
High Conflict Divorce or Stalking by Way of Family Court? The Empowerment of a Wealthy Abuser in Family Court Litigation: Linda v. Lyle - A Case Study

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Author Notes

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Introduction

Virtually all coverage of high-conflict divorce assumes both parents are the source of the conflict.¹ Blame is assigned solely and equally to the parents in essentially all cases without much analysis. However, if one party is abusive and sufficiently wealthy to fund on-going litigation, the Domestic Court may be ideally suited to the spurned mate's agenda.² The systematic assertion of 'dominion and control' via Family Court litigation would superficially mimic a high-conflict divorce because there would be ongoing litigation.^{3 4} The interpretation is consistently that the parties cannot get along and they are using their children as pawns.⁵ A closer look shows high conflict divorce has

¹-See generally Thomas Schact, *Prevention Strategies to Protect Professionals and Families Involved in High Conflict Divorce*, 22 U. Ark. Little Rock L. Rev. 565 (2000); David Doolittle & Robin Deutsch, *Children and High Conflict Divorce: Theory, Research, and Intervention*, in *The Scientific Basis of Child Custody Decisions* 425 (Ed. Robert M. Galatzer-Levy & Louis Kraus, 1999); H. Patrick Stern, et al., *Battered Child Syndrome: Is It a Paradigm for a Child of Embattled Divorce?* 22 U. Ark. Little Rock L. Rev. 335 (2000).

²-See generally Merritt McKeon, *The Impact of Domestic Violence on Child Custody*, 19 Whittier L. Rev. 459 (1998); James Ptacek, *The Tactics and Strategies of Men Who Batter*, in *Violence Between Intimate Partners; Patterns, Causes, and Effects* 117 (Albert P. Cardarelli, Ed., 1997); Lenore E. Walker & J. ReReid Meloy, *Stalking and Domestic Violence*, in *The Psychology of Stalking: Clinical and Forensic Perspectives* 139-161 (J. ReReid Meloy, ed., 1998).

³-See Ptacek, *Supra* note 1 at 122. Noting the ritualized patterns in domestic violence. Arguably, Family Court litigation is as ritualized as organized religion.

⁴-See Walker & Meloy *Supra* note 2 at 156. (Citing David Sonkin, *Domestic Violence: The Perpetrator Assessment Handbook* (1997)) Citing frivolous litigation as a tactic in perpetrating abuse.

⁵-See Mary Curran-Downey, *Taking Tots Back Home*, *The San Diego Union-Tribune*, April 1, 1996 at B-1. Reporting about the District Attorney's Child Abduction Unit, but failed to mention the case was a domestic violence case. Mother was in compliance with the visitation order, and father refused to return the child. Mother did nothing wrong. But the report included this quote: "This isn't a case of whether or not the child is going to be murdered," said Ed Sousek, criminal investigator for the District Attorney's Office. "This is a battle between the parents, and the kids are the pawns." This analysis is flawed

features common to both domestic abuse relationships and the stalking behavior displayed by abandoned abusers.⁶ This fascinating case study illustrates how power is transferred from the abusive mate to the professionals, who are, apparently, also at risk to lose control.

This article will look at the possibility that some or all high-conflict divorces are actually the manifestation of stalking behaviors by wealthy domestic abusers. Part I will compare and contrast the research on batterers and stalkers to the literature on high-conflict divorce. In Part II, an actual high-conflict case will be described. While it is understood that "the plural of anecdote is not data,"⁷ the purpose of this short narrative is only to show that Family Court lends itself to use as a forum for post separation stalking. Part III will explore the lack of consumer protection. Part IV will offer a modest proposal that may discourage protracted Family Court litigation and call for studies that apply stalking and battering dynamics to high-conflict divorce so stalking by way of Family Court can be quantified and illuminated.

Definition of Terms

Westrup⁸ defines stalking as "one or more of a constellation of behaviors that (a) are directed repeatedly toward a specific individual (the target), (b) are experienced by the target as unwelcome and intrusive, and (c) are reported to trigger fear or concern in the target." Walker and Meloy⁹ define domestic violence as "an abuser's attempt to use physical, sexual or psychological force to take away a woman's power and control over her life." Arguably, the critical feature of domestic violence is the power differential in the relationship.¹⁰ Here, the term battering will be used to describe the tools used by batterers as they systematically seek power. Battering includes physical violence, sexual or psychological force, or any other force the batterer harnesses to maintain control. Doolittle and Deutsch¹¹ define high conflict divorce as those cases where the parents continue to litigate and do not reach a resolution of their conflict within 2 years.

because one party was not cooperative, and one party was cooperative. That does not describe a battle, which assumes equal culpability.

⁶Darrah Westrup, *Applying Functional Analysis to Stalking Behavior*, in *The Psychology of Stalking: Clinical and Forensic Perspectives* 276 (J. ReReid Meloy, ed., 1998).

⁷David Hyman, *Lies, Damned Lies, and Narratives*, 73 Ind. L. J. 797 (1998) (quoting Edith Greene, *A Love-Hate Relationship*, 18 Just. Sys. J. 99, 100 (1995) *emphasis original*).

⁸Westrup, *Supra* note 6 at 276.

⁹Walker & Meloy *Supra* note 2 at 139-159.

¹⁰Donald G. Dutton, *The Domestic Assault of Women; Psychological and Criminal Justice Perspectives* 190 (UBC Press, 1995).

¹¹Doolittle & Deutsch, *Supra* note 1 at 425.

Part I: Comparisons and Contrasts: Batterers, Stalkers and High Conflict Divorces

Batterers and Stalkers

Experts cite fearful attachment style as a personality finding in stalkers¹² and in batterers.¹³ Fearful attachment is described as occurring where there is a negative self image and a negative image of the other.¹⁴ These individuals vacillate between pursuit of closeness and distrust and fear of rejection or abandonment.^{15, 16} Anger^{17, 18} and rage¹⁹ are associated with fearful attachment. In the fearfully attached, delusions of impending abandonment precipitate intimate rage,²⁰ and when actually abandoned, the "urge to destroy" the mate is overwhelming.²¹ When abandoned, they use physical assault, stalking, economic abuse, verbal and psychological abuse, physical coercion and recurrent litigation.²² Batterers minimize the significance of their acts²³ and demand secrecy about their behavior.²⁴ Leaving betrays that secrecy.²⁵ Experts believe batterers who stalk²⁶ are the most dangerous and the most likely to kill,²⁷ and that the highest risk to the departing mate is 2 years post-separation.²⁸

Obsessive thinking is common to stalkers²⁹ and batterers.³⁰ It is neither volitional nor welcome.³¹ Obsessive thinking is typical in the context of actual or imagined abandonment.³² Initially, obsessive thinking serves "some defensive purpose."³³

¹²Kristine K. Kienlen, *Antecedents of Stalking*, in *The Psychology of Stalking: Clinical and Forensic Perspectives* 56 (J. Reid Meloy, ed., 1998).

¹³Donald Dutton & Susan Golant, *The Batterer; A Psychological Profile* 113-116 (1995).

¹⁴Kienlen, *Supra* note 12 at 56.

¹⁵*Id.*

¹⁶Reid Meloy, *Psychology of Stalking*, in *The Psychology of Stalking: Clinical and Forensic Perspectives* 19 (J. Reid Meloy, ed., 1998).

¹⁷Donald Dutton, *The Abusive Personality: Violence and Control in Intimate Relationships* 143 (1998).

¹⁸Kienlen, *Supra* note 12 at 56.

¹⁹Meloy, *Supra* note 16 at 19.

²⁰Lenore E. Walker, *The Battered Woman Syndrome* 57 (1979).

²¹Dutton, *Supra* note 18 at 56.

²²Walker & Meloy, *Supra* note 2 at 139-59.

²³Dutton, *Supra* note 17 at 116.

²⁴Dutton & Gollant, *Supra* note 13 at 86-90.

²⁵-See Karla Fischer, et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, in *Domestic Violence Law; A comprehensive Overview of Cases and Sources* 89 (Nancy K.D. Lemon, ed., 1996).

²⁶-See Walker & Meloy, *Supra* note 2 at 142. Citing the fact that shunned batterers may hire others to monitor or harass the abandoning mate.

²⁷*Id.* at 142-45.

²⁸*Id.* at 141.

²⁹Meloy, *Supra* note 16 at 13.

³⁰-See Donald Dutton, *The Abusive Personality* 55 (1998). Citing rumination, or "playing the bitch tape" in batterers.

³¹Meloy, *Supra* note 16 at 13.

³²-See Dutton & Gollant, *Supra* note 13 at 14-17.

³³Meloy, *Supra* note 16 at 13.

Stalkers³⁴ and batterers³⁵ deny, minimize and project blame on their victim for their own behavior. Jordan, et al.³⁶ cited the stalker protagonists in two movies who justified the escalation of their stalking behavior "by insisting they (were) getting to the bottom of a mystery."

Stalkers³⁷ and batterers³⁸ use threatening symbols to instill fear and the promise of future consequences.³⁹ These symbolic gestures may be very bizarre, and the more bizarre the gestures, the more difficulty the victim has in convincing others that her reports are accurate.⁴⁰

Retaliation for defiant behavior is a central finding in battering relationships,^{41, 42} and stalking is one retaliatory measure.^{43, 44} Less sophisticated batterers tend to use physical violence to "teach her a lesson,"⁴⁵ but more sophisticated batterers use more sophisticated means,⁴⁶ for instance, on-going litigation which requires substantial financial prowess.

High-Conflict Divorce

Experts who write about high-conflict divorce describe the same findings as the experts who write about stalkers and batterers, but lay blame equally on both parties citing interparental conflict as the problem.⁴⁷ In describing interparental conflict, authors cite physical assault, stalking, economic abuse, verbal and psychological abuse, physical coercion and recurrent litigation.⁴⁸ "individuals in high-conflict divorces are alternately enraged and deeply emotionally injured by the actions of their ex-spouse."⁴⁹

Analysis

The descriptions of stalkers, batterers and litigants embroiled in high-conflict divorce sound very similar. A two-year time frame is touted as the period of highest risk for women who flee batterers⁵⁰ and as the defining time frame for the "high conflict" moniker.⁵¹ The actual behaviors are identical, and only the analyses differ. According to Walker and Meloy, the stalking and battering populations

³⁴*Id.* at 6.

³⁵Dutton & Gollant, *Supra* note 13 at 104-105.

³⁶Carol E Jordan, et al., *Stalking: Cultural, Clinical And Legal Considerations*, 38 Brandeis L.J. 513 (2000).

³⁷-See Doris M. Hall, *Victims of Stalking*, in *The Psychology of Stalking; Clinical and Forensic Perspectives* 132-33 (J. Reid Meloy, ed., 1998). Referring to symbolic behavior as "gestures."

³⁸Fischer, et al., *Supra* note 23 at 88.

³⁹*Id.* at 86.

⁴⁰Hall, *Supra* note 37 at 133.

⁴¹Fischer, et al., *Supra* note 23 at 90-95.

⁴²Ptacek, *Supra* note 2 at 112-123.

⁴³Hall, *Supra* note 37 at 121.

⁴⁴-See also Gavin de Becker, *The Gift of Fear* 198 (1997).

⁴⁵-See Walker, *Supra* note 20 at 37.

⁴⁶Fischer, et al., *Supra* note 23 at 91.

⁴⁷Schact, *Supra* note 1 at 56.

⁴⁸See generally, *Supra* note 1.

⁴⁹Doolittle & Deutsch, *Supra* note 1 at 429.

⁵⁰Walker & Meloy, *Supra* note 2 at 141.

⁵¹Doolittle & Deutsch, *Supra* note 1 at 425.

overlap.⁵² It seems the high conflict commentators are describing the wealthy individuals in that overlap population because they cite batterer and stalker behaviors. However, the use of Family Court as the forum would require sizable assets, therefore, the individuals who stalk by way of Family Court must be wealthy.

One distinguishing feature between the literature on stalkers and batterers in comparison to that on high-conflict divorce is the use of the word "conflict." A word search of three randomly selected articles illustrates that point. In articles on high-conflict divorce,⁵³ domestic violence⁵⁴ and stalking,⁵⁵ the word "conflict" was used 114, zero, and one time respectively. "Conflict" suggests equal culpability. It suggests an equal power balance.⁵⁶ However, the specific behaviors cited by the high conflict commentators are behaviors associated with a power differential.⁵⁷ They include physical assault, stalking, economic abuse, verbal and psychological abuse, physical coercion and recurrent litigation.⁵⁸ There is an inherent difficulty in blaming both parties equally. For example stalkers are not culpable in their own stalking. The high conflict analysis is misapplied.

Fischer, et al.⁵⁹ assert that conflict is not a feature of battering relationships. In conceptualizing the family with battering dynamics as a unit, rather than focusing on who has what problem, these complex families may be more clearly understood.⁶⁰ In the culture of abusive relationships, as in all relationships, there is a pattern of verbal, physical and symbolic communication.⁶¹

Family Court litigation is ideally tailored to the wealthy batterer's agenda because abandonment precipitates the competing needs: desperation to destroy the defiant mate alternating with desperation to preserve the tie.⁶², ⁶³ The objective of custody litigation in 'best interests' jurisdictions is to destroy the opponent⁶⁴ and the process facilitates ongoing contact with the lost mate. The child support schedules are predicated on how one fares in the custody battle,⁶⁵ adding fuel to the flame. The featured case is an actual case. There are some unexpected and very interesting dynamics as this fascinating case progresses. The milestones in Linda's loss of parental rights provide the main theme.

⁵²Walker &Meloy, *Supra* note 2 at 139-161.

⁵³Schact, *Supra* note 1 at 565.

⁵⁴The Harvard Law Review Association, *Developments In The Law -- Legal Responses To Domestic Violence: VI. Battered Women And Child Custody Decisionmaking*, 106 Harv. L. Rev. 1597 (1993).

⁵⁵Jordan, et al., *Supra* note 36 at 513.

⁵⁶-See Doolittle &Deutsch, *Supra* note 1 at 425. Identifying the reason for high-conflict divorce as the failure of the two parents to come to a resolution. The assumption of an equal power balance is implicit and can be illustrated by applying that analysis to a situation that has an inherent power imbalance. For instance, an elderly woman and her armed assailant would not be described as failing to come to a resolution.

⁵⁷See Dutton, *Supra* note 10 at 190.

⁵⁸-See generally *Supra* note 1.

⁵⁹Fischer, et al., *Supra* note 23 at 87-88.

⁶⁰*Id.*

⁶¹*Id.*

⁶²Kienlen, *Supra* note 12 at 56. Describing stalkers.

⁶³Dutton, *Supra* note 17 at 131-34. Describing batterers.

⁶⁴William L. Tabac, *Give Them a Sword: Representing a Parent in a Child Custody Case*, 28 Loy. U. Chi. L.J. 267(1996).

⁶⁵Cal. Fam. Code § 4055(b)(D) (Deering 1994).

Part II: Linda v. Lyle⁶⁶

Overview

Linda was married to Lyle for 22 years. He was a violent spousal and child abuser. Linda knew that Child Protective Services (CPS) had the authority to put children in foster care when a battered spouse does not leave a child abuser. A volume of CPS reports had accumulated against Lyle. Linda reluctantly chose to file for divorce. To date, the case has litigated for approximately 6 years without respite. There are approximately 130 minute orders, indicating that the case has appeared on the docket on the average 1.8 times per month. Ex parte appearances are frequent, however, they do not generate minute orders, so the exact number is unknown. Linda v. Lyle is a 16 volume file as of this writing.

Linda has been left homeless and her spousal support has been whittled down to \$400.00 per month. She has no retirement and no health insurance. Prospects for employment are dim because Linda never worked outside the home. She is in her mid 50's and must appear in court approximately once per month, sometimes more than twice a week, often with less than 24 hours notice. This situation would make it difficult to keep a work schedule.

The Focus - Loss of Parental Rights

Dr. Lohr, Ph.D. conducted three psychological evaluations in the Linda v. Lyle matter, and her third report is dated January 26, 1999. The first evaluation in 1994 recommended custody with Linda, and visitation with Lyle. Then, in 1997, she recommended physical custody with Lyle, and visitation to Linda. "Litigation between the parents over visitation issues continued, however, even after that second evaluation."

1. Supervised Visitation

In 1997, shortly after the appointment of the guardian ad litem, Ted Rex, Licensed Clinical Social Worker, was assigned as the child's therapist in spite of Linda's objection. Linda objected because she felt Rex had a conflict in that he had a prior relationship with Lyle's sister. Rex was assigned to the case at the guardian ad litem's request. The child's original therapist secured public funding for the child's therapy through the Victims of Crime program, citing the father's chronic violent abuse as the crime. Instead of that therapist, Rex has seen the child weekly for several years. In an ex parte hearing called by the guardian ad litem, with Linda locked out of the courtroom, Rex testified against Linda.⁶⁷ A letter to Linda from her attorney explained what happened in the locked courtroom.⁶⁸ Allegations surrounding the child's behavior over the preceding two months were the

⁶⁶All case material (declarations, letters, police reports, evaluations, audio recording and transcripts) on file with the author. The names have been changed.

⁶⁷-But see Philip M. Stahl, *Conducting Child Custody Evaluations* 14 (1994). In discussing the role of the child's therapist "she needs to be clear that she will be providing treatment to the child, not providing information to be used in a custody dispute."

⁶⁸Letter dated June 5, 1998: "As you know, yesterday we had a closed hearing in which testimony was received from Rex. The hearing was brought by (the guardian ad litem) for the purpose of receiving a recommendation from the therapist to

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basis of the order for supervised visitation. The attorney also recommended deposing Rex. He urged Linda to find \$500.00 to pay Rex's deposition fee. Linda was facing imminent homelessness and had a significant balance due in fees. She declined.

The timing of this unusual hearing suggests a retaliatory motive. The transcript was sealed. This *ex parte* hearing was held on June 4, 1998 which was a few days after the State Bar of California was reported to be on the brink of bankruptcy after a funding veto by Gov. Pete Wilson in 1997.⁶⁹ The guardian ad litem's billing statement shows three responses to the State Bar's investigation of Linda's complaint against him in March 1998,⁷⁰ two months before this sudden change in her access to her child. The guardian ad litem was also assigned to the case in spite of Linda's objection because she had interviewed him and elected not to hire him because he has a prior discipline for embezzlement of clients' funds.⁷¹ The family was ordered to submit to three psychological evaluations conducted by Lohr, whose office was across the hall from the guardian ad litem's office.

Analysis

There are a number of irregularities apparent in this hearing. The state must provide notice and prove unfitness to a clear and convincing standard when interfering with a parent's opportunity to know their child to this degree because the imposition of a supervision requirement is a substantial interference.^{72, 73} An *ex parte* hearing, which offers very short notice, would be appropriate only if the child were at risk for harm.⁷⁴ Because of the history, the family had an assigned worker at CPS. That worker denied the existence of any CPS reports against Linda. Social workers are mandated reporters of child abuse and neglect, in which case, Rex violated the Penal Code if his testimony alleged abuse or neglect.⁷⁵ If he did not make that allegation, there is no authority that would justify the order unless Linda interfered with Lyle's access to the child. Lyle was the custodial parent, not Linda. Furthermore, if Linda were simply interfering with Lyle's access to the child, there would be no need for secrecy.

The facts suggest that the supervised visitation order may have been retaliatory because the basis for the order was the report of the "the changes in the child's behavior over the last two months."⁷⁶ Linda had complained to the State Bar about the guardian ad litem and he had responded to the

address the purported change in (the child's) behavior over the last two months. While I am still prohibited from disclosing the testimony to you as it was agreed to remain confidential, I can tell you that the testimony was unfavorable to you and the recommendations of Rex were to essentially decrease and limit your contact with (your child)."

⁶⁹Bob Egelko, *Governor Says Plan Will Help State Bar: Low Funds Leave Group Few Choices*, The San Diego Union-Tribune, May 30, 1998 at A-3.

⁷⁰Billing entries: 3/2/98 Transcribe letter to State Bar. 3/10/98 transcribe and mail second letter to State Bar re the case. 3/19/98 Transcribe letter to State bar. (Linda's Decl. Ex. k, 1-23-99)

⁷¹In re (The guardian ad litem) case # 87 0 14493, filed February 13, 1990. State Bar Court, Los Angeles, CA. Public re-proval issued in May 1992.

⁷²See *Stanley v. Illinois*, 405 U.S. 645 (1982) (elevating the standard of proof of unfitness to clear and convincing if the state seeks to impose upon parental autonomy). While the state does assume more authority in divorce, ordering supervised visitation in a secret *ex parte* hearing exceeds that authority. See *infra* note 74.

⁷³2 Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law: Substance and Procedure* 104 (1999).

⁷⁴San Diego Superior Court Rules, Division V: Family Law, Chapter 3 Ex Parte Matters, Rule 3.15 available in www.sddt.com.

⁷⁵Cal. Penal Code § 11165.8 (West 2000).

⁷⁶Letter dated June 5, 1998, *Supra* note 68.

State Bar investigation 3 times in March, 1998.⁷⁷ His last response was approximately 2 months before this ex parte hearing where supervised visitation was ordered for a litigant about whom there was no CPS report, where the other party had sufficient history of child abuse to warrant treatment for the child under the Victims of Crime program. The guardian ad litem frequently blacked-out portions of the bills he sent to Linda, including time expended responding to a CPS investigation of Lyle.⁷⁸ The entries about the State Bar letters were just notations. He did not bill for the time. He wanted her to know he was responding to the State Bar about her complaint. Inasmuch, these entries may resemble the symbolic threats of future harm that are typical of batterers when confronted with 'defiant' behavior by their mate.⁷⁹ When the batterer's authority and control is challenged, there are consequences.⁸⁰ Stalkers commonly use bizarre symbolic gestures, and when they do, their victims have trouble convincing others that her reports are true.⁸¹ That is the case here. The overriding secrecy of the allegations was protected with the extreme measures of locking Linda out of the court room and sealing the transcript, but the specified time frame of the alleged problems was made clear. Additionally, it is unlikely Linda's report of this event would be taken seriously by anyone because her report would sound too bizarre to be believable.

2. Linda's Motion for Modification of Custody

Lyle became more resistant to Linda seeing their child and his refusal to cooperate generated a string of police reports that documented his pattern of frustrating visitation.⁸² Eventually, he was arrested for refusing to comply with the visitation order. The supervised monitors wrote declarations about the attempted visits. Initially, Linda was ordered to use the monitors on the list from Family Court. She chose whichever monitor was available, and met the child at a restaurant for a brief, stilted visit. There was a stark divide among the monitors' reports. Most blamed Lyle and one blamed Linda for the problems.⁸³ During this time, Linda was ordered into a "reunification plan" with the psychologist who had conducted the previous evaluations, Dr. Lohr.

Linda filed a motion in pro per for modification of custody based on Lyle's refusal to allow frequent and continuing contact citing the numerous police reports and Lyle's arrest as evidence of changed circumstances. She alleged collusion among the guardian ad litem and the mental health profession-

⁷⁷Billing entries, *Supra* note 70.

⁷⁸Billing statement dated January 30, 1998 had blacked out entries. In a hearing, Lyle's attorney gave Linda an unadulterated copy of the bill. The underlined portions are the blacked out portions: "1/15/98 Telephone conversation with (Lyle's) atty re: *CPS investigator* and report, and OSC date. Preparation of memo to staff re: *CPS investigation*." (Linda's Decl. Ex. K, 1-23-99)

⁷⁹Dutton, *Supra* note 17 at 51, 54.

⁸⁰Fischer, et al., *Supra* note 23 at 92-95.

⁸¹Hall, *Supra* note 37 at 133.

⁸²A sample of police reports in the case file are dated 11/29/98, 1/6/99: Linda paid the monitor, then Lyle never showed up. 12/7/98 "Ms. L.P. (supervised monitor) said she went to Lyle's vehicle to get the boy and Lyle asked her why the monitor was not there. He told her she was not supposed to be doing the visitation because (the child) did not want her to do it. Ms. L.P. said (the boy) was in the truck with Lyle and (the boy) got a puzzled look on his face when Lyle said (the boy) did not want her to be the monitor. Ms. L. P. said Lyle then drove away with the child." The officer's follow up entry was that Lyle had not returned any of his calls. (Linda's Decl. Ex. E, 1-23-99)

⁸³The monitor who blamed Linda (Ms. P.M.) included this passage in her declaration: "Right before the first visit, (the boy) shared with me that he did not like visiting with his mother. When I asked him why, he told me he hated it when she looked at him with puppy-dog eyes. I told (him) to stay close to me, and if she says anything that makes him feel uncomfortable, let me know."

als. Her exhibits included numerous letters from the guardian ad litem. One letter claimed the child liked a particular monitor, Ms. T.C.. After Ms. T.C. wrote a declaration for Linda detailing Lyle's frustration of visitation, the guardian ad litem wrote another letter claiming he and psychologist Lohr were in agreement that Ms. P.M. should be the monitor because the child liked Ms. P.M.

While the motion was pending, the guardian ad litem was granted his ex parte request that the supervised visitation be conducted at RS, a supervised visitation service. Linda's custody motion was heard in two hearings after numerous continuances by the guardian ad litem and the Respondent's counsel. For the first hearing on Linda's motion, she subpoenaed a specific employee of RS, J.S., who had stated "It is obvious that Lyle is trying to alienate you from (the child)." Two days after he was served, Linda called to tell him what she planned to ask him on the stand. He no longer worked at RS. Linda claims the supervisor, Ms. C., refused to reveal J.S.'s phone number unless Linda paid \$100.00. When Linda finally contacted J.S., she reported he claimed "(his) attorney" said he was not required to appear "because two boxes were checked on the subpoena instead of one."⁸⁴ J.S. did not appear. Ms. C. appeared claiming the custodian of records had been subpoenaed. The court decided that Linda's copy of the subpoena was not valid and the copy produced by Ms. C. was valid.⁸⁵

Analysis

The guardian ad litem, assigned to represent the minor, appears to be representing Lyle. The letters from the guardian ad litem show he preferred the supervised monitor who made a favorable report about Lyle. The guardian ad litem solicited the court ex parte for an order to use RS for supervised visitation two days after Lyle was arrested. When Ms. C. from RS appeared, instead of J.S., the court acknowledged that Ms. C. had a subpoena with two boxes checked, and that Linda's copy was "a completely different subpoena as far as who it is directing to do what."⁸⁶ Both subpoenas were signed by J.S. The subpoena that the court accepted was the one offered by Ms. C. of RS. Employing common sense, it seems more likely that Linda's copy would be the valid copy because she is the party who served the subpoena, but the court's wisdom found the opposite to be true. It is very clear how Linda could conclude that there was a problem with collusion, especially when the decision turned on how many boxes were checked because those were the words and phrases used by J.S. when he claimed he did not have to appear. Stahl,⁸⁷ an expert on custody evaluations, cites the use of similar or identical words and phrases by the children and the alienating parent as a cardinal sign of severe Parent Alienation Syndrome. After this hearing, which was continued to May 28, 1999, Linda was issued a permanent no contact order. She has not seen nor heard from her child since. It is apparent that Linda is being alienated from her child. The identity of the perpetrator of the alienation is less clear.

⁸⁴This report was given to the author on the same day that Linda had this conversation with J.S.

⁸⁵The trial transcript includes this passage: (4-15-99 p. 52, line 27) THE COURT: But the problem is, the subpoena that was served, it was served on apparently someone named J.S. and it was a subpoena to RS, ordered to appear in person, and then there's another box checked on there that said appear in person and produce records, and the one that (Linda is) providing me with, which is also signed by J.S., is a completely different subpoena as far as who it's directing to do what. So, Ms. C. is properly appearing on behalf of RS.

⁸⁶*Id.*

⁸⁷Philip Stahl, *Complex Issues in Child Custody Evaluations* 4 (1999).

3. Dr. Lohr's Third Custody Evaluation

Lohr was ordered by the court to implement a reunification plan, but instead she submitted a report captioned "Custody Evaluation" dated January 22, 1999. Lohr's report claimed that the child did not want to have any contact with his mother because she "gave him that puppy dog look." She also noted "(The teen) also felt that several of the supervisors had not protected him from things his mother had said or done which made him very uncomfortable." Lohr documented Lyle's arrest and claimed the child reported that "his mother took pleasure in the policemen's treatment of his father(the child) does not trust his mother and wants relief from the stressful contacts with her. It is clear that (the child) is very angry and worn out from five years of stress over the ongoing tension."

Linda saw Lohr twice under the guise of participating in a "reunification plan." Lohr insisted repeatedly that there was only one monitor the child wanted.⁸⁸ Lohr's report portrayed Linda as paranoid because Linda thinks Lyle is alienating the child from her.⁸⁹ She opined "I find no evidence that Lyle has alienated the child from his mother(Linda) presents as obsessed with the mission of regaining her son"

Analysis

Lohr's opinion looks very much like she is projecting blame for Lyle's behavior onto Linda and minimizing the magnitude of Lyle's bad acts. These are the typical behaviors of stalkers⁹⁰ and batterers.⁹¹ The string of police reports that culminated in Lyle's arrest suggest that Lyle is alienating the child from Linda because they were made in response to his frustration of Linda's visitation.⁹² The majority of the supervised monitors' declarations support that analysis. Linda's perception that some of the professionals have not been honest is based on the evidence. Lohr's report portrays Linda as paranoid. Paranoia, however, does not preclude the possibility of pursuit. Lohr knew Lyle was arrested, but it cannot be ascertained whether she saw the monitors' declarations or knew about the numerous police reports. Because Lyle is an abandoned batterer, he is likely to be obsessed.⁹³ Lohr finds Linda to be obsessed. If Linda is obsessed with gaining access to her child, her obsession, arguably, is within normal limits because it is normal for parents to want to know their children. The obsessions of abandoned abusers⁹⁴ and stalkers⁹⁵ are pathological, but the finding of pathology is projected onto Linda. Lohr has taken on the role of the batterer or the stalker.^{96, 97}

⁸⁸This session was recorded with Lohr's permission. Original recording on file with the author.

⁸⁹From Dr. Lohr's January 26, 1999 custody evaluation: "(Linda) accuses the father of alienating the child from her and blames the attorneys and this examiner for her loss of custody of her son. She stated that the child had been removed from her custody and her visitation restricted for reasons that had never been explained to her. She stated that all the professionals in this matter, the attorneys, (therapist) Rex and this examiner are liars. In all of my contacts with Linda from October - December 1998 she seemed to be out of touch with the realities of the current situation."

⁹⁰Meloy, *Supra* note 16 at 13.

⁹¹Dutton & Gollant, *Supra* note 13 at 104-105.

⁹²Police reports, *Supra* note 82.

⁹³Dutton, *Supra* note 17 at 55.

⁹⁴*Id.*

⁹⁵Meloy, *Supra* note 16 at 19.

⁹⁶*Id.*, at 6.

⁹⁷Dutton & Gollant, *Supra* note 13 at 104-105.

The diagnosis of Parent Alienation Syndrome is made when one parent, usually the custodial parent, psychologically manipulates a child to turn the child against the other parent, usually the non-custodial parent.⁹⁸ It is notable that Lohr and the 'preferred' supervised monitor used the same language to report the child's reason for not wanting to see his mother: puppy dog eyes. She and the 'preferred' monitor make reference to protecting the child from anything Linda might say or do that might make the teen uncomfortable. As noted above, Stahl⁹⁹ claims that when conducting custody evaluations, severe cases of Parental Alienation Syndrome are likely in families where the alienating parent and the children use "nearly identical" words and phrases to explain their complaints about the alienated parent. This pattern repeats itself in these vignettes as to the subpoena issue and here in the language used by the 'preferred' monitor and Dr. Lohr. If common sense dictates, the use of identical or similar words and phrases could simply reflect the telling of the truth, as in corroborating testimony. Stahl does not acknowledge that and offers no advice as to how to distinguish one situation from the other.

Finally, there seems to be a pattern of justifying any recommendation by claiming the recommendation is based on the child's preference. In the "reunification" session, Lohr insisted repeatedly that the boy only liked one monitor, and it would be incumbent on any good parent to accommodate that wish. In Lohr's report she said "there was no indication that (Linda) could perceive her contact with (the boy) from his perspective nor that she cared how (he) felt about the monitors." Ms. L.P. was one of the monitors whose declaration was consistent with the police reports and, therefore, was unfavorable to Lyle. In a letter from the guardian ad litem dated November 19, 1998: "It is Dr. Lohr's request that a supervisor other than Ms. L.P. supervise the visitation Dr. Lohr reports Ms. P.M. is very appropriate for the task. Dr. Lohr reports that Ms. L.P. has not been appropriate as a supervisor based upon comments made by (the teen) to Dr. Lohr." However, Lohr's report stated her first visit with the child was December, 1998, which suggests she had not yet met with him when the guardian ad litem wrote the letter in November.

4. Judicial Discretion

The law affords wide discretion to the court in custody matters.¹⁰⁰ A law journal article reported that the Commissioner who presided over this case exercises her discretion in cases of protracted litigation by assigning sole custody to the party who is causing the problem.¹⁰¹ Seemingly, the Commissioner's objective is to quell litigation. However, in this case, Linda's permanent no contact order has not eliminated the litigation. She is summoned to court incessantly, often on an ex parte basis. The court entertains these repetitive appearances. On June 8, 2000 in an ex parte hearing, the guardian ad litem asked the court to order Lyle to pay Linda's share of his fees. He suggested that the court could then allow Lyle to appear before the court and get an order to modify his \$400.00 per month spousal support order to offset his payment of Linda's share of the guardian ad litem's fees. The guardian ad litem argued that this would be reasonable because he elected to ignore the minor's counsel statute. Instead, he used a legion of mental health professionals who made many

⁹⁸Stahl, *Supra* note 87 at 104-05.

⁹⁹*Id.*

¹⁰⁰Tabac, *Supra* note 64 at 275.

¹⁰¹Marlene Stanger, (The Name of This Commissioner), *San Diego Journal of Law*, December, 1997 at 1.

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reports and appearances.¹⁰² The findings after hearing show that Lyle had \$566,651.00 in attorney's fees.¹⁰³ Fees outstanding for the guardian ad litem were \$34,607.00.¹⁰⁴ The court further found that Linda was at fault for the protracted litigation because she filed one motion for custody, and therefore, the court granted the guardian ad litem's motion.

Analysis

The court has taken the role of the batterer/stalker in that it is projecting blame onto Linda for events over which she had no control.¹⁰⁵, ¹⁰⁶ The court's findings projected blame on Linda for the protracted litigation in contrast to the facts. The law journal article indicates that the Commissioner may have known custody would ultimately go to Lyle but failed to implement her plan early before so much expense had been generated. If the Commissioner's objective is quelling litigation, it did not work in this case. It is hard to imagine an approach more likely to incite litigation than to award sole custody to the party causing the problem because most parents are highly motivated to know their children and would therefore be likely to fight an unfair, arguably illegal order. Additionally, the court allowed the guardian ad litem to ignore the minor's counsel statute, tacitly sanctioning the increased litigation he created.¹⁰⁷ However, the court found that the two appearances pursuant to Linda's attempt to gain access to her child frustrated the policy of law to promote settlement.¹⁰⁸ Moreover, there is an external appearance that the child may have been used as a commodity in light of the fact that substantial fees were generated in the course of incrementally eliminating Linda from the child's life.

The order of the court also suggests a retaliatory motive. There is a typographical error because the court made reference to actions taken by (Linda) after October 22, 2000 which frustrated the policy of law to encourage settlement, however, the order was issued in August, 2000.¹⁰⁹ Linda filed her custody action in January, 1999. However, Linda declared bankruptcy in late October of

¹⁰²Transcript on file with the author. (June 8, 2000 p. 27, 16-16, p. 28, line 3). GUARDIAN AD LITEM: "She has no funds. Minor's counsel should be paid. In this case to go from an 80% time share with mom to 100% time share with dad and all the various hearings we have had I disagree with the minor's counsel statute where minor's counsel give reports, so what I did was (he describes all the therapists and interventions employed to make that change and names the many experts who testified and how many times they testified). It was an extraordinary case. It was devastating in its harm to (the child), but there is now a protective order"

¹⁰³-See Briggs Adams, *Altman Survey Says Law Firms Are Rebounding*, Chicago Lawyer Volume 18, Number 8, August 1995 at 71. Citing the median annual income for Family Law attorneys as \$141,000.00. The court does not detail during what time frame the \$566,651.00 accumulated. Assuming the fees accrued over the entire 6 years of litigation, Respondent's attorney would have earned nearly \$95,000.00 per year on just this one case.

¹⁰⁴The court does not offer details about the balance due to guardian ad litem, but he appeared in an effort to get the one half owed by Linda. If \$34,607.00 represents one half, his total bill is \$69,214.00. He was assigned guardian ad litem in February, 1997, and Linda has had a no contact order since May, 1999 and there have been no matters before the court concerning the child since then. That is 27 months of representation, or \$2,563.00 monthly.

¹⁰⁵Meloy, *Supra* note 16 at 6.

¹⁰⁶Dutton & Gollant, *Supra* note 13 at 104-105.

¹⁰⁷Transcript of hearing, *Supra* note 102.

¹⁰⁸The court reserved judgment, then, in August, 2000 issued these findings in regard to the June 8, 2000 hearing: "The actions taken by the Petitioner (Linda), after October 22, 2000 (sic), in contesting the issue of custody, frustrated the policy of the law to promote settlement and thereby increased the cost of litigation. A party shall have the right of reimbursement and indemnification against the other party as to one-half of the fees and costs awarded herein that are actually paid to Minor's counsel."

¹⁰⁹*Id.*

1998. The court found justice in allowing Lyle to pay the \$400.00 per month in spousal support to the guardian ad litem, instead of paying Linda, if Lyle so chooses. This order looks like the symbolic promise of consequences for defiant behavior that is common in battering relationships.¹¹⁰ By filing bankruptcy, Linda exposed the case to 'outsiders' in the Federal Bankruptcy Court. Batterers typically expect the battered mate to keep the family's secrets.¹¹¹

This motion by the guardian ad litem takes the power transfer analysis to a higher level than seen previously. The transfer of power to the professionals is real. Lyle is destroying himself and Linda financially because he cannot free himself from his obsession.¹¹² However, the guardian ad litem got an order that may preclude his payment of a lump sum out of the bankruptcy, for which he is a priority because he is a court appointed attorney. Instead, he will get \$400.00 per month. His balance due is \$34,607.00. His motion, which was granted, has a negative impact on him economically, but it destroys Linda financially. The guardian ad litem, who milked Lyle's pathological personality to his economic advantage appears to have become overcome by his own obsession to harm Linda for her defiance of his authority in complaining to the State Bar. The appearance of this new development mimics contagion.

Lyle's Role

An obsessed individual would be easy to bait.^{113, 114, 115, 116} The court appointed a Special Master to assist with Discovery. Linda objected because Lyle had a prior relationship with the attorney, Mr. Henpecker. The court overruled her objection after Lyle claimed "I don't know who he is, no, ma'am." In the same hearing, the court admonished Lyle "Are you happy spending all this money on attorney's fees, Lyle?" Lyle responded "I can't stop it." The court: "You're not happy doing it, though. But if you want to spend your equity in your house on litigation, then there's not much the court can do about it other than to appoint a Special Master to try to get to the bottom of the discovery problem." Lyle is the owner of a corporation. Linda was a homemaker. The Discovery Master, Henpecker, deposed Linda, but did not depose Lyle. Henpecker was paid a retainer of \$2,000.00 out of community funds.

Analysis

Dutton¹¹⁷ and Meloy¹¹⁸ recognize obsessive thinking in the batterer and the stalker respectively. Lyle said he could not stop the litigation. He is not in control, suggesting that the litigation process

¹¹⁰Fischer, et al., *Supra* note 23 at 92-94.

¹¹¹*Id.* at 88.

¹¹²Meloy, *Supra* note 16 at 19.

¹¹³-See Dutton, *Supra* note 30 at 36. Citing "intermittent reward schedules" as the most effective in shaping learned behavior.

¹¹⁴-See also Westrup, *Supra* note 2 at 282. Citing reinforcement (positive or negative) as a tool in strengthening behavior and promoting the likelihood that the same behavior will occur in the future.

¹¹⁵-See also Meloy, *Supra* note 16 at 13. "Obsessions are behaviorally maintained because they are positively reinforced (in stalking, for example, intermittent contact with the victim results from a relentless pursuit)"

¹¹⁶-See also Dutton & Golant, *Supra* note 13 at 57. Citing the lure of intermittent gratification, as in slot machines.

¹¹⁷Dutton, *Supra* note 30 at 55.

¹¹⁸Meloy, *Supra* note 16 at 19.

is a function of obsessive thinking.¹¹⁹ The court taunted him because he was not happy spending his money on litigation. Considering the fact that Lyle's thoughts are unwelcome and uncontrollable, the court's comments are rather cruel. Lyle has taken on the role of the battered person. Then, Lyle was given a symbolic advantage which constitutes power over Linda in overruling her objection. Whether deliberate or fortuitous, Lyle was baited to continue litigating. If studies show that this is indeed how litigation is sustained, then, arguably, the children of divorce are not pawns at all.¹²⁰ They are bait.¹²¹ The distinguishing feature is the locus of control.

Overall Analysis

As seen in Linda v. Lyle, protracted litigation preserves the tie. The best interest standard creates an *Ideal* forum in which to destroy the opponent.¹²² However, what is less clear is who, exactly, is perpetrating the abuse. Because Linda is destitute, her power in court is limited or absent because in any litigation, money is power.¹²³ Therefore, the high conflict analysis does not apply because there is a power differential.¹²⁴ Furthermore, she is a pro per litigant facing two attorneys. Yet, all involved blame Linda. In unison they recite the mantra common to batterers and stalkers: "It's all her fault."¹²⁵,¹²⁶ This would serve to gratify¹²⁷ the delusions common to batterers and stalkers immensely because it projects blame on Linda and minimizes Lyle's role in the events.¹²⁸ Lyle's projection of blame on Linda is a predictable feature of the batterer's personality, especially when abandoned.¹²⁹

However, it is more difficult to explain the blame projected on Linda from other sources. The court blamed her for the protracted litigation because she attempted to reestablish a relationship with her child. The custody evaluator and the therapist blamed Linda. The supervised monitors who failed to blame Linda were removed. The custody evaluator claimed the child blamed Linda.

However, in a CPS report dated January 9, 1998, the reporter describes a somber child who said "I want to see my mom. I haven't seen her in awhile." The report includes this: "(The child) stated he had thought he would get to see his mother more often 'that's what my lawyer told me but it's not true.'" If this child told anyone he did not want to see his mother, perhaps it is because children

¹¹⁹*Id.* at 13.

¹²⁰-See Webster's *New Collegiate Dictionary* 841 (2d, 1974). "Pawn: one of the chessmen of least value." The control is equally distributed, and limited to the players.

¹²¹-See *Id.* at 84. "Bait: something used in luring, esp. to a hook or trap." Here, one or more has control and one or more others do not.

¹²²Tabac, *Supra* note 64 at 281.

¹²³-See Linda J. Ravdin & Kelly J. Capps, *Alternative Pricing of Legal Services in a Domestic Relations Practice: Choices and Ethical Considerations*, 33 FAMLQ 416. Citing the added expense of litigation when there is an extreme imbalance of power between the spouses.

¹²⁴Dutton, *Supra* note 10 at 190.

¹²⁵Meloy, *Supra* note 16 at 6.

¹²⁶Dutton & Gollant, *Supra* note 13 at 104-105.

¹²⁷*Supra* notes 113-116.

¹²⁸*Supra* notes 125, 126.

¹²⁹*Id.*

of high conflict divorce, like battered women,¹³⁰ say whatever they need to say to keep the peace.¹³¹

Looking at the totality of Linda v. Lyle, this case is a 16 volume example of iatrogenic intervention in a domestic violence case. Furthermore, it may be that Lyle held power in the beginning when his obsessive thinking served a defensive purpose.¹³² If money is power, a substantial amount of his power has been transferred to the professionals. In assigning the Discovery Master, the order was justified "to get to the bottom of the discovery problem." The language mimics the words used by Jordan, et al.¹³³ in discussing two stalkers in the movies ("reel stalker") who justified their escalating stalking behavior because they were "trying to get to the bottom of a mystery." However, in real life, the words were spoken not by the stalker, but by the court. The constellation of findings in Linda v. Lyle suggest pathology that is external to the litigants which does not support the high conflict assumptions. Moreover, predicating intervention on the premise that both parties are equally culpable demands ongoing assessment and adjudication.¹³⁴ Therefore, conflict is proportional to revenue for the professionals who use that analysis.¹³⁵

Part III: The Safeguards

Americans may believe they enjoy substantial consumer protection. However, looking at the professionals involved in Linda v. Lyle, it is apparent that there is essentially no regulation whatsoever. When Linda complained to the State Bar about the guardian ad litem, she felt she suffered the retaliatory theft of her child. However, even if the State Bar does act on her renewed complaint, the process of disciplining an attorney is protracted and offers no interim protection. For example, the last time the guardian ad litem was disciplined,¹³⁶ which was in 1992, it was for embezzling clients' funds in 1984, 1986 and 1987. Moreover, his penalty was a public reproof, which is a mere slap on the hand. Linda's complaint alleged collusion. In light of the fact that the actual reason for the supervised visitation is secret, she may be right. The child will be an adult before the State Bar can make that determination.

The mental health professionals are immune to civil liability because they are conferred with quasi-judicial immunity.¹³⁷ Linda complained to the California Board of Behavioral Sciences (BBS). Her complaint was that Rex violated the Penal Code in that he did not make a CPS report. The BBS responded "you should address any concerns regarding his opinion with the court."¹³⁸ His opinion was not the subject of her complaint.

¹³⁰Fischer, et al., *Supra* note 23 at 92.

¹³¹Doolittle &Deutsch, *Supra* note 1 at 433.

¹³²Meloy, *Supra* note 16 at 13.

¹³³Jordan, et al., *Supra* note 36 at 520.

¹³⁴Stahl, *Supra* note 87 at 96.

¹³⁵-See Linda J. Ravdin & Kelly J. Capps, *Supra* note 123 at 388. Citing the conflict of interest between the client's interest and the attorney's interest inherent in the hourly fee schedule. "Quick Resolution v. Lengthy Representation." This conflict would apply to all professionals who bill hourly for services in divorce matters.

¹³⁶In re (guardian ad litem), *Supra* note 71.

¹³⁷Stahl, *Supra* note 87 at 190.

¹³⁸See *Hornung v. Superior Court of San Diego County*, 81 Cal. App. 4th 1095 (2000). Holding that the the Superior Court did not have the authority to inquire into the decision making process of a quasi-judicial officer citing U.S. v. Morgan 313

The Board of Psychology (BOP) provides a Consumer Complaint Information form to prospective complainants. It explains that the BOP has no authority over licensees appointed by the court because "the family court system contains a number of checks and balances."¹³⁹ However, the system of "checks and balances" is between, not within, the branches of government and the purpose is to guarantee separation of powers to prevent tyranny.¹⁴⁰

The Commission on Judicial Performance regulates the judiciary in California.¹⁴¹ From 1988 to 1997, there were 9728 complaints. The penalties for disregard of the law include issuing an advisory letter (378 issued) or a public (27 issued) or private admonishment (86 issued).¹⁴² In the Family Court arena, this is not adequate protection because the licensing boards have ceded executive branch authority to the judiciary. If the bench can also ignore the law, thereby eliminating the legislative branch's balance of power, what is left defines tyranny: all power in one branch.¹⁴³

Part IV: Conclusion

There is an argument that Linda is being stalked. She is the target of a constellation of behaviors that are unwelcome and intrusive that instill fear and concern. Based on one narrative, no proof exists that this type of stalking accounts for all protracted litigation. However, some problems are clear.

Professionals must be regulated to protect consumers. An immediate remedy to the lack of regulation is imperative. Additionally, regardless of the etiology of protracted litigation, a change in the funding structure may promote self-regulation by the courts.

A funding structure based on the managed health care model might be effective. In the health care model, populations are capitated¹⁴⁴ which means the provider of care is paid a fixed fee per member per month.¹⁴⁵ To apply the model to family court funding, the capitation could be based on the divorce rate. If the courts were funded per divorce per year, and it was incumbent upon the court to manage the funds efficiently, decisions that foster litigation would negatively impact the judges' compensation, thus promoting self-regulation.¹⁴⁶

U.S. 409, 422 (1941). Holding that the Secretary of Agriculture could not be called as a witness and questioned "regarding the process by which he reached (his) conclusions. Just as a judge cannot be subjected to such scrutiny." If this rule of law applies in Family Court, arguably, the custody evaluators have more power than the judges because they would not submit to any scrutiny of any kind.

¹³⁹Consumer Complaint Information available through the Medical Board of California, 1426 Howe Ave. Suite 54, Sacramento, CA 95825-3236.

¹⁴⁰Karen O'Connor & Larry j. Sabato, American Government; *Continuity and Change* 56-57 (3rd ed., 1997).

¹⁴¹Robert C. Bonner, et al., State of California Commission on Judicial Performance; *1997 Annual Report* (1997).

¹⁴²*Id.* 81.

¹⁴³Black's Law Dictionary 1689 (4th ed. 1968).

¹⁴⁴Carroll Estes, et al., *The Medical-Industrial Complex*, in *Health Policy and Nursing: Crisis and Reform in the U.S. Health Care Delivery System* 57 (Charlene Harrington & Carroll L. Estes, eds., 1994).

¹⁴⁵*Id.*

¹⁴⁶The scope of this note reaches only so far as to point out the similarities between health care under the traditional indemnity insurance and Family Court litigation. The details of this potential funding structure have not be explored.

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The divorce process shares fundamental similarities to the traditional indemnity insurance that the managed care programs replaced. Those features include 1) all decisions about family court intervention are made by a group of professionals who enjoy autonomy and wide discretion;¹⁴⁷ 2) the revenue to those professionals is directly proportional to the interventions they deem appropriate;¹⁴⁸ 3) access is bimodal in that the wealthy enjoy free access and programs exist for the indigent, like Legal Aid .¹⁴⁹ However, working poor and the middle class have limited access or no access at all.¹⁵⁰ Currently, in Family Court, a litigant like Linda can be financially destroyed very quickly by a wealthy adversary.¹⁵¹

A comprehensive resolution cannot be formulated until the problem is identified. Studies that examine these cases for the presence of the known traits of batterers and stalkers may illuminate the actual mechanisms integral to intractable litigation.

"it is an essential part of the justice dispensed here that you should be condemned not only in innocence but also in ignorance." Franz Kafka, *The Trial*¹⁵², ¹⁵³, ¹⁵⁴

¹⁴⁷Carroll Estes, *Introduction*, in *Health Policy and Nursing: Crisis and Reform in the U.S. Health Care Delivery System* xi-xiv (Charlene Harrington & Carroll L. Estes, eds., 1994).

¹⁴⁸*Id.* Citing increased restraints applied to physicians in their decision-making.

¹⁴⁹-See Karen Davis, *Inequality and Access to Health Care*, in *Health Policy and Nursing: Crisis and Reform in the U.S. Health Care Delivery System* 359-371 (Charlene Harrington & Carroll L. Estes, eds., 1994).

¹⁵⁰*Id.*

¹⁵¹See Ravdin & Capps *Supra* note 123 at 416. Citing the added expense of litigation when there is an extreme imbalance of power between the spouses.

¹⁵²Franz Kafka, *The Trial* 62 (Willa & Edwin Muir and E.M. Butler, trans., 21st printing, Alfred Knopf, New York, 1978).

¹⁵³*Dictionary of Literature*, Brockhampton Reference 119 (Geddes & Grosset Ltd, New Lanark, Scotland, 1995). Noting that Kafka's characters are often trapped in bureaucratic totalitarianism.

¹⁵⁴See also Stahl *Supra* note 67 at 143. Explaining that the custody evaluation, which relegates the unlucky parent to the role of visitor, perhaps at best, is released only to the attorneys and not to the litigants because "it is a violation of confidentiality for the parents to have a copy of the report."