No. 21474: - Patricia Ann S. v. James Daniel S.

Workman, Chief Justice, dissenting:

The majority opinion marks a sharp departure from the primary caretaker rule which has been a viable and working concept in West Virginia for more than a decade. More disturbing, however, is the determination that it is in the best interests of children to place them in the custody of a parent who has abused both the wife and the children. In doing so, the majority implicitly places its stamp of approval on physical and emotional spousal abuse.

Deaths by domestic violence are increasing dramatically every year in West Virginia, and there is much discussion about the inefficacy of the judicial system in dealing with family violence. But until judicial officers on every level come to a better understanding of the phenomenon of family violence in its finer gradations, the response of the court system will continue to fall short. The majority demonstrates a tragic lack of understanding of the true nature of the dynamics that underlie family violence.

Erosion of Primary Caretaker Concept

The primary caretaker rule as set forth in Garska v. McCoy, 167 W. Va. 59, 278 S.E.2d 357 (1981), has been an important part of domestic

relations law in child custody disputes for more than twelve years. In actuality, the concept dates back further to our case of J.B. v. A.B., 161 W. Va. 332, 242 S.E.2d 248 (1978), wherein this Court "established a strong maternal presumption with regard to children of tender years." Garska, 167 W. Va. at 60-61, 278 S.E.2d at 358. This Court abolished the gender-based presumption in Garska, imposing in its place the gender-neutral primary caretaker rule. See id. at 70, 278 S.E.2d at 363. We explained the development of the primary caretaker rule in Garska at length:

> In setting the child custody law in domestic relations cases we are concerned with three practical considerations. First, we are concerned to prevent the issue of custody from being used in an abusive way as a coercive weapon to affect the level of support payments and the outcome of other issues in the underlying divorce proceeding. Where a custody fight emanates from this reprehensible motive the children inevitably become pawns to be sacrificed in what ultimately becomes a very cynical game. Second, in the average divorce proceeding intelligent determination of relative degrees of fitness requires a precision of measurement which is not possible given the tools available to judges. . . . Third, there is an urgent need in contemporary divorce law for a legal structure upon which a divorcing couple may rely in reaching a settlement.

167 W. Va. at 66-67, 278 S.E.2d at 361-62. After stating the rationale for implementing the primary caretaker rule, this Court ruled that: "in any custody dispute involving children of tender years it is incumbent upon the circuit court to determine as a threshold question which parent was the primary caretaker parent before the domestic

strife giving rise to the proceeding began." Id. at 68-69, 278 S.E.2d at 363.

In the instant case, it was clearly an abuse of discretion for the family law master and the circuit court to deny primary caretaker status to the mother. It is unfathomable that a woman who gives up her career (in this case, that of being a kindergarten teacher) to stay home to raise three children does not qualify as the primary caretaker, when as a full-time stay-at-home mother she breast-fed all three children; was so concerned about unnecessary additives and excess sugar that she processed her own baby food; was responsible for the majority of meal planning and preparation; was primarily responsible for laundering the family's clothing and housecleaning; was a Girl Scout troop leader; was a regular volunteer at her children's school and an active member of the parent-teacher organization; was responsible for scheduling and taking the children to their medical appointments; and was primarily responsible for managing the children's social activities.[1] For some unarticulated reason, both the family law master and the circuit court appear to have been bowled over by the fact that the father helped in the evenings and weekends. Not unlike many modern fathers, the Appellee did participate in some of the household and childrearing responsibilities. The mother and

[1]This woman fits the profile of what at least one member of the Court (Justice Neely) has said mothers should be. Furthermore, a full exploration of the evidence reflects that one of the major complaints about this woman is that she uses bad language, a quality that Justice Neely surely can't hold against her.

father jointly oversaw the bedtime routine of the children. Upon the birth of the third child, the father, by agreement of the parties, awoke the two oldest children and prepared their breakfasts, because the baby (Jennifer) was up a lot at night. As Jennifer grew older and began sleeping all night, the parties continued this routine. Although the mother stayed up late, during those evening hours she cleaned up from dinner, prepared lunches for the children to take to school the next day, and did other household duties. The Appellee planned recreational activities such as camping and hiking trips, primarily for the boys. Given the father's admitted ten to twelve-hour work days combined with frequent business trips which took him away from home, it is difficult to conceive how he could ever qualify as having equal caretaking responsibility. The family law master and circuit court's conclusions that neither individual qualified as the primary caretaker has the effect of somehow elevating the father's necessarily limited hours with the children, given his lengthy work days, to accord him the same caretaker status as the full-time stay-at-home mother. The majority in essence places a higher value on a father's time and contribution.[2]

[2]The majority cites Dempsey v. Dempsey, 172 W. Va. 419, 306 S.E.2d 230 (1983), for the proposition that the length of time a parent is "alone with the child" is not dispositive. Dempsey did not involve the length of time a parent was alone with the child. It was a case wherein the mother was the sole caretaker from 1978-1980 and the appellee was the sole caretaker from 1980 until the time of the divorce. This Court held that even though the appellant had assumed the caretaking duties for a longer time, that "length of time alone (in which each party has sole responsibility) is not determinative of whether the presumption should attach." Id. at 420, 306 S.E.2d at 231. It spoke not at all in terms of "length of time alone with the child," as the majority implies.

By upholding the circuit court's ruling, the majority begins an erosion of the primary caretaker rule,[3] or at least sends a signal to domestic relations practitioners that it will be situationally ignored when expedient. While this Court did acknowledge in Garska that there will be cases where neither parent has clearly taken primary responsibility for nurturing and rearing the children, this clearly is not such a case. See Syl. pt. 5, Garska, 167 W. Va. at 59, 278 S.E.2d at 358. What has happened in this case is precisely what this Court was concerned with in David v. Margaret M., 182 W. Va. 57, 385 S.E.2d 912 (1989), when we ruled in syllabus point four, in part, that: "[i]n West Virginia we intend that generally the question of which parent, if either, is the primary caretaker of minor children in a divorce proceeding is proven with lay testimony from the parties themselves and from teachers, relatives and neighbors." Id. at 68, 385 S.E.2d at 913. Whereas the majority "do[es] not believe the family law master or the circuit court judge deviated from the above-mentioned guideline[,]" the circuit court in a "Summary Of Ruling" on the issue of Appellant's petition for review of the family law master's recommended decision explicitly acknowledges that "[t]he surface appearance is that this is a matter of competing

[3]When the Appellee presented the first expert witness on the fitness/best interests issue, the family law master, in response to Appellant's objection, even acknowledged that it was a deviation from the primary caretaker rule, but in essence said the rule was being eroded "and we should feel free to deviate from that if there is some real good reason for that."

experts." Sadly, that is exactly what this case boils down to--one expert[4] versus another, rather than a decision based on lay testimony. We explained the dangers of relying on expert testimony in custody cases in David M.,

> Expert witnesses are, after all, very much like lawyers: They are paid to take a set of facts from which different inferences may be drawn and to characterize those facts so that a particular conclusion follows. There are indeed cases in which a mother or father may appear competent on the surface, only to be exposed after perfunctory inquiry as a child abuser. . . . The side with the stronger case can afford to hire only competent experts with profound integrity; the side with the weaker case, on the other hand, wants impressively glib experts who are utterly devoid of principles. When both parents are good parents, the battle of the experts can result only in gibberish.

182 W. Va. at 63-64, 385 S.E.2d at 919.

In this case, the testimony of three expert witnesses was admitted. Only one of the three, Dr. Charles Yeargan, was deemed by the court to be an independent expert. The Appellee sought out Dr. Mari Walker, who has since been disciplined by the West Virginia Psychological Association for violation of the ethical principles of the American Psychological Association for her testimony in this case. Without ever meeting with the Appellant (and only briefly meeting with Appellee and the children), Dr. Walker gave an opinion that custody of all three children should be awarded to their father.

[4]The "expertise" of the Appellee's experts is also questionable, which will be explored later in this opinion.

Later, the Appellee sought out another expert, Dr. Carl McGraw, who concurred with the findings of Dr. Walker that custody should be placed with the father. Of primary interest to Dr. McGraw was his concern that the children not be split up among the parents. While this is certainly a laudable concern, it appears that this focus may have totally overshadowed Dr. McGraw's "objectivity" with regard to his ultimate recommendation.

The upshot of this case is that first, the family law master, and ultimately, the circuit court, bypassed the "threshold question" of primary caretaker and were sidetracked by testimony concerning the relative fitness of the parties. Garska, 167 W. Va. at 69, 278 S.E.2d at 363. Only after the primary caretaker issue has been resolved does the question of fitness become relevant. See syl. pt. 4, David M., 182 W. Va. at 58, 385 S.E.2d at 913. In this case, both the trier of fact and the circuit judge "avoided" the primary caretaker issue by prematurely infusing the issue with questions of relative fitness and relying on "experts."

The family law master and circuit court also erred by permitting testimony on the issue of the relative fitness of the parties. Fitness, once it has properly been raised, does not involve a comparison of the parties, but instead requires a showing that the individual designated as the primary caretaker is unfit. As we stated in syllabus point four of David M., in part,

> Once the primary caretaker has been identified, the only question is whether that parent is a 'fit parent.' In this regard, the court is not concerned with assessing relative degrees of fitness between the two parents such as might require expert witnesses, but only with whether the primary caretaker achieves a passing grade on an objective test.

Id. at 58, 385 S.E.2d at 913. Because there was no showing of unfitness on the part of the mother, who clearly qualified as the primary caretaker, the majority opinion does great disservice to the primary caretaker rule in addition to exacerbating the pain of this family.

The lower tribunals then embarked on a best interests analysis, and it is in this arena that the family law master and circuit court demonstrated the most overwhelming lack of insight into the dynamics of this family and indeed the dynamics of domestic violence.

Majority Okays Spousal Abuse

This father not only takes a belt to the three children[5] regularly, but he also has taken a belt to his wife. Phenomenally, the family law master did not permit the wife to testify in detail to the physical abuse she endured throughout the marriage, as he apparently concluded it had nothing to do with the children.

[5]According to the mother's testimony, the father also regularly disciplined Jason (the oldest boy) by grabbing his shoulders and pushing him up against a wall or tree, on one occasion bruising his head. The father admitted overreacting and perhaps using excessive force, but denied it happened on a regular basis. The mother admitted that she, at one time, also used corporal punishment on the children, but had taken parenting classes in 1989 and learned that there were

In fact, spousal abuse has a tremendous impact on children.

> Children learn several lessons in witnessing the abuse of one of their parents. First, they learn that such behavior appears to be approved by their most important role models and that the violence toward a loved one is acceptable. Children also fail to grasp the full range of negative consequences for the violent behavior and observe, instead, the short term reinforcements, namely compliance by the victim. Thus, they learn the use of coercive power and violence as a way to influence loved ones without being exposed to other more constructive alternatives.
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> In addition to the effect of the destructive modeling, children who grow up in violent homes experience damaging psychological effects. There is substantial documentation that the spouse abuser's violence causes a variety of psychological problems for children. Children raised in a home in which spouse abuse occurs experience the same fear as do battered children.
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> Spouse abuse results not only in direct physical and psychological injuries to the children, but, of greatest long-term importance, it breeds a culture of violence in future generations. Up to 80 percent of men who abuse their wives witnessed or experienced abuse in their family of origin. Abused children are at great risk of becoming abusive parents.

> Thus, the ultimate question in assessing the relative fitness for custody of the abuser and victim is

(..continued)
better ways to handle discipline. She testified that she used time-outs and withdrawal of privileges following her completion of the parenting classes.

> which parent is most likely to provide the children with a healthy, caring and nonviolent home.

L. Crites & D. Coker, What Therapists See That Judges May Miss, The Judges' Journal, 9, 11-12, (Spring 1988) (footnotes omitted) (emphasis in original).

There is yet another aspect of spousal abuse that judges and many others find difficult to understand. These relationships are characterized not only by physical abuse, but also by repeated humiliation and other psychological abuse that "'reaches the level of a campaign to reduce the partner's sense of self-worth and to maintain control[;]'" and "a pattern on the part of the abusive partner to control the victim's daily actions. . . ." Crites & Coker, supra, at 9.[6]

It is clear from Mr. S.'s testimony that he ran this family with an iron hand, a significant trait in abusive relationships being the total power and control of one party. The evidence reflects that for some period of time Mrs. S. was not allowed to have a cent, not even grocery money. She was permitted to write a grocery list, and if her husband was ever-so-gracious, he would include her requests.

[6]An abused woman may be defined as one who is repeatedly subjected to any forceful physical or psychological behavior in order to coerce her to do something without any concern for her rights. See I. Bessenyey, Visitation in Domestic Violence Context: Problems and Recommendations, 14 Vt. L. Rev. 57 (1989),

Once she attempted to take $20 from his wallet and wound up in the emergency room after he wrestled with her over it. Mr. S. testified that he actually found the whole episode rather humorous, likening his wife clinging desperately to the $20 bill by hiding it in her mouth as resembling a lizard with lettuce sticking out of its mouth.

One of the complaints made about this mother is that she lacked the ability to manage the boys, ages twelve and ten at the time of the hearings, and surely the record is clear that it was difficult for her to manage these boys, especially Jason, the older of the two. In her petition for review, she pointed out that for several years, her husband had been "mentally, emotionally, and physically cruel" to her.[7] Studies demonstrate that after ages five or six, children show strong indications of identifying with the aggressor and losing respect for the mother. See Crites & Coker, supra, at 11.

In her personal petition for review to the circuit court, she stated

> My two boys in particular identify with their father. Unfortunately, their father has downgraded me for years in front of them and continues to do so. I would become angry in response. The children have seen their father hit me with a belt. My oldest son Jason has bit me and kicked me so hard to have left bruises on me. Jason repeats to me in arguments what his father tells

[7]As noted earlier, the family law master interrupted her testimony on physical abuse to assure the parties that he always entered a "boiler plate" restraining order on both parties and essentially indicated he wished to hear no more on this issue.

> him happens in court. Jason has attacked my mother and caused my father to get a lump on his head by slamming an attic door on his grandfather. Jason is the thirteen year old who has the added problems of puberty on top of this divorce. My second son Justin is ten years old and is having difficulty adjusting. Since he has been with his father, his grades have gone from "A's" and "B's" to some "C's", "D's", and one "F". My six year old daughter, Jennifer is a 4.0 student in first grade. She is also in the gifted program. She has done fine under my care alone this past year.

The evidence reflects that Mr. S. modelled for these children the behavior of demeaning, discrediting, and otherwise disempowering the mother. For example, the father devised a point system to reward good behavior and punish bad behavior. When the mother attempted to participate in the system as a method of encouraging good behavior and managing the children, the children were told that "mommy's points don't count" and "mommy is crazy." The mother testified that the children's response was that "you're not the boss, daddy's the boss. . . ." Furthermore, the father would tally the points and take the children to the toy store for the payoff, which the mother had no financial resources to do.

From Dr. Yeargan's report:

> Mr. S. reported that he can't see himself trying to tell the boys to be kinder and gentler to their mother for fear that he'll lose credibility with them. He said, "I'm not too interested in finding a way to help the enemy camp look good or better. . . . until all three kids are together and this is resolved. My primary objective is to have the three kids."

Mrs. S. testified that she attended counselling, both in an effort to save the marriage and in an effort to get help in working with the children, and that she read a number of books on parenting and divorce. She admitted that she used bad language (as did the whole family) and that the husband's constant demeaning of her in front of the children made her angry. She acknowledged she had made mistakes and was working to correct them.

Mr. S., however, presents himself as the perfect father as demonstrated by his testimony that his rapport with the children was "exemplary," and "that it would be very difficult to improve upon." He described himself as "nurturing," "kind," "loving," "caring," "understanding," and "patient."

But a look at Dr. Yeargan's report presents a very different picture of this man:

> some of the same parental behaviors that previously contributed to the children feeling torn between parents is continuing; those behaviors are (a) increasing the alienation between the children and their mother and (b) exacerbating the loneliness which the boys feel for their sister and vice versa. In this examiner's opinion the behaviors of Mr. [S.]
> . . . . are of primary importance in the creation of more alienation and loneliness in the children.

The same report details the control and manipulation of the children by Mr. S.:

> All three children report pain over being split but the two boys report it in a way that reflects their father's opinion. Jason, for example, reports the opinion that the children should not be separated and says that they shouldn't " . . . because we'll grow up to be total strangers." Justin reports that being ". . . sad over Jennifer" is his biggest concern. He then goes on to say, "That's really the only problem. Dad says to just tough it out and he's working on it. It's wrong to split up the children cause they'd not grow up together and they'd be total strangers." Two weeks after I talked with the boys Mr. [S] . . . reported to me virtually verbatim the same rationale for why the children should not be split. I infer that (a) the children would naturally express their discomfort in existential terms of the things that they are not now enjoying, (b) their expression of concern for future estrangement indicates how their father is contributing to, not allaying, their fears and (c) the boys, and possibly Jennifer, have been led by their father to hope that he will eventually get the children together under one roof.
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> All three children report knowledge of complaints which their father has with their mother which should not be told to them. The obvious effect that this knowledge has is to (a) divide their allegiance deeper and (b) alienate them further from their mother. Jennifeer [sic], for example, mentions that her mother does not want to pay the phone bill. Jason reports of his mother, "She'll run up his (father's) credit cards, get new glasses, run up his medical bills, buy vitamins and stuff like that that she doesn't need." When asked how he knew about all of that he replied, "Dad tells us cause there's really nothing he has to hide from us." Justin reports that they "sometimes" still see parents fussing during the times when the parents are picking up or dropping off the children to one another. He goes on to report that his father tells them

> about various arguments which occur between him and their mother (arguments which occur on the phone, at the office, etc.).
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> Mr. [S.]. . . . arranged for the boys to see a counselor (Michael Sheridan) after the separation and reported to Mrs. [S.]. . . . that it was because of their relationship to their mother. According to Mrs. [S.]. . . she was excluded by Mr. [S.]. . . . from any information or advice by that counselor. Mr. [S.]. . . . reported to me that Mr. Sheridan had helped the boys to accept that some of the sanctions being imposed by their mother during visitations were a direct result of their behavior (trashing their mother's Christmas decorations, etc.) However, Mr. [S.] . . . did not use that opinion of Mr. Sheridan to support the boys' mother in dealing with the destructive things the boys were doing; he declined to tell her anything about what transpired in Mr. Sheridan's office. Furthermore, in his discussion with me he missed the point that the boys should assume responsibility (i.e. feel some measure of reproach or make amends for misbehaving.) Instead, he assumed that the important lesson that the boys learned from Mr. Sheridan was that ". . . you can esteem yourselves for coping well with difficulty."

Mr. S. acknowledges that, (although less frequently on five-year-old Jennifer), yes, he does use a belt on all three children, and according to unrefuted testimony he also has grabbed Jason by the shoulders and banged Jason's head against a tree.

His own description of how he handles physical discipline shows best the kind of fear he uses to exert control over this family:

> Normally, the punishment is a smack on the behind with a belt. And I tell them what will happen if they transgress or exceed certain limitations; and, when they, on occasion - not recently, but on occasion - test an adult's authority, which all children are want (sic)to do, I have no choice

but to follow through consistently with what I told them would happen.

And when I do that, we discuss it, and I make sure they understand the nature of the discipline. We even negotiate sometimes about how many smacks they want. I will frequently ask them how many smacks that they think that the offense is worth, and frequently they will say four, and I had only planned, maybe, to give them one, maybe two at most, and we will discuss the issue.

Frequently, I will, at the last minute, decide that I can't even spank them anyway, after having gotten them ready to be spanked, decide that I -- it's difficult to do, and will let the belt fall aside and smack the bed or the floor and say to them, I'm going to let you go this time, but don't do that again.

On the occasions when I do smack their behinds with a belt, I will always make sure, after I have done it in a controlled and unemotional way - never in anger - that they understand what the punishment was for and why I had to do it, and I will always check their little bottoms to make sure that there is not sufficient force to seriously damage them, say bruising or whatever.

With all of these circumstances, one may wonder why the children were taken from the mother. A close reading of the record reveals that the most damaging things that can be said about Mrs. S. are that 1) she uses bad language; 2) she is very angry; 3) the children told the psychologists that they wanted to live with their father; and 4) one of the psychologists concluded that they "feel safer with their father."

Anger

What judges and indeed many therapists usually fail to understand is the behavior manifestations battered women frequently demonstrate. For example, a battered woman

> may appear in court as unstable, nervous, inarticulate, or angry--a result of her ordeal. The batterer, on the other hand, may appear in command of himself, calm, well spoken and so forth--and may appear in court as the more fit parent. This may operate to the disadvantage of the victim not only in the eyes of the judge, but also with counselors meeting with one or both of the parents and with psychologists hired to do a psychological evaluation.

Crites & Coker, supra, at 40.

It has further been recognized that:

> many women do not present a tearful passive personality to the psychologist. . . . Anger and a new assertiveness are positive characteristics of the recovering abuse victim. She is angry at being abused, and angry at having been blamed by him and by unaware therapists for having caused it. And she is especially angry at his attempts to take the children away.

Crites & Coker, supra, at 41.

Psychologists unfamiliar with all the circumstances and with the unique dynamics of family abuse may make these mistakes:

> 1. They fail to see that the victim's anger is appropriate and normal. . . . 2. They look to the victim's behavior and personality problems to explain the abuse. . . . Such blaming of the victim tends

> to reinforce the abuser's position that . . . the victim is crazy. 3. They seem to identify with the seemingly sociable, 'appropriate' male as a man who has been pushed beyond his limits by an 'angry woman." 4. They fail to see beneath the sincere, positive image of the abuser, but look instead for the 'typical' abuser personality. . . . 7. Finally, they criticize [the woman] for focusing her anger on her husband. . . .

Crites & Coker, supra, at 42.

It does not appear that any of the psychologists had any information on the domestic abuse and none dealt with the physical abuse; only Dr. Yeargan seems to have had any information on the psychological abuse and domination. If family law masters and judges are to make decisions on the lives of troubled families, they must become sufficiently knowledgeable about physical and emotional domination to enable them to recognize that these factors are just as invidious, and probably more pervasive, than physical abuse alone. And we must begin to see anger on the part of the victim as healthy.

Children's Preference

The children of David Koresh felt safe with him. While this dissent does not seek to compare Mr. S. with David Koresh, it implores judges to see that family relationships wherein one person has all the power (frequently not only through the purse-strings, but also as a result of both learned and socially-imposed helplessness) are also abusive.

These children learned from their father that their mother did not have even sufficient authority to purchase a package of Oreo cookies for them, that it was okay to demean, disobey, and verbally abuse her, and that physical violence awaited those who did not do as he said. The mother reacted with anger, and the father by word, deed, and dollar delivered the message that mommy's crazy and mommy's contemptible.

Jason was twelve years old at the time of the hearings before the family law master and thirteen by the time of the divorce. Thus, he was only thirteen at the time he last expressed a preference on the record in this case (not fourteen, as the majority indicates). We have said that a child has a right to nominate his own guardian at age fourteen, and that his preference can be accorded deference even before fourteen, depending on his age and maturity. See David M., 182 W. Va. at 64, 385 S.E.2d at 920. Consequently, even though the mother was the primary caretaker, the circuit court cannot be said to have abused its discretion in giving weight to Jason's preference and placing him in the custody of his father. In all likelihood, and by all the evidence, this young man has already demonstrated a propensity to act out anger with violence, and we can only hope we do not see him in court in another generation.

Justin was ten years old and Jennifer six years old at the time their preferences were expressed. Although it could be argued that a ten-year-old's preference could be given some weight, Jennifer at six was too young to express a meaningful preference. Furthermore, a reading of the record makes it quite clear that Jennifer was spirited off to see psychologists by her father and instructed rather specifically on the way by her father and older brother regarding what to say. She related to her mother after-the-fact that she told lies and even Dr. Yeargan discerned that she had been coached.

Justin and Jennifer should have been placed in the custody of their mother. The majority wreaks further havoc on this family (especially Jennifer) by a remand for further evidence. It appears that anxiety and manipulation will again be the order of the day for this little girl, and life's most basic uncertainties will resume as the family is figuratively killed with due process.

This case as written will have little impact on anyone's lives other than the parties themselves. But what it should have is a very clear, bright line syllabus point that domestic violence is a very important consideration in determining child custody. So long as this Court sends a different signal to family law masters, magistrates and circuit judges, the response of the judicial system to family violence will continue to be inadequate.

The judicial system in this country is the last bastion of almost total male domination. Judges bring to their work all their social, cultural, personal values and experiences.

In 1971, two white male law professors studied the response of American judges to sex discrimination cases up to that time and wrote:

> Our conclusion, independently reached, but completely shared, is that by and large the performance of American judges in the area of sex discrimination can be succinctly described as ranging from poor to abominable. With some notable exceptions, they have failed to bring to sex discrimination cases those judicial virtues of detachment, reflection and critical analysis which have served them so well with respect to other sensitive social issues. . . . Judges have largely freed themselves from patterns of thought that can be stigmatized as "racist" . . . [but] "sexism"--the making of unjustified (or at least unsupported) assumptions about individual capabilities, interests, goals and social roles solely on the basis of sex differences--is as easily discernible in contemporary judicial opinions as racism ever was.

L. Crites, A Judicial Guide to Understanding Wife Abuse, The Judges' Journal, 5, 7 (Summer 1985).

In 1977, Beverly Cook of the University of Wisconsin in Milwaukee analyzed the United States Supreme Court cases affecting woman from 1971 to 1977, and concluded that members of the Court were more influenced by their personal values than by legal principles. See Crites, supra, at 7.

Obviously, gender bias continues to exist in the court system in many contexts, pointing up not only the need for judicial education on gender-related issues, but also for larger numbers of women in the judiciary.

Since the majority has directed that this case be remanded on the best interests of Jennifer, the family law master and circuit court should permit evidence on family violence and should appoint an expert who knows something about this issue, for both evaluation and counselling. Carlotta Smith, the director of the Women's Resource Center in Beckley, West Virginia, who is a master's level counsellor and works daily with families whose lives have been disrupted by abusive relationships or someone with similar expertise should be considered.

Lastly, this Supreme Court in its administrative capacity should not only continue to develop training for judges, family law masters and magistrates on domestic violence, but should also get in touch with the fact that the members of this Court need such training as well.