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Op-Ed Column

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VIEWPOINTS

CHILD CUSTODY

Flawed system needs repair



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Something is drastically wrong with our nation's child custody policies. The symptoms are painfully evident: overburdened mothers, absent fathers, angry and depressed children from divorced homes crowding our mental health facilities, distraught grandparents cut off from their grandchildren, disgraceful rates of delinquent child support payments. Custody litigation is on the rise, and reports of violence and kidnapping by frustrated parents in bitter custody battles are becoming common.

And we now are witnessing a new phenomenon: Lawyers and litigating parents have discovered that an allegation of sexual abuse can be a potent weapon in the battle to win custody. The threat of lodging such an accusation can be effective in persuading a parent to drop his or her bid for custody, for even when the accused is found innocent, the damage to the alleged perpetrator and the child can be irreparable. And, since all suspicions of sexual abuse must be treated seriously, the accusation alone is often sufficient to separate a parent from a child, pending the results of a lengthy investigation that may itself produce trauma for the alleged victim.

The situation is appalling and getting worse; our record-high divorce rate creates new victims daily. And the worst battle scars are borne by the 20,000 children whose fates are decided each week. If we are to prevent much of the suffering of divorced families, we need to make fundamental changes in the way we think about and handle child custody decisions.

Litigation is the worst way to resolve a custody dispute. One veteran of a custody battle describes it as a "psychological meat grinder ... vicious, inhumane and, in the long run, pointless."

When the rich and famous do battle, the harm to the children is multiplied because of the humiliation of seeing their parents' dirty linen exposed on television and in the tabloids. But the poor and unknown are not beyond slinging mud. And with the costs of a custody battle running in the tens of thousands of dollars, many are left virtually penniless. Money set aside for medical emergencies and college tuition is diverted into the pockets of lawyers, private investigators, psychologists and expert witnesses.

Fortunately, couples who disagree on custody have a saner option: mediation. Mediation allows parents to retain control over custody, rather than leave such a crucial decision to a judge — a stranger who neither knows nor loves the children. It spares parents the experience of pleading to a higher authority to intervene in their conflict. It spares parents and children

the indignity of a public court hearing, and the escalation of hostility that is the invariable byproduct of such a process.

Because the decision is their own, and not imposed by an outside authority, both parents are more apt to abide by their agreement. That is a distinct advantage over the current system, in which only a minority of divorced fathers comply with court-imposed child support provisions.

Mediation also is far less expensive for parents and the public: Society will save more than \$180 million per year in court expenses. Finally, mediation achieves a separation of family and state in an area where government intervention not only is unnecessary but actually impedes the family's adjustment to divorce.

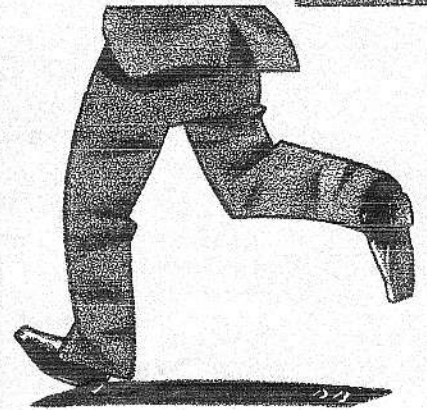
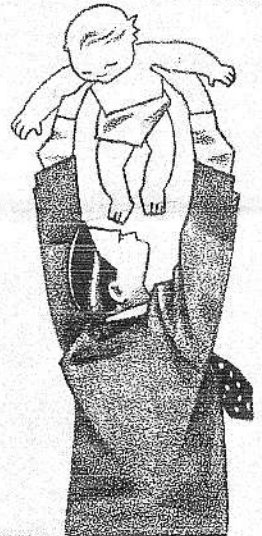
The growth of custody litigation is not the only problem. It is a sorry commentary on our culture that most divorcing couples spend more time and energy deciding the custody of their videotapes and furniture than they do deciding the custody of their children. Instead, most couples blindly follow a cultural prescription that leaves children — for the remainder of their childhoods — under the care and sole responsibility of their mothers.

It is ironic that for the past 25 years we have encouraged fathers to become more involved in raising their children. We have touted the virtues of a father's active presence in the delivery room, required his participation in Indian Guides, extolled the importance of father-child bonding and trumpeted statistics linking a father's absence to juvenile delinquency. We rightfully have decried the double standard that leaves women with the job of raising children and allows men to exploit their status as breadwinners in order to escape parental responsibilities. Men, we have argued, have as much place in the home with children as women do in the workplace.

But now a new double standard has emerged. Before divorce, a father should defy tradition and spend more time with his children. But after divorce, he should leave to his ex-wife the daily chores and responsibilities of raising the children and accept his rightful role as a second-class parent.

It is time for change. One-third of all children in mother-custody homes never see their fathers. Millions more long for a deeper, more authentic relationship with their "Disneyland daddies." Unfairly burdened with the job of two parents, all but the most wealthy single mothers walk a spirit-sapping treadmill that leaves little time or energy for personal needs.

A father makes immense contributions to his children's development, and his absence results in untold suffering. We need to create family structures that assure children that they have not been



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divorced, structures that safeguard their birthright to two parents.

An enlightened approach to custody would implement the following proposals: (1) stop discriminating against fathers in custody matters, (2) tailor custody to fit the needs of each individual family, rather than force every family into the same mold, (3) try to have some form of joint custody, although that may not always be suitable, (4) make a child's living arrangements flexible to accommodate changes in the family, (5) give each sibling some time alone with each parent, and (6) replace the adversary system with professional consultation and mediation.

Such changes offer the hope that the drama of divorce can be performed in a civilized manner, on a stage illuminated by wisdom and compassion for our children.

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