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Marianne E. Becker

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IN SEARCH OF MULTI-DISCIPLINARY
ENLIGHTENMENT TO THE JUDICIAL STANDARD OF
BEST INTEREST OF THE CHILD: THE ABA
RIPON CONFERENCE: FAMILY LAW AND
THE BEST INTEREST OF THE CHILD

HONORABLE MARIANNE E. BECKER*

On April 11, 1991, a conference concerning children in the legal system was convened in Wisconsin on the campus of Ripon College. The conference, as a conference, was not a remarkable event. Ripon College hosts many conferences. Lawyers and judges frequently meet to discuss the adequacy of forum in addressing children's needs.¹ The American Bar Association, Family Law Section, lists no less than eight standing committees which continually review the law and social trends relative to the affected needs of children in court.² The respective state bar associations multiply this reviewing process at least fifty-fold. Mediators, social workers and other professionals who serve as adjuncts in support of courts meet with similar frequency and like dedication in an effort to ascertain and respond to specific needs of children in court. Often, leaders and scholars of other disciplines are invited to address gatherings and conferences of attorneys and judges on specific issues; but generally, it can be said that lawyers, judges and other governmental professionals most frequently talk to each other about the best interests of children.

The idea for "another kind of conference" began in a 1988 meeting discussion within the Alimony, Maintenance and Child Support Subcommittee of the Family Law Section.³ The lawyers and judges on that subcommittee were then engaged in examining the link, if any, between the increasing numbers of children living in poverty or below the poverty line and the concept of no-fault divorce.⁴ A seminal and controver-

* State of Wisconsin Circuit Court Judge, Waukesha County, 1985 to present. Chair of the international multidisciplinary group "Toward 2020: Family Law and 'The Best Interest of the Child'." B.A. 1963, Ripon College; J.D. 1966, Marquette University.

1. The American Bar Association/Family Law Section and the Johnson Foundation co-sponsored an October, 1988 national conference at the Wingspread Conference Center in Racine County, Wisconsin. The conference was entitled: *The Law and Contested Child Custody*. Most of the conference transcript was published in August, 1989 under the title: ABA SECTION OF FAMILY LAW, CHILD CUSTODY DISPUTES: SEARCHING FOR SOLOMON (1989). The opinions expressed by the experts at Wingspread provided the impetus for the ABA/Ripon inquiry.

2. The Family Law Section of the 1991-92 ABA Handbook lists thirty-eight additional standing committees, which can also be said to address the needs of children.

3. In 1988 the author was Chair of the Alimony, Maintenance and Child Support Subcommittee.

4. Although no book has been published at this writing, the author believes the concept will be included in a future ABA book entitled: TWENTY YEARS OF NO-FAULT.

sial concern was whether no-fault divorce was destructive to the best interests of children born into an intact family unit. That discussion led to further questions: Whether a troubled parental situation in an intact family is less, more or as damaging to children, than a marital dissolution; whether family life is necessary to the development of the child; if so, whether a child's needs supersede parental rights; and if so, to what degree.

The committee observed that personal parental decisions often appeared to be in derogation of the developmental best interests of the children. Yet the law and lawyers are not particularly well educated in understanding the developmental needs of children beyond food, shelter and clothing. Before positing any more legislative solutions to child-orientated issues in court, it was determined that the law and lawyers and judges should be educated in the best interests of the children, *by those who understand all the developmental needs of children, as these needs are ascertained by other professional disciplines.*

The idea to more closely examine the situation of children of divorced parents, and to do so as a multi-disciplinary exercise with reference to the children's best interest, was submitted to the Family Law Section leadership who endorsed the formation of a de facto committee to study the issue. This author was appointed Chair of the de facto committee in the summer of 1989, and, with the assistance of the other members of the committee,⁵ began a search for a co-sponsoring entity. By autumn, Ripon College had accepted an invitation to co-sponsor the inquiry, and Robert Hannaford, Ph.D. and Douglas Northrup, Ph.D of the Ripon College faculty joined the committee.

The dedication of the de facto committee was unquestionable. Numerous meetings began. Telephone meetings were attempted but limited in-depth discussion. Face-to-face meetings were necessary, and they were held each month in Chicago or Milwaukee at substantial unreimbursed financial and scheduling costs to the scholars and the attorneys.

The Ripon College committee members were not lawyers; rather, they were scholars and academicians appointed to enrich the diversity of overview and experience. Each group educated the other, preparatory to examination of the judicial "best interests" standard. While the scholars originally accepted the best interests standard as flexible and straightforward, they were concerned to learn that the various states' legislatures were free to require their judges to interpret the best interests standards in keeping with specific factors recognized in that state.⁶

5. The author would like to express her gratitude for the work of attorney committee members Thomas Bailey, Esq., Milwaukee, Wis.; John Becker, Esq., Brookfield, Wis.; Ira Lurvey, Esq., Los Angeles, Cal.; Margaret McGovern, Esq., Chestnut Hill, Mass.; Thomas Mulroy, Esq., Pittsburgh, Pa.; Richard Podell, Esq., Milwaukee, Wis.; and Daniel Schultz, Esq., Wash., D.C., a Ripon college alumnus, who was most helpful in interesting the college in this project.

6. For example, in Wisconsin, legal custody and physical placement decisions are mandated under WIS. STAT. § 767.24 (Supp. 1991) and appropriate case law. The legisla-

Noting that the factors might be different among adjoining states of the same region, they raised questions: Was the nature of children's needs changed by passing from Wisconsin to Illinois? Are active parenting skills significantly altered at a state line? Who determines the factors and on what basis? Where was the statutory definition of the developmental needs of the child including the child's moral developmental needs? The lawyers, on their part, learned that existing legislative factors might not reflect the children's actual needs; that parental rights to have and raise their natural children might conflict with the children's developmental needs *if* judges interpreted those children's needs as children's *rights*.

Even as the array of questions before it expanded, the committee's commitment to build a bridge of understanding between the child and his or her needs intensified. Within the committee, it became clear that the law was, in fact, the best means by which to affect the best interests of the child. However, lest the standard be relegated to a platitude, or worse, to an institutionalized expression in justification of legal efficiency at the expense of the child, the inquiry must extend beyond children in divorce and identify, *a priori*, the needs of *the child*, that the law should substantively and procedurally promote.

To many readers, this retreat to the basics may appear obvious, but it was in fact, begrudgingly concluded. After many months, a mission statement was carefully prepared and disseminated to delineate what would become the conference charge.⁷ In essence, it states:

ture has established eleven criterion which must be considered. Sub-section 5 of that statute provides:

Factors in custody and physical placement determinations. In determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one potential custodian over the other on the basis of the sex or race of the custodian. The court shall consider reports of appropriate professionals if admitted into evidence when legal custody or physical placement is contested. The court shall consider the following factors in making its determination:

- (a) The wishes of the child's parent or parents.
- (b) The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.
- (c) The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest.
- (d) The child's adjustment to the home, school, religion, and community.
- (e) The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household.
- (f) The availability of public or private child care services.
- (g) Whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.
- (h) Whether there is evidence that a party engaged in abuse of the child, as defined in §§ 48.981(1)(a) and (b) or 813.122(1)(a).
- (i) Whether there is evidence of interspousal battery as described under § 940.19 or domestic abuse as defined in § 813.12(1)(a).
- (j) Whether either party has or had a significant problem with alcohol or drug abuse.
- (k) Such other factors as the court may in each individual case determine to be relevant.

7. The document was originally entitled TOWARD 2020: FAMILY LAW AND 'THE BEST

Survivors of the past two decades in American society bear witness to a national crisis in the lives of American children.

Traditionally, we have held the ideal of the family as the basic cell of society, centered around a marital union, the adult partners charged with the mutual responsibility for the nurturance, education and security of the children.

Given the frequency of divorce, the number of children born out of wedlock and the deprivation of a traditional cultural consensus, increasingly society has turned to the legislatures and courts of the many states which have reacted to provide various solutions to child oriented issues.

The legal community in most jurisdictions currently relies on the standard of "best interest of the child(ren)" to guide the development of law in family/child issues. When a cultural consensus of marriage-until-death prevailed, when divorce if not rare, was uncommon, most child-centered issues were resolved in family rather than in court. Society had little need to challenge, define or amplify the legal "best interest" standard. Affected were the few, not the many.

Frequently, the legislative branch interprets and confines "the best interest standard" to an economic context. Child support percentage guidelines, inter-state collection mandates and equitable property division statutes are examples of legislation directed to the correction of highly visible financial problems relating to children. However, our legislatures, and in turn, courts and lawyers, have given too little consideration to the non-economic ethical components of the "best interest of the child," the lack of which may profoundly impact on the ability of a child to mature into a responsible adult.

But, legislators buffeted by special interests, family law practitioners attempting to resolve the individualized problems of their clients, judges responding to the demands of too crowded calendars, seldom have the opportunity to examine the theoretical-ethical underpinnings of the law which they fashion, promote and enforce. When there is opportunity for discourse, most often, it is among themselves.

Law is a means, not an end. Law provides structure, order and sanctions to the substantive thought of other disciplines, in the absence of which, law is inherently arbitrary.

The existence of the child crisis raises fundamental questions about the role of family and of Law in the attempt to promote and secure the best interests of the child and the best interests of society, if these concepts are as they appear to be: mutually dependent.

While the legal profession, alone, cannot solve societal problems, the legal profession must be a part of the solution. The legal profession, the academic disciplines, and others concerned with serving the well-being of children must interact to

INTEREST OF THE CHILD.' Except for the specifics of the invitation to the conference, the statement above is quoted as written.

examine that which we think we have known, and determine whether that wisdom shared can provide societal focus in the 21st Century.

For those reasons the American Bar Association, Family Law Section and Ripon College will sponsor and facilitate an interdisciplinary symposium entitled "Toward 2020: The Family and the Best Interest of the Child." The symposium will seek the substantive thought of the various disciplines. It will ask: What elements of family life are necessary for a child to acquire the attitudes and values by which to become a healthy and responsible adult in society; and what impact should this identification have on family law and social policy in the 21st Century?

To that end we propose to gather a panel of legislators, lawyers, judges, clergy, and representatives of the disciplines of philosophy, anthropology, history, sociology, psychology and psychotherapy on the campus of Ripon College from April 11 through April 14, 1991.

The discussion should be spirited, the exchange of views insightful. We are looking for a new consensus and expression of appropriate measures toward which to direct the best interests of children as they relate to family and society.

While the committee had succeeded in preparing a focused statement of its inquiry, the scope of that inquiry had expanded exponentially. Under this statement, the committee could be confronted with an apparently endless inquiry in a controversial area that transcends many disciplines, with token funds and limited time to accomplish the task.⁸ However, in the view of this author, this "labored conclusion in committee" may be one of the most significant determinations of the committee and of the conference that followed. The statement represents our reluctant realization that there is no easy way and no quick fix; that limiting an inquiry to a part of the problem produces limited if not skewed results; that the needs of the child are multiple; and that the best interests of the child are as dynamic as the society in which she or he lives.

The committee agreed that the ABA/Ripon conference would consist of scholars of the several disciplines who would begin at the beginning, identify the basics and hopefully establish a continuing forum through which the various disciplines can collaborate in the definition and refinement of the judicial standard of best interests of the child. The committee proceeded to locate and invite individuals who had acquired experience and professional distinction as academicians in philosophy, psychology, history, anthropology; and as practicing psychologists, social workers, educators, psychiatric counsellors, legislators, lawyers and doctors. The dedication of those who accepted was manifest by the lack of honoraria, special recognition of individual achievement or lavish surroundings. Additionally, the conferees agreed

8. The conference had many "ifs," funding chief among them. The conference dates and location, however, were never in doubt after January, 1990.

to read hundreds of pages of pre-conference materials submitted to them and to seriously consider working for the best interest of the children after the conference concluded. These limitations, imposed by the mutual tenets of cognitive direction and limited funding, were the making of the conference. Conferees came to examine what they thought they knew and to confront myths and their own personal bias(es). Each committed to think more than to act, a concept difficult for many professionals often motivated by expectation to produce visible and immediate solutions, the bottom line of the "fix-it yesterday" era in which we live.

From Thursday, April 11, through Sunday, April 14, 1991, the conferees met, endured the changing Wisconsin weather, rejoiced in the gracious hospitality of Ripon College and formally listened, conferred and debated with each other until as late as 11:00 p.m. Historians and child development specialists put their particular issues into perspective. Educators and anthropologists discussed the issue of the nuclear American family as myth, image and/or expectation vis-a-vis our actual history. Physicians, child psychologists and behaviorists explained child development from pre-birth through adolescence. They concentrated their explanation on birth through age three, the period of time during which the child learns the quickest and his or her moral, intellectual and emotional development are most influenced. It is also the period during which the child experiences the greatest amount of parental or child care-giver modeling.

The conferees met as a large group, then were split into smaller groups as diverse in education and academic background as possible. With the help of word processing equipment and Ripon College students, the points of consensus of the various groups were submitted in writing to the larger group for discussion and further critical examination.

The exchange of views among the conferees proved to be a valuable learning experience in itself. For instance, that which might have seemed self-evident to the attorney or psychologist was questioned by the analysis of the historian. That which appeared to be an obvious solution to child development specialists was frequently challenged by lawyers, ever-mindful of constitutional rights of the natural parents in the care, custody and control of their children. This mutual introduction was beneficial, but time consuming and limited the symposium's ability to more closely refine the following points of consensus and/or to organize any scheme of implementation.⁹

In summary, the conclusions receiving the greatest consensus among conferees are as follows:¹⁰

9. Refinement and implementation will hopefully be the charge to later conferees.

10. The author compiled this list from small group consensus sheets and her personal notes. She took license, for the purpose of this article, to list only those points that met with significant approval and/or were within the meeting mission. For example, small groups listed "guaranteed parental leave for a minimum of four months in aspects of the labor force" and noted "we are in a hell of a mess," but such observations were omitted.

1. A child develops quickly and after birth through the first three years of life, learns chiefly by the example of his or her early caregivers, usually his or her natural parents.

2. Every child requires a secure, consistent, supportive, nurturing and loving environment provided by caring adults throughout its development.

3. These needs of the child must be more carefully defined and expressed in terms of psychological, moral and educational development.

4. A child's first experience of community is in its family. The raising of children within a natural family is expressly endorsed and promoted.

5. Children are the building blocks of our society; each must enjoy the respect of the other and understand his or her role in interdependency.

6. Parenting or child rearing must be elevated to national prominence; every member of society should bear a moral responsibility for the proper care of all the children of the community.

7. While all families require the support of the community, some families require more intensive support. Where the methods of raising a child in a family are inconsistent with the child's developmental needs, it is appropriate that society intervene to safeguard the child through the informed efforts of the extended family, close community associations and/or welfare agencies respectively.

8. The physical, moral, intellectual and emotional-developmental stages of a child should be widely disseminated, formally taught in schools and considered by all whose conduct affects the life of the child in order to avoid predictable developmental, intellectual, emotional, and moral damage.

9. There are predictable developmental crises in a child's life and appropriate times, many also predictable, to intervene on behalf of a child.

10. Mindful that there are different methods to encourage the moral intellectual and emotional development of the child, society must strictly avoid cultural, ethnic, gender or socio-economic stereotyping of children.

11. When a child-centered issue, especially that of child custody, is before the court, the standard of best interests of the child must consider that:

A. Individual moral responsibility is as necessary to societal continuation as it is to the physical development of each individual in society. The individual moral development of the child is of equal importance with that of its physical well-being.

B. Children learn moral responsibility primarily from the example of their parents or caregivers. Education as to moral responsibility is

reinforced by repetition, verbal declaration and ongoing discipline appropriate to the child's developmental capacity.

C. Moral behavior is culturally dependent; parental lifestyle will influence the moral development of the child. The child's moral needs are its right, equal or superior to the rights of the parent.

D. The best interests of the child must be supported and enforced by the work of other disciplines and cannot be determined by the legal processes alone.

E. The litigants to a disputed custody proceeding should be educated as to the child's needs in an effort to mediate a determination separately from the other issues confronting the parties.

F. Judges, lawyers and other helping professions should be educated in child development and family dynamics as part of law school curriculum or continuing education.

Many conferees were surprised at their findings. Those non-legal/non-judicial delegates were clearly concerned that the best interests standard was often over-shadowed by a struggle with legally asserted parental rights. Legal/judicial conferees were likewise somewhat taken aback that current legislatively endorsed factors, which often disallow parental lifestyle issues from consideration in child placement matters, might be in opposition to the actual developmental best interest of the child.¹¹

All parties concluded that the moral development of all children was necessary to the healthy maintenance and continuance of society and the advancement of appropriate social goals. The statement was inherent that moral development must be promoted, particularly in a non-religious state where parents or child rearers, rather than the church, are expected to exemplify and convey to children moral principles of honesty, trust, loyalty and respect for human life, property and culture.

As the conferees concluded their deliberations, many resolved to continue multi-disciplinary efforts and their own personal efforts to promote public policy and to provide protection of all the needs of children, not only their financial needs.¹² The participants felt the weight of their four days deliberations; yet, they were refreshed and encouraged by their fellow conferees, three-quarters of whom opted to accept the challenge to continue to work together to promote a multi-disciplinary effort for children both in and out of court.

As Dean Northrop closed the conference, he reminded the group that "137 years ago, about fifty people gathered in Ripon to confront an

11. Attorneys expressed more distress than non-legal conferees. For example, legal conferees took note of the attachment theory argument vis-a-vis the right of the mother to work outside the home and away from the infant. A second example, early intervention to prevent child abuse/neglect or infant failure to thrive, flies in the face of parental notification and the opportunity to correct conditions authorized by various jurisdictional statutes.

12. See mission statement, *supra* note 7 and accompanying text.

issue of concern, and their efforts contributed to the founding of a new political party dedicated to the abolition of slavery.¹³ A few people deeply committed can make a difference if we care enough, work enough and draw on our resources and those of others."¹⁴

From those moving words, action must follow.

Children have necessary developmental needs which are known and predictable. While theories to meet these needs may be in or out of vogue or favor, the child's needs do not fluctuate. When a court intervenes in a particular matter, it must employ the best interests standard flexibly and effectively for that particular child, in keeping with what we know about the developmental needs of all children. Judicial platitudes, legal presumptions and currently fashionable legislatively mandated factors must not be the fulcrum of the best interests balancing decision; rather, the needs of the child must be the cornerstone of child-centered decisions.

The basic cell of tomorrow's society is today's developing child. The developmentally healthy child is likely to grow to be a fulfilled, mature adult. If a child's nurturance needs have been met, that individual will be willing and likely to assume adult responsibilities of citizenship. If a child's developmental needs have not been met, he or she is more likely to grow into an immature individual, unable to positively respond to societal demands.

To defend the smallest, least politically powerful members of society has long been the challenge to the legal profession, to lawyer and judge alike. It is appropriate that the considerable influence of the legal community should be joined with the efforts of other professionals and scholars interested in and knowledgeable about a child's total developmental needs. To elevate the child's total developmental needs to the standard of legal rights is to promote the total health of society.

13. The Republican Party was founded in Ripon, Wisconsin in 1854.

14. Douglas Northrup, Ph.D., is Academic Dean of Ripon College. His statement was quoted in the Ripon College press release issued at the conclusion of the conference.

