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Lawrence H. Diller M.D.

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“IN THE BEST INTEREST OF THE CHILD”: A COMMENTARY

Lawrence H. Diller, M.D.*

I am pleased to have the opportunity to review Dr. Jellinek's presentation, "In the Best Interest of the Child," and add my own comments. I have practiced behavioral pediatrics and family therapy in a suburb east of San Francisco for more than twenty years. I wrote a book on Attention Deficit-Hyperactivity Disorder (ADHD)¹ which has interestingly led to a series of self-referrals involving divorced parents, their children and ADHD. A common pattern emerged where a divorced father reported that his child's mother (and ex-wife) had sought an ADHD evaluation for the child.² These fathers were neither alerted nor contacted by the evaluators who diagnosed ADHD in the children and recommended a stimulant medication (*i.e.*, Ritalin) for treatment. The information was presented as *a fait accompli* according to the fathers. These fathers objected on the grounds that they hadn't been consulted especially since they did not believe their children had serious problems or ADHD. The fathers approached me for a second opinion.

Thus, two of my interests, ADHD and the treatment of children of divorce, ironically converged. I will state my bias right off that the "best interest of the child" is actually the same as the best interest of the family. The problem very often, however, is convincing the battling parents that the child's and their interests are on of the same. How this process plays out reveals the attitudes, values and power structure of our society. The law should try to prevent the worst aspects of parents from hurting one another, their children and themselves as they come to terms with the best interest of the family.

Dr. Jellinek and his colleagues review a history of the "best interest of the child" concept. From Roman times until rather late in the 19th century, children were viewed as the father's property. In the late 19th century the "tender years" belief—very young children should remain with their mother—took hold in America. By the mid-20th century the concept extended to awarding the custody of all the children to the mother. The feminist movement of the 1970s and the return of women to the work place led to gender equity and the ideal of joint legal and

* Lawrence H. Diller is in private practice in Walnut Creek, California, and is an assistant clinical professor at the University of California, San Francisco.

1. LAWRENCE H. DILLER, *RUNNING ON RITALIN: A PHYSICIAN REFLECTS ON CHILDREN, SOCIETY AND PERFORMANCE IN A PILL* (1998).

2. Martin T. Stein et al., *Challenging Case: ADHD, Divorce and Parental Disagreement About the Diagnosis and Treatment*, 21 *J. DEVELOPMENTAL & BEHAV. PEDIATRICS* 53, 57 (2000).

physical custody. Over the last ten years or so, the propriety of this goal has been questioned for many divorcing families.

Dr. Jellinek attempts to define a healthy environment for children and “in the best interest” using the attachment model. This seems an appropriate and useful way to describe the basis of a good environment in which to raise children. In a less formal way, I’d suggest that most children will do well given a reasonably consistent modicum of affection and discipline (a variation of D.W. Winnicott’s “goodenough” parent). Jellinek points out that “in the best interest” changes over time reflecting the child’s development and maturity. Too often in the acute divorce situation and in families of chronically embattled divorce, the parents are too distracted or consumed by their own emotional needs to attend to the emotional needs of their children. Some temporary decline in parenting is virtually inevitable. Most families recover from the acute process. Unfortunately, in the families of embattled divorce, the children’s needs continue to be neglected.

Jellinek notes that many divorce cases involving children are easy to settle. Both parents are reasonably competent and can cooperate over parenting or one parent is so unstable, violent, substance abusing, etc., so as to make easy the choice of the other parent as primary caregiver. He uses the example of parents with character disorders to illustrate when choosing the primary parent “in the best interest of child” becomes a difficult dilemma. There are formal psychiatric criteria for making the diagnosis of a character disorder. At the risk of gross oversimplification people with character disorders are not crazy, but they persistently and often outrageously do not act reasonably, nor do they follow reasonable advice.

Jellinek’s example has the father as arrogant, exploitative and narcissistic with a mother who is dependent, a victim, nurturing but unstable. These people are often given another name in psychiatry—“borderline” personality disorder. They are considered notoriously difficult to treat. Essentially, the doctor has to reparent them (which is not such an easy thing to do with acting out adults). This therapy approach seems very similar to Jellinek’s suggestions for addressing the needs of the child in the embattled divorce.

He believes the court should set up a structure with clear rules for behavior for the parents with rewards (of contact and physical interaction with the children) and punishment (contact denied, supervised visitation, etc.). I would add that someone, perhaps a therapist, be assigned to offer some nurturance to these parents. Even so, the prospects for person with a character disorder are said to be poor.

We can neither legislate nor adjudicate the human emotions within a family. We can set up rules of behavior which may be helpful but limited in creating change. In our efforts to help we must also be careful to “first do no harm.” Many injustices (particularly against fathers and children) have been perpetrated by the system in the name of helping the victim. “In the best interest of the child” has been invoked too many times to justify individual therapy for the child where one of the parents has been intentionally or unintentionally excluded. Except for extreme situations of violence or substance abuse this makes no sense and can be harmful overall to the child and his post-divorce family.

Women and children are the most frequent victims of husband/fathers’ abuse and should be protected. Yet, many women and some children play a role in perpetuating the abuse cycle. Both factors, protection and involvement, should be addressed in treatment. Finally, the pediatrician, by virtue of his previous relationship with both parents prior to the divorce, may be in an ideal position to act as an advocate for the child and facilitator between the parents. Professional unease and economic factors which do not reimburse the pediatrician for his time are the greatest barriers to his being more helpful in this role.

