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# Journal of the Task Group on Child Custody Issues

## of the National Organization for Men Against Sexism

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### Move-away Custody:

Testimony in support of California  
Senate Bill 135 and in opposition  
to Senate Bill 1528

by Jack C. Straton

The *National Organization for Men Against Sexism* (NOMAS) is a non-profit organization incorporated in the State of Illinois, with a mission of community education to end sexism, heterosexism, and racism. Our membership ranges from men who counsel batterers to the principal scholars in the field of Men's Studies. We are motivated not by a concern for men's "rights" but by a desire for justice for all people. We are opposed to any legislation from the Male Lobby that seeks to maintain male privilege at the expense of women's freedom, control over women at the expense of their safety, and "ownership rights" to children at the expense of their well-being.

In forming a policy regarding a custodial parent who wishes to relocate to a distant community,<sup>1</sup> the Legislature of the State of California must carefully consider the topic of coercion. The first area of concern is the fact that perpetrators of domestic violence use custodial challenges as a means to maintain and extend their power and control over their former spouse or partner. The second area of concern is the extent to which the State of California is willing to use the

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### Don't Create Custody Laws That Facilitate Abuse

by Jack C. Straton

Joint Custody laws have become a rallying point in our society for those men who are having a difficult time maintaining their control over women. Their argument that joint custody is egalitarian totally ignores the enormous reality of male violence. They propose powerful custodial incentives (coercion by the State) that will motivate women to stay with their abuser ("to make the marriage work") — that will take custody from women who cannot "cooperate" because they fear any contact with their husbands. Such laws would not only promote woman abuse but would also promote child abuse because some 70% of men who abuse women also abuse the children they have access to.<sup>1</sup>

Half of all women in the United States will be battered by an intimate partner at some time in their lives.<sup>2,3</sup> The violence is so severe that battering is the single most important context for serious injury to women in the U.S.<sup>4</sup> Nearly one-third of all visits by women to emergency medical services are caused by battering.<sup>5</sup> According to the FBI, over the last seven years 29.4% of all women murdered were killed by

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**Notes From the Editor**

It is with great pleasure that I greet you from Portland!

The forests, mountains, and beaches of Oregon were the land of my childhood and they have been a beautiful homecoming for me this past year. Theresa and I moved to Portland a year ago with no jobs and have begun to put our lives in shape here. I recently was hired at Portland State University to teach an interdisciplinary course for incoming students that encompasses communication, multicultural diversity, analytical thinking, and social responsibility. It will be team-taught by a political scientist, an ethicist, a writer, a chemist, and myself as physicist — all of whom have turned out to be fun to work with.

Plus, I have stepped into a nest of activists already established here who are doing fantastic work. Most of the members of the Men's Caucus of Stopping Violence Against Women have gone through what I believe is the finest 36 hour training available in the country for men, presented by Tess Wiseheart of the Portland Women's Crisis Line. A dozen of us have also gone through an advanced 24 hour training. SVAW has a major focus on issues around Prostitution and Pornography, but has been extremely responsive to my desire to challenge the Male Lobby on custody issues. While I was out of town they picketed a Father's Day fund raiser for shelters for men who have been kicked out of their homes by restraining orders for battering. We also created a counter-protest for a rally in favor of court-mandated joint custody.

Last month the entire Portland (pro-) Feminist community began coalition building with communities of color around racist and sexist articles in the media. Five of us met with the editor of the local paper, the Oregonian, last week with mixed but hopeful results.

My best to you,

Jack

**Membership Information**

An X after your name on the label means that your membership in the Task Group has expired (C means "Complementary"). Membership is \$10 per year. Back issues are available for \$2 each (1 issue for each of the last 5 years).

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custodial parent's bond with her (or his) children to bind her to the locale of her former spouse or partner.

### Domestic Violence

Domestic violence is an enormous problem in this country. "Within the last year, 7% of women (3.9 million) who are married or are living with someone as a couple were physically abused"<sup>2</sup> and between 19% and 30% of women who visit emergency departments are there for symptoms related to ongoing abuse.<sup>3,4</sup> The abuse actually increases after separation and divorce. In almost three-fourths of spouse-on-spouse assaults, the perpetrator and survivor were separated or divorced at the time of the incident, according to the U.S. Department of Justice.<sup>5</sup> It is also important to note that about 70% of men who abuse their wives also abuse their children.<sup>6</sup>

Thus, whenever there have been any incidents of male violence in the relationship, concern for the woman's safety and the child's well-being must take precedence over other concerns, and not be just "a factor" to consider. Because the State is unable to shield battered women from ongoing violence by their abusers, as seen most graphically in the case of Nicole Brown Simpson, the State must not chain battered women to the locale of their abusers through concern for the visitation rights of the abusers. We know that a restraining order will not stop a bullet but

distance may be an effective barrier.

In addition to the most egregious, well documented cases of physical abuse we have to consider undocumented cases and the "37% (20.7 million) [of women who] are verbally or emotionally abused by their spouse or partner."<sup>7</sup> Domination and control become primary tactics by many men in the custody and divorce arena because they are such a central part of men's socialization process. The State must not reward this covert terrorism by setting too high an evidentiary standard in qualifying cases as domestic abuse.

### Supporting the Custodial Family Unit

Next we turn to custody disputes in which there has been no history of abuse. There is no neutral option available. The State must either decide to coerce a custodial parent into remaining in the same local as the noncustodial parent, to protect the latter's desired schedule of visitation, or to affirm that the custodial parent has a right to freedom,<sup>8</sup> and that the visitation schedule desired by the noncustodial parent must be altered. There are three central arguments for the State of California supporting the custodial family unit.

We must first acknowledge that when the State denies a custodial parent's permission to relocate, it is imposing a form of house arrest, with the boundaries of the "house" typically set at the county or state line. Although seldom

acknowledged consciously, this is in actuality a form of imprisonment without just cause. One might argue that this is not really true imprisonment because the custodial parent has the freedom to leave if she is willing to abandon her children. The counter-argument is that it is cynical, anti-family, and unethical for the State to use a woman's love for her children against her in this way.

Secondly, we must acknowledge that it is the noncustodial parent's *preferred visitation schedule*, not the actuality of visitation itself, that is being affected when a custodial parent moves. Visitation for extended periods over the summer vacation, and perhaps alternating birthdays and holidays, provides a practicable alternative to evening and/or weekend visitation when the custodial parent has moved to a city more than a couple of hour's drive away from the noncustodial parent. (In those 50% of cases where the noncustodial parent is paying full child support,<sup>9</sup> a reduction in support to cover transportation costs may be appropriate.) "[T]he alternative of uninterrupted visits of a week or more in duration several times a year, where the father is in constant and exclusive contact with the children and has to plan and provide for them on a daily basis, may well serve the paternal relationship better than the typical weekly visit which involves little if any real paternal responsibility."<sup>10</sup>

The third argument for the State of California supporting the custodial family unit is that children's well-

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being after divorce strongly depends upon the quality of their relationship with their primary caretaker, as has been well documented over the years.<sup>11</sup> It cannot be in the child's best interests for the State to impose constraints that strain this relationship.

## Refuting the Male Lobby

We must also examine the Male Lobby's arguments for binding the custodial parent to the locale of the noncustodial parent. The first is the hypothesis that ongoing contact with the noncustodial parent is of benefit to the child and therefore it is in "the best interests of the child" to forbid the custodial parent from moving the child away from the noncustodial parent. Even if this hypothesis were true, there are three arguments against such a law; each sufficient to dismiss it.

First, as noted above, contact with the noncustodial parent may be maintained by trading weekly visits for extended visits involving a more substantial proportion of quality time. Second, when a custodial parent must forfeit custody in order to move, the children will lose weekly contact with *her*. But since this will again deprive them of contact with one of their parents, this is "not in their best interests," according to the presupposition. Thus, such a requirement is logically self-contradictory. Third, if it is to be logically consistent and free of bias, any law chaining a custodial parent to the locale of the noncustodial parent has to likewise chain a noncusto-

dial parent to the locale of the custodial parent.

In any case, the hypothesis that ongoing contact with the noncustodial father is of benefit to the child is false, so basing a law on it is misguided. Early evidence that children living with their mothers seemed to do better if they had ongoing contact with their fathers<sup>12</sup> has been contradicted by two larger studies based on more representative samples: A study done in 1987 by Furstenberg, Morgan, and Allison,<sup>13</sup> found that children who had not seen their father in 5 years did significantly better than those who had spent 1 through 13 days with their father in the previous year. Another study by Zill<sup>14</sup> found that the well-being of children following divorce is not related to father-child contact.

Another "best interests of the child" argument for binding the custodial parent to the locale of the noncustodial parent is that moving is stressful for children, particularly moving combined with divorce.<sup>15</sup> A careful analysis of the studies,<sup>16</sup> reveals that the causal agent is low or decreased income for the child's family, not divorce itself.<sup>17</sup> For this reason the State should facilitate post-divorce relocations, which are often made to increase family income. In addition there are studies that indicate that children who have had behavioral problems in school during the parental discord and divorce phases are evaluated much more positively after a change of schools.<sup>18,19,20</sup>

In summary, whenever there have

been any incidents of male violence in the relationship, concern for the woman's safety and the child's well-being must take precedence over other concerns. For non-abuse situations, we must look at whomever has actually given the daily care, nurturing, and support to the children. If the primary caretaker has a job opportunity, a new marriage, an educational opportunity, or a nurturing community that will help her support the child, she should be facilitated in accepting it even if that means inconveniencing the other parent.

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- <sup>4</sup> S. V. McLeer and R. Anwar, "A Study of Battered Women in an Emergency Department," *Am J. Public Health* **79** (1), 65-66 (1989).
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- <sup>7</sup> Louis Harris and Associates, *The Commonwealth Fund Survey of Women's Health* (The Commonwealth Fund, New York, 1993), p. 8.
- <sup>8</sup> 271 Cal. Prtr. 392 (Ct. App. 1990).

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- <sup>10</sup> *D'Onofrio v. D'Onofrio*, 365 A.2d 30 (N.J. Super. Ct. Ch. Div.), *aff'd*, 365 A.2d 716 (Sup. Ct. 1976).
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- <sup>14</sup> Nicholas Zill, *The Impact of Divorce, Single-parenting, and Stepparenting on Children*, E. M. Hetherington and J. Arasteh (eds.) (Lawrence Erlbaum Associates, Hillsdale, NJ, 1988).
- <sup>15</sup> See, for example, P. M. Raines, "Joint Custody and the Right to Travel: Legal and Psychological Implications," *J. Family Law* **24**, 625 (1985-86) at p. 648-49.
- <sup>16</sup> See Janet M. Bowermaster, "Sympathizing With Solomon: Choosing Between Parents in a Mobile Society," *J. Family Law* **31**, 791-884 (1992-93) at p. 861-865.
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## Joint Custody, continued from Page 1

their husband or partner.<sup>6</sup> This is reality.

### "Cooperate With Your Batterer Or Else!"

So how does court-mandated joint custody fit into this reality? Like a knife sliding in to the hilt! "Friendly parent" provisions of joint custody presumptions, that award sole custody to the parent who "cooperated and facilitated the relationship between the child and the other parent," are particularly dangerous.

"Friendly parent" provisions guarantee a batterer frequent and continuing access to his victim. Such provisions force a woman who has

been beaten by her partner to submit to further abuse during custodial exchanges or lose custody of her child to a terrorist. How likely is it that he will abuse her after separation? Two thirds<sup>7</sup> to three fourths of the women who are battered are divorced or separated from their abusers at the time of the incident.<sup>8</sup> In one study of spousal homicide, over half of the male defendants were separated from their victims.<sup>9</sup>

### Consequences to Kids

What are the consequences to the child if an abused woman either leaves and loses custody or stays because of vindictive laws? A number of studies have reported rates at which men who abuse their wives also abuse their children ranging from 53%<sup>10,11</sup> to 82%.<sup>12</sup> In the

most extensive study to date, of 1000 battered women, Bowker and coworkers found that 70% of the children were also abused.<sup>13</sup> They also noted that daughters of abused women are six and one-half times more likely to be sexually abused as girls from non-abused families.

Furthermore, Bowker found that as the severity of the wife abuse increased, so did the severity of the child abuse. While it is true that women will spank children, Bergman and coworkers determined that men are ten and one-half times more likely than women to inflict serious harm. They found that every known perpetrator of the death of a child was a father or father surrogate.<sup>14</sup>

Joint Custody laws harm children in other ways. The threat of a joint

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custody decision may be used by the husband to bargain out of court for a reduction in child support payments, thus inflicting the violence that is poverty on the child; clearly not a result “in the child’s best interests.” “Friendly parent” provisions, that give a preference to the parent requesting joint custody when the alternative of sole custody is considered by the court, increase the effectiveness of this threat and the consequent impoverishment of children.

Joint custody also makes it easier for the non-primary-caretaking parent to interfere with needed and timely medical decisions by the primary-caretaker.

Because court mandated joint custody is unworkable for those parents who cannot cooperate, is unneeded by those parents who can cooperate, and creates unconscionable costs in pain and privation for children and mothers, this option for settling custody disputes is unacceptable.

### **The Primary Caretaker Rule**

Is there a gender-neutral presumption that does not automatically harm women and children? Yes, leaving children in the custody of the parent who has been the primary giver of care (the parent who most often prepares the meals, changes diapers and dresses and bathes the child, chauffeurs the child, monitors the child’s health, and interacts with the child’s friends and teachers), as in the “Primary Caretaker Parent Rule” of West Vir-

ginia.

Norway’s Kirstin Sandberg summarizes that this criterion “should only exceptionally result in a worse solution than if the other parent was chosen. . . . [This] parent has demonstrated a willingness to take care of the child and has practice doing the job. There is also reason to believe that the child is emotionally more attached to her or him. *Besides, during the marriage the parties after all set up the caretaker arrangement together, and would hardly have done this while thinking that the actual primary caretaker was less fit than the other parent.*”<sup>15</sup>

Given that most primary caretakers now are women, is this criterion fair to men? The answer is that men as a group have the power to create a gender-neutral society in which we actually do perform as primary caretakers in 50% of families. Men as individuals have the power to set themselves up as primary caretaker in any given family. What is fair is for men to put up or hush up.

Until men choose to be equal partners in marriage, after divorce children would probably not spend as much time with their fathers as with their mothers under this criterion. What are the consequences of this for children? The Male Lobby claims that “fatherless homes are destroying America . . . [creating] poor education, gangs, crime, drugs, teen-age pregnancy, health problems, behavioral problems. . . .” They claim that “children from fatherless homes are five to six times

more likely to live in poverty,” but forget to name the father as responsible for the 30% drop<sup>16</sup> in such a child’s household income after he leaves. It is also obvious that poverty itself, rather than the lack of an adult penis in the house that is the causal agent for the problems noted above.

### **Consequences to Society of Children Witnessing Abuse**

Those who want to stop gang violence should be aware that witnessing battering has been strongly linked to kids turning to crime. Studies by Pagelow,<sup>17</sup> Jaffe *et al.*,<sup>18</sup> Davidson,<sup>19</sup> Alessi and Hearn,<sup>20</sup> Hilberman and Munson,<sup>21</sup> and others have shown that children who witness woman abuse may experience severe mental and physical impairment, similar to Post-traumatic stress disorder (PTSD),<sup>22</sup> and almost all children of battered women are witnesses.<sup>23</sup> Hughes<sup>24</sup> and Jaffe *et al.*<sup>25</sup> have shown that children exposed to wife abuse<sup>26</sup> often are fighting, rebelling, and unmotivated in school. Children who live in abusive homes are at higher risk of juvenile delinquency, including crimes such as burglary, arson, prostitution, running away, drug use, and assaults, according to the work of Walker,<sup>27</sup> Heath *et al.*,<sup>28</sup> and Lewis *et al.*<sup>29</sup> Long-term studies such as McCord’s have shown<sup>30</sup> that ongoing marital violence in childhood is significantly predictive of perpetration of serious crimes in adulthood — assault, rape, kidnapping, and murder. Stark and Flitcraft have shown that boys who witness their father beating their mother are three times

more likely to abuse their own wives. Sons of the most violent families have a wife beating rate that is 1000 times larger than of sons of non-violent fathers.<sup>31</sup>

## Are Kids OK Without Their Fathers?

It is clear than children are harmed by living with abusive fathers. Are they hurt by not living with non-abusive fathers? A study done in 1987 by Furstenberg, Morgan, and Allison,<sup>32</sup> found that children who had not seen their father in 5 years did significantly better than those who had spent 1 through 13 days with their father in the previous year. Another study by Zill<sup>33</sup> found that the well-being of children following divorce is not related to father-child contact.

When men finally stop brutalizing women and children, I imagine that shared custodial arrangements will be possible. When men finally become equal partners in child care before divorce, shared custodial arrangements after divorce will be workable. But let us not pretend that they are necessary to the child's well-being.

The primary caretaker criterion for awarding custody is the fairest and the most logical for the child. But perhaps we should entertain a simple wager: Award men an additional 1 percent of custody cases for each day in every three months that women and children in this country are absolutely free from male violence. Just imagine the society we would live in if men

gained custody 100% of the time under this plan: Your grandmother laughing with her friends as they stroll through the neighborhood after dinner; your mother really relaxing at home with your father; you and your spouse being best of friends; your daughter free to spend late hours at mathematics or music at college; your grandson following the daycare worker around asking him "Why?" a thousand times. I would give much to see such a world.

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Many of the references are primary studies (as opposed to articles that refer to someone else's research) such as "Within the last year, 7% of women (3.9 million) who are married or are living with someone as a couple were physically abused, and 37% (20.7 million) were verbally or emotionally abused by their spouse or partner."<sup>1</sup> That is 7.4 women battered per minute, and 39.3 verbally or emotionally abused.

References are arranged by keyword, and many are cross-referenced to other studies. One may also search by author.

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<sup>1</sup> Louis Harris and Associates, *The Commonwealth Fund Survey of Women's Health* (The Commonwealth Fund, New York, 1993), p. 8.