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A CHILD'S EVIDENCE

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As a practicing Psychologist in the Halifax metro area for the past twenty-five years a considerable portion of my time has been devoted to problem children and families. In the past fifteen years I have been involved extensively in issues which bring children to the attention of the Court. The majority of these children have been the focus of custody and access disputes however there have also been a sprinkling of alleged child abuse and child offender cases. To a large extent I share the dilemma which I have heard most Judges and Family Law Practitioners express, namely what part, if any, does the child play in defending his own rights. If a child does in fact participate in the legal system, at what age does he do so and to what extent does he participate? If a child needs assistance in this endeavour who shall provide this assistance and what assurances are there that the assistant or representative of the child can interpret or speak accurately for the child. Does the adversarial system benefit the child? What is in the best interests of the child? Does the truth actually surface in the courtroom when decisions and futures must be made about children? Unfortunately I have many questions but very few answers.

I am not steeped either by education and training or experience in the adversarial role. In fact, the principles that underly my education, training and practice are conciliatory and therefore diametrically oppose the principles of an adversarial format. My colleagues in psychology and in related helping professions and I myself have condemned the adversarial format as a means of arriving at a decision which will be in the best interests of the child. The retort by my colleagues in the legal profession is a valid one - namely if the adversarial system is removed what will the mental health professionals substitute? Of course we have no substitute. For the present we are stuck with what we have. Many of my colleagues in the mental health professions find the advocacy system insensitive and an abhorrent process that rips families apart and leaves a wake of emotional destruction to all family participants that is irreparable - a

process that is supported by the contention of natural justice. Furthermore many of my mental health professional colleagues find the adversarial process and courtroom procedure foreign - and yes, personally threatening - and as a consequence they actively avoid involvement and only participate when they have no option. Obviously I do not believe this a prudent option to follow. The rationale behind my decision fifteen years ago to learn and work with the adversary system is very simple. The reality is and has been that the courts have the power to make decisions regarding the future of children and it is therefore vital that such a weighty decision should be based on whatever expert information can be made available.

In my opinion there is no justification for a child's evidence to be given in court, especially in those cases that involve custody, access, physical or sexual abuse. To understand the rationale behind this opinion, which I strongly endorse, one must not only look to the child's level of development and maturity but also to his perception of the world around him. It is not enough to determine whether the child can distinguish between right and wrong; one must look at his motivation and why that motivation exists.

From the time of birth (and some may say before birth) a child has needs and rights. The child is a person whether we refer to him as baby, toddler, pre-schooler, pre-adolescent or adolescent. While it may be redundant to emphasize this axiom, the rights that pertain to a child because he is a person are often ignored, misaligned and abused. Why does this happen? When we think of the process of justice where does the child fit in? How much can we expect of a child even if he or she is assisted or represented in our legal system when their best interests are at stake?

There are three primary concepts which we must appreciate in understanding the child's perception of his world and how he relates to it: (1) developmental stage (2) living and learning

experience and (3) parental/adult influences.

DEVELOPMENTAL STAGE

Any introductory book on child psychology will outline the developmental stages of childhood and adolescence. This is not the place to recite and expand on this topic, however I shall deal with it insofar as it applies to the main topic of this paper. The amount of development that takes place within the first five years of life is enormous and is never experienced by an individual in any other five-year period throughout his or her lifetime. In fact there are many who believe that the basic personality of an individual is determined by five years of age. This development is largely independent of outside or environmental influences. It is as if an internal clock within the child is set to trigger-off developmental acquisitions on schedule. As a result we have a newborn who is completely dependent on his caretaker for all biological, emotional and social needs to a five year old who moves independently, has acquired certain physical skills, can think and talk and communicate, and in effect see to the gratification of a great many of his needs at all levels. Of course he still requires the supervision and guidance of his parents. During the pre-adolescent years there is relative calm and maturation of the basic personality structure acquired by the child. However with the onset of puberty another physical change with considerable social and emotional turmoil takes place. This is recognized by many parents by the rebellious nature of the teenager as he or she seems to vacillate between childish behaviour on the one hand and a very mature or adult behaviour on the other. In most adolescents the rebellious behaviour does present a specific challenge to the parent however it is generally contained with great effort, and an equilibrium takes place as the child moves into the late teens. If we take a moment to reflect on this developmental process we can readily appreciate that the formative years are unique. There is no phase of adulthood that compares to these formative years.

I want to point out a number of implications that derive from the developmental stages. This has direct relevance to the topic of competency of a child to give testimony. First of all there is the principle of specificity or response. The response of the newborn or baby is non-specific i.e. he cries if he is unhappy and smiles if he is happy. It is up to the sensitivity of the caretaker to determine what is specifically creating unhappiness in the child. As motor development improves and particularly when the child acquires speech he can be more specific in his responses. For example if he is hungry he can say that he wants something to eat rather than simply cry until the need is met. However a child is not fully capable of the complexities involved in differentiating on a cognitive, emotional or social basis. It takes many years and some authors believe it is not until well into the adolescent stage that there is a sufficient development of conceptual ability that the individual can work with abstract and subtle concepts. As a case in point I have seen children up to the age of ten years who show quite different and difficult behaviour before and after an access visit. This is often reported by each biological parent and of course the difference in behaviour is attributed by each spouse as the fault of the other and a sign of inadequate or unsatisfactory parenting. The comment I most frequently hear is that it takes Johnny two days to settle-down and to be able to be managed after he is returned from a visit with his father. Ironically such disruption is not ordinarily the cause of one parent or the other but an inability of the child (at least in the initial stages) to adjust to two different environments, two different styles of life, sets of rules etc. The child cannot inform the parents that such is the case because he is cognitively incapable or performing at such a level of abstract complexity. However he feels a disequilibrium which can only be expressed through his behaviour and never in a way which can be directly associated with the precipitating problem. Of course this is a

transitional period in most cases which eventually dissipates provided it is not exacerbated by the parents. The point here which I would again wish to reiterate is that a child even of ten years of age while he can speak and think, carry on social relationships with his peers and master school subjects, he is not capable of the level of abstraction necessary to differentiate his feelings and associate them with the various situations he experiences.

LIVING & LEARNING EXPERIENCE

It is not the shorter life span that children have compared to adults that I am emphasizing here but is the implications of that shorter life span which are significant. As I have noted above that development especially during the first five years of life takes place as a result of an inherent program or scheduling. Of course it does not take place in a vacuum. All things being equal a child's development follows a sequence and takes place within an expected period of time.

In the following paragraphs I will emphasize the progressive steps by which a child's emerging skills enable him to have increasing experience and mastery of his environment. Recently, an access issue arose with a couple during mediation. In general their agreement was working satisfactorily however father was insisting the fifteen month old boy as well as his four year old brother continue to spend overnights in his home. Mother protested the toddler was too young and it upset his routine for days afterwards. Father believed his ex-wife was attempting to deprive him of time with his son. As I had suspected, the toddler was genuinely upset mainly because he had neither the skills nor the experience to cope with the nighttime environment except for the one he was familiar with in his mother's home. This was resolved by restricting access to daytime visits for the time being. His older brother had no problem, however I suspect it will be at least another year before the fifteen month old will start to feel secure on an overnight.

The environment of the child is confined in the beginning but broadens gradually with the child's growing confidence and independence. As a baby, the child's environment consists of its crib and his caretaker who tends to his biological needs and comforts. Eventually the environment spreads to the playpen and that part of the home which is within crawling distance. As the child's mobility improves i.e. the advent of walking the child can now cover a greater amount of territory and explore further. Although we have no empirical evidence to substantiate the child's perception of his world at this toddler stage logic dictates that it is immense and most likely overwhelming and exciting at the same time. To get some idea of his visual perception of the adults in his world we can imagine ourselves interacting with people who measure twelve and even eighteen feet tall. With greater mobility and more familiarity with the environment within the home the child next ventures into the nearby surroundings of the home such as the back and front yard and thereafter to meet others of his age in nearby homes. When speech develops, usually from two and a half years on, the child then gains the facility to regard more than the tangible and the present as part of his environment. Time concepts i.e. yesterday, today and tomorrow become the focus of his next undertaking for mastery. These are difficult concepts for the child because they are still functioning at a concrete level. However they can talk of the experience that they just had or the event such as a birthday party which is forthcoming. The difficulty in mastering this abstract concept can be illustrated by one of my children who at three years of age produced the following logic. He reasoned that when he went to bed at night and awakened the next morning it was the following day. He questioned if the next night he went to bed and he slept with his head at the foot of the bed when he awakened in the morning would it be yesterday - in other words if you sleep backwards why should you not go back in time to yesterday! I believe this illustrates the reasoning which is primitive and logical but demonstrates the difficulty

in the struggle to master an intangible concept. The child continues to broaden his horizons and the next step in his experience is his entrance to school. By this time he has recognized that adults in his environment are there as authority figures, comfort figures and individuals from whom he takes supervision and direction. At this stage he is beginning to pick-up some subtleties and begins to learn through the classroom experience of an environment much broader than his current experience has allowed him to absorb. His native ability to comprehend is fed and complemented by all that he encounters and becomes aware of in his environment. In psychology we often refer to inherent intelligence and environmental intelligence in order to measure as accurately as possible the intelligence of the child. In fact all intelligence tests must incorporate both factors in arriving at the child's present and potential capabilities.

As we can see the environment gradually broadens however the experience that the child incorporates into his understanding depends not only on his potential and his quickness to absorb, but also the readiness with which experiences are made available to him as well as his age and stage of development. The child always looks to home for his need to belong and his need to survive. Of course with increasing independence he becomes less and less dependent on the home to supply his needs for security. Even at the adolescent stage where many adolescents appear mature not only physically but also mentally there is a lack of depth which becomes evident in a crisis situation where it is demonstrated that they have no resource with which to cope. The need for belonging and for security is a vital factor even into the adolescent years. Children who have been deprived of this even in the early teen stage spend many of their adult years focusing on those experiences which will guarantee them security.

A final comment in this section on the importance of the environment is in order. Often an intellectually gifted child demonstrates a cognitive development which allows him to converse with an extended vocabulary

and an understanding which would appear to be far beyond his years. I myself have often been on the verge of attributing to this child the ability to make decisions about critical life situations e.g. the understanding of the divorce of his parents. It soon becomes evident on interview however that the child's emotional and social development are not advanced and furthermore while he is probably ahead of his peers in conceptual development he does not have the life experience to grasp the significance of what is happening. Like all children who are less endowed than he, there is an overwhelming concern for belonging and surviving. With his world turned upside down he becomes more concerned with the basic need of who will now take care of him.

PARENTAL/ADULT INFLUENCES

Parents are charged with the responsibility of rearing their children and for charting the composition and development of the family - still the basic unit of society and always a vital reference in family law. The parents are responsible for the development of the whole child - socially, emotionally, morally and intellectually. A child is brought into the family; he learns that this is the place where he belongs; this is where he receives nurturance and love. The parents are the sources of all his needs especially in the beginning but they are no less important as the child grows into adolescence. According to Maslow's hierarchy of needs the child moves from basic biological needs to safety or security needs and then to the feeling of belonging. This is accomplished in the family. A feeling of belonging is essential to all individuals. We are all aware of the "orphaned adults" who demonstrate an insatiable need to discover and make contact with biological parents despite the fact that they have been reared by foster parents in accepting and loving homes. No matter what the age of an individual it is essential that he or she realizes that he belongs. It is not surprising therefore that a child endows his parents with

infinite trust and morality. It is the parent who determines when the child has done something wrong; it is the parent who comforts and supports; in effect it is the parent who is the hub for all the spokes in the child's wheel. The family becomes the microcosm of the child's world. Here he becomes exposed first hand to the values which he will promptly adopt for the most part in his independent life. A boy learns to be a man by immitating his father - a girl by immitating her mother. He learns to relate to other by relating to his parents first. He learns first hand the role of a parent. His image of a marriage relationship is formed by his observations of the interaction between his parents.

PROTECTION OF THE CHILD

While it is true that children will test and confront their parents and plead unfairness especially when parents impose limits the child's sociological role is inherently one of dependency. The parent instructs and directs, and possesses the authority. If the child and parent are involved in a conflict situation the child soon becomes conditioned to the parent being in the right. The child perceives the parent in an omnipotent role. This perception is necessary for the child because he believes that the parent must be in control. If the parent is not in control, then who is? - certainly the child does not feel capable of this role and in fact would be extremely threatened if he believed he were in complete control. A child may test his parents often to make sure that the controls and therefore the security is still operational for him but he does not sit in judgement of his parent or parents. If this function were to exist the very fact that the child could use this power would be catastrophic and would threaten all the underpinnings of his development. And yet we entertain this function when we expect a child to speak-out or to act against one parent or the other, perceiving that it will incur the disapproval of one of his parents. The many years of living with his parents and in the family have proven to him that his parents are a source of love and belonging - to

threaten this bond is to threaten his survival. What crime can a parent commit to a child that would be greater than the danger of defrocking that parent and destroying the bond with a parent to whom he belongs. It is a known clinical fact that a battered child will cling to the battering parent; that a sexually molested child will go to great lengths to protect the molesting parent. I can recall a single-parent mother who brought her eight year old son to see me. He showed many symptoms of depression. The mother noticed he was sad and preoccupied most of the time. The father had been out of the home for at least a year and he had a drinking problem, was unemployed and was providing no support for the family. The father had been out of the home for at least a year and the family had no contact with him even though he was living in the city. The boy's mother did not know what was causing his problem and furthermore he would not confide in his mother. She was certain that he was not mourning over the absence of his father because his father while in the home clearly rejected the boy and treated him cruelly. As an example, the father's authoritarian attitude would result in father pushing the boy's face in the vegetables that he left on his plate because he did not like the vegetables or he was not hungry. Father did not reject the other two children although he certainly was not a model parent to them. Fortunately I was able to gain the boy's confidence when I saw him on an individual basis. This boy idolized his father and craved some sign of attention from him. He spoke of a time when he had seen his father on the other side of the street and he watched his father until he walked out of sight hoping that he would see some sign that his father had recognized him. Suppose there was enough evidence to charge this father with physical abuse to his son, what would be gained by having the boy give evidence? Firstly I doubt whether the evidence would be valid if he gave it. Secondly if he did tell the truth and it was accepted by the Court I would expect a severe depression as a result of guilt over an act for which he would never forgive himself.

Let me put my point in perspective. I am not suggesting that the father be condoned for the hypothetical physical cruelty toward his son. What I am suggesting is that the son should be protected from the realization that he had participated in an activity which alienated him from his father once and for all and cut off all potential further relationships that he hopes and dreams for. If a father is found guilty the boy must realize that he has had no part in the process.

THE CHILD'S ROLE IN FAMILY BREAKDOWN

When parents separate children cannot cope. They are devastated and the reactions vary. Some become emotionally upset immediately and are impervious to support and reason. Others withdraw and appear to be numb to the tragedy that has befallen their family. Still others will react very logically and would appear to accept the situation with a matter-of-fact attitude. Despite the variation in reactions all children struggle to cope with the immensity of a situation that is beyond their grasp. They simply do not understand the implications of what has happened. One student professional related to me some years ago that she was seven years of age when her parents separated but for years she had always believed that her parents would reunite. She kept alive this fantasy (as all children of broken families do) for many years. The impact of the divorce actually did not become a reality for her with all its implications until she was fourteen years of age. At this point of realization she became extremely angry and subsequently rebellious and unmanageable for some years thereafter. In those instances where the child is not an offender i.e. custody and access issues the child approaches the whole family breakup situation with a much different perception than the adults. The adults often get locked into a dichotomy of "Who is the parent best suited to look after the children and give them primary care?" While both the parents and the child are attempting to cope with the stress of the breakup the child's motivation is much different. In effect he or she is more

preoccupied with not losing one parent or the other. He is concerned with maintaining a relationship with both his parents despite the fact that they will no longer be living together. It is the assurance of the continuing relationships between the child and each of his parents that provides him with the security for the future. In many instances it is not the primary parent which the child is concerned about but the fact that the animosity between parents will interfere with his relationship with each of them. In one instance several years ago I was engaged to assess two teenagers of a broken marriage, a fifteen year old and a seventeen year old, to determine what their preference was in respect to primary residence. This was important because the parent who had the primary responsibility for the two adolescents would also inhabit the family home. On assessment both boys felt secure in their relationship with each of the parents, and rather than a preference for living primarily with one parent and having access to the other their main concern was to remain in the neighbourhood where they attended school and had friends and carried on most of their activities. In effect, this was an issue for the parents and their sons indicated this clearly during the assessment.

Quite often the question of who can provide the better home environment and just not an adequate home environment is a basic issue. If we are to consider the main thrust of the child's motivation we should look at the factors which will sustain strong and enduring relationships between the child and each of his parents. One could argue that it is the parent with the least resources and ability to create a quality relationship with the child that should have the primary care of the child. This leaves the stronger parent, the access parent, with more resources to apply to the task of maintaining the most difficult aspect of parenting, namely to create a meaningful relationship with the child while not having day-to-day contact with him.

Unless there are cases of physical or emotional abuse (and this could be determined by assessment at some time during the

divorce process) in most cases it is the parents who need to address the issues at hand. It is not a matter of the guilty and the innocent and therefore not grist for adversarial process. It is a joint decision that is ideally sought in this matter. Those who need to make the decision are the parents who are jointly responsible for the rearing of the child. Whatever decisions arise out of their deliberations are likely to be the best decisions that can be made provided hostilities are controlled during the period of deliberation. This, of course, is a case for a mediation which more and more is seen and is experienced as a viable alternative in such matters. Mediation has the potential for creating a working relationship between parents, providing for flexibility to meet changing circumstances, and avoids ongoing court appearances and the perpetuation of parental feuds.

THE UNIQUENESS OF FAMILY LAW

Unlike other courts, Family Law draws two systems into its process - the Judicial System and the Family System. In any given situation whether the parent or the child is the focal point of examination and investigation ultimately the court's decision must take into consideration not only the family member but also the family to which that member belongs. The family still remains the basic unit of our society, and despite the changing images of the family constellation over the years it remains the source for gratifying such basic needs as security and a sense of belonging. It is encumbant therefore upon the court to be mindful of the importance that this structure represents to all its members. The family is a cohesive unit wherein roles and relationships evolve over a period of years through intimate contact and interaction. The implication therefore of any wrongful or unlawful acts that are attributed to one of its members has the implications for the other members and the family unit as a whole. Not infrequently the court is faced with this dilemma. While the guilty cannot go unpunished, does the punishment of the individual lead to a repair or

reconstruction of the family unit in order that it returns to its original state of homeostasis, or does it represent a wedge within the family from which the family structure cannot recover? As a case in point it has been documented in the literature that a parent who sexually molests one of his children stands a better chance of resolution of the problem in the office of the family therapist than in the adversarial system. Parent-molesting is considered in most cases to be a symptom of family dysfunction that involves other family members besides the parent and the child, and therefore is amenable to family therapy. A case of parent molesting that is processed through the adversarial system of the court inevitably results in a breakdown of the family structure that is irreparable and leaves permanent emotional scars on all concerned. Similarly it is not uncommon for a child who is in violation of the law to be reflecting a symptom of family dysfunction. To sentence a child for his violation in isolation of the strengths and weaknesses of his family structure results in serious implications for the family as a whole. Families develop values and a balance which is unique to each family. Often it is an intricate balance which must be weighed prudently when one of its members is brought into contact with the judicial process.

SPECIAL CONSIDERATIONS

In the course of divorce proceedings there are many issues that come before the court for its consideration and decision, some of which are considered independently and some collectively. Where children are involved it is vital that their rights are safe-guarded. Unfortunately, more often than not, the disposition of children is included in the bartering that takes place in respect to maintenance and division of assets. To include children in this context is to regard them as chattel and to undermine the rights that are properly theirs. Therefore it is important to make appropriate distinctions that would result from asking the questions. What is the issue? - Who does it involve?. The answers to these questions should determine what amount of participation, if any, is required of the child. All too often

the child becomes a pawn in the negotiating period. It is incumbent upon the Judge to discern which claims for custody are genuine and which ones are spurious. We are all aware of the situation in which one parent's claim for custody is actually designed to acquire leverage in maintenance and/or assets. Custody deals with the current adjustment and the future development of a human being. Surely this is not a matter for barter. For all practical purposes custody should be heard and decided as an independent item before the court. While saying this, I am aware that there is one asset which may impinge upon the child's rights. I refer to the marital home and specifically a structure which is owned jointly by the couple. While the trend is to have an equal division of assets between the divorcing parties, a priority consideration should be given to the fact that the removal of the home may have effects on the child. Of course the effect will depend on a number of factors, not the least of which would be the age and the meaning of the home to the child's adjustment. Normally the younger the child the more important the home is to the child's security. If you recall the pre-schooler's level of thinking which is primarily concrete he attaches more of his security to tangible items and surroundings and of course his home is the most important aspect of his life at this stage. In the main teenagers are more flexible because of their greater level of development of conceptual understanding. Nevertheless a teenager whose home, neighbourhood, friends, school and in general his surrounding environment, forms a foundation for his overall adjustment must be given serious consideration. Although it is the parent or parents who have secured the home it is the child who may have made it an integral part of his adjustment. The child has not made a financial investment but he has in a sense made a morale and emotional investment, the removal of which will have an effect on the child. In this context it is important to point out that the parents have made a decision to terminate their relationship as a married couple, however they continue to be the child's parents. Their responsibilities to the child do not end with the termination of the marital relationship.

FINAL COMMENTS

Earlier in this paper I emphasized that the child is a person. However we cannot and do not deal with children as we do their mature counterparts. They are emerging adults. I draw your attention to an article by the Honourable Lindsay G. Arthur, J.D., District Judge, Juvenile Division, State of Minnesota, who as early as 1969 published a short article entitled "Should Children be as Equal as People". I concur with his conclusions which are "Should children be as equal as people. Certainly not. They should not have equal liberty: they should have less. Neither should they have equal protection - they should have more. How much less and how much more will depend on the maturity of the particular child at the particular time".

I would like to go further than the Honourable Judge because his conclusions beg the question - "Who will, or more to the point, who is competent to determine the maturity of a particular child at the particular time?". Is it a Judge, Lawyer, a Mental Health Professional, a Lay Person or some other professional? Rather than designating an individual by occupation it is perhaps more prudent to determine what is required of an individual in this position. Firstly the individual should be skilled at interviewing. Interviewing is not simply a matter of asking questions but it is a skill which is learned. The interview process itself is complex because the interviewer must take into consideration the motivation and environment of the interviewee, antecedant events, the interviewee's method of communication, the nuances of communication that are verbal and non-verbal as well, the interviewee's confidence in the interviewer, the possible undesirable consequences perceived by the interviewee in making certain statements, and a host of other factors. This process is made more complex by the fact that a child is the interviewee and the interpretation of a child's needs requires a working knowledge of the age and stage of development and the manner in which the child appropriately communicates at the time. It is not uncommon that a child cannot communicate satisfactorily on a verbal level because he has not yet

acquired the skills and the necessary differentiation in thought processes. On one occasion a six year old girl described an activity which she carried out fairly regularly while visiting her father. Drawing upon the limited experience which she had during her six years she described the activity as similar to milking a cow. This comment and subsequent investigation eventually led to the conviction of her father of involving the girl in masturbating him on a fairly regular basis. The interviewer must be careful not to lead the child nor show displeasure or shock at the child's responses since the child and particularly younger children have been conditioned to believe that they are wrong if they have displeased or shocked an adult. Such qualifications as I have outlined are usually found in a professional trained in the knowledge and understanding of child development and one who has hands-on experience and exposure to aberrant child development.

The expert witness is given a degree of latitude in his testimony and is often permitted to utilize hearsay evidence. By and large the same rules that apply to witnesses should be applied to expert witnesses. The bulk of his evidence should be derived from source or as close to source as possible. Where the bulk of evidence is hearsay and particularly if it is obtained by potentially biased informers the reliability of such evidence is certainly in question. Typically it is difficult for the expert to determine the degree of reliability of hearsay evidence and he or she is vulnerable to being led by the informer. Hearsay evidence should be admitted only when the court is satisfied that it is justifiable in the case at hand. Such instances would include information from a reliable informant such as another professional if that professional is not available to testify on his own behalf; or as supportive information to evidence already derived from source by the expert.

SUMMARY

It is time we took a critical look at the credibility of a child's evidence in court. I am sure there has been more than

one occasion when the weight given to a child's evidence has been an arbitrary decision. Throughout this paper I have attempted to create the child's perception of his world; in effect, the basis upon which he interprets and responds to the demands made of him. The child is a person - true; the child has rights - true; the child is in need of more protection than the adult - true. It is fallacious to view the child simply as an immature adult, an incomplete person. This leads to a judgement based upon watered-down adult expectations. It ignores the unique, the distinctive developmental processes of children. Ages and stages of development, living experience and the influence of parents/adults all represent the ingredients which determine the child's perception of his world at any given time. It is important to realize what characterizes the child is different and not the lesser of what is possessed by an adult. The burden of deciding whether or not a child's evidence should be accepted now rests with the court - a judge who through his own personal experience with children must formulate an opinion - or alternately, by playing out the adversarial process. For a moment, let us assume that the child's maturation level and the degree to which he can cope is understood. What happens next? He is brought into a courtroom where the surroundings are foreign, the procedure is not understood and he is the focus of adults. The setting is intimidating. It is incredulous to think that a child will be genuine under these conditions.

Hopefully, this paper makes a case for an accurate interpretation of the child's needs. In any family law dispute, whether the child is the accused or the innocent, such information must come before the court in order that our youth will have the best possible chance to become contributing adults in our society. There are no winners in family breakdown. I suggest our main goal is to lessen the personal and emotional losses that all parties will sustain. The literature often draws the parallel between family breakdown and death and dying. In effect, it is the death of a family. There are feelings of loss, grief, anger, guilt and a myriad of other stresses. The child has no greater insight and

understanding into family breakdown than he has for death. It is incumbent upon those who attend at the dying process of the family not to compound the stress and confusion that is being experienced by the family members. I suggest that, to demand of a child, participation beyond his capacity, in a judicial process, directly increases his confusion and stress level.

For the most part a child cannot accurately interpret or conceptualize the significance of family breakdown. He has neither the conceptual ability and/or the living experience to place this event in proper perspective. A child's memory however is not subject to the same developmental bias. He can recall events, in fact sequences of events, registered through his own perceptual processes. As a narrator rather than an interpreter of events we gain the most reliable evidence from the child. All other things being equal he can recall what he has seen and heard as accurately as adults, and sometimes with more accuracy and vividness.

In criminal court when it is questioned whether or not an accused is fit to stand trial an assessment is ordered to determine his competence. This is ordered when the accused is demonstrating behaviour that deviates well beyond accepted standards of normalcy. In respect to any given child, what are the standards which determine his capacity to give evidence? and at what level? when does he exceed that level? This writer advocates that a child specialist is qualified to determine the child's understanding and current capability of understanding the issues at hand. This could be accomplished to the extent of establishing guidelines for the court in order that the expectations of the child are within his range of understanding. Or, preferably the child specialist can report from his assessment the relevant information for the court. Certainly, at this point, a court may be reluctant to delegate such powers to a professional. Child specialists just like any other professional can be less than objective. This writer advocates a ban on the appearance of the child in the courtroom. How then are a child's rights to be protected? How can he be heard in court? I suggest an interview assessment of the child

by a child specialist be conducted in a facility familiar to the child and videotaped on closed - circuit T.V. Both counsel and the judge, but not the parents, observe the assessment via monitor as it is in process. The child specialist subsequently is available to interpret the child's needs and other relevant information through examination and cross examination on the witness stand. This procedure accomodates the child's means and level of communication in a setting which is not intimidating.

The question then arises whether the same process applies if the child is the accused or conversely an innocent victim of a larger issue i.e. marital breakdown. In principle the same format should apply. As a young offender he cannot hope to grasp the nuances of the judicial process. For example the child's moral values remain at a simplistic stage for many years i.e. if he does something bad he is punished. He expects this. To be coached in "preparing" his case by legal counsel is foreign to his thinking and is apt to be interpreted as a means for manipulation i.e. a way to beat the system.

- Recommendations:
- (1) All family court judges should be required to learn child development as a prerequisite to their appointment. The intent of this recommendation is to enable the judge to recognize various stages of child development so he or she can interpret with greater ease the child's needs as they are reported by the child specialist.
 - (2) A child should not be permitted to appear in the courtroom.
 - (3) All adults convicted of child abuse (sexual and/or physical) should be required to undergo a course of treatment and be re-examined by another independent specialist before care of a child is entrusted to them again.

- (4) Develop a core of specialists who are capable of discerning the child's needs, and who can speak effectively for the child, and only the child, in court. Such specialists may be a hybrid of lawyer and mental health professionals, and possess not only the skills to assess and interpret the child's needs but also to allow his or her objectivity to establish credibility for testifying on behalf of the child.