and behavior of the children.

Table 1

## Percentage of Identified Child Factors by Group

FACTORS	Lawyers (N=24) %	Judges (N=16) %
Material/Fundamental		
Household	33.3	18.7
Finances/Income	16.7	-
Routine	62.5	18.7
Parenting	4.2	12.5
Childcare	37.5	18.7
Physical		
Condition of Children	4.2	6.3
Age of Children	12.5	56.3
Sex of Children	4.2	18.7
Age of caregivers/parents	8.3	-
Physical condition of caregivers/parents	4.2	-
Social/Cultural		
Opportunities for peer interaction/social conditions/support	25.0	6.3
Educational plans for children	12.5	-
Neighborhood	4.2	-
Emotional		
Emotional stability/ well being of children	12.5	-
Emotional stability of parents	12.5	-
Parent-child relationship	50.0	43.7
Children's adjustment/ happiness	16.7	25.0
Children's desires	8.3	-
Sibling relationship	4.2	31.3
Children's relationship with caregivers	4.2	-
Inter-parental attitudes	4.2	-
Behavior		
Behavior of the children	8.3	31.3
Other		
Not enough information on the children	-	6.3
No decisive factors	-	6.3

Note: cumulative frequencies are greater > 100% due to multiple responses.

**EXPLANATIONS FOR THE IMPORTANCE OF IDENTIFIED CHILD FACTORS**

Based on the explanations given for why the above factors were important the categories that emerged from the data were: material/fundamental needs; physical needs; social/cultural needs; emotional needs; legal aspects and other.

In regard to the category material/fundamental needs, responses were coded as: household/physical accommodations; finances/income/economics; routine (stability of environment/ primary caregiver/ routine/ work schedules/time available for the children); parenting (capability/ability); and childcare.

Physical needs included: age of the children. Social/cultural needs included: neighborhood/community; peer interaction; and role modeling. Emotional needs included security/stability; relationships (family/ loving/affection). Legal aspects included: statutes and precedents; and reasons based on professional experience. Responses coded as "other" included those comments that were not classifiable into the above categories. Twenty-four lawyers and 15 judges provided explanations for their choice of child-pertinent factors.

Ninety-two and 56 responses were given by lawyers and judges respectively. As shown in Table 2, the three most frequent human development categories used to classify the lawyers' explanations were: material/ fundamental needs;

Table 2  
 Frequency of Explanations by Group Using Human  
 Development Categories

CATEGORY	Lawyers	Judges
	(*F=92) f	(*F=56) f
Material/Fundamental Needs	42	21
Physical Needs	1	2
Social/Cultural Needs	14	5
Emotional Needs	28	25
Legal Aspects	5	2
Other	2	1

\*NOTE- F=the total number of responses given.

emotional needs; and social/cultural needs. For judges, the three most frequently used human development categories were: emotional needs; material/fundamental needs; and social/cultural needs.

#### **EXPLANATIONS FOR SPECIFIC IDENTIFIED CHILD FACTORS**

##### **Lawyers**

Explanations for the importance of the specific identified child factors were examined for lawyers and judges. As discussed previously, lawyers focused on routine, parent-child relationship, child-care and the home when choosing important factors to consider when recommending custody.

Nine of the fifteen lawyers who listed routine provided explanations for the importance of this factor. The most frequently given explanation for considering routine was, "it is important that parents are able to spend routine/regular time with the children" (7). The respondents focused especially on each parents work schedules and their effects on the parent's ability to be with the children.

Of the twelve lawyers who listed parent-child relationship, five provided explanations for its' importance. The most frequently given explanation was that "it was important to know if the parents and children spend quality time together (2).

Nine lawyers indicated child care as a crucial

consideration and five provided explanations for its importance. Only one response was given with a frequency greater than one. This was, "it is an important consideration because the paternal grandmother may be unsuitable/undependable due to age and health problems" (2).

Five of the eight lawyers who said the home as an important issue explained its importance. The most frequently given reason was, "the children should not be uprooted because remaining in familiar surroundings/home is important for root identification" (3).

### **Judges**

As discussed judges focused on age, parent-child relationship, sibling relationship and the behaviors of the children. Five of the nine judges who listed age as an important factor provided explanations for its importance. The most common explanations included: children of this age need peer interaction (2); age was important because young children need their mothers (2); and age was important because at this age childhood routines must be considered (e.g. "mother's schedule interferes with childhood routines") (2);

Of the six judges who listed parent-child relationship, five provided explanations. The most common response was: "a close ongoing relationship with both parents is important for children and creates the

possibility/consideration of joint custody (3)."

Five judges listed sibling relationship and two provided explanations for its importance. Both said the children should be kept together due to closeness/bonding.

Finally, four of the five judges who listed behavior as important provided explanations for its' importance. All four said that it was important to consider because they were concerned that it indicated an emotional problem/trauma related to spending time with the mother.

As discussed previously explanations were also categorized according to the best interest of the child criteria listed in the code of Virginia to examine research question #2 which was stated as: Which components of the best interest of the child criteria in the Code of Virginia are most often used to classify legal professionals responses?

In addition to the social science classification system legal professionals' identified child factors were also coded according to the six criteria in Virginia's code dealing with the best interests of the child. The code is as follows:

- a. the age and physical and mental condition of the child or children;
- b. the age and physical and mental conditions of each parent;



- c. the relationship existing between each parent and each child;
- d. the needs of the child or children;
- e. the role which each parent has played and will play in the future, in the upbringing and care of the child or children; and
- f. such other factors as are necessary to consider the best interest of the child or children" (Divorce, Affirmation, and Annulment Act, 1950).

All of the lawyers gave factors that could be coded according to the criteria in the code of VA. Fourteen of the sixteen judges' factors could be classified as such.

#### **CHILD FACTORS CLASSIFIED ACCORDING TO THE CODE OF VIRGINIA Lawyers**

Eighty-three responses were received from lawyers. As outlined in Table 3 four most frequent criteria used to classify the lawyers' listed factors were; children's needs; such other factors necessary to consider in the best interest of the child; the relationship existing between parent and child; and the age, physical and mental condition of the children.

#### **Judges**

The number of responses given by judges that were classified according to the Code of Virginia was 47. The

Table 3  
 Frequency of Identified Child Factors Using the Best  
 Interest of the Child Criteria

CODE	Lawyers (*F=83) f	Judges (*F=45) f
Age/physical/mental condition of children	11	14
Age/physical/mental condition of parents	6	-
Parent-child relationship	11	6
Children's needs	31	12
Present/future role as parent, caregiver	1	2
Other factors necessary to consider in best interests of children	23	11

\*NOTE- F=total number of responses given

age and physical and mental condition of the children; children's needs; such other factors necessary to consider in the best interests of the child; and parent child relationship were the four most frequent criteria from the Code of Virginia used to classify the judges responses.

(See Table 3)

#### **EXPLANATIONS CLASSIFIED ACCORDING TO THE CODE OF VIRGINIA**

##### **Lawyers**

The explanations were also coded according to the six criteria in the code of VA. Of the 92 responses from lawyers, 85 could be classified according to the code of Va. As shown in Table 4, the lawyers responses were most frequently classified under the following criteria: such other factors necessary to consider in the best interest of the children; children's needs; and parent-child relationship and the role each parent has played and will play in the future in the upbringing of the children.

##### **Judges**

Fifty-five of the fifty-six explanations given by the judges were coded according to the code of Virginia. The best interest of the child criteria most frequently used to classify their responses were: such other factors necessary to consider in the best interests of the children; children's needs; parent-child relationship; and the age and the physical and the mental condition of the children.

Table 4  
 Frequencies of Explanations by Group Using the Best  
 Interest of the Child Criteria

CODE:	Lawyers (*F=65)	Judges (*F=55)
Age/physical/mental condition of children	4	7
Age/physical/mental condition of parents	2	1
Parent-child relationship	9	9
Children's needs	25	14
Present/future role as parent, caregiver	9	3
Other factors necessary to consider in best interests of children	36	21

\*NOTE-F= total number of responses given

Research Question 3: What was the custody decision? In answering this question lawyers were told "If you were appointed by the courts to represent the child (guardian ad litem) please indicate who you would recommend as the custodial parent." Judges were asked "If you were responsible for determining the best interests of the Doe children, what would you custody decision be?"

When asked to recommend/decide custody 39 subjects responded. One judge did not decide custody. Overall 38.5% of the respondents chose the mother, 53.8% chose the father and 7.7% chose joint custody. When differentiating between lawyers and judges, 50% of the lawyers and 20% of the judges chose the mother. The father was chosen by 45.8% of the lawyers and 66.7% of the judges. Joint custody was chosen by 4.2% of the lawyers and 13.3% of the judges.

A chi-square was performed and no significant difference was found between lawyers and judges in their choice of custodial arrangement. The obtained  $\chi^2 = (2, N=39) = 3.91$  was not significant at the .05 level.

Research Question 4: In explaining why the subjects thought their choice of custodial arrangement was appropriate, lawyers responded to the statement, "Explain why you think this is the most appropriate arrangement for the Doe children." Judges responded to the question, "Why

do you think this is the better arrangement for the Doe children?"

#### EXPLANATIONS FOR CHOOSING THE FATHER

When the father was chosen the most frequently given reason was that the children's behaviors indicated emotional trauma due to problem/instability of the mother (7 subjects). Other frequent responses were "children of this age need peer interaction and the mother's home is isolated" (6) and "children are accustomed to the marital home and should not be uprooted" (6).

#### EXPLANATIONS FOR CHOOSING THE MOTHER

"She has proven/demonstrated her ability to care for the children and would likely assure the children were cared for" was the most frequently given response when the mother was chosen (5). Other frequently given responses were "peer interaction will be provided through her day care", "a strong prior relationship with the parent will give a sense of stability at a difficult time", "young children need their mothers", and "primary care-giver is often the person the child is most closely bonded to." Each of these was given by three subjects.

## EXPLANATIONS FOR CHOOSING JOINT CUSTODY

Two of the three who chose joint custody based their decision on the belief that a close ongoing relationship with both parents is important. The third said the mother had always taken care of the children and since the primary caregiver is often the person the child is most closely bonded to, the bond should not be broken.

**Research Question 5:** To determine what additional information about the Doe family was needed and why it was important, the subjects responded to the question, "Is there any other information regarding the Doe parents or children (included or that should have been included) that you think would be important to consider? If so, what information and why is it important?"

## ADDITIONAL INFORMATION DESIRED ABOUT DOES

Twenty lawyers and thirteen judges responded to this question. Lawyers most often wanted information on the children's behaviors (7). Other frequently requested pieces of information were: reason for the marital break up; psychological evaluation of parent and/or child; and past and future religious upbringing of the parents and children. Each was requested by

four lawyers who asked for more information.

Judges also frequently requested the reason for marital break up (8). Children's behaviors, psychological evaluations, and inter-parental attitudes were the other frequently requested pieces of information desired by the judges. Each was requested by three of the judges who responded to this question.

#### **EXPLANATIONS FOR ADDITIONAL INFORMATION'S IMPORTANCE**

In explaining why the above information was important 10 lawyers and 10 judges provided reasons. The reason lawyers most frequently gave was to determine cause of children's behaviors (6).

The second most frequently given reason by lawyers for wanting information was to establish a stronger argument (2). The other reasons listed were given by one respondent each.

The most frequently given reason given by judges was to determine who was at fault (3). The other explanations were given by only one respondent each.

**Research Question 6: Lawyers and judges were asked, "Do you think that most legal professionals are adequately trained to determine what constitutes the best interests of children?"**



## PERCEPTIONS OF TRAINING

As shown in Table 5, thirty seven subjects responded to this question. Three lawyers did not respond. Overall 29.7% of the respondents thought as a group legal professionals were adequately trained, 10.8% thought that judges were trained but that lawyers were not, and 59.5% thought legal professionals were not adequately trained to determine a child's best interest. The chi-square statistic was used and a significant difference was found between lawyers and judges in their perceptions of training,  $\chi^2 (2, N= 37) = 6.257, p < .05$ .

## EXPLANATIONS OF TRAINING

The respondents were asked to explain their answers. In calculating frequencies and percentages of explanations, those that thought legal professionals were not trained and those that thought judges were but lawyers were not were examined as a group. Because the question asked about legal professionals as a group, responses that differentiate between lawyers and judges are essentially saying that overall legal professionals are not trained.

Of those subjects who felt legal professionals as a group were not adequately trained (26), the three most frequently given explanations were: learn by

Table 5  
Perceptions of Training

	Lawyers (N=21) %	Judges (N=16) %	Total (N=37) %
RESPONSE			
YES	14.3	50.0	29.7
NO	76.2	37.5	59.5
J-YES/L-NO*	9.5	12.5	10.8

\*J=Judge, L=Lawyer

professional experience (11); the best interest of the client (parent) is usually the focus rather than the children's best interest (9); and legal professionals are capable/competent to determine the best interests of a child because they can assess/challenge the testimony of those trained (7).

**Research Question 7: To determine professionals' sources of information concerning the effects of divorce and custody arrangements on children, subjects were asked to "list the various sources you use to get updated information on the effects of divorce and child custody arrangements on children."**

As shown in Table 6, 37 subjects gave multiple responses to this question. The four most frequently given responses were seminars/continuing education, legal publications/literature, professional interaction, and professional organizations.

**Research Question 8: To determine what, if any, information/research was desired by participants subjects were asked "What other information/research would be helpful to you in determining what children's best interests are?"**

Thirty-one subjects responded to this question. Due to multiple response the question was answered 45 times. When looking at individual responses the two most

Table 6

## Sources of Information on Divorce/Custody

SOURCES	FREQUENCY OF RESPONSE (N=37)	
	n	%
Professional Interaction	15	40.5
Legal Professionals	5	13.5
Professional Experience	5	13.5
Interview Children	2	5.4
Statistical Reports	1	2.7
Text Books	2	5.4
Legal Publications	18	48.6
Journals	4	10.8
Popular Literature	4	10.8
Church Literature	2	5.4
Social Services Literature	1	2.7
Professional Seminars/Continuing Education	27	73.0
Professional Organizations	13	35.1
Past Cases	8	21.6
Child's Best Interest Isn't Focus	1	2.7
No Sources except case itself	1	2.7

\*Note- Total percentages are greater than 100 due to multiple responses.

frequently given responses were psychological evaluations on child in the dispute and no other information was necessary. Each of these was given as a response by 22.6% of the respondents.

**Research Question 9: To determine where legal professionals were likely to look for such information subjects were asked, "How would you like this research/information made available to you?"**

The ways in which legal professionals wanted the research/information disseminated were categorized as follows: publications; professional organizations/meetings; professional interaction/testimony; state/county/ government agency or department; and none needed.

Twenty subjects responded to this question. They provided a total of 39 responses. Sixteen of the responses were publications, 15 were professional organizations/meetings, 5 referred to state/ county departments or agencies and 3 of the responses were categorized as professional interaction.

When looking at specific responses within these categories, the two most frequent responses were seminars (9) and legal publications (6).

## Summary

Overall, the results indicated that the respondents had difficulty focusing on the children. Further, there was a large diversity in the factors identified as the most important to consider when making a custody decision. There also seemed to be a significant amount of uncertainty as to why these factors were important in determining a child's best interests. The uncertainty and difficulty in focussing on the children was further pronounced in the explanations given for the importance of desired additional information about the Doe's. The explanations often focused on the respondents role as a legal professional rather than on the needs of the children. When choosing a custody arrangement the group as a whole chose the father more often than the mother. The reasons given when he was chosen tended to focus on perceived weaknesses in the mother's parenting. The father's capabilities as a parent did not seem to be a deciding factor.

As a group the respondents felt legal professionals were not adequately trained to determine a child's best interest and their responses further indicated that they desire and value the input of a social scientist to guide them in understanding children's best interests.

### Discussion

This study was essentially aimed at addressing two broad issues in regard to child custody disputes. First, it was designed to help us understand which components of available information are most often used by legal professionals involved in such disputes. Second, this study was undertaken to determine what information is needed/desired by legal professionals to assist their involvement in child custody disputes. Following is a discussion focused on the results of the specific questions this research included to address these two issues.

The results of this study were similar to those of Lowery (1981) and Woody (1977) in that it too found that some factors are perceived as more important than others in the recommendation/determination of child custody. The studies sometimes differ, however, in terms of the factors chosen as important.

Mental stability of the parents was indicated as one of the four most important factors in Lowery's (1981) and Woody's (1977) study. This was not initially indicated by lawyers or judges in the current study as one of the four most important factors to consider. In fact, none of the judges listed this and only 12.5% of the lawyers indicated this as one of the four most important factors to consider. In the current research the case study did not present mental stability of the parents as an issue. The

concern for this component of information appeared, however, when the subjects were asked if there was additional information desired about the Does. Many wanted a psychological evaluation on the parents.

Lawyers and judges in this study listed parent-child relationship as a crucial consideration. Woody (1977) also found this to be an important consideration whereas Lowery (1981) did not. Morality was a crucial issue found in the work of Woody (1977) and Lowery (1981). This was not indicated as one of the top four factors in the current study.

Stability of routine/environment was indicated as important by the lawyers in the current study. This was not indicated as important by the judges in this study or in Lowery's (1981) results. Instead, Lowery (1981) found community involvement to be important.

The other factors indicated as important by the lawyers were child-care arrangements and the home. Judges indicated age of the children, sibling relationship, and behavior of the children as important. Neither Lowery's (1981) or Woody's (1977) respondents listed or ranked these as one of the four most important factors to consider.

As can be seen in the literature, the types of questionnaires used in the various studies were considerably different. This could account for the variation between studies. However, much of the past



research/literature on child custody disputes (Goldstein, Freud, Solnit & Goldstein, 1986; Marafiotte, 1985; Pearson, Munson, & Thoennes, 1982; Pearson, & Ring, 1982/83) provides a more likely explanation. The lack of clear-cut legal guidelines allows for much discretion and subjective interpretation of what constitutes a child's best interests. This is further pronounced in the results of this study by the fact that when responses were classified under the criteria in the Code of Virginia so many were classified under "such other factors as are necessary to consider in best interests of children." Of the six criteria in the Code of Virginia, the identified child factors were classified under this one second most frequently. This seems to illustrate the significant amount of subjective consideration used in making custody decisions.

To provide insight into what the subjects perceived children's needs to be, respondents in this study were asked to explain why they thought the factors they chose were the most important. However, when looking at the four most important factors indicated several subjects did not explain the importance of some of their chosen factors. One might assume that the consistency in the lack of explanations might have indicated a problem with the questionnaire. However, it is believed that this was not the case as the question was not misinterpreted in the

pilot-test. An alternative explanation is that the lack of behavioral science training may account for much of the uncertainty related to why such factors are important for children. This uncertainty about factors used to make a decision was also found by Charnas (1981). As discussed previously, in Charnas's study where a comparison was made between social scientists and legal professionals, comfort with criteria chosen was the only aspect of the comparison that the professions differed on.

Another interesting finding with regard to the subjects' explanations was that there was again a large variation in the interpretation of what a child's needs are. When explanations were coded according to the criteria in the Code of Virginia, the explanations given by both lawyers and judges were most frequently classified under "such other factors necessary to consider in the best interests of children." The subjective interpretation of a child's best interests is further illustrated by the fact that the subjects generated a list of 24 responses and generated 69 different explanations for these factors.

Finally, when custody is given to the mother, there still seems to be the persistence of the reliance on the tender years doctrine. In fact, one of the respondents said "the tender years doctrine still raises a presumption in favor of the mother" and cited the 1982 code of Virginia, apparently unaware that the code had been amended

to the current sex-neutral standards.

Even without the tender years doctrine in existence the misconceptions that "young children need their mothers" persists. This is evidenced by the fact that it was one of the most frequently given explanations by judges to explain why age of the children was an important consideration.

When investigating which parent gets custody, many of the past studies (Kray, 1977; Pearson, Munson, & Thoennes, 1982; Pearson, & Ring, 1982/1983; Sanford, 1977) have found mother custody patterns to be the preferred custodial arrangement. The current study, when looking at lawyers and judges as a group of legal professionals, did not yield the same finding. Instead, the majority of the subjects placed the children with the father. The findings of this study seem to indicate an increase in objectivity in custody decision-making decisions because the father was chosen as custodian so often. It seems to be an acknowledgment that fathers can successfully parent their children. However, when looking at the reasons the respondents chose a particular parent as custodian this is not the case. When the father was chosen the most frequently given reason was "the children's masturbation/bed-wetting indicated an emotional problem due to problems/instability of being with the mother. Thus, the father was most frequently given custody due to a negative aspect concerning the mother rather than because of his own

fitness as a parent. This replicates the findings of Pearson, Munson, and Thoennes (1982) and of Pearson and Ring (1982/1983) who found that fathers usually had to prove their wives unfit to be awarded custody. These same studies indicated that mothers did not have to prove fathers unfit to be awarded custody and this was also found in this study where the most frequently given reasons for choosing the mother dealt with her ability, or fitness as a parent.

The one study that did not find a difference between what factors are used when choosing the mother and choosing the father was Charnas (1981). However in Charnas's (1981) study the list of criteria for the parents were given to the subjects who then ranked them. The criteria used were derived from the Michigan Act and recommendations from professionals. As such, they did not include unfitness or negative aspects about the parents. The work of Pearson, Munson, and Thoennes (1982) and of Pearson and Ring (1982/1983), however, used decisions from previous cases to extrapolate the information they desired. The current study provided a case study from which to choose information. This methodology allowed the extrapolation of negative and positive information. Thus, when custody decisions are looked at in terms of information about parents that is used to decide custody it still seems fathers are awarded custody primarily due to the unfitness

of the mother.

Another interesting finding regarding choice of custodial arrangement was that three subjects awarded joint custody to a family who was not seeking it. It is questionable whether parents who are battling over their children in a court of law are the most appropriate choice for joint custody which requires amicability and cooperation. It has been shown that conflict throughout the marriage and divorce is devastating to children. It is highly likely in the situation presented in the case study that joint custody would perpetuate such conflict and as such would probably not be in the best interests of these particular children. It seems that joint custody in this particular situation could be considered parent-focused rather than child-focused. Another possible viewpoint is that this choice was made because it was too difficult for the subjects to choose the mother or the father so they instead chose joint custody.

Additional information that the subjects felt was important to consider was requested so as to ensure that any factors overlooked in the case study but which were perceived as important considerations could be discovered. The most frequent request by both lawyers and judges was information on children's behaviors (masturbation/ bed-wetting etc.) and psychological evaluation of parents/children.

The strong desire to know if the behaviors are "normal" and for psychological evaluations indicates an acknowledgment by the legal professional that they lack the training/knowledge to assess a child's functioning and or needs. It is interesting, however, that a psychological evaluation was the primary method chosen to give the legal professional the information they needed about the children. Such an evaluation assesses the current functioning of the child with it's focus being on a child's emotional adjustment. However, it does not give the legal professionals insight into the developmental needs of the children so by itself provides little help in determining custody.

It seems that the legal professionals assume that if a "problem" is discovered determining custody is easy (e.g., "the behaviors indicate an emotional problem due to the mother so custody is awarded to the father"). Eliminating the potential negative risks associated with one parent by awarding the children to the other does not necessarily guarantee that a child's developmental best interests will be provided for with the chosen parent. It is crucial to understand if a child is having problems due to the marital breakdown and/or the divorce so that these problems can be attended to. However, if we as a society truly want what is best for these children, this is not enough. The focus needs to be more long term than alleviating problems

occurring now. To ensure that problems do not continue an understanding of what a child's needs are now and at all developmental levels is necessary. The child could then be placed with the individual most likely to meet such developmental needs. Thus, it is indicated that legal professionals need the guidance of a developmental social scientist who can help them understand the developmental needs of children, and help them understand the needs of specific children who come before them in court.

Other interesting findings of this study were the other frequently given explanation for the desired information's importance. Lawyers often provided the explanation "to establish a stronger argument" and judges often explained "to determine who was at fault." Thus, very often the focus of these professionals was on legal aspects and the role they play in the disputes. There is an indication that children's best interests are not necessarily the primary focus in making a custody decision.

With regard to the findings about training, the results of this study indicate weaknesses in the current system of training legal professionals to understand children's needs or what their best interests are. The majority of subjects in this study thought that legal professionals were not adequately trained to determine the best interest of children. This replicates the findings of Sanford (1977) and Settle and Lowery (1982). The

explanations given by the group overall whether they believed legal professionals were adequately trained or not however was that they "learn by professional experience." It seems the difference found between lawyers and judges perceptions of training was due to a difference in interpretation of what training is.

Although learning by experience is certainly a contribution to the legal professional's knowledge regarding custody, it cannot alone provide the training necessary to truly understand a child's best interest. By itself, it allows for the large amount of subjective consideration in determining a child's best interest criticized in the literature. It is therefore strongly indicated that legal professionals could benefit from training in the social sciences. This could help reduce the amount of subjective consideration and increase the amount of scientific knowledge used in making custody decisions.

Other frequently given explanations by the group were, best interests of the parent is often the real focus, and they can determine a child's best interest because they can assess the testimony of those trained.

These explanations further emphasize that legal professionals lack the formal training necessary to determine a child's best interest so rely on those they perceive to have such training. Further, it again seems



that the parent rather than the child is often the focus in child custody disputes. It is certainly possible that the lack of an understanding of what children's needs are make it difficult for these legal professionals to focus on them.

To further understand lawyers' training/knowledge of facts/issues related to determining a child's best interest, the questionnaire asked respondents to list sources of information on the effects of child custody and divorce on children.

The most frequently given responses were seminars/continuing education, legal publications, professional interaction and professional (legal) organizations.

According to B. Shaver (personal communication July 7, 1987) of the Virginia State Bar's mandatory continuing legal education, legal professionals are required to participate in eight hours of continuing education every year. The seminars are given in a day and focus on a particular topic with several presentations related to that topic. The presenters are "well qualified individuals from various fields." Legal professionals can attend any seminar and do not have to attend those related to their field of practice in order to get continuing education credit.

Although it is important that legal professionals attend seminars/conferences to get updated information

needed on child development and child custody. A thorough understanding of what children's needs are cannot come from eight hours of courses per year. This problem is compounded by the fact that the legal professionals have the option of attending any type of continuing legal education course and may never select one related to children's needs.

The above findings suggest the need for changes in the formal training and in the continuing legal education (CLE) system to maximize its potential for helping the children who will benefit if lawyers and judges increase their knowledge of children's needs. Such changes could include social science coursework during initial training (law school). Steinberg (1980) discussed the possibility of joint degree programs now offered in some law schools. These interdisciplinary programs are sponsored by such organizations as the American Orthopsychiatric Association and the American Bar Association. Further, for continuing education to make a contribution to the legal professionals' knowledge of children's needs there is a need for CLE to require the legal professionals specializing in family law to attend seminars related to this area. To do an adequate job CLE needs to make sure that along with pertinent legal information family and child development information is presented in these seminars.

Ms. Shaver explained that the seminars were designed to give the participants updated information that they could use in the cases in which they are involved. If these professionals attend a conference on a subject unrelated to their field, simply to get credit, then they are not getting the updated information needed to help them in understanding children and their needs. Furthermore, the term "updated" implies that the legal professionals already have some of the training needed but the results of this study do not indicate this. Also, according to a representative of University of Virginia's Law School, there is not degree specialization in law school. Thus, domestic relations lawyers do not necessarily have a heavy courseload related to this area.

The high frequency of responses for legal publications and professional organizations also carry some implications for changes in the ways social scientists present information regarding the effects of divorce/custody arrangements on children. One judge summed up the reliance on legal publications and the need for social science research.

Most mental health studies by pass the legal literature that is the diet of judges and lawyers. Circulation of custody decision factors by mental health professionals would be used if

the articles were circulated by the executive secretary of the Supreme Court who would probably be glad to forward to judges significant articles in this area. The Virginia Bar Association would also print significant studies in their journals.

As such, it seems that those scientists completing research in the area of divorce and custody should submit their work to legal publications and legal organizations. The information carries the greatest potential to help children in divorce situations if it is made readily available to the legal professionals who determine their future.

A final point regarding the results of this study deals with the high frequency of response for professional interaction as a source of information about divorce and child custody. This emphasizes that legal professionals value interaction with other professionals to help them with their difficult roles in child custody disputes. This was further pronounced by the fact that the most frequently given response in regard to what is needed to help with these cases was "having a court staffed psychologist to perform evaluations on the children involved in these disputes. This dependency on those professionals perceived to be trained was found repeatedly in the results of this

study and seems to be an acknowledgment by the legal professionals involved in this study that they do not feel qualified to do their job alone. This fact must be addressed in the policies/laws we set forth regarding child custody determinations. To capitalize on the fact that legal professionals want such help it is indicated that a team approach (discussed later) should be considered for determining child custody in Virginia.

## CHAPTER IV

### Conclusions and Recommendations

#### Conclusions

As discussed, the results of this study along with findings from past research indicate there is wide variation in the interpretation of what is crucial in determining the best interest of a child. They also indicated that legal professionals feel they lack the training and expertise to determine a child's best interests. Further, these professionals indicate a strong reliance on and desire for help from other professionals to determine what a child's best interests are.

Some recommendations to improve some of the above problems have been to change the laws implementing specific criteria implied by social sciences or to create presumptions of what is in a child's best interests.

Changing the laws to specific criteria does not seem to be a viable solution. Research has consistently shown that changes in laws have had little impact on the degree of confidence legal professionals feel when making custody decisions and little impact on the decisions made (Pearson, Munson, & Thoennes, 1982; Sanford, 1977).

Further, creating specific presumptions is dangerous. When such presumptions exist in law they must be applied to all cases. In Virginia's most recent legislative session

for example, a proposal for a new law was made that created the presumption that joint custody was in the best interests of children experiencing the divorce of their parents. It seems apparent this situation is not in the best interests of all children. As discussed previously, in situations where spouses are arguing for custody the likelihood they will cooperate in child-rearing itself is low. Thus, the child would continue to be subjected to ongoing conflict. In divorce situations where there is ongoing conflict children have the most difficult adjustment (Hetherington, et al., 1982).

Another proposed solution is that the child be legally represented during the proceedings by a guardian ad litem. Although this is a step in the right direction because it shifts the focus of the custody proceedings from parents to child, the results of this study do not indicate that merely appointing someone to represent the child ensures that the child's needs are focused on or understood. The fact remains that legal professionals lack the social science training to determine/interpret a child's best interests. In fact, the lawyers in this study were placed in the role of the guardian ad litem. Their uncertainty as to what a child's best interests are was illustrated by the fact that many did not provide explanations for the importance of the factors they chose and further emphasized by the fact that such a large percentage often felt that

lawyers were not adequately trained to determine a child's best interests. Also, one respondent said "there is almost no training in law school in the special role of the guardian ad litem." Thus, such representation certainly does not ensure that a child's needs are being addressed. The only way to ensure that a guardian ad litem can benefit the child in these proceedings is to make sure such individuals have social science and child development training to be considered an expert in the needs of children.

Others have said that such decisions should be made by social scientists acknowledging that they are the most aware of what children's needs are as illustrated by the following remark by a lawyer in this study:

Custody fights should not be determined strictly speaking, on legal grounds but more on sociological grounds, that is one must always keep the children's best interest as the primary concern. In order to determine what a child's best interest is is very seldom a legal question, it is more a determination from all of the available sources what the future will bring as a result of placing a child in one or the other parents custody.

However, it is argued that completely removing child



custody disputes from the court is not the best solution either:

...child custody disputes should be removed from the court system...since related legal problems such as support, termination of marital status, diversion of assets etc. must be resolved in court. Moreover to the extent there is a need for enforcement of the custody decision, the court processes provide the only effective means of enforcement. (King, 1979, p. 157).

It seems the method that carries the most potential to alleviating some of the problems associated with child custody disputes is to implement the changes in training of legal professionals discussed previously and/or to consider a team approach using social scientists and legal professionals together to determine child custody in Virginia.

The team approach is emphasized rather than the utilization of social scientists as just witnesses for either side of the case because of some of the potential problems associated with using experts as witnesses. As a witness rather than part of the decision-making team one's testimony could be ignored or overlooked by the judge. Another point is that when expert witnesses are used, often the children's best interests are overlooked and the

parents become the focus. According to Woody (1977) expert witnesses are often evaluated in terms of their accomplishments and prestige which are often directly related to the cost of employing such witnesses. As such the "better" witness is often provided by the parent who can afford it. Because the witness is working for a particular parent, that parent often becomes the primary focus rather than the child.

This is further illustrated by Derdyn (1975) who stated;

When the clinician has been engaged by one of the parents he often tends to take a role quite similar to that of the parent's lawyer. Both the lawyer and the clinician become emotionally invested in that parent... He may have some difficulty in the legal setting in focussing upon the child if he is working for one of the parents. (p. 796)

The team approach has been used successfully in child abuse/neglect hearings (O'Shea & Connery, 1980) and in other matters in divorce proceedings (Steinberg, 1980). It has also been argued by several to be a positive alternative to the current adversarial process for determining custody (Derdyn, 1975; Felner & Farber, 1980; King, 1979).

According to Derdyn (1975), the input of social

scientists is valuable because it helps with specific cases but also broadens the legal professionals understanding of child development needs. Thus, it means that custody decisions are made by more knowledgeable people better able to look at the child needs separately from those of the parents. He also discusses how the input from social scientists helps the children in custody proceedings over the long term because they can "aid the courts in finding more constructive solutions than would otherwise be the case, thus serving an important preventive function of reducing the risk and the degree of emotional disability in these children" (Derdyn, 1975 p 795-6).

Derdyn (1975) provides a strong argument for consultation or the team approach for deciding custody. However, some of his terminology implies that the only appropriate social scientists are psychologists or psychiatrists. It is believed that family therapists and child developmentalists are appropriate choices for such a team approach. These individuals are aware of normal development which is what we are striving not to have disturbed when a child custody decision is made. They can attend to the child's developmental needs as well as his/her specific needs when determining a custodial arrangement.

According to Felner and Farber (1980), what we need to ask is what factors should be considered in determining the

best custody arrangement for each family on a case by case basis" (p. 346). Felner and Farber (1980) further say that "the mere development and reporting of the information to guide efforts to determine the best custodial arrangement is not sufficient to guarantee the desired results" (p. 347). Thus, the disciplines must come together to interpret the important factors to consider and how they apply to particular families and children.

King (1979), a judge in San Francisco stated:

child custody is a legal problem only because the legislature, by statute requires the judge to decide it. In reality it is not a legal problem.

It is a human problem, an interpersonal problem, a psychological problem, and a child developmental problem. The only real legal issue ever involved in such cases is whether or not the court has jurisdiction over the parties and the child.... (p 157)

As discussed previously King (1979) also provided a valid argument for keeping these disputes within the legal system. As such, he searched for an alternative that included social scientists and legal professionals in the determination of child custody and his program has been successful. It involves the use of five "well trained

family counselors" as consultants/mediators for the child custody cases in his jurisdiction. Before Judge King would allow a child custody case in his court the family involved in the dispute was required to see one of these counselors. Through this process almost every custody/visitation dispute was resolved outside of court. When unsuccessful, the counselor discussed with the family the recommendation s/he intended to make and this helped families resolve almost all of the remaining cases. Judge King reported that he referred approximately 1300 cases to the counselors and less than 12 were returned for him to decide in court. This process has almost totally eliminated repeated child custody/visitation hearings which often fill the court dockets.

According to King (1979) the use of counselors to mediate custody disputes has proved highly satisfactory to the families, their lawyers, the counselors and the court. King's use of counselors to assess each family involved in a dispute focuses on the particular needs of these families and the children in these families. Further the use of mediation which encourages the families to determine/agree on custody seems to eliminate ongoing conflicts in these families as evidenced by the low rate of returned hearings. It also helps all members to feel satisfied with the arrangement as they are involved in the final decision made. It seems this would serve the best interest of

children by the mere facts that those individuals knowledgeable in the needs of children and their families are included in the process and the adversarial tug of war which so emotionally strains the child is eliminated.

The above suggests the need for a pilot study of a similar approach in Virginia if we truly want children's welfare to be the focus in custody decisions. It might be argued that funding would make such an effort difficult. However, the cost effectiveness of such an approach provides a valid argument for attempting such a program. King (1979) describes a case in San Francisco that returned to court 35 times. In the year and a half after it was finally referred to him and dealt with by his counselors, it had not returned. Thus, such a program seems to eliminate the high expense of cases that continually reappear in the courts.

## Recommendations

The findings of this research indicated the need for some changes in regard to child custody disputes in Virginia. The recommendations included:

1. Social scientists need to submit their research to legal organizations and publications to ensure that the legal professionals who desperately need the information receive it.

2. The training for legal professionals involved in family law should become more interdisciplinary incorporating family and child development coursework.

3. Mandatory Continuing Legal Education needs to require that the seminars attended by lawyers and judges specializing in family law a) be related to family law **and** b) incorporate family and child development information if continuing education credit is to be received. To do an adequate job in providing the legal professionals with information necessary to understand families' and children's needs, this will require an increase in the number of mandatory hours of CLE seminars taken per year.

4. A team approach using legal professionals and social scientists knowledgeable in child development may be an improvement to the current system of determining child custody in Virginia. Ideally, this would involve a mediation/ non-adversarial process so as to reduce the

ongoing conflict known to be detrimental to the adjustment of children and families involved in such disputes.



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APPENDIX A  
CASE STUDY

Mr. John Doe, 35, and Mrs. Jane Doe, 34, were married for five years when Jane left the family home with the two Doe children, Bobby and Stevie. She moved in with her mother in a home in the same town. At this time there was frequent bed wetting and vomiting by the children. The couple is divorcing and both want sole custody of the two children ages 4 years and 4 years 11 months (while allowing visitation to the non custodial parent). Because at the time of the petition Jane was unable to care for the children without the help of her mother the boys were returned to the family home and John has temporary custody until a final decision is made.

Prior to the separation, Mrs. Doe did most of the interacting and caregiving of her children. Jane Doe was a full time parent/housekeeper until the younger child was 2 1/2 years old. She prepared the childrens meals, bathed them, dressed them and attended to their daily needs and played with them. When the younger child was 2 1/2 years old Jane got a part time job in a grocery store market to earn extra money to buy the children bikes and a swingset. While at work Jane took the children to the paternal grandmother for babysitting. John was responsible for picking the children up from his mother's two days per week and Jane picked them up the rest of the time. Prior to the separation, Jane attended to such things as the children's annual physical examinations. Mr. Doe now assumes this responsibility.

Prior to the separation, Jane developed a friendship with another mother in her sub-division. The women and their children would spend time together often providing the Doe children with interactions with other children. Since the separation Bobby and Stevie have not interacted with this other family regularly.

Currently, Jane is living in a mobile home in a rural area. It contains a living room, kitchen, 1 1/2 baths and three bedrooms. She has a bedroom furnished for the boys which they use when they visit and which will be their bedroom if she is granted permanent custody. There is one other home on her road and no other families in the proximity. Jane is employed at a cafeteria and takes home approximately \$100 per week. Her income will be supplemented with child support from Mr. Doe if she is awarded custody. Her work schedule is as follows: Sunday-off, Monday-off, Tuesday- 11:30 a.m.- 8:30 p.m., Wednesday-day work, Thursday- 11:30 a.m.- 8:30 p.m., Friday- day work, Saturday- day work.

If given custody, Jane has the following child care arrangements planned. Mrs. Doe would take the child to a caregiver who lives ten miles from her home. The woman has five years experience in caring for children in her home. She usually cares for approximately five children at a

time. The caregiver interacts with other mothers in the neighborhood who have young children. The caregiver and the neighborhood women plan walks and visits to the park and games that include all the children. While in the home the child caregiver schedules times for crafts and stories for the children.

In the present situation, Mrs. Doe visits with her children from Sunday to Tuesday. During her visits they play together and also go places such as amusement parks. On one known occasion Jane left the children with her mother to babysit for the boys while she went out until late at night.

The home that John and the children are currently living in is in a subdivision, is approximately two years old and has a living room, den, utility room, two baths and four bedrooms. The boys share one of these bedrooms in which there is their clothing, toys and a bed for each of them. The Doe children are very close and play well together.

Mr. Doe is a truck driver for a postal service and takes home approximately \$380 per week. He leaves the home at 6:45 a.m. and returns at 6:00 p.m. Monday through Friday. While he is at work child care is provided by his aunt from 6:45 until 4:00 p.m. at which time the paternal grandmother arrives and stays with the children until Mr. Doe arrives home. The paternal grandmother has had two nervous breakdowns. One occurred several years ago and the other when the Doe children were born. She received medical treatment and has had no reoccurrences since. The aunt prepares breakfasts and lunches and settles the children down for their naps. The grandmother arrives while the children are still napping. She prepares dinner for the children and their father. The children play inside and outside in their yard/neighborhood while being cared for at home. When John arrives home, he and the children eat dinner together. After dinner they spend the evening together on the swingset, playing ball or going for drives. On Saturdays Mr. Doe and the children spend the day doing things around the house (yardwork, gardening) and doing things the boys especially enjoy (flying kites, go to their fathers place of work to look at the trucks, go to the airport to watch the planes). Prior to the separation, Mr. Doe spent little time with the children. His job required a lot of overtime and weekends were used to catch up on home maintenance and repair. Because of a change in company policy, such long hours no longer occur and if overtime is necessary he works no later than 7:00 p.m.

Mrs. Doe supplied witnesses that state she is a "good and loving mother." They stated that when Mrs. Doe was still living in the home and child care was her responsibility the children would cry when being left at a babysitter and exhibit excited happy behaviors when Mrs. Doe returned.

Mr. Doe also supplied witnesses to attest to his ability at parenting. The witnesses say they observe him and the boys interacting happily often. They say he is a good father and loves his children. In addition Mr. Doe and his witnesses claim that when it is time for the children to go and visit with their mother they cry and say they do not want to go. Also, it was stated by the childrens' father , paternal grandmother, paternal aunt and a neighbor that the children engage in masturbation and mutual stimulation when they return from visiting their mother . Although they have observed these behaviors at other times these witnesses stated that it was especially true on Tuesdays.

Mr. Doe feels that the boys should be in his custody permanently because he feels that his life is more stable and suitable for the boys at this time. Mrs. Doe believes she should be granted custody because, in her opinion, children of this age belong with their mother.

A social worker visiting both homes stated that both environments are physically adequate, each parent is a loving and concerned parent and each would be able to meet the childrens' needs. As such, she said she could not make a recommendation as to the most suitable home for the boys. She also stated that the children exhibited no physical or developmental problems when she was with them.

APPENDIX B  
LAWYER'S QUESTIONNAIRE



\*\* If needed, additional space is provided on the reverse side of the question sheets. Please indicate question number.\*\*

PART A

Please answer the following questions about the case study

1. If you were appointed by the courts to represent the child (guardian ad litem)

a) please list up to four factors about the Doe children that you think are the most important for the judge to consider when making a custody decision. Please list them in a rank order of importance.

b) give your reasons for choosing these factors as the most important and indicate how you would use them in your briefs or oral arguments.

c) please indicate who you would recommend as the custodial parent and explain why you think this is the most appropriate arrangement for the Doe children.

2. If you were representing John Doe in this case please list up to four factors about each parent that you think would be most significant to discuss in your briefs or oral arguments. Please list them in a rank order of importance.

MOTHER

FATHER

3. Give your reasons for choosing these as the most important factors and indicate how you would use each in your briefs or oral arguments.

4. If you were representing Jane Doe in this custody case list up to four factors about each parent that you think would be most significant to discuss in your briefs or oral arguments. Please list them in a rank order of importance.

MOTHER

FATHER

5. Give your reasons for choosing these as the most important factors and indicate how you would use each in your briefs or oral arguments.

MOTHER

FATHER

6. Is there any other information regarding the Doe parents or children (that was included in the case study and/or that you would like to have been included) that you think would be important to consider? If so, what information and why is it important?

II. Please answer the following questions regarding divorce and child custody.

1. Do you think that most legal professionals are adequately trained to determine what "the best interests" of children are? Please explain.

2. List the various sources you use to get updated information on the effects of divorce and child custody arrangements on children (e.g., professional organizations, research journals, law journals, professional seminars, other professionals, popular literature etc.). Please be specific.

3. What other information/research would be helpful to you in determining what childrens' best interests are?

4. How would you like this information/research to be made available to you (e.g. professional organizations, research journals, law journals, professional seminars, other professionals, popular literature etc.). Please be specific.

Thank you once again for participating in my study. I truly appreciate your help in completing my research.

APPENDIX C  
JUDGE'S QUESTIONNAIRE

\*\*\* (see below)

I. If you were responsible for determining "the best interests" of the Doe children...

1. What would your custody decision be in this case? Why do you think this is the better arrangement for the Doe children?

2. List up to four factors about each parent that you think were the most significant in making your custody decision. Please rank them in order of importance (#1=most important, #2=second most important, #3=third most important and #4=fourth most important).

MOTHER

FATHER

3. Give your reasons for choosing these as the most important factors to consider when deciding custody in this case?

MOTHER

FATHER

\*\*\*If needed, additional space is provided on the reverse side of the question sheets. Please indicate question number.\*\*\*

4. List up to four factors about the Doe children you think were most significant in making your custody decision. Please list them in a rank order of importance.

5. Give your reasons for choosing these as the most important to consider when deciding custody in this case.

6. Is there any other information about the Doe parents or children (that was included and/or that you would like to have been included) that you think is important to consider when deciding custody in this case? If so, please indicate what that information is and why you feel it is important to consider.

(PLEASE TURN TO NEXT PAGE)

## PART B

Please answer the following questions regarding divorce and child custody.

1. Do you think that most legal professionals are adequately trained to determine what constitutes the best interests of children? Please explain.

2. List the various sources you use to get updated information on the effects of divorce and child custody arrangements on children (e.g., professional organizations, research journals, law journals, professional seminars, other professionals, popular literature etc.). Please be specific.

3. What other information/research would be helpful to you in determining what childrens' best interests are?

4. How would you like this information/research to be made available to you (e.g. professional organizations, research journals, law journals, professional seminars, other professionals, popular literature etc.). Please be specific.

Thank you once again for participating in my study. I truly appreciate your help in completing my research.

APPENDIX D  
LETTER TO LAWYERS



VIRGINIA TECH

Department of Family and Child Development  
College of Human Resources

Wallace Annex  
Blacksburg, Virginia 24061-8299  
(703) 961-4794 or 4795

Dear

As you probably remember from our phone conversation in which you agreed to participate in my research, I am a student at Virginia Tech completing a Master of Science degree in Child Development. My particular area of interest is child custody adjudication. I am conducting this research to add insights into the information which legal professionals use when involved in child custody disputes.

I would greatly appreciate your review of the enclosed material and responses to the corresponding questions. The instructions for completion are included. I realize a person in your position is very busy and carries a full schedule. Therefore, I am truly thankful for your participation as reliable results will require a high rate of return. Information gathered will remain confidential. To ensure confidentiality, response forms will be coded with numbers rather than subject's names. Furthermore, subjects will not be identified by name in any subsequent dissemination of the results.

It would be most helpful if you could return the material and your answers in the enclosed self addressed stamped envelope by . I thank you in advance for your participation and your expedient return of the materials with your responses.

Sincerely,

Amanda S. McGill  
Va. Tech. Graduate Student

Dr. Janet Sawyers  
Associate Professor of  
Child Development

Enclosures

APPENDIX E  
LETTER TO JUDGES

VIRGINIA TECH

Department of Family  
and Child Development

Wallace Annex  
Blacksburg, Virginia 24061 - 8299  
(703) 961-4794 or 4795

Dear

I am a graduate student at Virginia Tech completing a Master of Science degree in Child Development. My thesis topic is child custody adjudication. I am conducting this research to add insights into the information which legal professionals use when involved in child custody disputes.

I would greatly appreciate your review of the enclosed material and responses to the corresponding questions. The instructions for completion are included. I realize a person in your position is very busy and carries a full schedule. Therefore, I am truly thankful for your participation as reliable results will require a high rate of return. To ensure confidentiality, response forms will be coded with numbers rather than subject's names. Furthermore, subjects will not be identified by name in any subsequent dissemination of the results.

It would be most helpful if you could return the material and your answers in the enclosed self-addressed stamped envelope by

I thank you in advance for your participation and your expedient return of the materials with your responses.

Sincerely,

Amanda S. McGill  
Va. Tech. Graduate Student

Dr. Janet Sawyers  
Associate Professor of  
Child Development

Enclosures

APPENDIX F  
REMINDER LETTER TO LAWYERS

VIRGINIA TECH

Department of Family and Child Development  
College of Human Resources

Wallace Annex  
Blacksburg, Virginia 24061-8299  
(703) 961-4794 or 4795

Dear

I am the graduate student whose research you agreed to participate in when I spoke to you on the phone. I have not yet received the questionnaire that I sent you. If you have already sent it, please disregard this letter. However, if you have not yet returned my questionnaire, I would greatly appreciate you doing so. At present I have an insufficient return rate to complete my research. Once again, thank you for agreeing to participate in my study.

Sincerely,

Amanda S. McGill  
Va. Tech. Graduate Student

Dr. Janet Sawyers  
Associate Professor of  
Child Development

APPENDIX G  
REMINDER LETTER TO JUDGES

VIRGINIA TECH

Department of Family and Child Development  
College of Human Resources

Wallace Annex  
Blacksburg, Virginia 24061-8299  
(703) 961-4794 or 4795

Dear

I am a graduate student attempting to complete my Master of Science Degree. I have not yet received the questionnaire that I sent you. If you have already sent it, please disregard this letter. However, if you have not yet returned my questionnaire, I would greatly appreciate you doing so. At present I have an insufficient return rate to complete my research. Once again, thank you for your cooperation.

Sincerely,

Amanda S. McGill  
Va. Tech Graduate Student

Dr. Janet Sawyers  
Associate Professor of  
Child Development

APPENDIX H  
CODING KEY



**FACTORS ABOUT CHILDREN****MATERIAL/FUNDAMENTAL FACTORS**

01-household/physical accomodations

02-finances/income/economics

03-routine(stability of environment,primary caregiver, schedules, work schedules, time available for children)

04-parenting (capability, proven ability or interest or lack thereof)

05-childcare

**PHYSICAL FACTORS**

10-physical condition of children

11-age of children (as in young children)

12-sex of the children

13-age of the caregivers/parents

14-physical condition of caregivers/parents

**SOCIAL/CULTURAL FACTORS**

20-social conditions/opportunities to interact with peers

21-religion

22-education plans for children

23-neighborhood/location of home

**EMOTIONAL FACTORS**

30-emotional stability/well being of children

31-emotional stability of parents

32-parent child relationship as in love, affection/time spent with children

33-child's adjustment/happiness/adaptability

34-children's desires

35-sibling relationship

36-children's relationship with caregivers

37-interparental relationship/attitudes

#### BEHAVIOR FACTORS

40-behavior of the children

#### OTHER

45-not enough information on the children

46-no decisive factors

#### REASONS THE FACTORS ABOUT THE CHILDREN ARE IMPORTANT and FOR CHOICE OF PARENT

##### MATERIAL/FUNDAMENTAL

##### (home/physical accomodations)

01-important where a discrepancy exists

02-physical environment affects the health safety and warmth needed to develop

03-living arrangements/accomodations are better/ better home

04-housing is okay, accepatable

##### (income)

10-mother will be able to support with help from husband

11-fathers income helps him/ will decrease stress

##### (routine)

16-indicates/yields maintains/ is needed for/stability of home-life, schedule which is important for young children (especially during stress), stable regular environment is important

17-father's childcare is less disruptive/more stable/mother's childcare requires children to be in outside care/away from family too long

18-spending every evening with a parent is important for children this age

19-(work schedules) affect time available for children

20-has always taken care of the children

21-do not like to disrupt a working/good arrangement/least disruption

22-father's work schedule is stable/allows him to share quality time/regular time with children (e.g. evening meals and bedtime with children every night)

23-wife's irregular schedule does not allow much time for children/interferes with childhood routines

24-each parent has time in current arrangement; each has part of a weekend, each is provided quality time, arrangement and visitation as is is stable (things are stable and good as is)

25-mom's work schedule allows her time to be with children during day

26-dad's work schedule allows little time with children

27-father can see children on weekends

(childcare)

31-child care is better

32-caregiver's dependability/suitability is questionable due to health and age

33-caregiver is suitable/ children will be well taken care of during the day

34-child spends substantial time in child-care so it must be good

35-more definite/assured child care plan/ more convenient child care

36-child care is inconvenient

37-children will be starting school which will remedy drawbacks of dad's child care

38-child care by family member is suspect

(parenting/ability,skills)

42-proven ability to care for the children/parent the

children, has demonstrated ability to care for children/likely to assure children are properly cared for

43-puts child's needs ahead of self

44-might sacrifice children if paternal grandma becomes unable to care

45-lacks caregiving experience

46-father is a "playmate"

47-priority needs to be his job due to economic burden so he is better for visitation than he is custodian

#### PHYSICAL

-physical needs of children are best met (not coded not a response-does not tell what physical needs/how/why)

(age)

50-children are old enough to care for selves to a large degree/old enough to be with either parent

51-children are old enough to express feelings/ideas/desires

#### SOCIAL/CULTURAL

(neighborhood,community)

56-good neighborhood/better location

(peer interaction)

61-children of this age need peer interaction/ should be encouraged to interact, sociability/interaction with peers is important for development, plan needs to/does provide for social interaction/situation will provide for social interaction

62-peer interaction will be provided through day care

(role modeling)

66-exposure to instability means they will be more likely to repeat in their own marital situation

67-male children should have male company/identity and role modeling/physical contact with father is important

## EMOTIONAL

(security/stability)

72-stability needed could be somewhat alleviated by school and friends

73-strong prior relationship with parents will give sense of stability at a difficult time/ (will help overcome any negative affects of arrangements) important to consider for child to gain some sense of stability.

74-children's behaviors may indicate [emotional]trauma (which can be eased by stability), children's feelings are indicated by their actions, fearful that behavior indicates a problem with the mother, emotional well being of children is paramount

75-family members need time to adjust to new roles and the divorce without another change

76-will avoid uprooting/remain in familiar home, etc. important for root identification/remain in what they are used to/least upheaval/ children are happy, they have ties to the community

77-mother's arrangements sound experimental which could mean increased risk of further moves/changes/uprooting

78-mother's desertion may indicate instability

79-group play with strangers may make children feel unstable

80-important because it is [parent most] likely to provide security/feeling secure is important for children

82-children are used to/ adapted to caregivers (grandma and aunt)

104-children's adjustment in present situation helps predict future success of this arrangement

(relationships-[family/loving/affection])

84-extended family is involved (sense of family unit)

85-children of this age need to be mothered or nurtured by a parent (relatives not adequate substitute)

86-mother is the nurturer-young children respond to love of mom more than of dad/ young children need their mothers, being with their mother will yield less trauma/children respond to love of mother more than to love of father

88-(father) loves the children/he and children have a good relationship

89-(father) spends free/more time /positive/quality time with the children

90-primary caregiver is often the person the child is closest to/ breaking this relationship may hinder necessary emotional adjustment

91-children should be kept together because of closeness/bonding

92-close/ongoing relationship with both parents is important and opens the door for joint custody/children need ongoing relationship with both parents

93-father's desire for children is focused on children whereas mother's is on herself

\*Emotional needs of children are best met is not coded.  
It does not tell me which emotional needs/how/why etc.)

#### LEGAL

(statutes/precedents)

97-code of VA sets guidelines which must be incorporated with case

(reasons based on legal/professional experience)

98-experience indicates that the courts look for these factors as primary consideration

99-courts give preference to primary caretaker

101-courts do not like to disrupt custodial arrangements unless a real need exists

102-courts say that when both parents are fit then home, stability, companionship with parents and other children are important

103-factors relate to the best interest of the children

#### OTHER

105-depending on reasons for separation, let mother live in marital home with children and father leave

106-recommend counselling

107-factors listed favor mother

ADDITIONAL INFORMATION DESIRED ABOUT DOES

CHILDCARE

- 01-cost of mom's
- 02-is there a plan to replace maternal grandmother
- 03-availability or lack of decent daycare near dad
- 04-more information on location of mother's day care
- 05-more information on father's child care
- 06-who will tend to children during mom's nightshifts

EMPLOYMENT

- 11-how long has each been employed at their jobs
- 12-any plans for either parent to change jobs
- 13-distance mom's job is from home
- 14-what is "day work" in mom's schedule

HEALTH

- 19-nature of grandmother breakdown/her health
- 20-information on children's behaviors  
(enuresis/vommitting/masturbation &/or sexual stimulation
- 21-parents health
- 22-children's physical condition

HOME

- 27-is marital home owned by both parties
- 28-home environment prior to separation

PARENTS

- 33-attitudes towards each other/interparental

relationship

34-parent-child interaction/history

35-reason mom unable to care for children at first

36-likelihood of each parent to continue care/ nurture the children

37-why did mother lose custody

38-why did mom take children and then relinquish

39-reasons for marital breakdown/mom's leaving

40-with Mrs. Doe's first job in the supermarket-was it a mutual decision or unilateral decision on her part

41-how much time do the parents put into other activities

42-how long have the parents been separated

43-educational plans for children

#### CHILDREN

48-why are the children reluctant to go with mom

49-who does the child confide in

50-children's social adjustment

51-emotional adjustment/stability of children

52-did kids live in present home up until the separation/how long have children lived in this home

53-when did they return to the marital home

55-why do they share a room at their fathers

56-why couldn't they live at mothers before

57-attitudes children are exposed to by parents/others about their parents

58-daily activities of the children/what is being done for the children socially now

59-where do the children want to live



60-relationship with caregiver(s)

INPUT FROM OTHERS DESIRED

65-see/interview the witnesses

66-interview the children

67-psychological testimony, psychological evaluation of parent and/or child/medical professional's evaluation

68-interview teachers/classmates

LIFESTYLES/BACKGROUND

74-type of people parents associate with/social habits

75-religious upbringing of parents/children and who will continue to provide it to children

76-education of parents

77-abuse of drugs/alcohol

78-child or spouse abuse

79-any lovers

80-moral habits

81-has there been a full scale background report done or just a home visit

LEGAL

86-information on original petition (what relief did it provide, what court is it pending in, when filed)

87-was temporary custody, arrangements between parents or preliminary court order

OTHER

93-what time of year is decision being made (is school a factor)

## REASONS ADDITIONAL INFORMATION ABOUT DOES IS IMPORTANT

## CHILDCARE

01-important in terms of affording interaction with other children

02-important in terms of affording activities to enhance development

03-if not too far or on the way to work and not difficult to travel on then not an excessive obstacle

## ROUTINE

08-to establish visitation schedules

## HEALTH

13-to determine what kind of damage a recurrence would do

14-to determine reason- is it normal or a manifestation of an underlying problem

15-to find out if allegations are true or said to bias case

## HOME

20-it may be sold in divorce agreement which could change father's plans

## PARENTS

25-to determine who is less unfit

26-would give an indication of parental stability/responsibility

27-important to know if parents and children have quality interaction

28-important to know if due to emotional problems or lack of physical means

29-both parents mean well but are both emotionally equipped to handle the children

30-good gauge of future relationship

31-to determine possibility of joint custody

32-to determine if counselling is necessary

33-to determine if Jane should be allowed to have home and children

#### CHILDREN

37-to see if children have a special need that one parent might more adequately provide for.

38-would give indication of moral influences

39-important to know how long children have been with father to determine if moving them would be detrimental

#### LEGAL

43-depending on who was being represented the information would be used differently

44-to establish/determine/provide a stronger argument

45-to determine who was "at fault"

\*NOTE: important for stability is not coded as a response as it does not specify type of stability

#### EXPLANATION OF TRAINING

01-advocate for client/focus not necessarily best interest of child

03-learn by professional experience

04-learn by family experience (by being parents being children)

514-learn by reading/attending conferences and seminars

612-are aware/ capable/ competent/ can assess/challenge the testimony of the experts who are trained in best interest of child

07-judgement call/common sense/ gut reaction/ subjective consideration

08-input from other sources and professionals

09-use the code of VA

10-lack the time necessary for thorough investigation

11-social service workers/court staff receive courtroom training before testifying

13-trained to impartially assess those things important to family development

### SOURCES OF INFORMATION

#### INTERACTING WITH COLLEAGUES AND OTHER PROFESSIONALS

01-professional interaction  
(psychologists./teachers/social workers/doctors)

02-other legal professionals

#### EXPERIENCE (as an attorney/judge)

05-experience/client feedback (past cases)

06-talk to the children involved

#### PUBLICATIONS

09-statistical reports

10-texts (psychology, divorce)

11-legal publications/literature

12-journals

13-popular literature

14-church literature

15-department of social services literature

#### PROFESSIONAL ORGANIZATIONS/MEETINGS

18-professional seminars

19-continuing education

20-professional organizations

#### LEGAL PRECEDENTS

23-supreme court/court of appeals/law reports

#### OTHER

26-B.I. not the focus so do not look for this info

27-no sources except for what is already in case

\*\*note-after original coding, responses 18 and 19 were considered to be the same answer and frequencies were determined accordingly.

### ADDITIONAL INFORMATION NEEDED

#### RESEARCH

- 01-have judges complete study and publish the results
- 02-frequency of involvement in crimes as compared to children from intact families
- 03-probability of increased antisocial (criminal) activity when income of each custodial situation is compared
- 04-educational achievements compared with children of intact families
- 05-follow-up studies on various custody arrangements/case studies
- 06-adolescent bonding among separated parents
- 07-if conflict is on-going after separation what is the effect of non-custodial parent maintaining frequent contact with child
- 08-is child's gender an important consideration

#### INFORMATION

(specific)

- 13-psychological evaluations done on child
- 14-psychological evaluations done on parent
- 15-would want a lengthy realistic evaluation/social history for each case/case by case study/pre-custody report/general info can only go so far-need specifics
- 16-what age/how much weight for child to give preference for custodian

(general)

- 17-any guidelines for determining the best way to decrease trauma of being separated from a parent and enhancing psychological, educational and emotional growth of child

18-more factual and less emotional information

19-parent education so they will know what the effects of their potential actions are on their children

20-make a new model act with guidelines listed

INPUT FROM OTHERS

24-use guardian ad litem more and have more training for them by the Bar Association.

25-provisions of guardian ad litem in code of circuit courts to be funded and authorized to investigate the best interest of the child

26-input from psychologists

27-input from doctors

28-professional consultants/social service workers for case by case input

Other

32-Best interest is not my focus

33-information is adequate/ no more is necessary/ do not know of any

**HOW SHOULD THE ADDITIONAL INFORMATION BE DISSEMINATED**

PUBLICATIONS

01-popular literature

02-legal publications

03-careful compilation for certifiable facts/qualified opinions rather than several various sources

04-journals

PROFESSIONAL ORGANIZATIONS/MEETINGS

07-seminars/handouts from seminars

08-continuing education

09-professional organizations

PROFESSIONAL INTERACTION/TESTIMONY

12-input/testimony from other professionals

(psychologist, doctors)

STATE/COUNTY/GOVT. DEPT OR AGENCY

15-through the public school system

16-state agency responsible for enforcing arrangement

17-funded through/by courts

OTHER

19-enough information already

REPRESENTING JOHN DOE-MATERNAL FACTORS

MATERIAL/FUNDAMENTAL

01-home/physical accommodations

02-income/finances

03-childcare

04-routine- same criteria as page 104

05-parenting- " " " " "

PHYSICAL

06-age of children

07-sex of children

SOCIAL/CULTURAL

08-Opportunities for interaction with peers/social circumstances

09-neighborhood (quality)/ location of home

BEHAVIOR

10-behavior of wife

11-behavior of children

12-parent-child relationship

## REPRESENTING JOHN DOE-PATERNAL FACTORS

## MATERIAL/FUNDAMENTAL

01-home

02-income

03-childcare

04-routine - same criteria as page 104

05-parenting- " " " " "

## PHYSICAL

06-age

07-sex

## SOCIAL/CULTURAL

08-opportunities for social interaction/ social circumstances

09-community/neighborhood

## EMOTIONAL

10-parent-child relationship

11-emotional stability

12-happiness of children

## REPRESENTING JOHN DOE REASONS FACTORS ARE IMPORTANT

## MATERIAL/FUNDAMENTAL

(home/physical accomodations)

01-father's home is larger/good home

02-environment becomes important/is more imortant when both parents are fit

(income)

07-father can provide financially for better/good proper



upbringing

08-mother is unable to support self much less children-  
even with support it would be difficult/unstable financial  
situation

(child care)

13-mother's child care is too far/inconvenient

15-father's child care is in familiar  
surroundings/stability of care is important

16-child care of father's focuses on his children only

(routine)

21-mom's work schedule does not allow time with  
children/family

22-dad's work schedule does allow more time with  
children/family

23-lifestyle and home of mom not as stable/lifestyle of  
dad is stable

24-mother's work schedule is unstable which is hard on  
ch.

25-father's work schedule is stable

26-factors listed indicate stability

27-mother's work schedule does not correspond well to  
future school hours

29-mother's care requires them to be in outside care away  
from their family for too long

(parenting)

34-mother left children with husband which was an  
admission of his ability to care for them

36-mother's leaving and inconsisitent behavior (moving  
twice, taking and then returning children) raises questions  
about her future dedication to parenting

37--father has demonstrated capable parenting

42--problem if mom's social life expands more  
(unavailability to care for children)

### PHYSICAL

(age)

47--boys are old enough to care for themselves to a large degree/at an age where they should be free of apron strings

### SOCIAL/CULTURAL

(peer interaction)

52--mother's home lacks opportunities for social interaction in neighborhood

53--father's home provides social interaction possibilities

(neighborhood/community)

54--more desirable location of home/home is in a stable community

(role modeling)

55--children should have more contact with father as they get older/ boys should be with father to get proper role modeling/boys have greater affinity with dad

### EMOTIONAL

(security/stability)

60--mother's leaving indicates instability

61--some question that behaviors (masturbation/sexual interest etc.) after being with mom indicates problem (emotional trauma)

62--children are happy/they should not be uprooted/they have ties to the community and are used to their home/life, stability of routine/lifestyle is important status quo/maintaining things as they are is important/turning the children over to the mother would be disruptive/unsettling to the children since dad has a stable home

63--children's crying at visitation indicates that

children do not want to be with/go with their mother

(relationships-[love/family])

64-extended family is involved in father's child care (both parents need to rely on others for child-care but mom relies on strangers and dad on relatives), relatives are probably more interested and more available to them

65-family oriented stable environment is important when both parents are fit

66-father loves the children/they enjoy being with him/father has a warm relationship with the children/ they get along well

67-factors indicate willingness of parent to put personal time into the parent-child relationship

68-father spends quality time with the children/ spends free time with children/provides the children with numerous activities

69-does not interact much with children

70-when had visitation did not stay home

72-parent demonstrates love by how they care for the children

#### LEGAL

(professional experience)

77-based on discussions with child psychologists these are important

78-court looks for stability (of home/income) as primary consideration

79-based in my professional experience these are applicable

(legal guidelines)

80-there should be no automatic preference for the mother (against the statute) especially since the children are boys

81-best interests of children dictate these factors. best interest = primary court test for custody/ would need to show these as Best interest of children

## REPRESENTING JANE DOE-MATERNAL FACTORS

### MATERIAL/FUNDAMENTAL

- 01-home/physical accomodations
- 02-income
- 03-childcare
- 04-routine - same criteria as page 104
- 05-parenting - " " " " "

### PHYSICAL

- 06-age of the children

### SOCIAL/CULTURAL

- 07-social network/support
- 08-social interaction opportunities for children

### EMOTIONAL

- 09-parent-child relationship/bonding
- 10-emotional stability
- 11-happiness of children
- 12-interparental relationships/attitudes

## REPRESENTING JANE DOE-PATERNAL FACTORS

### MATERIAL/FUNDAMENTAL

- 01-childcare
- 02-routine
- 03-parenting

### SOCIAL/CULTURAL

- 04-social network/support
- 05-opportunities for social interaction for children

## EMOTIONAL

06-interparental attitudes/relationship

07-emotional stability

08-parent-child relationship

## REPRESENTING JANE DOE REASONS FACTORS ARE IMPORTANT

## MATERIAL/FUNDAMENTAL

(home)

01-mother should not be penalized for her home/mom's situation is suitable for the children, the home study accepted it

02-added support will help improve mom's home

(income)

08-with support from the father, children can be adequately provided for

09-mother has done well with limited financial means

10-because father has greatest economic burden will have to be his job instead of parenting

(routine)

15-mother has always taken care of the children/ she was the primary caregiver in past/would likely resume

16-father was not original primary caregiver

17-dad's work schedule allows little time with the children/ he is away all day long

18-dad's work schedule could change again allowing less time with children

19-father could spend time with children through visitation/ activities are visitational not custodial

20-if father expands his social life it could result in less time with the children

21-mom's work schedule allows her more time

(childcare)

25-mother's childcare is better than dad's/mother provides excellent daycare with lots of activities

26-caregivers should not have health problems/caregiver may be unsuitable

27-mother's childcare was investigated and found adequate

28-father got whoever was available for care

29-caregiver's (of dad) change during day which may confuse children

30-caregivers should be same age as parents

(parenting)

34-mom's competence/initiative is illustrated by establishment of job/home/child care

35-mom's actions indicate she takes her parenting role/responsibilities seriously, she puts the children ahead of herself, devoted to caring for the children (willing to work at job that allows more time with children, gave up job opportunities to care for children. She is working hard to get them)/mom's desire to care for/nurture children (evidenced by relinquishing them when unable to care for them)

36-mom has demonstrated capable parenting of meeting daily needs of children, more likely, better able to meet daily needs

37-father lacks interaction/experience with the children/spent little time with the children in the past

38-in father's situation he relies on others to do parenting

**SOCIAL/CULTURAL**(peer interaction)

42-interaction with age mates is very important from developmental point of view

43-social interactions needed are provided through mom's child-care

44-father lacks social connections in neighborhood without the wife/he does not encourage/provide social

experience for children within neighborhood

45-mother has friends who support her and her children

(role modeling)

46-custodial parent should be role model not just playmate

### EMOTIONAL

(relationships-love/family)

51-opportunity for interaction with extended family/father on a regular basis

52-mother has been nurturing/psychological parent for entire marriage/has more developed relationship, long term consistent relationship with them-bonding between mother and child should not be disturbed and which relatives cannot substitute for (primary caregiver is often the person child is most closely bonded to)

53-mother loves the children/always has

54-because father was not primary caregiver there probably is not as much bonding

55-children are happy to go with mother

56-father has bias against mom indicated by masturbation allegations

57-fathers plan/childcare lacks nurturing-he relies on others to do "mothering"

58-what assurance is there that father will spend quality time with children in future/ father's current activity real indication of feelings or is it a show fo custody/ getting even with mom (since he spent so little time in past interacting with children)/past parenting role is more indicative of parents feelings for children than role assumed since the separation.

60-children are too young to be with the father/children's age favors the mother/ fathers are not as suited to raise children/ young children need their mothers more than they need their father

**GENERAL DEVOLPMENT**

65-developmental goals/more stimulus is provided for in mother's care

66-developmental goals are lacking in dad's child-care

**LEGAL**

(winning the case)

72-judges recognize the bonding process as the most important factors

73-factors are important in showing the children's best interest which is what judge will use to base decision/want to demonstrate these as the best interest of the children

(statutes/guidelines)

75-tender years still raises a presumption in favor of mom (code of VA)

**FACTORS ABOUT MOTHER**

**MATERIAL/FUNDAMENTAL**

01-home/living arrangements

02-income

03-routine - same criteria as page 104

04-parenting - " " " " "

05-childcare

**SOCIAL/CULTURAL**

06-opportunity for social interaction

07-location of home/neighborhood

**EMOTIONAL**

08-parent child relationship

**BEHAVIORS**

09-parents behavior



10-childrens behavior

### FACTORS ABOUT FATHER

#### MATERIAL/FUNDAMENTAL

- 01-home/living arrangements
- 02-income
- 03-routine - same criteria as page 104
- 04-parenting - " " " " "
- 05-childcare

#### SOCIAL/CULTURAL

- 06-opportunity for social interaction
- 07-location of home/neighborhood

#### EMOTIONAL

- 08-parent child relationship

### REASONS FOR IMPORTANCE OF PARENTAL FACTORS (MOTHER)

#### MATERIAL/FUNDAMENTAL

##### (income)

- 01-professional caregiver costs money/too expensive
- 02-low income

##### (routine)

- 06-work schedule allows for many activities now but will be disruptive when child starts school
- 07-less change in child's life with custody to mom
- 08-mom's schedule provides for good visitation/ her availability for visitation is best visitation potential
- 09-work schedule is irregular/late and does not permit time with the children

10-child care is too far away/inconvenient/too much travel time for small children

11-work hours could be reduced to permit more time with children.

12-has always taken care of children/seen to the children's daily needs/ was considerably involved with children in past

13-can be with children more

(child care)

15-child care involves too many children

16-child care is satisfactory

(parenting)

21-admitted she was unable to care for children when she left

22-mother has edge over father in parenting skills

23-puts child's needs ahead of self

24-proven parent/ demonstrated ability to care for children

**PHYSICAL**

\*NOTE-greatest physical trauma is not coded because it lacks an explanation of how/why this trauma will occur

**SOCIAL/CULTURAL**

(peer interaction)

29-lacks opportunity for social interaction

30-provides better social environment/ circumstances/ opportunities

**EMOTIONAL**

(security/stability)

36-behavior indicates emotional problem/instability with mom

37-least turmoil/upheaval imposed

38-greatest turmoil/upheaval imposed

39-mother and child are used to each other

(relationships/love & family)

43-loving mother

45-past relationship helps predict future relationships

46-child care proposed provides less potential for love and affection

47-both parents are fit so children should have ongoing relationship with both

48-young children need their mother more than they need their father/ mothers are better with small children

**COGNITIVE**

53-provides better learning environment

**LEGAL**

(legal/professional experience)

58-court must/will assess if physical, emotional, developmental needs are/will be met

(statutes/legal guidelines)

59-code of VA says when both parents are fit then stability of environment, suitability of home and companionship for children are important

**REASONS PARENTAL FACTORS ARE IMPORTANT  
(FATHER)**

**MATERIAL/FUNDAMENTAL**

(home)

01-father's living arrangements are better

02-home is comfortable

(income)

07-has more money available for raising children

(routine)

12-father can spend every evening meal/every bedtime with children

13-father's schedule is stable

14-father is gone most of week

15-lifestyle is stable

(child care)

19-child care is well structured/stable

20-child care is in familiar surroundings

22-caregivers health problem seems to be resolved and less risky since part time caregiver

23-caregiver is of questionable health

(parenting)

28-father has done well with custody/is good with the children

29-father lacks parenting experience, is less than adequate

30-father relies on others to provide care and he should be primary supporter of children

**SOCIAL**(peer interaction)

35-neighborhood has children and playmates for socializing with

(neighborhood/community)

36-comfortable neighborhood

**EMOTIONAL**(security/stability)

40-stable work schedule yields security/stability/structure

41-children are adapted to/ used to grandmother and aunt

42-children are happy/ why uproot- it is the familiar

home/ they are used to this situation/status quo is important to stability

43-least upheavel imposed

(relationships/love & family)

44-present interactions/relationships help determine future

45-grandmother and aunt are presumably more loving than professional caregiver

46-loving interest of father (offsets loss of mom) spending time with children is more important than best child care so dad's interactions outweigh mom's childcare

47-promotes a sense of family unit

48-children should have ongoing relationship with both parents since both are fit

49-loss of mom is offset by avoidance of accompanying risks

\*\*\*greatest emotional trauma is not coded-it doesn't explain/ e.g. what kind of emotional trauma/ which factors etc. are they talking about???

**GENERAL DEVELOPMENT**

54-must assess which parent would meet basic emotional, physical and developmental needs

55-court must/will assess if physical, emotional, developmental needs are/will be meet

APPENDIX I  
DATA ENTRY KEY

## Card #1 for Judges and Lawyers

column	information
1-3	subject number
4	card number
5	occupation
6	sex 1=male 2=female
7	order of questions 1=cmf 2=cfm 3=mfc 4=mcf 5=fmc 6=fcm
8-21	factors about the Children
22-45	reasons factors are important/ reasons for custodial choice
46	choice of custodian 1=mother 2=father 3=joint
47-72	additional information desired about the Doe family

## Lawyers-card #2

column	information
1-3	subject number
4	card number
5-10	reasons additional additional information about Doe's is important
11	adequately trained? 1=yes 2=no 3=judges yes/lawyers no
12-23	explanation of training
24-37	sources of training
38-45	additional information/ research desired
46-55	how available
56-65	representing John Doe- maternal factors
66-75	representing John Doe- paternal factors



## Judges Card #2

column	information
1-3	subject number
4	card number
5-10	reasons information about the Doe's is important
11	adequately trained?
12-23	explanation of training
24-37	sources of training/ information
38-45	additional research/ information desired
46-55	how available?
56-63	factors about the mother
64-71	factors about the father

## Lawyers Card #3

column	information
1-3	subject number
4	card number
5-24	representing John Doe-reasons
25-32	representing Jane Doe- maternal factors
33-40	representing Jane Doe- paternal factors
41-60	representing Jane Doe- reasons

## Judges Card#3

1-3	subject number
4	card number
5-18	reasons factors about the mother are important
19-32	reasons factors about the father are important

APPENDIX J

DATA

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