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The San Diego Family Law Council For Children Newsletter

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Newsletter
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UPDATE ON LAMUSGA MOVE AWAY CASE; STATE SENATOR JOHN BURTON WITHDRAWS SB 730

Written By David C. Bruer, M.A.

In April of this year a landmark 6-1 decision was handed down by the California Supreme Court regarding "move-away" cases in *In re Marriage of LaMusga* (La-moo-shay) (2004). This decision clarified (and more) the Court's previous decisions related to the infamous "Burgess" case. Immediately, State Senator John Burton of San Francisco began his "stealth" campaign to try and sneak a bill through the legislature without public scrutiny and debate that would destroy the Court's decision. While even some Sacramento insiders were a little unsure what Burton's next move would be it was soon discovered that his *anti-LaMusga* bill was placed into a gutted and amended version of SB 730, a labor-related bill that was introduced in the fall of 2003. The Burton bill would have given custodial parents the right to move whenever and wherever they wanted without even obtaining a court order.

In early July the ACCAMA (Alliance for Children Concerned About Move-Aways—www.ACCAMA.org) was organized to expose and oppose Burton's bill. There was such a bombardment of Burton's office with faxes, e-mails, and phone calls that Burton's principal consultant, Anthony Williams (with whom I spoke directly) agreed to meet with the aforementioned group. From that meeting it was clear that there was fierce opposition and the bill was not going to slip through unnoticed.

Then came the amended bill with Burton withdrawing the provision regarding moving without court orders. This still did not fly with opponents as they continued to hammer away at the bill, stating they were in opposition to any bill that was going to weaken or abrogate the *LaMusga* decision. On or about July 21, 2004, "Dr. Laura" Schlessinger joined in the campaign against SB 730 and issued a "call to action." Eventually, over 1,000 people in opposition had contacted Burton, the Assembly Judiciary Committee and the Governor. Garrett C. Daily, who represented Gary LaMusga in the California Supreme Court, delivered a stack of over 600 letters at the meeting with Burton's representatives.

The bill was to be heard by the Assembly Judiciary Committee on August 17, 2004. On August 16, 2004 I received word that Burton had withdrawn SB 730. In an August 17 letter to Ellen Corbett, Chair of the Assembly Judiciary Committee, Burton promised hearings on a move-away bill in the fall. At this time, due to term limits and Burton not returning to the Senate, proponents of unrestricted move-aways are expected to resurface with a new sponsor for their bill in January, 2005. Stay tuned!

AN INTERESTING WEBSITE

The Association of Family and Conciliation Courts (AFCC) is an international and interdisciplinary association of family, court and community professionals dedicated to the constructive resolution of family disputes. Members include judges, lawyers, mediators, mental health professionals, court administrators, re-

searchers, educators and other professionals who work with families in conflict. AFCC membership spans the globe and includes representatives from six continents: North and South America, Europe, Asia, Africa and Australia. The AFCC was founded in 1963. The administrative offices are located in Madison, Wisconsin. The AFCC has numerous

local chapters including a California Chapter. The AFCC as well as local chapters hold yearly conferences that present the latest information impacting our field. Coming up in October, the AFCC will host its biannual Symposium on Child Custody Evaluations and Parent Education Programs.

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Written By Donna Mallen, Esq, CLFS

It is often said that parenting is a job that doesn't come with any instructions. We learn as we go, sometimes getting it right, and sometimes not.

This is even truer of parenting while divorcing or splitting up with the other parent. The parents are tossed back and forth in a storm of uncertain events, with demands being made upon them by society, the courts, the family and the other parent while they are naturally in an anxious, defensive, and demoralized state. Sometimes, they can barely make decisions that are in their own best interests, let alone in their children's best interests. Most parents have no experience in making the proper parenting decisions during a divorce. At best, they read books or learn by making mistakes. The children are caught between the struggling parents or extended families, who may inadvertently do them damage due to the adults' lack of knowledge of the impact of their own actions on the children.

In San Diego, parents and children have access to a very special and effective parenting program that is addressed specifically to the needs of "dual household" children, meaning children with parents who do not live together. Kids' Turn is a non-profit organization formed to educate parents and children about problems and solutions for children in such situations. Both the parents and the children can learn what to expect, what to do, what is normal, and how to deal with problems as they arise to achieve the most positive outcome.

Founded in 1996 by Shari DeLisle, Ph.D., the San Diego Branch of the organization is so highly respected by the legal community that participation in Kids' Turn is often recommended by the Family Court Services or ordered by the Court when there is a contested custody hearing. Attorneys welcome the de-escalation of hostilities that usually results when the parents and children attend the program.

One unique aspect of the Kids' Turn program is that the children are given tools to deal with inappropriate demands occasionally made upon them by stressed-out parents. For example, what can a child do when one parent insists on asking the child questions about the other parent's home? Kids' Turn workshops empower the child to handle such situations. In group workshops with other children, the child learns, through games, songs, art and other enjoyable activities, that others have the same worries and concerns about their parents' divorce, and gain an understanding of what is happening to them and how they can adjust to the new situations that have come into their lives.

Parents learn about the needs of their children, how to help them cope with the separation of the family, and how to work effectively with the other parent in order to best help the children get through the loss of their familiar "old" family and move more comfortably onto the "new" configuration of their family.

The six-week workshops are conducted by trained mental health professionals and certified schoolteachers. The sessions are scheduled throughout the year, at various sites around the county. Tuition is set on a sliding scale, dependent upon the participants' income. The parents and children attend the same workshop, but participate in separate groups.

A companion program, Parents' Turn, focuses on the relationship between the adults and co-operative co-parenting. It is open to stepparents, grandparents, as well as parents. Parents are encouraged to attend Parents' Turn before starting the Kids' Turn program, to maximize the benefit of the Kids' Turn sessions.



BILL EDDY: ATTORNEY, THERAPIST, MEDIATOR: A DISCUSSION WITH BARNEY CONNAUGHTON, ESQ.

Bill Eddy is a Mediator and Family Law Attorney in San Diego, California. Prior to practicing law he was a Licensed Clinical Social Worker, providing therapy to children, adults, couples and families in psychiatric hospitals and outpatient clinics. He considers conflict resolution the theme of his varied career. He has authored two books, *High Conflict Personalities, Understanding and Resolving Their Costly Disputes* and *Splitting: Protecting Yourself While Divorcing a Borderline or Narcissist* which focus on identifying and understanding people with High Conflict Personalities and how we can best work to manage and resolve their disputes.

Barney Connaughton: In the context of family law, what is a high conflict personality?

Bill Eddy: Those with high conflict personalities in family law cases seem to especially avoid taking responsibility for their problems or resolving their problems. They appear preoccupied with blaming others, have difficulty accepting and healing loss, and are generally rigid and uncompromising. Emotions dominate their thinking, they are unable to reflect on their own behavior, they have difficulty empathizing with others (including their own children), and they tend to depend on others to solve their problems for them - such as attorneys and the courts.

BC: What are the different types of high conflict personalities?

BE: From my observations over the last twelve years, there seems to be people with four main types of high conflict personalities in family law cases, who appear to have similar traits to the four "Cluster B" personality disorders identified in the Diagnostic and Statistical Manual (DSM-IV) of mental health professionals: Borderline, Narcissistic, Antisocial, Histrionic.

BC: Can you describe each briefly?

BE: It's hard to do briefly. But here goes: Borderlines appears to be the most common, and includes wide mood swings, sudden and intense anger, clinging one minute and rage (including domestic violence) the next. They can be men or women, and many perpetrators of domestic violence appear to have this personality style. Narcissists tends to be those who see themselves as very superior, they are very disdainful of others, they are self-absorbed and oblivious to much of what is going on around them, and they generally lack empathy. Antisocials are often con artists in the family law context, often manipulating professionals into believing that they are victims when they are really perpetrators. And Histrionics tend to be those who are highly dramatic about everything – even the most minor points, and have difficulty focusing on tasks.

BC: How can we as advocates identify when our case involves a High Conflict Personality?

BE: You usually catch on when they are highly emotional about minor events or seemingly unconcerned about major problems. You often get a feeling that there is something very different about such a person, and you may feel threatened by or protective of such a person. You notice that they seem to be extreme and outside of the social norm in their thinking and actions. As advocates, we often realize that the information these clients have given us is very distorted or completely untrue. High intensity emotions are another indicator. However, it is hard in family law cases to distinguish at first between those who are highly emotional about the early stages of an upsetting divorce – or about truly terrible events – from those who are chronically highly emotional and distorting information throughout their whole lives. Those with high conflict personalities tend to be identifiable because their emotions and thinking and actions seem so out of proportion with the events they are describing. It is important to distinguish a person who has been a victim of domestic violence or false allegations, who is very upset about this. It is appropriate to be very upset about such matters. The difference is when someone has the same high-intensity emotions, thoughts and actions, when the issues are very minor or very vague. In other words, there is no quick and easy way to identify High Conflict Personalities until the case has gotten under way.

BC: Do we know how these Personalities originate?

BE: Mental health researchers point to early life experiences and biology. People are born with different temperaments and tendencies towards different personality styles. Some people are born with extremes of behavior, regardless of how positive their family environments may be. Other people experience severe abuse in early childhood or emotional deprivation, which seems to be factors leading towards the development of personality disorders or High Conflict Personality traits.

BC: Is there a treatment/cure?

BE: Individual therapy has been found to be helpful for some of these personalities, and intensive group treatment programs have also been helpful. In many ways, treatment for High Conflict Personalities is similar to that for substance abuse and domestic violence programs. What is required is a long term, consistent effort to change behavior, how people think about problem solving, and managing one's own emotions. Interestingly, there does not seem to be any medication at this time that has a significant impact

VISIT THE SDFLCC WEBSITE!

www.sdcouncil4children.org

on these personalities. It is also important to understand that those with these personality disorder or traits are often experiencing a great deal of distress inside, but because they cannot reflect on their own behavior they have difficulty seeking treatment. They think all their problems belong to other people. A combination of extraordinary supportiveness and very strong boundaries and rules seems to be part of all treatment programs related to these types of personalities.

BC: Do you have any estimate as to how many of the litigated cases in Family Law involve one or both of the parties having a Borderline/ Narcissistic/ Antisocial/or Histrionic Personality?

BE: I have no certainty with which to estimate this and I am involved in some research to look into this question. From my observations and my own cases, I would say that at least half of family court cases that actually have a trial or have more than two hearings, involve one or both parties with personality disorders or traits. The reason this appears to be true is that the vast majority of divorcing couples don't go to court at all, or only need one or two hearings to get an understanding of the legal standards. Then, most people are able to negotiate and move on with their lives. The parties with High Conflict Personalities tend to be those who cannot accept the legal standards, cannot accept court orders, cannot accept differences of opinion, and have difficulty letting go. However, this is not a choice for them, but rather an unconscious dynamic that no one seems to recognize or understand. That is why so many legal professionals get caught up in these cases: we have a hard time seeing that it is something internal for the person, rather than an external legal issue. It's like arguing over where the band-aid should be placed, rather than treating the underlying cancer inside that is harming the person. Without addressing the underlying personality problems, there will always be new issues that bring these personalities to court.

BC: How are the children involved in these disputes?

BE: It is a tragedy for them. As the title of my book Splitting indicates, children are pulled between parents into a high-intensity battle. However, it is important to remember that not all of these cases involve two parents equally harming their children. Instead, there is often one parent who is generally reasonable and a problem-solver outside of court – like a "co-dependent" to an alcoholic. In court, that person is often the one who is blamed by the more dysfunctional parent, who has a lifetime history of blame and avoidance of problem-solving. Parents with little empathy use their children as allies, or they see them as enemies in their life-time battle. But the most important point in these cases is to understand that the parents with these personalities truly do not see the effect of their own behavior. Therefore, they are often handled by professionals in a way that increases rather than decreases their problem behavior towards their children.

BC: What can we do to minimize the involvement of the children in these disputes?

BE: I think the courts have done a good job of trying to set limits on the involvement of children in high conflict court battles. Keeping children out of the court room, not having judges interview children, not allowing children to read their parents declarations, and admonishments not to discuss the case with the children, are all important measures. However, I believe we also need to demonstrate more empathy for the parents involved in these cases, rather than criticizing them so much and publicly humiliating them in court. Instead, we can focus on their strengths and what they are doing right. We can encourage them to build on their positive efforts, rather than trying to simply tear them down to win a point in court. The way the court treats parents is very likely the way the parents will treat their children. As professionals, we can try to provide much clearer structure and limits for how they behave during their cases, as well as providing more calmness in our communications with them.

BC: When we have a client with a high conflict personality what are some things we need to watch out for?

BE: First, it is not believing everything we are told. This seems so simple, yet most high conflict cases only become high conflict after professionals have advocated for information that is highly distorted or completely untrue. Secondly, we need to avoid "splitting." This is a dynamic between professionals and within those with difficult personalities, in which they turn all issues into all good and all bad. If we join our clients in treating the other parent as all bad, with no redeeming qualities, then we will escalate a dispute which may eventually backfire on us. Instead, we need to recognize the strengths in everyone in the case, and avoid treating others as bitter enemies. Third, we need to focus on solutions rather than blame. High conflict personalities often hook us into how awful everyone has been to them in the past. They see themselves as constant victims in the world. Instead, we should help them focus on the strengths they have and finding new, practical solutions to their problems. Encouraging a small step of change for a client maybe a world better than jumping on the bandwagon of their complaints about how helpless they are in a mean world.

BC: What are some strategies to use to help our high conflict personality clients resolve their disputes?

BE: As I just mentioned, focusing on strengths, focusing on solutions, and focusing on the future are very important. While these may seem obvious, most high conflict cases get bogged down focusing on the past and on everybody's worst weaknesses. Telling our clients that we are going to try to take the high road and not react to everything that comes along is also helpful. Help them learn to choose their battles.

BC: When the opposing party has a high conflict personality, what are some strategies to help our client resolve their dispute?

BE: First of all, in a family law case, I would encourage them to read my book Splitting. I tried to spell out in step by step manor ways to handle many of the predictable problems in family law cases with high conflict personalities. Becoming educated about what to expect can be very helpful. The patterns of these cases are very predictable and sometimes preventable, if your client knows in advance that certain problems will arise. Another strategy is to focus on "choosing your battles." I have found that in cases of high conflict personalities, there are so many battles that it is overwhelming to try to take them all on. Instead, it helps to separate out what is important from what is unimportant. This is an area where attorneys and therapists can really help clients who are dealing with an opposing party with a high conflict personality. Lastly, getting a lot of support and consultation can be very helpful. These cases are often long term battles and the healthy client needs energy and support to get through them, as well as feedback and outside activities which will give them strength in the disputes ahead. High conflict personalities tend to be impulsive and have short spurts of energy. In the long run, if they don't address their own underlying problems, they will usually just move on to new disputes with new people once your client figures things out and has a steady resolve to calmly resolve the dispute in an assertive manor over time.

BC: How can people get copies of your books?

BE: They can call my office at 619-232-9688 to order either book: Splitting (primarily for parties going through a divorce) and High Conflict Personalities (primarily for professionals).

Book Review Corner: **Mom's House, Dad's House—Making Two Homes For Your Child** by Isolina Ricci, Ph.D.

Reviewed By: Sharon Shields Peterson, Esq.

In the early 1980's, Isolina Ricci published Mom's House, Dad's House. It was based on her work as a family therapist and went far beyond the legal constraints of the term "custody." Rather, Ricci outlined a whole new way or reorganizing family life after divorce.

The conclusions in her book reflected the desire I saw in many of my Divorce Mediation Clients twenty years ago: people wanted to realign their families rather than one parent being "custodian" and the other being allowed "to visit" children. The problem many divorcing couples faced—as well as the professionals working with them—was that there was no blue print on the how-to's of this realignment.

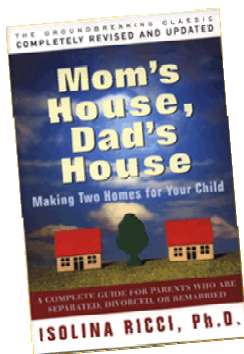
Ricci's book provided that guidance then and it still stands as one of the best road maps to a new way of parenting after divorce. She expertly shows how mothers and fathers can put their energy into partnering as parents of their children, rather than immediately looking for a replacement parent.

This how-to begins with self-surveys for parents to realistically assess their situations (i.e. agreements to date, sharing of costs, geographic constraints, schedules, etc.) and then provides a map of how couples can move from "the American Dream Home" (where two parents rear children in a household with trust, respect and love), through "the Problem Home" (where discord is beginning), through "the Dividing Home" (where severe difficulties emerge), through "the Divided Home" (where separation occurs) for a total of seven stages to the final plateau of two residences for children: "Mom's House, Dad's House" (where each parent provides a unique living space for his and her children).

Recognizing that this process takes time and real effort, Ricci holds it out as a standard to be reached by most parents willing to make the effort to move from the husband–wife relationship to the father–mother relationship. But she is also aware of pitfalls and spends time showing how the use of descriptive language is marriage failed and my kids live with their mother," two homes."). She tracks how couples must retreat is analogous to a business partnership that is cour-

With a precise practicality, Ricci outlines child's point of view: literally setting up of space in rules, to chores and even decisions about child care. precision, detail and numerous examples. The book return of an absent parent and long distance parent-

For this review, I secured a new copy of had this poignant inscription on the title page from a This is one of the most important books you will ever mature book that both your mom and I should un-lady who will be better for having read it. Love,



important to re-define emotions (e.g. instead of saying, "My practice saying, "Our marriage ended but our children have from their intimate relationship to a working relationship that teous, respectful and arm's length.

how to set up two homes by viewing the transition from the both homes for their stuff, to rules each household adopts, to Then she tackles the business and legal angles, again with concludes addressing complications such as remarriage, the ing.

Mom's House, Dad's House on e-Bay. The book I received dad to his daughter:

read. Please read and talk to (your sister) about it. It is a derstand and try to adhere to. You are a very mature young Daddy

Obviously, Ricci's book is addressed caring parents like this father, so eager for his daughters to understand the possibility (and his desire) for their living with both mom and dad after divorce. But I think Ricci would broaden her base for all parents and give them this admonishment: children need the love, guidance and chance to live with the two people that created them. Her book goes a long way showing that it is possible.

BIRNBAUM v. BIRNBAUM: "Parallel Parenting, As Contrasted To Shared Or Cooperative Parenting"

Article By Enrique Monteagudo, J.D.

Although *Birnbaum v. Birnbaum* (1989) 211 Cal.App.3d 1508 is best known for its holding: "when parents have joint physical custody of their children, an order modifying the coparenting residential arrangement does not constitute a change of custody," it also offers advice that is very much in line with the SDFLCC's mission of raising public awareness of dual household children. As such, this article will merely share the Court's message with the reader.

In this case, the two parents couldn't agree on how to share custody of their children. Both parents wanted more time with the children. As a result, they had created very detailed, "perhaps to the extreme", parenting schedules as they appeared to be inflexible in dealing with each other. Ironically, the psychologist praised both parents as parents. Similarly, the trial court stated: "Both parents love their children, yet neither can see past their particular egocentric needs to acknowledge the full value of the other parent to the children." One example of the parties' inflexibility was that the father, because weekends were "his" time, refused to let the children spend Mother's Day with their mother (as the Court of Appeal later discussed, this form of joint custody might be described as parallel parenting, as contrasted to shared or cooperative parenting). The trial court also commented at length on the complementary characteristics of each parent and fashioned an order "which it believes will allow both these parents to contribute the most positive sides of their personalities to their children in a balanced fashion." Ultimately the trial court adopted the reverse of the parenting plan set forth by the psychologist, and the mother appealed.

On review, the Court of Appeal affirmed the lower court decision. More importantly, the Court included in its opinion the following comments with the hope they would benefit not only the parties to the instant appeal, but also the bench and bar, and the general public. The Court offered:

In a presentation to the 1986 Annual Conference of the International Association of Family and Conciliation Courts, Isolina Ricci, Ph.D., stated: "For purposes of clarifying parenting relationships, I suggest four types of parenting patterns: exclusive, parallel, shared and cooperative. We could name more types of course (such as competitive or hostile) but today's illustration will be limited to these four types.

The first type is a familiar one and called **exclusive parenting**. This is an exclusive role bound type of parenting, often typified in sole custody arrangements where one parent, usually the mother makes all the decisions, has all the responsibility and has all the authority. The parent without custody pays child support and commonly has visitation twice a month. Perhaps the noncustodial parent can give opinions regarding major decisions in education and medical treatment, but he or she may have no functional authority. When the parents are cooperative, and the child has consistent and continuing access to the other parent, this form of parenting can be successful. However, if the parent with custody is the 'in-house' parent, the parent without custody often considers his or her position as the 'out-house' parent, a 'visitor,' peripheral and powerless while the resident parent may feel overwhelmed and defensive.

A form of parenting seen more frequently since the increase in joint custody, is what I call **parallel parenting**. Both parents are actively involved in the child's life, both have input into major decision making, but there is little or no interaction between them. Parents are unable or unwilling to discuss the children's needs with one another and their communications are strained or nonexistent. The parents will only contact one another in emergencies or in cases of illness. Children are not free to talk about what has happened to them in the other home – where they went, whom they saw. Children in such circumstances may even have to pretend that they do not have another parent and must choose their words carefully in the presence of each parent. Sometimes when a child spontaneously talks about something that's happened at the other home, the parent may say, 'I don't want to hear about it.' Because it is so difficult for both of them to be in the same room together, parents will often alternate attendance at school events. Rather than risk a scene or bad feeling, only one parent attends at any one time. Such parent may say 'It's too painful (or difficult) to talk to him/her' or . . . 'I don't like her/him . . .' or 'I have nothing to say to him/her' or 'Everytime [sic] we talk, there's an argument' and often adding 'She/he takes it out on the child, or puts our child in the middle.' [In such situations, the child may have two parents in two homes but may not feel at home or secure in either. One child in such a situation said, 'My safe home is the car.' Such parents do not share parenting, instead they divide it and they divide the child. Paradoxically, even with the more generous and predictable time arrangement, parallel parenting is just the exclusive parenting problem all over again. For some families (and for some proponents of joint custody), joint custody has been operationalized as parallel parenting. When I have asked children how things are going for them or if a change would help, their answer is frequently something like the following – 'No, keep it as it is . . . At least I have them both, even if it isn't the best.' Such children appear to fear that if only one parent had the lion's share of the authority or power, that parent would cut out the other parent causing the child to lose that parent.

In contrast to this parallel parenting arrangement are two healthier forms. The first is what I call **shared parenting**, and the second, **cooperative parenting**. In both of these arrangements, parents do work together and support one another as parents. They might not love one another, but they've developed a business-like relationship as parents and can talk to one another about the child's needs and experiences. Parents can attend joint conferences and school events together. Teachers and coaches feel free to call either parent without risk of getting caught in parental competitiveness or territorial disputes. Children can share their lives with both parents and have open access by telephone to each parent. The difference between shared parenting and cooperative parenting is important to note. Shared parenting is a business-like working relationship as parents. Cooperative parenting builds on that working relationship with an additional spirit of forgiveness and easier give and take. Shared and cooperative parenting are the most desired forms of parenting after divorce by the child, by parents, and by the community at large." (Address, Mediation, Joint Custody and Legal Agreements: A Time to Review, Revise and Refine, by Isolina Ricci, Ph.D., and California's Coordinator of Family Court Services for the Administrative Office of the Courts, Association of Family and Conciliation Courts (AFCC) Annual Conf., Boston, May 22, 1986.)"

The Court also wrote: "A better public understanding of the nature of joint physical custody is essential. Parents must understand that successful joint physical custody depends upon the quality of the parenting relationship, not the allocation of time. Parents must also understand that it is much harder to be a joint physical custody parent than a sole custody parent. Fully participating with the other parent to share the burden of cooperative or shared parenting for the benefit of the child is much more demanding than having sole physical custody or being a noncustodial parent.... Finally, we cannot conclude without expressing our distress that parents can be as inflexible as [Mom and Dad] when it comes to even slight adjustments in the time the children spend with each of them."

Based on the outcome of the appeal, the Court (and the trial court) felt that cooperative relationships are best for the child, but parallel parenting is acceptable where both parents want to share in the child's upbringing but are incapable of getting along.