Woodrow Wilson International Center for Scholars

Division of United States Studies

Custody Decision-Making in Maryland: Practice, Principles, and Process

Proceedings of a discussion held at the University of Maryland School of Law

December 09, 2003

Speakers

Karen Rothenberg

Dean of the University of Maryland Law School and

Marjorie Cook Professor of Law

Honorable Robert Bell

Chief Judge, Court of Appeals of Maryland

Honorable Audrey J. S. Carrion

Judge-in-Charge, Circuit Court of Baltimore City, Family Division

Jana Singer

Professor, University of Maryland School of Law

Rebecca Saybolt Bainum,

Legal Projects Manager, Women's Law Center of Maryland

Pamela Cardullo Ortiz

Executive Director, Family Division,

Administrative Office of the Courts

Jane Murphy

Professor, University of Baltimore School of Law

Karen Rothenberg

This symposium reflects a true collaboration, both between the legal and mental health professions and among the Bench, the Bar and the legal academy. Judges, academics, court personnel and family law practitioners have come together to discuss the current standards and procedures for resolving custody disputes in Maryland and to consider new and innovative approaches to handling these very challenging issues.

This conference is also collaborative in that it is the fourth annual symposium on family law jointly organized and presented by the University of Maryland School of Law, the University of Baltimore School of Law, and the Circuit Court for Baltimore City. This year our collaboration has been enhanced by additional collaborators and co-sponsors: the Maryland Administrative Office of the Courts, the Custody Subcommittee of the Maryland Judicial Conference Committee on Family Law, the Division of United States Studies at the Woodrow Wilson International Center for Scholars, and the law firm of Butler, McKeon and Associates.

Chief Judge Robert Bell has long been a visionary and a leader in family law and in Family Court reform in Maryland. He played a pivotal role in establishing and implementing the Family Divisions in Maryland's largest jurisdiction five years ago and has continued to provide leadership in developing and expanding Family Court programs and services. He has been nationally recognized for his leadership in this area and has received numerous awards, including the Rosalyn D. Bell Award for Outstanding Achievement in Family Law given by the Women's Law Center of Maryland. Chief Judge Bell is the only member of the Maryland Court of Appeals to have served as a judge at every level of court in Maryland, and he has first-hand knowledge of the issues that concern us.

Judge Robert Bell

The Family Divisions in Maryland had been a work-in-progress for about twenty years by the time I became Chief Judge, with many people, judges prominently among them, advocating for Family Courts and Family Divisions. With 271 judges in this state, Family Courts could not have happened without judicial interest. The judges formed an ad hoc committee that included other professionals and that developed the rules we now operate under, so a good deal of credit goes to a whole variety of people.

During the last five years we have tried to develop a comprehensive and consistent spectrum of resources available to families throughout the state, even though at the moment only the five largest jurisdictions have Family Divisions. With the help of the Legislature, however, we have been able to provide resources to all of the courts so that such resources are available to at least some

extent in every county. New services have been offered to educate parties about the process, and reforms have been made in case management practices. We have provided evaluative information to the parties, to counsel and to courts. We have aided litigants in navigating the family justice system and we have encouraged families to make important decisions through mediation and other forms of appropriate dispute resolution mechanisms. We have developed standards and measures for our Family Divisions and we regularly evaluate and assess our progress and our performance, knowing that our efforts will be best measured by the impact that we have on individual families and children.

We constantly question ourselves: Have these reforms had a positive effect on the quality of decisions that are made on behalf of children? Do the services we now provide help parents better understand the needs of their children? Are parents choosing more often to make important decisions themselves? When courts make custody and visitation decisions, are they the best decisions possible? Are there steps that we could take to insure that the most appropriate decisions are being made in all cases? In other words, are we institutionalizing quality decision-making? These are the questions that we must continue to ask and that have brought us here today.

One of the people to address them is Audrey Carrion, the new Judge-in-Charge of the Family Division in Baltimore City. Audrey has served on the District Court of Maryland, becoming the first Hispanic judge in the state. She then moved to the Circuit Court of Maryland, becoming at that time the first Hispanic judge to serve on the Circuit Court in the state. As she takes on this new administrative responsibility she becomes the first Hispanic administrative judge in the state.

Judge Audrey J. S. Carrion

I spent almost two years on the juvenile side of our Family Division. One of my goals as I manage my docket now is to look at how we can work better with the juvenile docket, the other wing of our Family Division. I am particularly interested in issues that affect girls and in how we can assist them in becoming better parents and better citizens.

You may know that the Circuit Court in Baltimore City began an exciting pilot parenting project in April 2003. We are still compiling statistics, but we believe that the project will assist us in establishing case management standards and in identifying areas of conflict in custody disputes. We hope that future funding will permit us to expand the program to reflect the reality: the majority of the custody cases here in Baltimore City involve never-married parents.

Jana Singer

The American Law Institute's Approximation Standard for Allocating Custodial Responsibility for Children

The American Law Institute (ALI) was founded in 1923 to promote the clarification and simplification of the law, to enable it to meet social needs more efficiently, and to advance the administration of justice. Today it is a membership organization made up of 3,000 prominent judges, lawyers and law school professors from across the United States and a number of foreign countries. Its best-known products are its restatements of law in a wide variety of subject areas such as contracts, property, agency, and conflict of laws.

Until recently, the ALI had not attempted to deal with the area of family law. In 1989, however, at the suggestion of a number of members who included several family court judges, the ALI undertook a project to examine and make recommendations about the laws governing family dissolution. I believe the ALI envisioned this as a two or a three year project but it took substantially longer than that, turning into a decade-long effort that involved not only many ALI members but outside advisers, state family court judges, social scientists, and legal academics as well.

Their efforts culminated in the publication in late 2002 of the ALI's *Principles of the Law of Family Dissolution*. It is deliberately described not as a restatement but rather as a set of principles because, according to the ALI, it is designed less to restate what the law is than to explore and clarify the fundamental assumptions—about the best interests of children and how to achieve them, about fairness to divorcing spouses, about the legitimate expectations and economic claims of unmarried partners—upon which the rules governing the consequences of family dissolution should rest. The *Principles* contains proposals in a wide variety of areas. Some of the proposals are designed to function as do traditional restatement rules and are addressed primarily to judges in their capacity as decision-makers in individual cases; others, including many of the provisions most relevant to this discussion, are addressed as much to legislators, court systems, practicing lawyers, and even bar associations in their capacities as family law rule makers, practitioners and implementers.

That is why we are beginning this symposium by summarizing the ALI proposals in the area of custody decision-making and then examining what has been happening in Maryland and whether it would make sense to consider adopting the ALI proposals in this state.

Questioning the "Best Interests" Standard

The ALI report begins its consideration of rules governing the allocation of custodial and decision-making responsibility for children by affirming that the primary objective of legal rules in this area should be to serve children's interests. It notes that when a family breaks up, it is usually

children who are the most vulnerable parties and the ones most in need of the law's protection. The drafters, however, take issue with the prevailing broad "best interests of the child" standard, questioning whether that standard as traditionally applied actually promotes the interests of children either individually or on a systemic basis. They note that the standard is indeterminate and unpredictable, which makes it difficult for litigants and their lawyers to predict the way it will be applied in a particular case or by a particular judge. This in turn discourages settlement and leads both to difficulty in negotiation and to a greater number of contested cases than might occur under a more predictable standard.

The drafters also criticize the unpredictability of the "best interests" standard for encouraging strategic bargaining (less flatteringly referred to as custody blackmail), in which one spouse threatens to wage a custody battle primarily in order to extract financial or other concessions from the other spouse. In addition, the drafters see the ambiguity of the "best interests" standard as allowing leeway for judges and other decision-makers to base judgments on personal biases about gender, race, religion, economic circumstances, or unconventional life style.

The drafters of the *Principles* note that the "best interests" standard may set an unrealistic goal for the law. By instructing courts to determine the custodial arrangement that is best for a child, the standard assumes first, that it is possible to identify the best arrangement with some degree of certainty and second, that it is within a court's power to achieve whatever result the court believes is best. In fact, the drafters suggest, what is best for children often depends on values and norms upon which reasonable people, including reasonable parents, may disagree. In addition, even when consensus exists about what would be best for a particular child, there are substantial limits on the power of courts to compel individuals to act in ways that will promote that best outcome.

Finally, the drafters of the *Principles* note that by focusing on the parents' relative parenting abilities and by conceptualizing custody as a zero-sum game, the "best interests" standard encourages divorcing spouses to focus on each other's faults and parental shortcomings rather than giving them incentives to work together to reduce conflict and design a viable post-divorce caretaking arrangement.

At the same time, the drafters recognize that previous efforts to make the "best interests" standard less unpredictable — for example, through the adoption of a presumption in favor of joint custody or a custody preference for the primary caretaker parent — have created their own problems. In particular, the drafters suggested that these presumptions may not be beneficial for all families and are often insufficiently flexible to respond to the variety of circumstances and parenting arrangements that families have adopted in the past and that may work for families in the future.

The ALI report therefore offers two sets of recommendations designed to improve the quality of custody decision-making. The first is a series of proposals that focuses primarily on the process by which parenting disputes are resolved. Second, the report addresses outcomes by suggesting an "approximation standard" designed to resolve contested custody cases based on past parenting patterns. The purpose of the approximation standard is to enhance predictability without sacrificing attention to individual family arrangements.

The Parenting Plan Process

Chapter 2 of the *Principles* deals with allocation of custodial and decision-making responsibilities. Its primary focus is on structuring a process that will enable separating and divorcing parents to make decisions about their children and to resolve disputes about how their children will be cared for after divorce or separation. In this sense, the main goal of the *Principles* is to shift the focus of legal reform away from the very small percentage of high conflict cases that will need to be adjudicated by a court and to concentrate instead on the much larger percentage of cases that eventually will be resolved by agreement of the parties. The *Principles* assumes not only that resolution by agreement is preferred in family dissolution cases but also that the court system ought to adopt a more structured process that will encourage parents to resolve such disputes and equip them with the resources necessary to do so.

The cornerstone of this process-based approach is the parenting plan, which the *Principles* defines as a set of provisions for the allocation of custodial responsibility and decision-making responsibility on behalf of a child. A key assumption behind the parenting plan's process-based approach is that each parent will continue to play an important role in the child's life after divorce. The purpose of the court system, then, is less to resolve which parent will get custody than to encourage parents to engage in a process by which they will think seriously about and ultimately arrive at a workable post-separation parenting arrangement.

Accordingly, the ALI report proposes replacing the terms "custody" and "visitation" with the more inclusive "custodial responsibility," designed to encompass all forms of post-divorce caretaking arrangements so that the result is not one parent with "physical custody" and the other with "visitation." Instead, there is a division of custodial responsibility. Similarly, the drafters would replace "legal custody" with "decision-making responsibility," to better connote the range of possible ways in which parents may allocate post-divorce decision-making responsibility for their children. The report acknowledges that changes in terminology will not themselves revolutionize the custody process, but the drafters do assume that changes in terminology will contribute to a broader reconceptualization of the enterprise, altering the question from one of who will possess and control children to the more

appropriate inquiry about the adjustments in family and parenting roles that will be most appropriate for the child.

The *Principles* does much more than change terminology. It also sets out a detailed process for decision-making. For example, the *Principles* would require that anyone seeking judicial allocation of responsibility for a child must file a proposed parenting plan. The plan must address how and where the child will be cared for, how decision-making responsibility will be allocated, and how future disputes about parenting issues will be resolved. The parties may file a joint parenting plan, which would be ideal, but if they do not agree they must file separate plans. Each proposed parenting plan must be supported by an affidavit containing information about finances, the way caretaking responsibilities for the child have been divided for at least the past two years, and the child's school and extracurricular activities. In other words, the idea is to have the parents focus on how the child has been cared for in the recent past and how each parent proposes to care for the child in the future.

The drafters emphasize that primary responsibility for the welfare of the child and for post-divorce parenting rests with parents, not with the courts. Parents who are able to agree can customize their post-divorce parenting arrangements to take account of their particular family circumstances. If the parents fail to come to an agreement, the court, after considering the proposed parenting plans, must order its own parenting plan, fashioning one that is much more detailed than the traditional post-divorce parenting order (either "sole custody to one parent, with reasonable visitation to the other," or "joint custody"). Instead, the parents or the court must create a plan that includes either a detailed schedule for the child or a method by which such a schedule will be determined. The plan must specify an allocation of decision-making responsibility about significant matters such as health and religion. It must also include a provision for the resolution of future disputes, so as to minimize the need for future judicial involvement.

Special Procedures for Family Abuse Cases

Recognizing that such a parenting plan procedure may not be appropriate in all cases, the *Principles* requires courts to establish a screening process for identifying and addressing issues of child abuse and domestic violence as well as serious parental impairment. If either of the parents requests the court to do so, or if the court receives independent credible information about abuse, it must determine whether a parent has abused or neglected a child, engaged in domestic violence or abused drugs, or alcohol in a way that interferes with caretaking functions. If that proves to be the case, the court oversight process becomes much more rigorous. The court's parenting plan must then impose limits that are reasonably calculated to protect the child, the child's parents and other members of the

household from harm. The *Principles* further cautions that the court should not allocate custodial or decision-making responsibility to a parent who has abused or neglected a child or inflicted domestic violence without making specific written findings that the limits imposed are adequate to protect the child and the other parent from harm.

The procedures for court approval of agreed-upon parenting plans also distinguish situations of abuse and domestic violence. The *Principles* requires that courts ordinarily defer to the provisions of the parties' agreed-upon parenting plan. Thus, absent allegations of abuse or violence, the court is no longer required to make an independent determination of whether the parents' agreement serves the best interests of the child. This differs from the traditional paradigm, in which courts are supposed to review even agreed-upon custody arrangements to make sure that they serve the best interests of the child. The new approach reflects the drafters' underlying premise that parents are generally best situated to decide what is best for their children, and that judges in most situations are in no better and are often in a much worse position to make that determination.

The Approximation Standard

Despite their emphasis on parental agreement, the drafters recognize that parents will not always be able to agree on a parenting plan. They are also aware that negotiations over post-divorce parenting arrangements, like other forms of legal negotiations, take place in the shadow of the law. So the *Principles* considers the governing legal standard doctrine and offers the approximation standard as an alternative to the traditional "best interests" rule.

The approximation standard is based on the assumption that if there is no parental agreement, the court should allocate what we think of as physical custody (what the *Principles* calls custodial responsibility) so that the proportion of time that the child spends with each parent approximates the portion of time that parent spent performing caretaking functions prior to the parties' separation. The *Principles* defines caretaking functions as tasks that involve direct caretaking (interaction with the child) or supervision of third-party caretaking. Examples include feeding, bathing, bedtime, discipline, arranging for health care, arranging for babysitting or childcare, and providing moral or ethical guidance.

The commentary to this section notes that the approximation standard is likely to yield more predictable and more easily adjudicated results than a wide ranging "best interests" inquiry, and in most cases will therefore advance the interests of children without unduly infringing on parental autonomy. The approximation standard also anchors the determination of the child's best interests in the individual history of each family rather than in generalizations about what post-divorce arrangements work best for all children. The drafters assume that the division of past caretaking functions correlates reasonably well

with factors traditionally associated with the children's best interests, such as the quality of each parent's emotional attachment to the child and each parent's respective parenting abilities. Where there are disputes, the approximation standard requires fact-finding that is less likely than the traditional "best interests" inquiry to focus on the parties' moral characters or parental failings and hopefully less likely to require or invite dueling and expensive expert testimony.

The *Principles* allows departure from the approximation standard where reliance on past caretaking would not allow the child to have a meaningful post-divorce relationship with both parents. In other words, the *Principles* envisions a presumptive floor of custodial responsibility for all parents who have exercised a reasonable share of what the *Principles* calls parenting functions, which are defined much more broadly than direct caretaking functions and which include financial support as well as direct care. The result is that the workaholic parent married to the homemaker spouse does not end up with severely limited custodial responsibility or none at all. The *Principles* invites the state legislature or state rule-making committee to establish the level of the presumptive floor.

The *Principles* also allows for departures from the approximation standard to achieve other goals, including respecting the firm and reasonable preference of an older child at an age to be determined by each state, keeping siblings together when the court finds that necessary to their welfare, and avoiding an allocation of custodial responsibility that would be impractical or would interfere substantially with the child's need for stability because of economic or physical circumstances such as distance between the parties' residences.

The ALI report addresses the allocation of significant decision-making responsibility separately, and here it embodies a presumption of joint decision-making responsibility for each parent who has been exercising a reasonable share of parenting functions, again defined more broadly than past caretaking functions. This presumption of joint decision-making responsibility is overcome where there is a history of domestic violence or child abuse or if joint allocation of decision-making responsibility would not be in the child's best interests. It is, therefore, a rebuttable presumption.

Finally, the ALI recognizes that its custody provisions, especially its process provisions, require more of both parents and the court system than has been required under most traditional custody regimes. In particular, divorcing and separating parents are expected to engage in much more detailed consideration of post-separation parenting responsibilities. Court systems, for their part, are expected to provide the resources to work that out. Where parents are unable to do so, individual judges are expected to orchestrate much more detailed parenting arrangements.

The questions to which we will now turn are: What are parents doing in custody cases in

Maryland today? How are such cases being resolved? What might have to be done differently, by both the court system and by parents, if Maryland adopted the ALI *Principles*?

Rebecca Saybolt Bainum

Results from the Women's Law Center Project on Custody Trends in Maryland

What follows are select findings from a research project the Women's Law Center has undertaken during the past two years. It seeks to correct the lack of empirical data on which to base discussions of proposed policies about custody. There is always some form of proposed legislation pending in Maryland about custody in general and the presumption of joint custody in particular. While there are anecdotal stories on both sides of the issue, little research has been done to study the practice of awarding custody in Maryland and so there have not been many meaningful statistics. The Morton K. and Jane Blaustein Foundation and the Administrative Office of the Courts therefore awarded funding to the Women's Law Center in December 2001 to conduct research about custody awards in Maryland, with the goals of collecting empirical data, disseminating the findings, and educating key audiences. The specific questions asked were: What are the most prevalent custody outcomes? How do these outcomes compare to the requests from litigants? How are the custody decisions being made, and by whom? How successful have they been?

The Women's Law Center was also approached by the Lyn P. Meyerhoff Fund in 2001 and, after a series of discussions, designed another research project to investigate financial distribution practices in Maryland in divorce cases. The project examined all the decisions made during the course of a divorce that affect the financial status of women involved. It asked how financial assets are distributed, what factors impact the distribution, and what the interplay is between the various financial awards.

The research populations for the two projects were obviously very similar. Knowing that children and money are the major issues in divorce, the Women's Law Center decided to combine the two projects and to focus on the overarching question of how custody and financial distribution are related. We collected lists of divorce and custody cases filed in each of Maryland's 24 jurisdictions in fiscal 1999. The result was a snapshot of what was happening in the state in 1999, which will give us a baseline from which to assess trends in the future. We randomly selected a ten percent sample from each jurisdiction and created a research instrument to capture the information we sought. We then reviewed cases in the field using the research instrument, after which we conducted an in-house review of all the instruments to catch inconsistencies, missing data and the like. The data were then coded and analyzed, using a statistical database package.

The resultant project is a huge one and while it resulted in many findings, what follows is no more than a general overview, focusing first on select custody findings and then on the interplay among custody, money and divorce. (Editor's note: at the time of the conference, only preliminary and incomplete results were available. The final report, which contains data relating to custody, financial distribution and the interplay between the two, is available from The Women's Law Center of Maryland. It is online at www.wlcmd.org; a hard copy can be requested by calling 410-321-8761.)

We reviewed a total of 2,573 cases from Maryland's 24 jurisdictions. Of those, 726 were absent or dismissed cases, meaning that the case file was not available to us when we were in the field or the case had been dismissed before final judgment (more than 50% of the 726) or had been consolidated or transferred. We therefore analyzed 1,847 cases, including 983 from the Baltimore metropolitan area. There were 1,022 cases involving children. Of the 1,847 cases we reviewed, 1,687 were divorce cases, with the remainder involving unmarried parents.

The woman was the plaintiff in 1,127 of these cases; the man, in 720. The remaining 39 third-party custody cases, 24 of which involved grandparents seeking custody of the children, are not part of this discussion.

FIGURE I

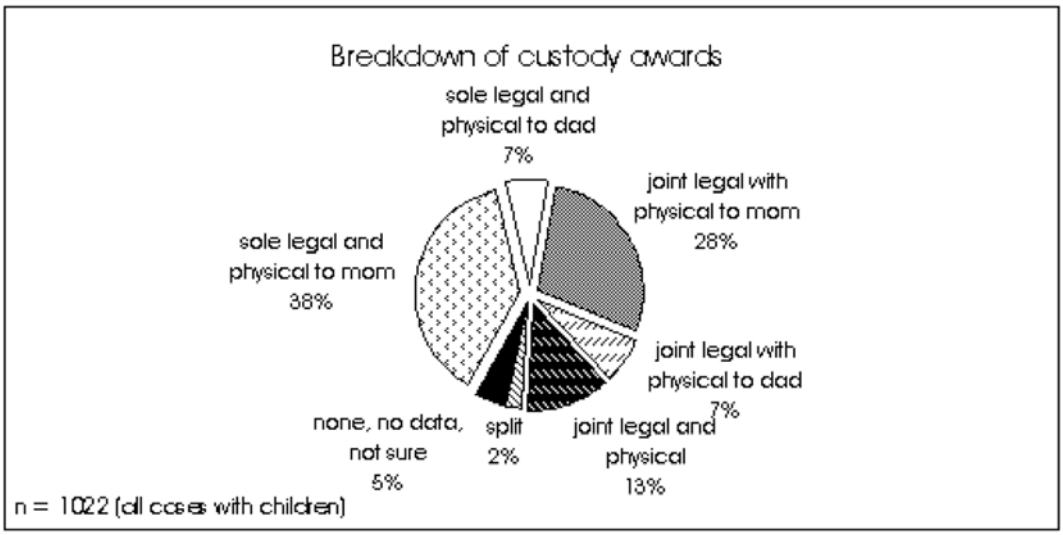
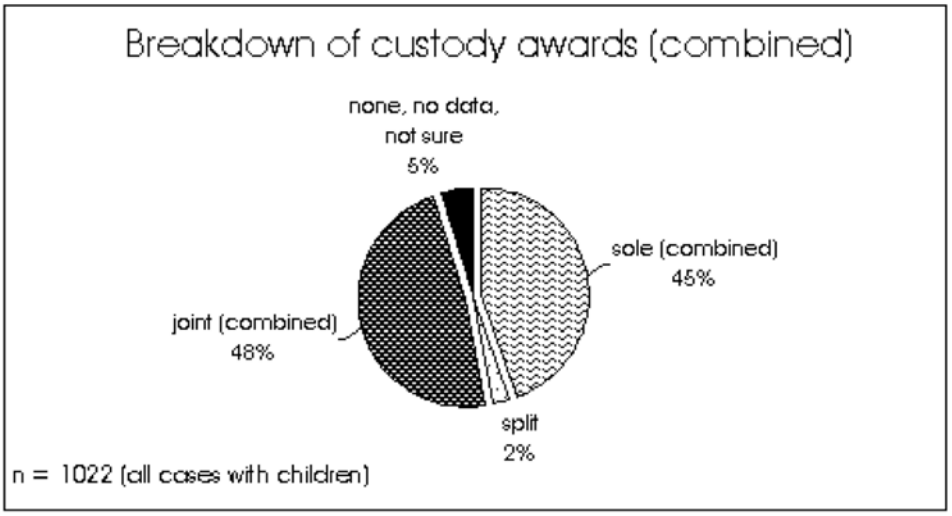


Figure I shows the breakdown of the 1,022 cases with children. The most frequently occurring outcome, in 38 percent of the cases, is sole custody to the mother. The next most frequent outcome (28 percent of the cases) is joint legal custody, with physical custody to the mother. The remaining outcomes, grouped in descending order of frequency, are joint legal and physical custody (13 percent), sole legal and physical custody to the father (seven percent), joint legal custody with physical custody to the father (seven percent), and split custody (two percent)—the last meaning that

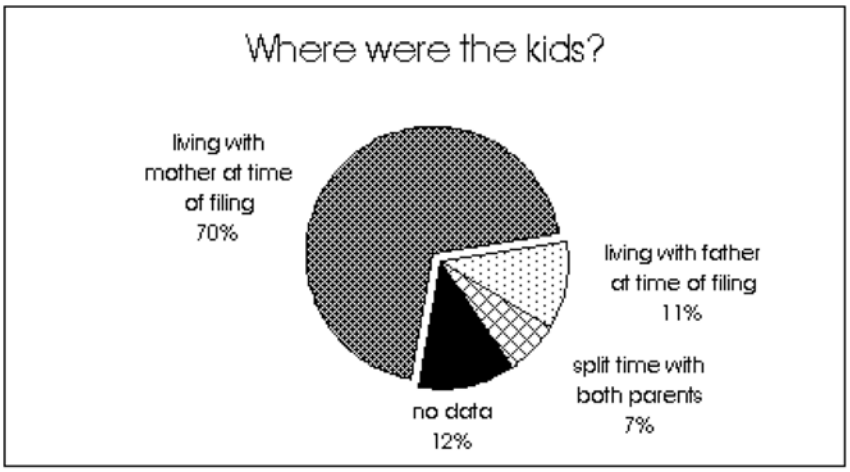
the children are split up and one or more goes with each parent. The remaining five percent are cases in which no outcome was reported in the case file or the outcome was unclear or the data were missing.

FIGURE II



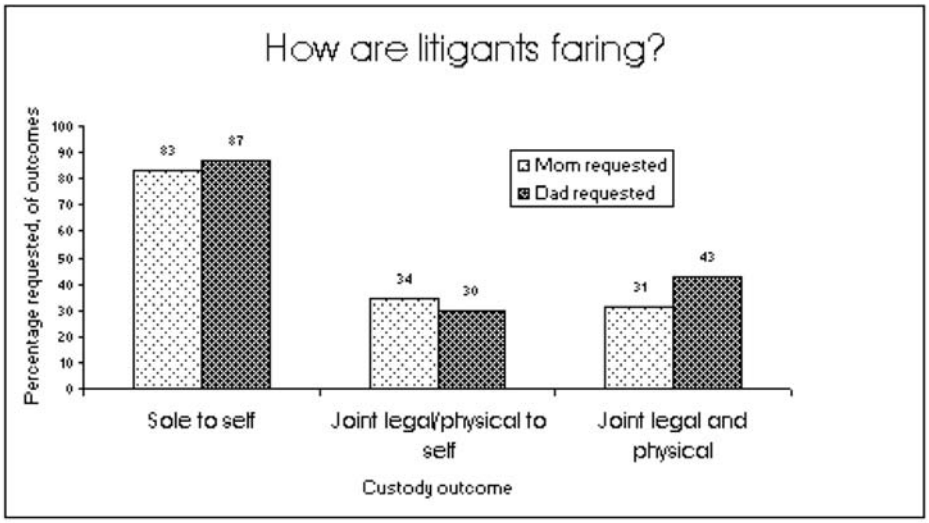
Another way of looking at these outcomes is to combine similar categories. Figure II combines all the categories related to joint custody: joint legal custody with physical to mother, joint legal custody with physical to father, and joint legal and physical custody. Some form of joint custody is the outcome in 48 percent of the cases. The combined cases in which the award was sole custody to the mother or sole custody to the father were 45 percent of all cases. In other words, parents are sharing some form of joint custody in Maryland in nearly half the cases, and are sharing at least the decision-making portion of custody in nearly half the cases as well.

FIGURE III



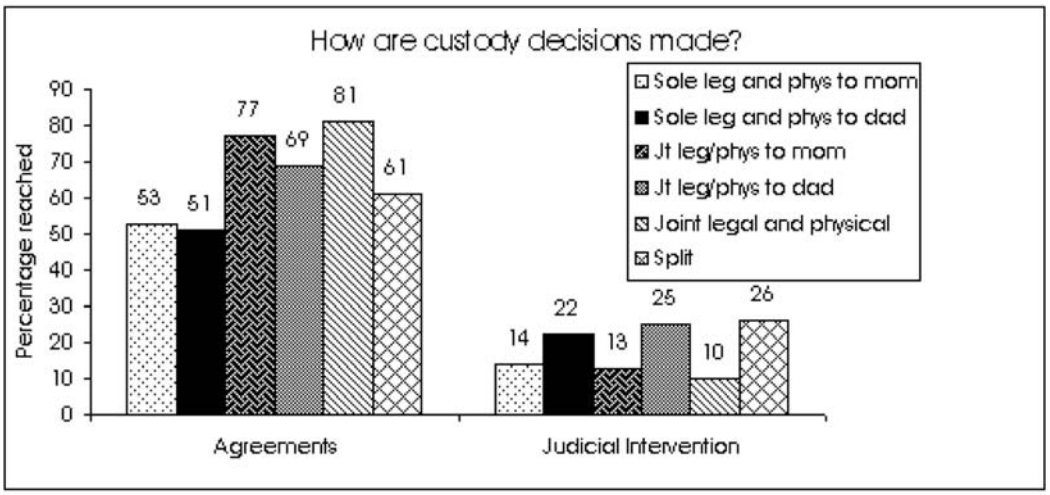
The breakdown of custody outcomes is best understood as reflecting the standard determining custody, which is the "best interests of the child" standard. One of the factors used to determine "best interests" is the length of time the child has been separated from the parent who is seeking custody. Our research instrument was therefore designed to capture information about where the children were living at the time the litigation was filed. The data (Figure III) show that in 70 percent of the cases, the children were living with the mother at the time the case was filed. In 11 percent, they were living with the father, and in seven percent of the cases the children were splitting their time between the parents. (In 12 percent of the cases, data were not available or the living situation was unclear.)

FIGURE IV



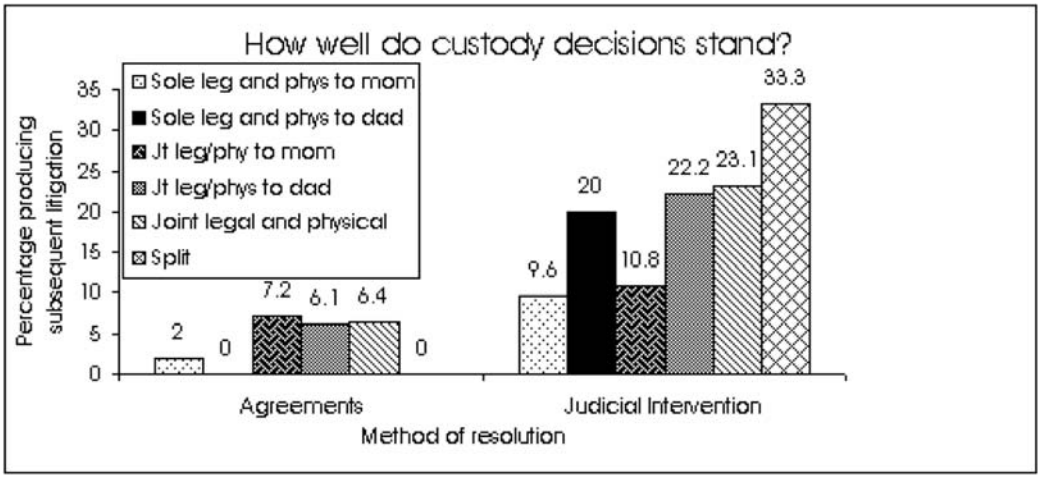
The next question was how the custody outcomes compared to the outcome sought by each litigant. In Figure IV, the outcome (sole custody, joint legal custody with sole physical custody, or joint legal and physical custody) is across the bottom. The chart shows, for example, that where the father asked for sole custody at the beginning of the litigation, he received it in 60 cases, or 87 percent of the cases in which he requested it. When the woman asked for sole custody at the time of filing, which occurred in 386 cases, she received it in 319 (83 percent). There were 289 cases in which the decision was joint legal custody with the mother getting physical custody, which was the outcome requested only 99 times (or 34 percent of the cases); the father had requested joint legal custody with sole physical custody in 71 cases but received it in 21 (or 30 percent of the cases).

FIGURE V



There are many points in a custody case at which the decision about who will have what kind of custody is made, and the study tracked where in the process the custody outcome was resolved and whether the issue was resolved through an agreement of the parties or through judicial intervention. The "agreement" category includes complaint settlement agreements, agreements in the answer, mediated consent and pretrial hearing and property or marital settlement agreements. The "judicial intervention" category includes those cases where custody was contested and a judge made the determination, as well as cases where an agreement was reached during trial. For purposes of this analysis we decided that an agreement reached during trial would be considered to have been reached because of some type of judicial intervention. As Figure V indicates, every type of custody outcome was more frequently reached through agreement of the parties than through judicial intervention.

FIGURE VI



We also tracked post-judgment litigation to see whether the case files indicated that subsequent litigation was filed, on what issue it was filed, and by whom. With that information in hand we compared the cases where subsequent litigation was filed on the issue of custody. Figure VI shows that where the custody matter is resolved through judicial intervention, at least twice as much subsequent litigation results than is the situation when the matter is resolved through agreement of the parties. Split custody generates the most litigation when it is resolved by judicial intervention and none at all when resolved through an agreement. Sole custody to the father generated no litigation at all when it was reached through an agreement but 20 percent of such cases generated litigation when the decision was made by a judge.

FIGURE VII

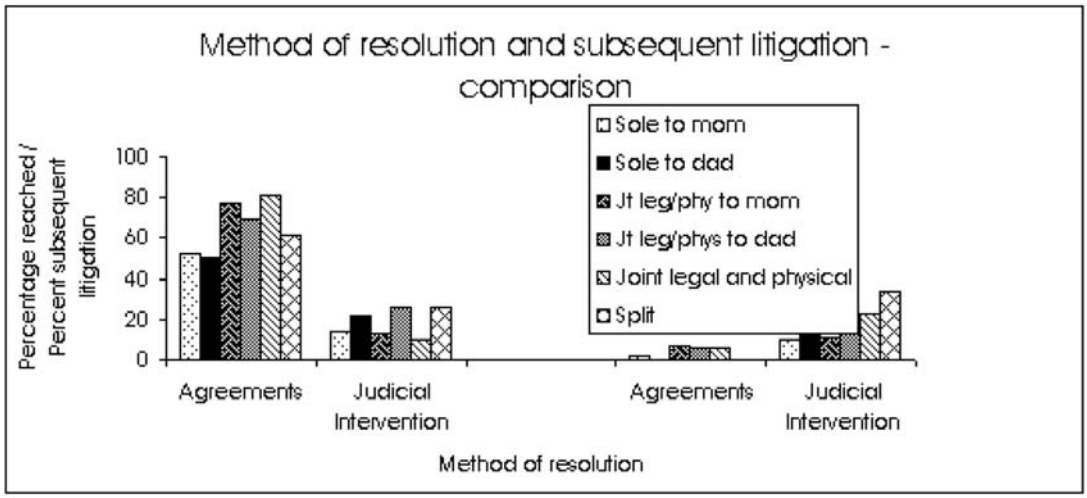
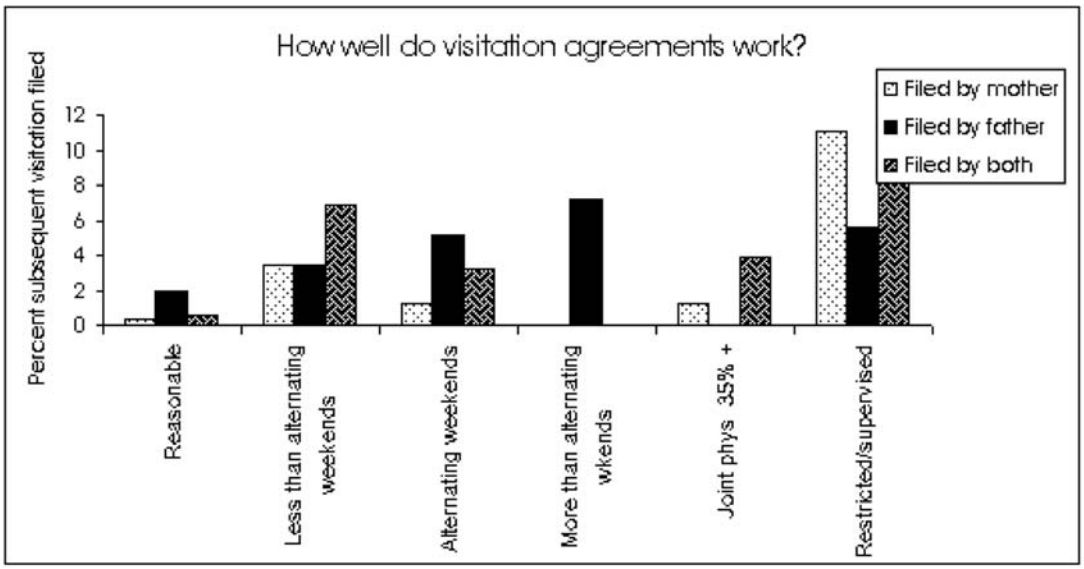


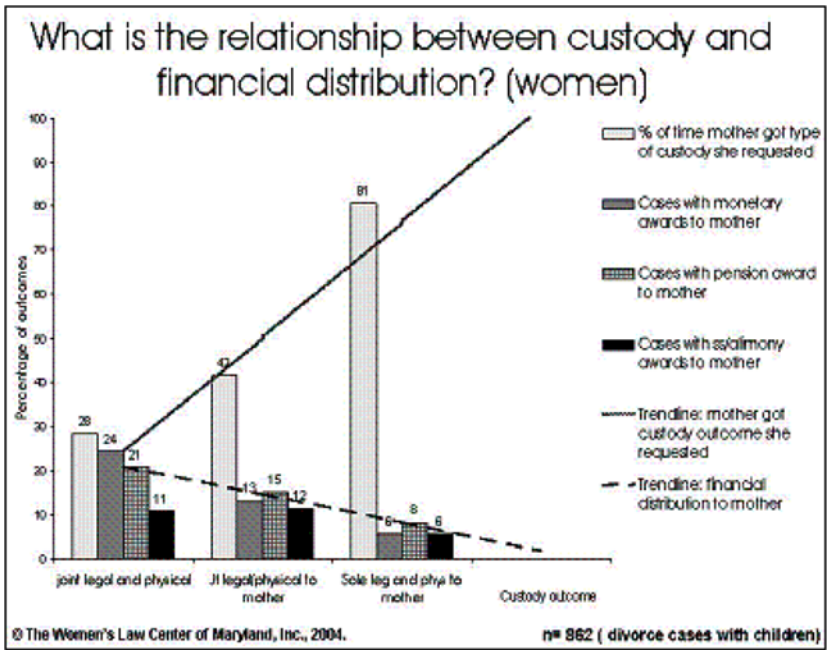
Figure VII demonstrates that the parties go back to court twice as often when custody is resolved through judicial intervention as they do if they agree on the outcome by themselves. The data support arguments in favor of mediation and other forms of appropriate dispute resolution as methods of reducing the emotional and financial costs of litigation. We also tracked all the possible types of visitation arrangements: reasonable, less than alternating weekends, alternating weekends, more than alternating weekends, 35 percent or more, and restricted and enforced supervised. We then investigated the amount of subsequent litigation each of those outcomes produced. Figure VIII indicates that mothers filed the most litigation when the arrangement was restricted or supervised and none when the arrangement was more than alternating weekends. Fathers filed the most litigation when the arrangement was more than alternating weekends and none when the arrangement was 35 percent or more.

FIGURE VIII



Both parties filed litigation when visitation was restricted or supervised. One of the research questions that brought together the projects on custody and divorce was whether there is any relationship between the type of custody outcome and the financial distribution in divorce cases, which for this purpose means alimony, monetary awards and shares of pension or retirement awarded to either party.

FIGURE IX

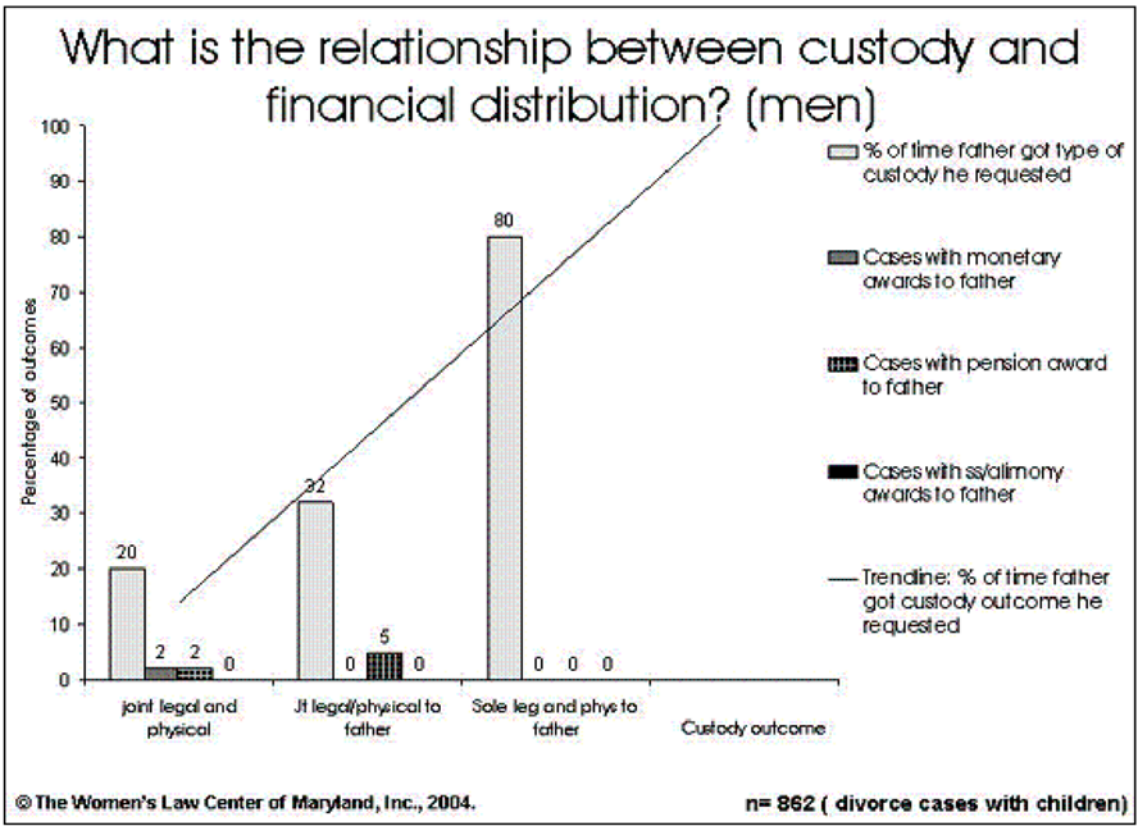


55% of the divorcing families in the study were couples with children, so the impact on the children from the division of assets and other property was substantial. The complete report contains all our findings relating to divorce and financial distribution; today I will look only at the custody aspect.

As indicated earlier, we analyzed the relationship between the type of custody outcome and the distribution of financial assets. Figure IX first tracks three of the custody outcomes for mothers: sole custody to the mother, joint legal custody with physical custody to the mother, and joint legal and physical custody. The three outcomes represent a range in the amount of time and decision-making power given to the mother. Figure IX then plots the amount of financial distribution for each outcome.

What Figure IX indicates is that as the financial awards to the mother go up, the amount of time and decision-making responsibility allotted to her go down. Put another way, the outcome that allows for the most involvement of the mother results in the smallest financial awards: the more custody the women get, the less money they receive.

FIGURE X



As Figure X shows, we conducted the same analysis for men, again looking at three custody outcomes: sole custody to the father, joint legal custody with physical custody to the father,

and joint legal and physical custody to the father. There is again a range in the amount of time and decision-making power that a father might have. We then plotted monetary awards and pension or retirement awards to the father. The data clearly show that the experience for men is much different from that for women.

FIGURE XI

	Custody requested by				Alimony awarded to				Monetary award given to				Share of pension awarded to				Total
Custody outcome	**Mother**		**Father**		**Mother**		**Father**		**Mother**		**Father**		**Mother**		**Father**		
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n
Mothers																	
Sole to mother	260	81	18	5.6	18	5.6	na	--	18	5.6	3	1	26	8.1	3	1	322
Joint leg/ phys to mother	105	42	28	11	29	12	na	--	33	13	9	4	38	15	6	2	253
Joint leg/ physical	34	28	24	20	13	11	na	--	29	24	2	2	25	21	2	2	120
Fathers																	
Sole to father	8	20	32	80	0	--	na	--	2	5	0	--	1	2.5	0	--	40
Joint leg/phys to father	16	28	18	32	6	11	na	--	14	25	0	--	12	21	3	5	57
Joint leg/ physical	34	28	24	20	13	11	na	--	29	24	2	2	25	21	2	2	120

FIGURE XII

Other relevant data

Mediation

cases mediated	7%
divorce cases mediated	6%
cases with children mediated	11%

Child support

awarded to mother	60%
awarded to father	7%

Child support amount reached

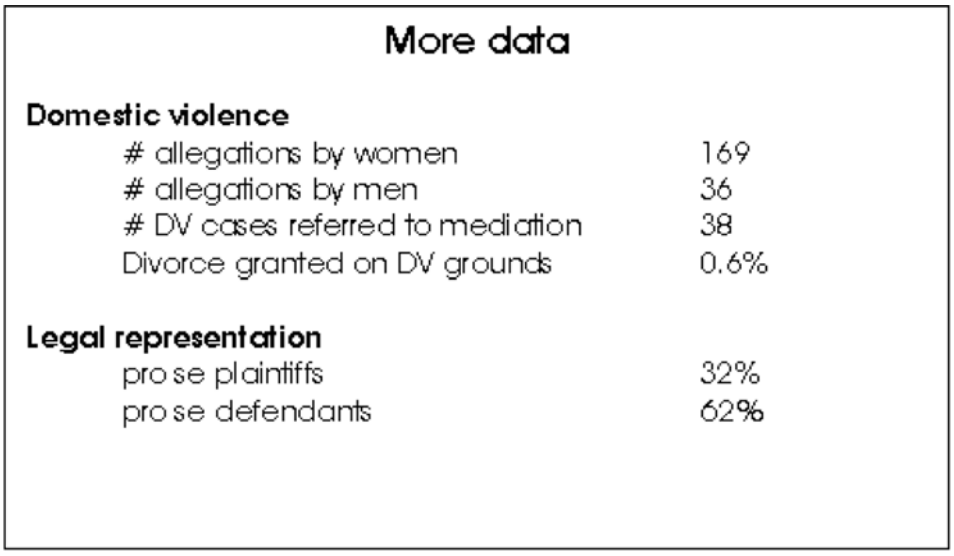
by consent to guidelines	38%
set by judge at guidelines	14%
other methods of resolution	58%

A number of other intriguing statistics emerged from the study and are reflected in Figure XII. Seven percent of the cases studied, for example, were mediated: six percent of the divorce cases and 11 percent of the cases with children.

Child support was awarded to mothers 60 percent of the time and to fathers seven percent of the time. The parties consenting to the guidelines in 38 percent of the cases, set by the judge in 14 percent,

---

FIGURE XIII



and resolved through some other method in 58 percent determined the child support amount. (We could not obtain information in the remaining cases.) In 169 cases there were allegations by women of domestic violence. As Figure XIII indicates, there were 36 cases in which men alleged domestic violence and 38 cases with allegations of domestic violence that were referred to mediation. Divorce was granted on domestic violence or cruel treatment grounds in 0.6 percent of the cases. It should be remembered that our study began in fiscal year 1999, meaning July 1, 1998, and that the cruel treatment ground was implemented as a grounds for divorce only in 1998.

Finally, we looked at legal representation of the parties, finding that 32 percent of the plaintiffs and 62 percent of the defendants were *pro se*.

Pamela Cardullo Ortiz

Current Resources and Practices in Maryland's Circuit Courts

The Department of Family Administration, one of several departments within the Administrative Office of the Courts, supports the work of the judiciary by shepherding the development of the state's family justice system. We work with each of our circuit courts to

develop healthy Family Divisions and what we call Family Services Programs in those jurisdictions that are not large enough to accommodate a Family Division. We support the jurisdictions in the Family Divisions through grants as well as a variety of programs that enhance the family justice system, serving as a resource center on family law and working in various ways to improve family justice in Maryland.

The process that Chief Judge Bell described culminated in 1998 with the passage of Maryland Rule 16-204, which established Family Divisions in our five largest jurisdictions (essentially, those with seven or more judges). The Rule also outlined the resources and services that we wanted to make available to families in the state as they moved through the litigation process.

Rule 16-204 provided for a key point person, a family support service coordinator, in every jurisdiction. It took roughly three years to ensure that we had coordinators in every jurisdiction, which has enabled us to ensure that we are reaching every citizen in the state. The coordinators, who may be Family Division administrators in larger jurisdictions, bring ideas back to the department and constitute an effective statewide team.

We began to implement Rule 16-204 in Fiscal Year 1999 with funding from the General Assembly to provide the services, which the rule required, to the extent that funding was available. At that time we had a statewide budget of $4.5 million. Many jurisdictions were already providing some services, such as mediation in child access cases and co-parenting education, that were outlined in the rule, and the funding was designed only to help create such services and resources where they did not already exist.

It takes a long time to weave a tapestry of resources across the state but now, five years later, we have coordinators and a fairly uniform spectrum of services in every jurisdiction. The cases that fall within the jurisdiction of Family Divisions, including both juvenile and domestic matters, represent a substantial portion of the Circuit Court caseload—between 46 and 48 percent. In fiscal year 2004 the funding for the effort has grown to $9.4 million. Unfortunately, we cannot expect it to grow at that rate in the future and yet we want to make sure that our Family Court reform efforts continue to progress. One way to do that is to look at what are we doing now and at what remains to be done.

One of the documents we have produced as part of that examination is the Performance Standards and Measures for Maryland's Family Divisions. The Judiciary's Ad Hoc Committee on the Implementation of Family Divisions worked with Barbara Babb and her colleagues at the University of Baltimore, at what is now the Center on Families, Children & the Courts, to develop a set of performance standards and measures that would enable us to identify our goals and achievements. We utilize the standards in preparing an annual report that includes, e.g., data about *pro se* appearances. We measure that by

looking at several stages of litigation, because we know the number changes at different stages of litigation. We also gather information about the population that comes to our *pro se* assistance projects and our co-parenting classes.

The Performance Standards and Measures are designed to help us provide a fair and efficient forum in which to resolve systemic problems. Maryland's Family Court reform was inspired in part by a nationwide movement that includes the development of problem-solving courts—courts that facilitate decision-making. A problem-solving court brings the parties together and, while it does not necessarily make the decision itself, it makes certain that the decision is a good one. The main goal of our case management strategies is to promote families as the primary decision makers for themselves and their children. We also make an effort to educate parents so they are child-focused as they make decisions for their families.

In addition, we want to insure that when the court is called upon to make decisions, it has complete information. We want to provide healthy options for parent-child access and to help make certain that families have solid support networks and remain stable over time.

Over the last few years I have come to realize that our work falls into three areas. I had thought originally that in establishing Family Divisions we were going to reorient our case management practices so as to better facilitate decision-making, and that we were then going to build a spectrum of services. I have since come to realize that those efforts alone are limited and that reform efforts also have to focus on the quality of custody decision-making—what happens in the courtroom or at the settlement table. You can provide families with services and manage a case until it gets into the courtroom or until the parties are sitting down in a mediation session or elsewhere to discuss the issues. When the actual decision is made either by the judge or by the parties, however, you must make certain as well that attention is being paid to the law and the institutional setting, both of which affect the quality of the decision.

We have done a number of things in the area of case management over the last five years. They include reorienting case management practices to intervene with families very early on, because many of the issues that families address in these cases are urgent and delay can be a destabilizing factor for children as well as parents. We have, as I mentioned, promoted parents as decision-makers through co-parenting education and promoting alternative or appropriate dispute resolution. We have tried to emphasize problem solving rather than litigation. Recently, the judiciary developed a series of time standards to help us evaluate how well we are moving cases, and we have completed a second round of assessments.

FIGURE XIV

We have developed a broad spectrum of services that fall into five categories. One is alternative dispute resolution programs, including child access mediation, marital property mediation programs, pretrial conferences, family conferences, and facilitative programs in which volunteer trainees resolve cases with the parties on the day of trial, as well as working with parties in chambers and with judges. The second is evaluative services such as home studies, custody evaluations, mental health evaluations and other services that give both the parties and the court information that will have an effect on settlement.

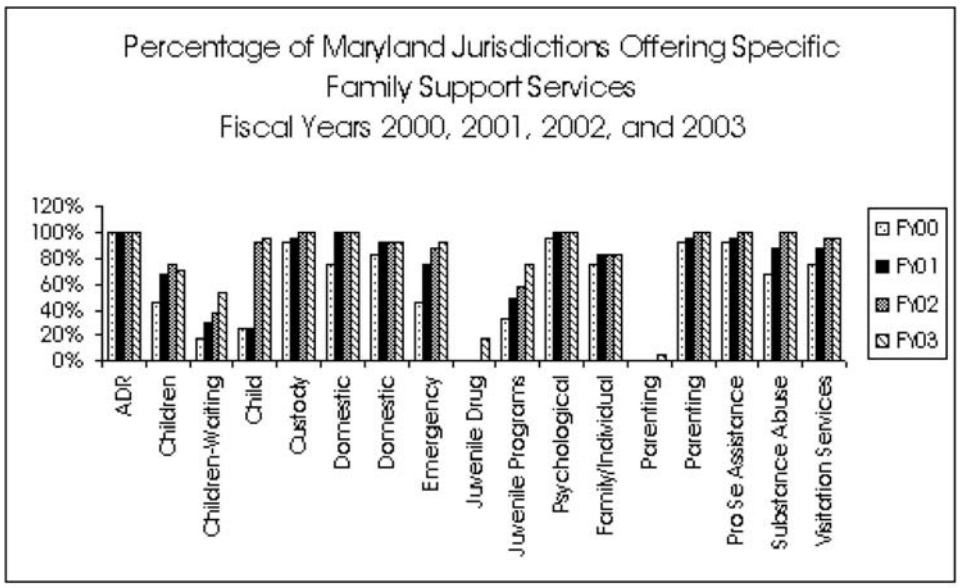
Third, we provide educational and therapeutic services by referring people to co-parenting education, offering psycho-educational programs for children in many jurisdictions, making referrals for individual groups and family therapy in these cases where the court feels that to be appropriate, and being a connection point for families to resources in the communities.

Fourth, we offer safety and protection services because we know that many of the individuals who come to us are at risk. We have been able to do this in part through the Special Project Grant funding that we provide to operate programs, as well as through Protective Order Advocacy Representation Projects and other programs that provide victims of family violence with access to the justice system and that address safety issues.

We take very seriously the need to provide access to the family justice system. We make certain that people have access through our *pro se* assistance projects, which operate in every jurisdiction in the state, and through the provision of online forums and other services that make the system easier to navigate.

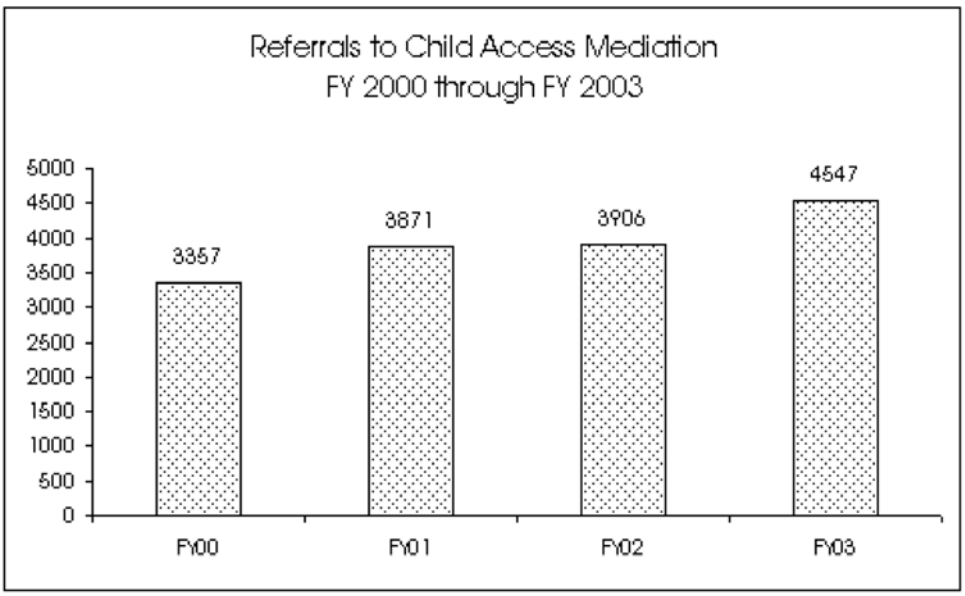
Figure XV shows how the spectrum of family support services has grown in Maryland jurisdictions over the last few years, from fiscal year 2000 through fiscal year 2003.

FIGURE XV



Many types of services, including *pro se* assistance and referrals for co-parenting, are uniformly available throughout the state. We have been careful to work closely and integrate ourselves with the network of resources already available in each community, as our job is not to replicate existing services but to make ourselves part of the spectrum of resources available to families in each jurisdiction.

FIGURE XVI



One of our key services is child access mediation. Roughly 4,500 cases—out of the approximately 129,000 cases that reach the Family Divisions each year—were referred for child access mediation throughout the state in fiscal year 2003.

FIGURE XVII

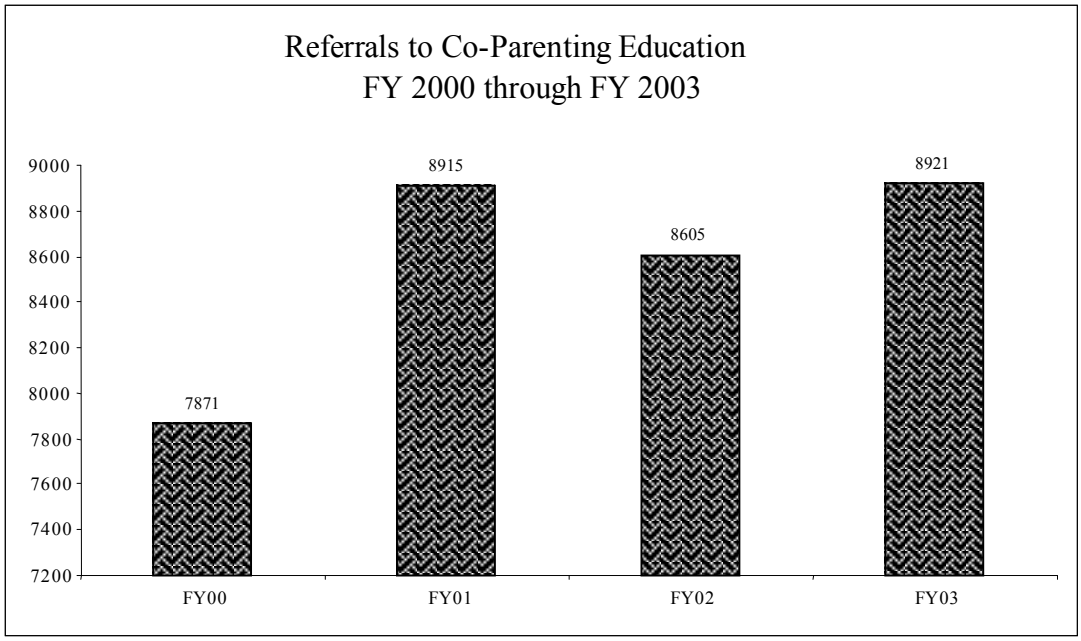
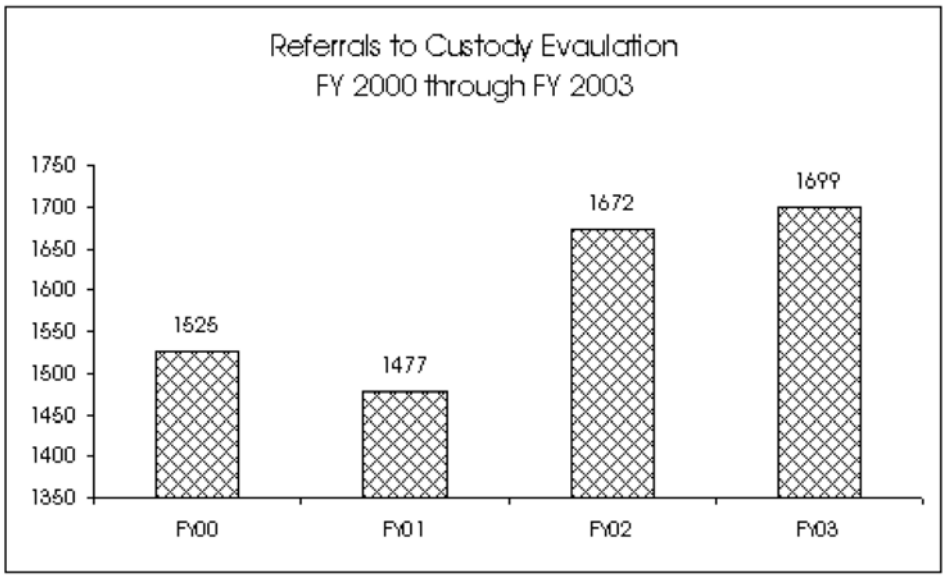
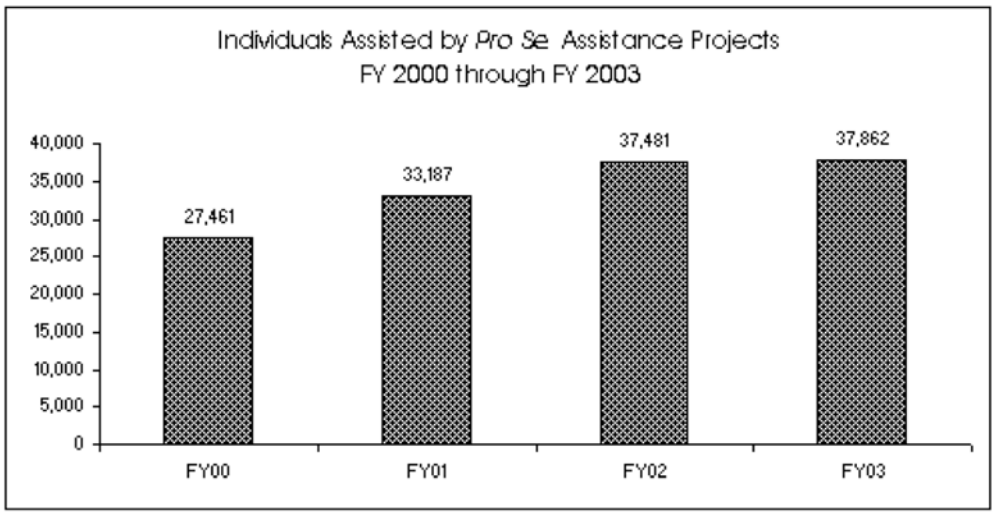


FIGURE XVIII



As Figure XVII indicates, about 8,900 cases were referred to co-parenting in both Fiscal Year 2001 and Fiscal Year 2003 (the dip in Fiscal Year 2002 appears to be the result of a data capturing problem). In fiscal 2003 about 1,700 cases, typically high-conflict cases were referred for custody evaluations. But the service that is in highest demand is *pro se* assistance projects. These are the free, walk-in services offered in courthouses. About half of them do income screening, and our data indicate that for the most part the programs reach a very low-income population.

FIGURE XIX



In Fiscal Year 2003, 37,862 people received assistance, some by telephone but the overwhelming majority through walk-in legal services.

The quality of decisions made for children is dependent on many factors such as parent education, which in this context means how well the parents understand the options for them and their children. Other factors include the process by which cases are assigned to judges and the knowledge of the judge making the decision. Before we can assess the effectiveness of the system we must ask, How are judges educated? What is the statutory framework underlying a judge's decision or, if the decision is made by the parties, what is the statutory framework that informs them as they negotiate? What case management practices have been implemented? What evaluative information is available to the judge or to the parties in their decision-making? Counsel informs the decisions, especially those made by agreement; what is counsel's perspective? All of these are factors that we will continue to consider and monitor.

Discussion

Jane Murphy: There is a great deal of both judicial and practitioner experience here and so the broad question with which I would like to begin the discussion is: based on your experience and what has been said here today, what do you think we should be doing in Maryland to improve custody decision-making? To start us off with a judicial perspective, I will call on Judge Albert Matricciani, who is both one of Judge Carrion's predecessors as head of the Family Division and one of the people who encouraged the law schools of the Universities of Maryland and Baltimore to organize symposia such as this.

Judge Albert Matricciani: The Family Division of the Circuit Court in Baltimore City currently has a small project to track cases. These are essentially divorce cases with a child custody component, and the purpose of tracking them is to measure the cases that go through the process on a regular basis against others where we are requiring an ALI *Principles* parenting agreement to be reached before the case can go to final resolution. Roughly 45 cases on each side are under study at the moment. Once we have the results we can assess the impact that parenting plans can have on the adjudicatory process. I hope it is a positive one, because the ALI *Principles* hold the promise of eliminating some of the bitterness and emotion from cases that have too frequently resembled a competition among bitter adults to win the prize of getting the children while inflicting pain and guilt on the losing party. I hope that in the future such cases will involve two reasonable adults who may still be bitter at the end but what they win is the right to perform responsibilities related to the needs of their children.

Jane Murphy: Let us turn to Chris Nicholson, an experienced family law practitioner who may have a different perspective.

Christopher Nicholson: I am pleased that one focus of the ALI *Principles* is how we will resolve future disputes without having to go back to court for a judicial decision. There is some discussion in the *Principles* about non-final decision-making through mediation or what some jurisdictions call parent coordinators. I have been putting "issue resolution meetings" into some agreements, meaning a mechanism that, if the parties agree, can impose a temporary solution before they return to court. Whether we call them parent coordinators or have the parents participate in issue resolution meetings, the concept is to have independent third parties assist the parties with a prompt non-judicial resolution of issues regarding their children.

Jane Murphy: Let us hear from Judge Marcella Holland, Judge Carrion's immediate predecessor as the head of our Family Division, now the Administrative Judge-in-Charge of the Circuit Court for Baltimore City.

Judge Marcella Holland: A decision-maker, whether the judge or the parents, cannot make a quality decision without good information. We need to know the child, what is happening in the child's life, what the child is like, what is on the

child's mind. That leads me to the child's counsel issue because it seems to me that parents and judges need feedback from a third-party. We do evaluations but we need children's counsels and guardians *ad litem* who can get to know the child, spend quality time with him or her, and give the resultant information to the parents and to the court. We need someone who can find out what is really on the children's minds. How, for example, do they feel about switching households every week or every month? How do they feel about summer vacation in situations where they want to go off to summer camp but the court order says they have to live with mom or with dad?

Dorothy J. Lenning, Director, House of Ruth Maryland Domestic Violence Legal Clinic: When the Custody Subcommittee first met, back when Judge Matricciani was chairing it, I was such a naysayer to this that he finally told me I could just write the minority report, so I am here to present the minority report.

My big concern with the ALI *Principles* is that there is a presumption of joint custody. There is reference to screening out of domestic violence cases, but we already screen them out for mediation and we do not do a very good job of it. We have screeners who do not really believe these cases should be screened out and other screeners who are not well trained to screen them out. We have judges and masters who believe that such cases can be mediated. I am therefore concerned that unless we put far more resources and training into the process we will end up ordering joint custody in many cases where there is domestic violence.

We do want to avoid custody blackmail. We all know that people sometimes ask for custody when what they really want is to pay less money to the spouse. Instead of making custody the determinant of monetary decisions, I would suggest that we make the financial part more determined and formulaic so that we have alimony guidelines and rules on how to divide marital property. If financial distribution was an absolute, the people who would ask for custody would be the ones who truly wanted it rather than those who simply wanted to trade on it.

In discussing the approximation standard the *Principles* refers to a desire to eliminate judicial bias. If we are trying to reduce judicial bias, then we ought to attack it as judicial bias. Perhaps we need more training for judges and more workshops on diversity and how families are actually organized today. I think judges come up with a reason to grant custody to the person whom they favor, hiding their biases. We have to attack the biases at the fundamental level.

Question: Ms. Ortiz, is it true that the percentage of family cases in suburban counties is much higher than the statewide percentage? Is there a correlation? Is it also the case that if there is more than one judge in the county there may be an overworked judge working on family law cases and an underworked judge working on other cases?

Pamela Cardullo Ortiz: I cannot answer your question without going back to the data for individual cases. I look at the data when we award grants to make sure that jurisdictions that seem to be under-funded for their family caseload can grow a little faster than those that are well funded. I have always thought that one advantage of our smaller jurisdictions, especially our single-judge jurisdictions, is that those judges have the comprehensive perspective we hoped all our Family Division judges would have.

Robert Bell: If a jurisdiction lacks a Family Division, the Administrative Judge has to assign the cases among his or her available judges in such a way as to get the work done, which means it is unlikely that a particular judge will be assigned only to one particular kind of case. The cases will be distributed among the judges in such a way that on one day they may be handling family cases, juvenile cases, criminal cases and civil cases, all of them on a docket that is not differentiated on the basis of subject matter. I therefore doubt that there would be a situation in those jurisdictions of a particular judge who handles only one kind of case and is therefore overworked while another judge handles another type of case and is therefore underworked.

In Baltimore City, Anne Arundel, Montgomery, Prince George's and Baltimore Counties, Family Divisions and judges are assigned to work those kinds of cases for a period of something like 18 months, 75% of the time. Those judges may find themselves working very hard in such cases and may have more burnout than judges who are not handling family cases.

Marilyn Bartlett: I am in domestic practice in Howard County. I see two major impediments to the ALI suggestions being successfully implemented in this state. The first is that there are many matrimonial bar attorneys who reject child-focused decision-making. The second has to do with the structure of our child support guidelines. The amount of support payable drops off radically once one goes beyond the magic number of 128 nights, which generates a great deal of litigation.

Bruce Copeland: As a psychologist who has worked as a mediator, parent coordinator, and custody evaluator, I consider the approximation rule not to be a child-oriented way of determining custodial allocation. My practice deals with high-conflict families who end up litigating, and the approximation rule seems too simplistic to resolve those cases.

There are a number of situations in which the approximation rule will not work well. Consider, for example, parents whose parenting responsibilities differ from child to child, or from point A in history to point B in history. Can we assume that parenting responsibility at different points of time is equal? So many cases are now resolved through alternative dispute resolution that the ones which do end up in litigation are enormously complex. There are allegations of domestic violence on one hand and allegations of access denial or alienation on the other. There are

sexual abuse allegations. These demand a very textured look by the courts; they are the kinds of cases for which simplistic rules simply do not work.

I think the approximation rule also ignores some of the child development research, which, for example, looks not simply at parenting but at the quality of parenting. Not all parental attachments are equal.

Patrick W. Dragga, practitioner in Rockville**:** Would it be possible to require judges, particularly those in the larger counties, to go to the Judicial Institutes for training when they rotate into the Family Division?

Robert Bell: We already do.

Patrick Dragga: Thank you. On another subject, perhaps the panel members can tell us where they stand on the time-sharing aspect of the approximation rule. Bruce Copeland indicated why some of us think it will not work. If you support it, why do you see it as an alternative to a much broader "best interests" analysis? How and why is it better?

Jana Singer: I think it has a lot of promise when it is coupled with a structured decision-making process that favors parents as the primary decision-makers. It gives parents a basis from which to operate. They will have to examine what they did in the past and how they are going to move from that to continuing to meet their children's needs in the future. There are probably cases in which parents will decide that many of their past practices will have to be changed along with the transformation of the family structure, but it does give them a common point from which to begin. It avoids a process that some people call custody blackmail and that I view as an understandable process in a situation where motives are mixed and people are negotiating about children and money at the same time. The more ambiguous and less determinate the standards, the greater the incentives are to engage in strategic bargaining. A standard that increases predictability while respecting the choices individual families have made would have a beneficial effect on the process of negotiating about responsibility for children.

When people talk about the approximation standard they look at it in isolation from the presumption of some form of continuing joint decision-making authority. I think the standard recognizes that both parents will continue to be involved in the child's life, and that arrangements for where the child will spend time ought to evolve from the past arrangements. If your focus is on what the child needs, then what the child has been doing is a good starting point. That is why I believe not that the standard would be perfect but that it would be an improvement over the completely open-ended "best interests" standard and other alternatives that have been proposed.

Jane Murphy: I would just add that the approximation standard may be particularly appropriate in the many cases where there are no resources for lawyers, much less experts like Dr. Copeland.

Pamela Cardullo Ortiz: I am looking at statutory reform as an option, but I want to hear from you whether we have done enough and whether we are having the impact we want. It is legitimate to suggest that many factors affect the quality of decisions and that perhaps we do not need statutory reform. Do you think the "best interests" standard, which provides judges with so much discretion, is working well enough? Do you think it needs to be rethought?

Ria P. Rochvarg: I am a private attorney in Howard County who does mediation and also represents children as a guardian *ad litem* (GAL). I would like to see more parenting coordination because the problem frequently is not the order but its implementation and the way in which the parents do or do not relate. There a parenting coordinator would be extremely useful as someone to whom the parties could go and say things like, "Here is what we're having a communication problem with." "She's always late." "He's hassling me about this." The bottom line is finding ways to make the transitions smoother for children, and parents cannot always do that without outside assistance.

Pamela Cardullo Ortiz: We hope to increase the number of our parenting coordination programs in the future. Only a few jurisdictions have begun programs or have begun to train professionals to provide parent coordination. It is one of the services that will target the needs of very high conflict families. While we must also direct our resources to the broad range of families, we know that it is an important area.

Comment: I have served as a GAL and consider them wonderful resources but the expense to the practitioner that is involved, along with the possibility of being sued when the case is completed, makes me unwilling to serve as such in the future.

Question: I am a private practitioner in Montgomery County. I was very interested in the statistical data on *pro se*'s—32 percent of plaintiffs and 62 percent of defendants were *pro se*—and would like to know whether the *pro se* cases covered were only those in which there was domestic violence.

Rebecca Saybolt Bainum: The statistics are for all of our cases. We tracked whether the person was represented through the entire case or a certain portion of the case, and these numbers reflect people who were not represented during any portion of this case.

Question: I find dealing with *pro se*'s to be a problem when I am in the courtroom and the judge properly attempts to protect the other side, which means the matter takes a very long time with the judge's explanations. In addition, a number of my colleagues will not deal with *pro se*'s except in writing because of problems, for example, with settlement conferences. When both parties are represented by counsel, they may be outside the chambers while the settlement discussion is taking place with the judge. If someone is *pro se* and there is a lawyer on the other

side, both clients must be present for all the discussions. We in the Bar could use some education about how to deal with situations when there is a *pro se* on the other side.

Pamela Cardullo Ortiz: For those who are interested in the issue, our annual report has a bar chart at the top of page 31 that reflects *pro se* appearances in domestic litigation for Fiscal Year 2003, showing the percentage of cases at different stages of litigation where there was full representation, where there was one party *pro se* and where there were two or more parties *pro se*, and it reflects a regional variation. In Baltimore City there is something like 82 percent *pro se* litigants at the time of the answer and a large percentage at the time of trial.

Christopher Panos: I work as the Family Division Special Master in the Circuit Court for Baltimore City. Our case data confirm that, in four-fifths of our cases, at least one party appears *pro se*. This, in part, leads me to believe the ALI *Principles* fall into a trap of viewing "the family" in the abstract. I have recently observed *pro se* litigants utilizing the parenting plan in resolving custody cases and I have come to believe that educating parents in advance of their participating in the parenting plan process will yield better long-term outcomes for families. Indeed, high-conflict parenting disputes are one of many social ills that are better addressed by an educational process for parents that is utilized prior to decision-making by the court. Typically, we have observed that the parents who participate in our shared-parenting program are better prepared to sit down and discuss what the next step should be, as to the parenting division of labor process, regardless of whether that discourse is direct or through their counsel.

I note as well that the way decision-making and parenting responsibilities were allocated in the past does not necessarily tell us what should happen in the future, because it may not have been working well in the past. With regard to families of two or more children, it might be appropriate to focus on the strengths of each parent as they relate to what one or the other has done that worked well for a particular child, and allocate decision-making and parental responsibility accordingly.

In Baltimore City, we see many cases involving life issues of substance and alcohol abuse and domestic violence. As we know, these ills are pervasive in every community, rural or urban, and know no socio-economic bounds. One of the things I would hope to see in the future would be more judges, addressing the issue of child support within the context of domestic violence Final Protective Order hearings, utilizing the child support guidelines software available on their courtroom bench laptop computers. Provided the court has credible evidence regarding the parties' respective gross incomes as well as health insurance, tuition and child care expenses, the child support issue can be resolved with relative ease and speed, rendering the Final Protective Order more comprehensive as to the legal issues that impact the family.

Powel Welliver: I am the Family Law Administrator for Carroll County as well as an attorney and mediator. I am also a strong believer in the use of language to deal with social change and I would very much like to see "custody" erased from the vocabulary. I like the idea of a parenting plan as a way to force some serious thought about parental responsibility. Right now it is very easy to check off the box requesting custody, because the important questions are not being asked. We ask for seven pages' worth of financial information but we ask no questions about custody decisions before parents walk into the courtroom. People who have lived in the same household may nonetheless have very different perceptions about what took place there, so asking a couple in litigation about their past history on child care or child rearing simply generates litigation.

I agree with Master Panos that the education of the parties is key, and one way to educate them is to start asking the questions before they walk into the courtroom. That is what the parenting plan does. Getting rid of the word "custody" and thinking instead about the allocation of parental responsibility is a fine idea, because that is what a parent is: someone who has been given responsibilities.

We should come up with a questionnaire that parents must fill in before they reach the courtroom. As a mediator, I believe in asking each party what the strength of the other party is so they can both start acknowledging those strengths and looking at the asset building qualities that parents should give their children. There is already a great deal of research about the assets that a strong child has. Why aren't we bringing that into the discussion rather than focusing on the negatives of the parents? Why can't we focus on what strengths each parent can bring to this child so the child can be stronger, not weaker, because of this process?

What we see in such situations is a family that has to restructure—a family where something was wrong in the past. What can we do to change it into something more positive? Our presumption should not be that we are trying to replicate the past but, on the contrary, that something needs to change. What is it? What can we do that is different and better?

Kathy Coleman, Circuit Court, Baltimore City**:** I come from a mental health background as a social service coordinator and I echo the positive comments about the parenting coordinator. My experience in Baltimore City, however, is that our clients cannot afford it, and so I would like to see more subsidized programs in Baltimore City.

I have experiences with many clients who are violently angry but who do not meet the definition of a domestic batterer. When I call the programs in Baltimore City, the response is that since the anger is not directed toward an intimate partner, the clients cannot be accepted by these programs. These are nonetheless very angry, frustrated, hurting people. I would like to see a

collaborative or subsidized program with a requirement that such people go through it.

Louise Phipps Senft, Baltimore Mediation Center**:** Jana's beautiful summary of the ALI suggestions indicates that they are quite profound, even though it probably will take at least ten years for them to begin to make an impact. The ALI *Principles* very much mirror what low- and medium-conflict families are doing in mediation. High-conflict cases are different, but the *Principles* has a great deal of potential for the majority of couples. We must be certain not to gloss over the exceptions in a footnote, but it is encouraging that we have such a good set of guidelines for those situations in which low- and medium-conflict families are facing dissolution.