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In her paper *Clinical Education and the "Best Interest" Representation of Children in Custody Disputes: Challenges and Opportunities in Lawyering and Pedagogy*,[1] Frances Hill provides a thought-provoking discussion of pedagogic efforts that can be undertaken to ensure that lawyers are trained to better appreciate the best interests and special needs of children involved in custody disputes. Although there may be disagreement related to the specific strategies presented in the paper for better serving children, there should be a consensus that there is a need for open dialogue about children and divorce and the destructive consequences that often ensue from custody disputes. It is not easy to "ask the tough questions," but this process is essential to any effort to make improvements in our legal system.

For the purposes of my Response I would like initially to highlight the strengths of the collaborative and interdisciplinary educational approach to educating law students and social-work students in a child advocacy clinic. Following my discussion of these strengths, I would like to suggest a few challenges that may be involved in collaborative and interdisciplinary work. Looking beyond the issues of the educational components of the clinic, I will conclude with a discussion of some of my specific concerns regarding divorce and child-custody disputes.

A unique feature of the clinical training described in this paper is the collaborative and interdisciplinary nature of a child advocacy clinic. Providing an opportunity for law students and social workers to work closely together can certainly help to increase understanding among the two professions. It is not uncommon for misunderstandings to occur among professions around issues such as idiosyncratic language usage. For example, lawyers and social workers typically have very different understandings and definitions of the simple term "interviewing." For the lawyer, the interview may be viewed as a vehicle for obtaining information to support a case, whereas a social worker may view the primary goal of an interview as the establishment of a working relationship with a client, with obtaining information a secondary goal. Social workers who do not understand nor respect the emphasis on the information and case-building aspects of *legal* interviewing may not fare very well in the courtroom setting. In a similar manner, it may be possible that law students will find that paying attention to the rapport-building aspects of interviewing may actually improve the quantity and quality of the information they receive from a client.

An additional advantage of the interdisciplinary approach to handling cases is that it provides hands-on orientation and training to a *team* approach to work.

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1. Frances Gall Hill, *Clinical Education and the "Best Interest" Representation of Children in Custody Disputes: Challenges and Opportunities in Lawyering and Pedagogy*, 73 IND. L.J. 605 (1998).

Collaboration and cooperation are the watchwords of the current decade. Given the complexity of contested custody disputes, there is strong indication of the need for multiple disciplines to pool their respective strengths to reach a decision that is truly in the best interest of the child. This type of collaborative work is more than merely *using* the knowledge of others for instrumental purposes. It also involves the willingness to change one's perspectives and actions based upon the knowledge provided.

Collaborative approaches can also promote an expanded view of the major issues to be considered and evaluated within a given case. Social work has traditionally emphasized an ecosystems approach to understanding clients and their respective issues. The ecosystems model requires an evaluator to consider the interrelatedness and interdependency of social phenomena. The focus is on the person-in-context unit of study, the transactional nature of human interaction, and the continuous process of adaptation or accommodation between individuals and their environments.[2] Hill demonstrates an adoption of an ecosystems perspective when she discusses how supervisors within her clinic "encourage students to reconsider their approach to a particular child or situation to reflect the current body of scientific knowledge in child development, sexual abuse, family dynamics, and a variety of other social-science issues."[3] The ecosystems perspective reminds us that children involved in custody-dispute cases do not exist in isolation. The problems they encounter and demonstrate are part of a larger family and social milieu. The decisions that are made regarding the custody issue will have both long-range and rippling effects throughout the child's life.

An ecosystems perspective also provides an excellent vantage point from which to view and understand a family undergoing divorce. Goldsmith points out that although divorce alters the family system, it does not terminate it.[4] Patterns of communication and the roles enacted by individual family members can continue well past the point of the legal divorce. As with the married family, symptomatic behavior of individual family members is often related to dysfunction within the system, and children are often *selected* as symptom bearers.[5] Therefore it is easy to see how a disgruntled former spouse who still feels vindictive toward his or her partner may choose to continue to use the children as a means to punish and control the former spouse. This pattern may have started while the couple was married; the legal divorce may do little to change this habitual manner of handling anger by the *aggrieved* individual.

Of course, collaborative and interdisciplinary approaches can present their own set of challenges. One possible area of concern may be the role confusion for the clinic staff involved in the case. As the number of individuals working on a particular case increases, the potential for misunderstandings can also increase.

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2. *See* MAGALY QUERALT, THE SOCIAL ENVIRONMENT AND HUMAN BEHAVIOR (1996).

3. Hill, *supra* note 1, at 608 n.17.

4. *See* Jean Goldsmith, *The Postdivorce Family System, in* NORMAL FAMILY PROCESSES 297, 298 (Froma Walsh ed., 1982).

5. *See* Joan I. Wood & Gloria J. Lewis, *The Coparental Relationship of Divorced Spouses: Its Effect On Children's School Adjustment*, 14 J. DIVORCE & REMARRIAGE 81 (1990).

It is possible that confusion can arise regarding who is responsible for which particular elements of a case. Ongoing and effective supervision can do much to diminish the likelihood of role confusion jeopardizing the effective delivery of services. Hill mentions in several places that students at her clinic are provided ample quality professional supervision; this reduces my concern regarding the impact of role confusion within this clinic. Role confusion can also extend to the child and family. As more professionals are introduced into the child's life, there is the potential for a lack of clarity regarding the role of each new professional working with the child. It is imperative that children and their families be fully informed of the role and function of each professional involved in the case. Once again, effective supervision and education of clinic staff can do much to assure that role confusion is minimized for the children and their families. Finally, the court system may experience confusion regarding who is responsible for the case: is it the guardian ad litem ("GAL"), the lawyer, or the entire clinic? Effective education of court personnel can do much to reduce this type of role confusion.

A second potential challenge presented by collaborative and interdisciplinary work is the issue of how to balance differing and potentially opposing views presented by the various professions operating with a clinic. Although clinic workers may share a desire to see that the best interest of a child involved in a custody dispute is protected, there may be considerable disagreement on the most appropriate manner to proceed on behalf of the child. For example, lawyers and social workers often differ in their approach to the *fact*-gathering stage of the assessment process. Social workers are trained to approach a new client with as few preconceived notions as possible. Information and explanations *emerge* from the client's narrative. For lawyers, there is often the need to engage in *positional thinking*. The lawyer may possess various a priori assumptions about a client and his or her situation, and the interview is used as a manner in which to validate these preexisting conceptions. Both approaches can provide valuable information about a client, but they can also lead to a different understanding of a client's issues. The challenge for the clinic staff is to find a way to integrate these separate and distinct understandings of the client into a holistic synthesis. This is certainly not an easy task, but it is one which ample communication and supervision can effectively address.

These are just a few of the special challenges presented by professionals engaged in an effort to work in a collaborative manner. Beyond my concerns with these challenges, I also have special concerns related to divorce and more specifically child-custody disputes. My concerns are related to: (1) children as clients, and (2) the traditional overarching adversarial context of divorce proceedings. I would like to briefly discuss each of these concerns.

A strength within the Hill paper is the author's willingness to grapple head-on with the ethical issues involved in taking on children as clients. At the heart of this debate is the conflict over the appropriateness of clinic staff assuming a GAL role pursuing a *best-interest* position with child clients. In general, I am in favor of any custody-dispute process that places the burden of *final* custody decisions into the hands of adults. This does not prevent the inclusion of children into the decisionmaking *process*. Indeed, a sense of control over one's own fate is vital to a sense of mental health; however, ownership for the final decision

needs to be placed upon the adults. In essence, it was the adults in the child's life who made the original decision to marry, have children, and ultimately divorce. It is unconscionable to place a child in a position in which they must *clean up the mess* left by the adults by rendering a final decision as to where he or she will live.

It is important to note that there is popular support for the argument that providing children with a greater say in their custody choice will lend them a greater sense of control. Control does have many psychological benefits, but the benefits are not ubiquitous. For example, research on the psychological concept of *learned helplessness* indicates that internal attributions of control over *positive* events are related to better mental health, but internal attributions of control over *negative* events are associated with even more mental-health problems, especially depression.[6] Therefore, the negative repercussions which are likely to follow the child's custody decision may very well outweigh any positive experiences gained as a result of the control he or she had over the final custody decision. Whether having the clinic staff follow a best-interest standard can provide an effective way to lessen the pressures on children in custody disputes remains to be seen. More discussion and research is needed in this area.

Part of the dilemma faced by child advocacy clinics is the traditional overarching adversarial approach to divorce that still exists in our society. Although the clinic may be invested in the internal training of law students and social workers who are sensitive to the need to formulate custody resolutions that are in the child's best interest, the reality is that the clinic must still operate in a larger social and legal environment that often views children in divorce as objects to be *won*. Even the use of the term "custody" connotes images of children as property. Clinics such as the one at the Indiana University School of Law-Bloomington will be faced with the additional challenge of not only serving the best interests of their individual child clients, but also finding ways to advocate for change within the overarching legal system.

It is important to note that very few seem pleased with the current adversarial approach to divorce. Many lawyers and judges dislike the adversarial approach to divorce.[7] Studies have also found that mothers and children are not satisfied with the divorce process.[8] In a recent study I completed with divorced fathers, I found that there was unilateral dissatisfaction with the legal system among fathers as well. This dissatisfaction was evidenced among fathers across various custody arrangements: sole-custody mother, joint custody, and even sole-custody father. This dissatisfaction is even more disturbing in view of my additional finding of the strong connection between father involvement with children after divorce and the fathers' level of dissatisfaction with the legal system.[9]

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6. *See* Christopher Peterson & Martin E.P. Seligman, *Causal Explanations as a Risk Factor for Depression: Theory and Evidence*, 91 PSYCHOL. REV. 347 (1984).

7. *See* Francis J. Catania, Jr., *Accounting to Ourselves for Ourselves: An Analysis of Adjudication in the Resolution of Child Custody Disputes*, 71 NEB. L. REV. 1228 (1992).

8. *See* ROBERT E. EMERY, RENEGOTIATING FAMILY RELATIONSHIPS (1994); FRANK F. FURSTENBERG & ANDREW J. CHERLIN, DIVIDED FAMILIES (1991).

9. *See* Glenn Stone & Patrick C. McKenry, *Nonresidential Father Involvement: A Test of a Mid-Range Theory*, 159 J. GENETIC PSYCHOL. (forthcoming Sept. 1998).

Given the level of dissatisfaction with the current adversarial approach to divorce, there may be a need for a paradigm shift in how we view and process marital dissolution. One method is to look to other societies for ideas on ways to deconstruct and then reconstruct our approach to divorce litigation. England has recently made efforts to transform family law through the Children Act of 1989. According to Fricker, this law has lead to significant changes in how children and divorce are viewed: "Expectations of the conduct of family law have steadily moved away from legal directive intervention toward supportive work to enable families to progress through transition and recover from the trauma of disruption of their family unit, . . . and resolve issues together instead of through lawyers."[10] This law has resulted in extensive training for family-court workers, social workers, mediators, lawyers, judges, educators, and representatives of the medical profession to heighten their sensitivity and skills in putting children first in the divorce proceedings, not as objects to be won, but rather as individuals who have the right to appropriate parenting. Fricker suggests what I would term a paradigm shift in family law when he states that: "The practice of family law involves particular sensitivity to the welfare needs of children, the trauma of separation and divorce and the consequent emotional and psychological changes, and the diverse cultural expectations and family structures of various ethnic groups."[11] This approach is in stark contrast to other areas of the law which are strictly concerned with legal rights and evidence, with little consideration of subjective human emotions. Unfortunately there is little rigorous research on the effects of the law change in England.

In summary, child advocacy clinics represent a significant positive step toward better meeting the needs of children in custody disputes. In addition, the Children Act of 1989 in England offers an alternative approach to the adversarial system of handling divorce and child custody disputes currently dominating our legal system. However, it can be very difficult to transplant laws and programs from one society to another. Significant efforts are still needed to challenge and change existing adversarial practices within our legal system. Unfortunately, when it comes to divorce we are still a society that has no perfect solutions to our divorce dilemmas, only perfect problems.

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10. Nigel Fricker, *Language and Culture in Child Law: Experience of the Children Act in England and Wales*, 34 FAM. & CONCILIATION CTS. REV. 342, 344 (1996).

11. Nigel Fricker, *Family Law is Different*, 33 FAM. & CONCILIATION CTS. REV. 403, 403 (1995).