

**Hearing Testimony**  
**of**  
**The Coalition of Fathers and Families New York, Inc.**  
NYS Office of Court Administration  
Matrimonial Commission

Albany, New York  
Thurs., 4 Nov. '04

INTRODUCTION:

Ladies and Gentlemen of the Commission, my name is Randy Dickinson, and I am the Vice President of the Coalition of Fathers and Families New York, Inc. Our organization represents the 2.5 million non-custodial and disenfranchised parents - and their families - residing in the State of New York today. I wish to express deep and sincere appreciation for being given this opportunity to appear here before you today on behalf of this constituency. At the same time, however, I should warn you in advance that what you are about to hear has not been sugar coated. You will hear no glowing praise or congratulatory adulation for the job you and/or your courts are performing. Indeed, some may actually take personal offense at much of the content of this testimony. It is, in effect, an indictment. We ask your indulgence, however, to hear me through to completion. You need to hear it; it's time.

## THE STATE OF THE COURTS:

Retired New York State Supreme Court Judge Brian Lindsay was once quoted as stating that, “There is no system ever devised by mankind that is guaranteed to rip husband and wife or father, mother, and child apart so bitterly than our present Family Court System.”

Today the courts routinely ...

- Issue ex parte orders of protection and temporary custody orders based upon false allegations of domestic violence and/or child abuse,
- They maintain such incestuous relationships with forensic psychologists and law guardians that it is not uncommon for them to actually recommend their own services to the courts, which, in turn, simply order the parties to comply,
- They intimidate, coerce, and/or threaten unsuspecting defendants to “settle” their separations and/or divorces and sign “consent orders”, before their cases ever have a chance to go to trial. For those that do make it to trial, the “game” is so hopelessly rigged that no amount of “proof”, including indisputable evidence of a close and positive relationship between children and their fathers, is sufficient to persuade the courts that more equal access to both of their parents may be in their best interest.
- They require virtually no burden of proof whatsoever that it is “in the best

interest of the children” to separate them from one of their parents by ordering that temporary custody orders often issued ex parte and on the basis of false allegations should be made permanent,

- They place such a heavy burden of proof on non-custodial parents seeking more time with their children that even the most minor modifications to such orders become virtually impossible to obtain,
- They pay lip service to the importance of maintaining “regular, frequent, and meaningful contact” between children and their non-custodial parents, but then demonstrate a complete and total disdain for fathers as reflected in the following rather breathtaking statement:

“You have never seen a bigger pain in the ass than the father who wants to get involved; he can be repulsive. He wants to meet the kids after school at three o’clock, take the kid out to dinner during the week, have the kid on his birthday, talk to the kid on the phone every evening, go to every open school night, take the kid away for a whole week so they can be alone together. This type of involved father is pathological.” - Chief Judge Richard Huttner, Kings County (Brooklyn) Family Court and member of the New York State Commission on Child Support, 1985

Judge Huttner, by the way, still serves on the bench in Brooklyn.

It seems that, in practical application, “regular, frequent, and meaningful contact” is interpreted to mean nothing more than a couple of hours mid-week for dinner and every other weekend ..., if that.

- They allow custodial parents to violate the terms and conditions of court orders and interfere with custody and/or parenting time rights of non-custodial parents with impunity,
- They refuse to hold custodial parents to account for the filing of false reports of domestic violence and/or child abuse,
- They impose sanctions and legal fees against non-custodial parents who insist on continuing to struggle in court for greater access to their children,
- They “consider” the actions and behavior of non-custodial parents, and are quick to incarcerate them for the most minor infraction,

#### FALSE ALLEGATIONS:

High level Social Services officials acknowledge a growing problem with the false reporting of child abuse; the State’s Chief Judge Judith Kaye has stated publicly that “**reports**” of DV are skyrocketing; advocates for the prevention of domestic violence

have also admitted publicly that the allegations contained in these “**reports**” are used routinely to gain tactical advantage in custody disputes; and the State’s own data confirms that fully 70 percent of all such reports are potentially false. Yet when asked to look into such matters, neither our law enforcement agencies, our District Attorneys, the Departments of Social Services, the New York State Office of Children and Family Services, nor the courts seem to have any knowledge of how they should be handled.

The filing of a false report of child abuse is a criminal offense under the New York State Penal Code! It doesn’t seem it should be necessary to have to point out that that fact alone might suggest a point of departure to begin looking for possible real, tangible, and practical solutions to this problem!

ANECDOTAL EVIDENCE:

Descriptions of such cases of abuse are customarily referred to as anecdotal, a term that implies certain illegitimacy. It carries with it a sense that the truth and/or accuracy of the story are incapable of being verified, and that, without the imprimatur of some official certification, it need not be taken seriously. These stories will likely continue to retain their status as “anecdotal”, so long as the diminished sense of urgency that seems to go along with it means that judges, the courts, our elected representatives, and the New York State Legislature can continue to ignore the elephant in the room. One

would think, however, that when the initial odor of pachyderm has become an overpowering stench, somebody might begin to suspect that the carcass has begun to rot.

GENDER BIAS:

Let me offer a possible explanation for our sense of smell having become so hopelessly impaired. One need look no further than the following quotes; perhaps some of you may recognize them.

- “Your job is not to become concerned about the Constitutional rights of the man that you are violating. Throw him out on the street, give him the clothes on his back, and tell him, ‘see ya ‘round’.” New Jersey Municipal Court Judge Richard Russell to his colleagues **during a training seminar** in 1994

and then ...

- “Gender bias against fathers, as expressed in the ostensibly discredited ‘tender years doctrine’ which holds that young children belong with their mother, **is well known.**” (emphasis added)

## PRESUMPTIONS IN THE LAW:

Consistently, whenever the suggestion is made that certain statutory measures might reasonably be warranted as protection against this “well known” bias, the response from representatives of the court system, as well as from elected representatives in the Legislature, recited almost as if it were some sacred mantra, is that you don’t favor presumptions in the law, and that the courts should have the discretion to make custody and parenting time decisions based upon the “best interests of the child(ren)”. Sounds pretty reasonable ... on the surface. Consider the following, however.

- At a meeting in January of '03 with the State’s Chief Administrative Judge for Matrimonial Matters in the Supreme Court, Jacqueline Silberman stated that the term in common usage among the system’s insiders to describe the Wednesday evening/alternating weekend custody/visitation schedule that most men/fathers have come to learn is pretty much all they can expect is the “**Standard New York Order**”. Any order that can be described as “standard” seems to me to have the distinct ring of a **presumption** to it.

... and then we have this little gem:

- “Mothers are **presumptively preferred** as custodial parents ...” (emphasis added).

..., but, if anyone really needs a smoking gun, consider this:

- “In **93 percent** of the 2,588 cases where the custodial arrangement for the children was included in the file, **mothers** were the primary caretaking parent.” (emphasis added)

This latter has **bias** and **presumption** written all over it.

Interestingly and not insignificantly, we don’t seem to harbor the same sense of uneasiness with respect to the anecdotal nature of the evidence when **presumptively preferring mothers** as custodial parents, or **presuming** the obligation to pay child support, or a **presumption of guilt** in cases involving the allegation of domestic violence or child abuse, or the **presumption of no fault** when seeking a divorce.

#### THE CHILD’S BEST INTEREST:

In a press release opposing reform of New York State Family Law dated April 7,

1997, the **Women's** Bar Association of the State of New York commented that, "New York's best interests test rightfully places the child's well being above the interests of either parent." It goes on to say that changes championed by advocates for non-custodial parents would "... spell disaster for children." In a similar memo that same month, the League of **Women** Voters of New York State opined that it "... believes that current statute, case law, and judicial discretion adequately allow for decisions on appropriate custody arrangements."

In September of '02, after a search lasting several months, seven-year-old Kaili Warrington was finally located, by her father, Mr. Daniel Sims of Glens Falls, New York, "living" in Florida with her mother and the mother's boyfriend, where she was being held locked in a closet and starving. On Tuesday, October 1, 2002, referring to Washington County officials' handling of the case, Mr. Kent Kisselbrack, a spokesman for the New York State Office of Children and Family Services, is quoted by the Associated Press as stating that, "... the county did what was in the best interest of the child." **The "best interest of the child"???** **The child almost died!** One shudders to imagine what might have occurred had they not all been so deeply concerned about "the child's best interests".

Washington County officials and the State Department of Social Services both claim that the case involving Kaili Warrington was handled properly. Indeed, in fairness to the County, the State, and the Court, they all do seem to have performed their duties

and responsibilities in accordance with prevailing orthodoxy ..., and therein, Ladies and Gentlemen of the Commission, lies the heart of the matter.

Here's what we find elsewhere regarding "the best interests of the child(ren)":

- "Guided only by the **vague** standard of 'the best interest of the child', judges are given virtually **unbridled** discretion to determine what factors should be considered when making custody decisions." (Translation: no one has a clue what 'the best interest of the child' standard really means; it can simply mean anything anyone wants it to mean, and, more ominously, it can be used as the unquestioned pretext to justify any action and/or decision the court wishes to make.)

... and then we have this:

- "Some judges appear to give weight to gender-based stereotypes about mothers and fathers that may have little bearing on the child's best interests ....". (this last has got to be the understatement of the year.)

The foregoing quotations are not the ravings of some crazed sociopath on the lunatic fringe. They are not the cynical musings of some hopelessly misogynistic woman

hater. They are not the complaints of some “disgruntled litigant” “troubled” about the outcome of his case. They are not the uninformed opinion and agenda driven biases of “**those** ‘radical’ fathers’ rights guys”, masquerading as sound research-based fact, and who are simply seeking to have their child support reduced or eliminated altogether.

**They represent the State of New York’s very own research findings on the subject!**

The sources from which they derive are the *Report of the New York Task Force on Women in the Courts*, published in 1986 by none other than the **New York State Office of Court Administration, Unified Court System - almost 20 years ago(!)** - and the New York State Child Support Standards Act *Evaluation Project Report*, prepared by The Finger Lakes Law and Social Policy Center, Inc., of Ithaca, New York, and published in 1993.

Occasionally, court officials and members of the Legislature are heard to claim that they receive complaints almost as often from women as they do from men, and, in fairness, it should be pointed out that the latter quote has been abridged somewhat. In its entirety, it reads as follows: “Some judges appear to give weight to gender based stereotypes about mothers and fathers that may have little bearing on the child’s best interests **and that discriminate against men and women.**”

So, here’s the \$64,000 question. If, **by your own admission**, the courts are biased against fathers, and, if their decisions often have little bearing on the best interests of children, and, if they are discriminating equally against women, who and/or what do

they serve? What do you people do to earn your keep ... at taxpayers' expense???

DOMESTIC TERRORISM:

When a man can be falsely accused ..., **with no recourse**; when his accuser's allegations are accepted, **with no questions asked, no burden of proof, and no accountability for perjury**; when anyone - man or woman – can have a divorce forced upon them, against their will and without their control; when he can be **ejected** from his family and **evicted** from his own home; when his children can be **abducted**, his income **extorted**, and his assets **confiscated**; when a man can be diagnosed, as political dissidents in the old Soviet Union so often were, as suffering from a mental disorder for expressing anger over the mistreatment and abuse he may be experiencing and is ordered to attend “anger management” classes; when he can be ordered to pay the legal fees incurred by someone else committed to destroying him; when he can be thrown in jail, without ever having committed a single crime ... this is not just “troubling”, as some might describe it; “troubling” is when the crab grass is taking over your lawn ..., neither does it rise merely to the level of abuse, nor to a violation of certain rights and protections guaranteed under the U.S. Constitution. **It is domestic terrorism!!!**

## LIP SERVICE AND ULTERIOR MOTIVES:

This Commission's charge and the stated purpose of these series of hearings "is to receive the views of interested individuals and organizations with regard to ways to reduce the cost, delay and trauma to the parties ...". According to the press/media reports, Judge Kaye indicates she is sincere in her determination to "clean out the barn". We'll see. The proof will, of course, be found in the pudding.

If past experience is any indicator, however, it does not instill great confidence that much of substance is likely to come from any exercise such the one we are engaged in here ..., at least not that holds much promise of having a direct positive impact on any interested parties other than those that feed lavishly at the trough of the divorce industry.

The issues listed for consideration by this Commission and these series of hearings include those involving law guardians, forensic "experts" ... and "others", as well as such vogue new concepts as something called "alternative dispute resolution", "mediation", and "collaborative divorce", terms calculated to give a warm and fuzzy sense that some enlightened cutting-edge solution has been discovered that will, at long last, provide the tools to put Humpty Dumpty back together again, and send everyone off to live happily ever after. In reality, such concepts are impotent and ineffective palliatives. They are nothing more than window dressing that gives the sense that something is being done to address the problems, while at the same time doing little more

than facilitating court procedures and making the jobs of those working within them easier and ensuring that complete and total control over the issues is retained and that the revenue streams of attorney's and social workers are left secure.

It is widely known that those in the judiciary and the legal community have been advocating over the past several years for increased funding necessary to hire more court officers and to provide higher fees for court appointed attorneys and law guardians. We are also well aware of how the legislative lobbying processes work and how important a part public hearings and the "recommendations" of commissions established for that purpose play in them. One can only imagine this same commission called just a century and a half ago to consider the question of slavery and recommending that the inherent flaws in the system could be resolved by increasing the number of plantation owners and offering higher compensation packages to the slave traders. We ask your indulgence if we appear just mildly skeptical of the intentions expressed by Judge Kaye and the members of this Commission and any suspicions we may have with respect to the potential for certain ulterior motives.

NO FAULT DIVORCE:

Now we learn that the New York Bar Association is proposing that New York become the last to join the ranks of our other 49 more enlightened no-fault divorce states,

and that, with the recent elections now behind us, it will begin looking for someone willing to sponsor the necessary legislation. **What are they thinking???** **This is sheer insanity!!!**

After almost thirty years of experience with no-fault divorce, it is now widely recognized that, in effect, they have given a legal preference to any spouse wishing to leave a marriage, even if the other spouse wants to preserve the marriage and has done nothing to give the deserting spouse “grounds” for a divorce. Such laws have essentially acted to empower whichever party wants out, leaving the spouse who wants to preserve the marriage powerless to prevent its dissolution and with no recourse but acquiescence. Marriage is one of the few contracts in which the law explicitly protects the defaulting party at the expense of his or her partner.

Adding to laws that help facilitate the divorce process are others that drive the decision to initiate it. Research has shown that the single greatest factor in determining which party is most likely to initiate a divorce is the expectation of being awarded custody of the kids. Along with the kids usually comes a whole range of other financial benefits, as well, including child support, alimony, the marital residence, and one half of the remaining marital assets, to name but a few.

The elimination of any need to establish grounds for a divorce was originally based on the presumption that both parties would be equally motivated to end a marriage.

The reality today is that 80 percent of all such divorces are initiated against the will and without the control of one or the other of the parties. Oops! With many states still adhering to the standard sole custody model, wherein one party receives the kids, while the other is left to pay, it's not difficult to understand how at least one of them may perceive little or no downside.

**Without a corresponding overhaul of the entire body of family and matrimonial law and statutory protections for those most likely to become non-custodial parents, no-fault divorce will only produce more of the same devastation in the lives of countless innocent people. The Coalition of Fathers and Families New York, Inc., vigorously opposes and will never consider supporting any such proposal, otherwise.**

SHARED PARENTING:

Notably and regrettably, joint physical custody or “shared parenting”, as it has come to be known, and/or alternating custody arrangements, such as those being considered and tried by the judiciary in other states, is conspicuously missing from the menu of issues up for consideration by this Commission. Ignoring the overwhelming body of research on this subject and the conclusive evidence of the overall positive effect of such arrangements on children, the courts of the State of New York and the New York

State Legislature continue to resist any reasoned and/or substantive consideration of these concepts as having any merit. Shame on you. **Shame on you!!!** You'll simply have to forgive us if we remain unconvinced that questions relating to "custody and visitation" and "trauma to the parties" is really a high priority item for this Commission.

The mantra most often heard recited whenever the issue of "shared parenting" comes up for discussion, is that it is an unworkable arrangement, whenever there is conflict between the parents. This argument seems to imply that the current sole custody model somehow avoids this fatal flaw. Curiously, no one seems inclined to want to discuss the question of what qualifies as "conflict", how much "conflict" may be necessary in order to justify separating a child or children from one of its/their parents (usually their fathers), or, perhaps most importantly, what may be the single greatest causal factor contributing to such conflict. It ought hardly come as an epiphany to anyone that imposing a divorce on someone against his or her will and without their control, taking their children away from them, giving complete and total control over them to another party, and then putting at that party's disposal all the processes and resources necessary to completely destroy the other party, might be a fairly good place to begin looking for a likely candidate.

"Shared parenting" and/or alternating custody are two of only a very limited range of options that hold any reasonable promise of eliminating children as bargaining chips and that would level the playing field for **all** parties to a separation and/or divorce.

Without it, such touchy feely concepts as “alternative dispute resolution”, “mediation”, and/or “collaborative divorce” are doomed from the outset to failure. What would compel anyone who already has the advantage to put any of it at risk by negotiating with another party, who may have little or nothing to offer, when they have more to gain by simply holding out and letting the courts settle matters for them ... and mostly in their favor?

#### THE ENFRANCHISEMENT OF NON-CUSTODIAL PARENTS:

One thing is certain; it is virtually guaranteed that no attempt to resolve the issues laid out here for consideration by this Commission will ever produce satisfactory results, so long as it is the very same judges, attorneys and self-styled legal “experts”, social services and mental health “professionals”, and those who advocate for more confiscatory and punitive child support standards and ever increasingly more Draconian domestic violence and child abuse legislation, who are themselves largely responsible for the dysfunction that now characterizes the entire body of family and matrimonial law and the New York State Court System, continue to presume that they and they alone are the only ones qualified now to fix it.

Time and time and time again, the interests of non-custodial parents are consistently ignored, whenever there is any public show of self-examination on the part

of the courts. Non-custodial parents have become the Dread Scotts of the 21<sup>st</sup> century, and are as invisible in exercises such as this one as they are in your Courts today.

It is time for non-custodial parents to be given representation - not merely 10 minutes to testify at a public hearing or two here and there, but real representation - on bodies such as the one we are before here today, and that we be given a voice in the decision making processes relative to the establishment of public policy and the formulation, drafting, and proposal of legislation that directly impacts them. **The Coalition of Fathers and Families New York, Inc., demands a seat on this very Commission!**

CLOSING REMARKS:

In closing, I would like to leave you with the following thoughts to consider in the privacy of your own hearts and minds, away from all the sound and the fury, late at night perhaps, when you're all alone with nothing else but your own consciences as company. If nothing else I've had to impart to you here today has got your attention, you need to hear me now loud and clear.

The event from which our Nation was born some 225 years ago was a revolution fought over the issue of taxation without representation. Many are beginning to develop an ominously similar perspective with respect to the issue of being stripped of their right

to raise their own children without the interference of the state and/or its courts and being left with nothing but the responsibility for their financial support ..., as determined by the state and/or its courts.

The issues and concerns you are hearing here today are themselves the stuff of revolution. You are sitting on a time bomb – a powder keg set to explode at any moment. Don't take my word for it, though. I invite you to step out of the comfort and complacency of the boxes that appear to have insulated you for so long, and begin informing yourselves by taking even the most cursory look at the volume of discourse and the level of outrage being expressed over them on the internet.

Let me be very clear on this one point: in no way does The Coalition of Fathers and Families New York, Inc., condone acts of violence. We certainly would never endorse, promote, and/or encourage any such behavior. At the same time, however, we have no control over those who may be otherwise disposed, and you cannot continue to mistreat and abuse an entire demographic of any population the way non-custodial parents have been and continue to be, without sooner or later leaving the clear and distinct impression that they have no other alternative than to lash out in anger and rage. Even more dangerous, however, is to leave them with the sense that **they have nothing to lose by doing so!**

For those who may be tempted to discount my comments as hyperbole, make no mistake about it; there will be a price to pay for continuing to ignore these issues. You'd

better hope to God - or to whomever or whatever you place your faith in - that your accounts are settled in this lifetime. Rest assured that, no matter how dear the cost, it will pale in magnitude to the debt likely to be collected in the next.

Ladies and gentlemen, you have a problem on your hands, larger, perhaps, than you might initially have imagined. You'd better start finding a way to fix it.