Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Prengaman
Mr. Sena

Members Absent:

None

Guests Present:

Barbara Bailey	Nevada Trial Lawyers
Jim Barrows	Las Vegas SUN
Joe Braswell	Inter-Tribal Council of Nevada
Jack Bullock	Humboldt County District Attorney's Office
Frank Daykin	Legislative Counsel Bureau
Cal Dunlap	Washoe County District Attorney
Janis Higginbotham	KOLO-TV
Bill Macdonald	Humboldt County District Attorney
Ruth Pearson	Child Custody Division, Eighth Judicial District
R. L. Petroni	Clark County Schools
Joseph Potts	Legislative Counsel Bureau
Kent R. Robison	Nevada Trial Lawyers
Judge Charles Thompson	Eighth Judicial District
George L. Vargas	American Insurance Association
Trish White	Review-Journal

Chairman Hayes called the meeting to order at 8:05 a.m.

ASSEMBLY BILL 152

Specifies type of evidence whose contents may be proven without production of the original.

Judge Thompson stated that this bill was identical with Section 2 of A.B. 153.

ASSEMBLY BILL 153

Modifies rules of evidence concerning related crimes and contents of missing original documents.

Judge Thompson said that when the Legislature passed the Evidence Code in 1971, the Code was modeled after the Federal Evidence Code, and to a large extent was used verbatim. He

said that Section 2 of the bill adds the wording, "of writings, recordings or photographs," to clarify the usage of the word "contents" in NRS 52.285. He said this clarification comes from Federal Rule 1007.

Judge Thompson, referring to Section 1 of the bill, said that the instruction that is presently mandated in NRS 48.035 in regard to discussion of related crimes when a person is on trial places undue emphasis on the related crime. He said that defense attorneys do not want special admonition about another crime. He said the wording in the bill would allow this instruction to be given only if requested.

ASSEMBLY BILL 155

Broadens scope of examination of adverse witnesses.

Judge Thompson said that the first change in this bill was on Page 1, Line 16. He said that the Federal Evidence Code was changed substantially when this subsection was put in. He said the present wording of the bill would provide that there would be no difference in criminal cases and civil cases in calling various witnesses to testify.

Judge Thompson said that the other major change proposed by this bill was on Page 2, Lines 9, 10, and 11. He said that this language is also a part of the Federal rules. He said this new subsection refers to the admission of a hearsay statement, and he said it is only logical that a person be able to cross-examine a witness who is submitting a hearsay statement attributed to that person.

ASSEMBLY BILL 156

Broadens cases in which inquiry may be made during trial into specific instances of conduct.

Judge Thompson said that this bill involved a sentence that was left out from the Federal rules. He said that there was no reason not to go into specific instances of conduct when cross-examining a character witness. He said present language limits this cross-examination, and the new language would go along with the Federal rules.

ASSEMBLY BILL 158

Eliminates limitation on admissibility of evidence of transactions or conversations with or actions of deceased persons.

Judge Thompson said the statute reads, "Transactions or conversations with or actions of a deceased person are admissible if supported by corrobative evidence." He said he knew of no other provision of the Evidence Code that does more to foster injustice than this provision. He referred to a Supreme Court ruling concerning this statute, and his feeling was generally that

the Nevada Supreme Court's decision was inadvertently written. He said the estates of living persons are endangered by this rule. He said he had been told that there was only one state other than Nevada that has not abolished or repealed this law. In addition, he stated that a statement made by a person believing that death is imminent would not be admissible unless the bill repealing NRS 48.064 was passed.

ASSEMBLY BILL 159

Limits hearsay exception for statements against interest.

Judge Thompson read the new wording in the bill, "A statement tending to expose the declarant to criminal liability and offered to exculpate the accused in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." He said that defendants have found with the present wording of NRS 51.345 that they can come up with a phantom confession. He said that jurors will believe these confessions. He said that inclusion of the statement would adopt the Federal rule in this regard in total.

ASSEMBLY BILL 154

Removes exception to exemption of judicial proceedings from "open meeting" law.

Mr. Daykin said that during the interim between legislative sessions, the Nevada Supreme Court considered the provision of the open meeting law which said that it did apply to judicial proceedings where the subject was deliberation of rules or on administrative orders. He said the Supreme Court felt this was a violation of the doctrine of separation of powers. The provision of the statute was declared unconstitutional, and this bill would, therefore, remove this language from the text of NRS. He said this bill would not make any change in the substance of the law because the judicial branch would not be covered by this statute after the decision of the Supreme Court.

Chairman Hayes asked what would happen if the bill was not passed. Mr. Daykin said that the wording would remain in the law but would not be given any effect by the courts.

Judge Thompson said that judges in Clark County voted to have open meetings except for personnel matters. He said he thought it was safe to say that all meetings that were of public interest were open to the public.

Mr. Coulter stated that there is a proposed constitutional amendment that would bring the judicial branch under mandated open meetings.

PAGE 4 OF ASSEMBLY JUDICIARY, 2-9-79

THIS PAGE IS MISSING FROM BOTH THE ORIGINAL MINUTES AND THE MICROFICHE.

PAGE 5 OF ASSEMBLY JUDICIARY, 2-9-79

THIS PAGE IS MISSING FROM BOTH THE ORIGINAL MINUTES AND THE MICROFICHE.

ASSEMBLY BILL 153

Mr. Malone moved for do pass; Mr. Prengaman seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Coulter, Fielding, Horn, Malone, Polish, Prengaman - 9.
Nay - None.
Absent - Brady, Sena - 2.

ASSEMBLY BILL 154

Mr. Banner moved to indefinitely postpone; Mr. Prengaman seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Coulter, Fielding, Horn, Malone, Polish, Prengaman - 9.
Nay - None.
Absent - Brady, Sena - 2.

ASSEMBLY BILL 155

Mr. Prengaman moved to pass out A.B. 155 with a do pass recommendation; Mr. Banner seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Coulter, Fielding, Horn, Malone, Polish, Prengaman, Sena - 10.
Nay - None.
Absent - Brady - 1.

ASSEMBLY BILL 156

Mr. Sena moved for do pass of A.B. 156; Mr. Horn seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Coulter, Fielding, Horn, Malone, Polish, Prengaman, Sena - 10.
Nay - None.
Absent - Brady - 1.

ASSEMBLY BILL 159

Mr. Prengaman moved to recommend do pass on A.B. 159; Mr. Sena seconded the motion. The Committee unanimously approved the motion.

ASSEMBLY BILL 115*

Mr. Banner moved for do pass; Mr. Horn seconded the motion.

See Exhibits A through D

Mr. Malone said that his only concern was that this bill would cover only half of the problem. Mr. Coulter questioned whether the concerns addressed by the Inter-Tribal Council should be taken into account in this bill.

After further discussion, Mr. Stewart moved to amend Mr. Banner's motion to do pass for a time certain, next Monday at the regular meeting time; Mr. Sena seconded the motion.

Mr. Coulter moved to adjourn; Mr. Fielding seconded the motion. On a voice vote, Chairman Hayes declared the meeting adjourned at 9:59 a.m.

Respectfully submitted,

Carl R. Ruthstrom Jr.

Carl R. Ruthstrom, Jr.
Secretary

Harding & Zervas, Chtd.
A PROFESSIONAL CORPORATION

SAMUEL A. HARDING
MICHAEL R. ZERVAS

BANK OF NEVADA BUILDING
225 E. BRIDGER, SUITE 760
LAS VEGAS, NEVADA 89101
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February 7, 1979

Honorable Karen Hayes
Chairperson of Assembly
Judiciay Committee
Capitol Complex
Carson City, Nevada

Dear Ms. Hayes:

It has come to my attention that your Committee will be considering Assembly Bill #115 (the Uniform Child Custody Jurisdiction Act) on February 9th, 1979.

I wish to offer at this time my whole hearted support for that Act. All too often the members of Nevada's Legal community are faced with problems which they are unable to correct for their clients due to the inherent jurisdictional limitations of the judiciary.

The subject Act will significantly reduce, if not eliminate, those problems through the judiciary's ability to, in effect, exert jurisidction in other signatory states, and act on behalf of or in furtherance of the decrees or orders of those States.

I strongly urge you to carefully consider the subject bill, which consideration I am sure will lead to its ultimate passage.

Respectfully submitted,

Michael R. Zervas

MRZ/amp

On Reducing the Snatching Syndrome

by Ken Lewis

The Snatch

At 10:00 a.m. the telephone rings at a Virginia elementary school. A woman who identifies herself as Johnnie Byrd's mother tells the school secretary that she will be coming to pick up her son to take him to the dentist and asks the secretary to have Johnnie ready in about half an hour. The secretary does not know that Johnnie's parents were recently divorced and that his father has been awarded custody of their son. She calls Johnnie's teacher on the PA system and fills out the appropriate form for an early dismissal. At 11:00 a.m. Mrs. Byrd arrives and takes Johnnie away—but not to the dentist. Within an hour they cross the state line into North Carolina. Child snatching is that easy.

Child snatching is not limited to one social class or racial group but cuts across all strata of our society. Last year there were an estimated 100,000 cases of child snatching in the United States alone! With over 600,000 divorces involving children each year, and with the divorce rate continuously climbing, more and more contested child custody cases are coming before the courts. Whichever parent is awarded custody, the other parent may very well consider the possibility of snatching the child. Most snatches, however, occur during the separation period, prior to the final custody decree. Either out of fear of losing the forthcoming case, or merely to avoid it altogether, thousands of parents abscond with their children.

Ken Lewis, Ph.D., is director of the Single-Fathers Research Project and associate professor, Division of Social Work, Southern Connecticut State College, New Haven.

The Damage

For children of divorce, the psychological damage resulting from parent separation can be very traumatic. Post-divorce tensions between parents can create an unpleasant environment for the children. In many cases, child snatching after divorce is merely an extension of the pain that the child suffered during the termination period of the parents' marriage.

There is no way to measure the psychological damage to children who have been snatched. For some, there may be an advantage to living with the non-custodial parent. However, when a child is abducted against his will, the act interferes with his personal liberty and has the potential of creating irreparable psychological damage. Often a parent who has successfully abducted a child will change his or her name or leave the country. One father in Boston who was awarded custody of his two children has hired three men to guard them 24 hours a day! A man in Seattle was hired by a mother with custody to be a babysitter; his only qualification is his black belt in karate! With these environments, one can only question the emotional climate for childrearing.

The real losers in child snatching are usually the children. A helpless young child becomes a pawn in the "game" between his parents. Often incapable of expressing his emotions, he may keep them repressed for years. He may feel guilty that he didn't do anything to prevent the snatch, or angry that the custodial parent allowed it to happen. If a child is snatched by the mother against his will, he may grow to distrust all women (or all men if he or she is snatched by the father). Not understanding the intricacies of the situation which precipitated the snatch, a child may become confused and act out in strange behavioral patterns.

Professionals who work with children generally agree that the detrimental effects of child snatching are long-lasting. For example, Dr. Ner Littner, a child psychiatrist at the Chicago Institute for Psychoanalysis, says that child snatching virtually guarantees deep-seated psychological harm that can trigger lifelong patterns of misbehavior and misery. "Parents who kidnap," he says, "give the excuse that the other parent is unfit. But they're usually rationalizing, because if that were true they would try to get the other parent legally declared unfit by a court."[1]

Dr. Gary Grad, a family therapist at Downstate Medical Center in Brooklyn, New York, claims that the true motive for child snatching is spite or revenge. "The emotional feelings are directed at the other spouse even though they're expressed in terms of the offspring . . . Very few youngsters can avoid being permanently scarred by such an experience."[2]

Dr. Robert Zuckerman, a Virginia child psychologist, says that child snatching "makes the child feel like a piece of property . . . Being torn continually between parents can turn a child into an

emotional wreck. And you can't make up for it later no matter how good you are to him. These situations produce adults who are emotionally crippled and unable to maintain lasting relationships.[3]"

Some children who are emotionally stronger than others are able to survive the experience of a snatch without measurable damage. Writing in *Ms* Magazine, New York psychiatrist Dr. Henry Haberfield pointed out that in some instances children view the snatch as "an adventure."[4] Some children may perceive the event as exciting but the parent from whom the child was snatched rarely does.

Some Cases

Child snatching often involves some physical violence—towards those protecting the child, towards the child himself or both, as the following cases illustrate.

Seward Prosser Mellon was awarded custody of his two daughters, Catherine, 7, and Constance, 5, by a Pennsylvania court in 1974. During a visitation period, the mother, Karen Mellon, spirited the children away to another state. She used nine different names and lived in 14 different hotels to elude her husband's search for the children. By 1975 she had been awarded legal custody of the girls by a New York court, and had enrolled them in a private elementary school:

"The day began routinely for Catherine Mellon . . . and her sister, Constance, last week. Their driver-body-guard Lester Carew loaded them into a blue station wagon and was about to ferry them to their private school in Brooklyn Heights . . . when a late-model golden-brown Chrysler pulled up. Two men leaped from the car, one of them claiming to be armed and identifying himself as an FBI agent; they relieved Carew of his .38 revolver and drove off with the two girls . . . Several jumpy hours later, however, the girls' father crisply announced to authorities over the phone: 'The children are safe with me.'" *(Newsweek,* March 29, 1976.)

Wayne Haskins, a 37-year-old nuclear chemist, was awarded custody of his two sons, Eric, 10, and Shelly, 8, by an Alabama court in 1976, by having his wife, Oleeta, declared an unfit mother. But a Massachusetts court awarded the children to her. The children were with her at the time of the snatch:

"Three men . . . prowled the area for four days last May, watching the Tewsbury, Mass., home where the youngsters lived . . . They were armed with tear gas, a club and two sets of handcuffs should someone give them trouble . . . On the fifth day, they finally got a shot at the children. Their green car screeched to a halt and two of the men went after the brothers. The 10-year-old had a running start on his bicycle and had to be knocked off it. Both were tossed into the strange car . . . The children were terrified until they recognized the man with the dyed hair. That was their father." *(The Sunday Bulletin,* Boston, September 19, 1976.)

Last year there were an estimated 100,000 cases of child snatching in the United States alone!

Terry Jean Cain, 24, lived on a ranch in Oklahoma with her parents and her 4-year-old son, Cody. She had been awarded custody of Cody and a divorce from her husband, Steve, 25, several years before the incident in July 1976:

"On a hot day last July, while Terry Jean was shopping, four men drove to the ranch, overpowered and tied up her sister and carried Cody away with them. The little boy was terrified—until he realized that one of the raiders was his own father. 'C'mon, Cody, you're taking a ride with your daddy,' said Steve Cain . . . But just as the kidnappers were making their getaway, Terry Jean returned, saw what was happening and gave chase. 'I tried to pass them several times,' she remembers in anguish. 'Their car must have lost control.' It flew into a ditch and rolled over twice before smashing into a tree. Cody was dead on arrival at the hospital; his father died a few days later." *(Newsweek,* October 18, 1976.)

The Law

Before 1968, child snatching was called the legal crime against children. There were no statutes, state or federal, which effectively addressed the problem of parental kidnapping, particularly across state lines. Today, several states have attempted to curb this growing phenomenon by making it a felony. Even more states have passed into law the Uniform Child Custody Jurisdiction Act (UCCJA). The Federal code has remained silent.

The Federal Kidnapping Act (Title 18, U.S.C. Sec. 1201), passed in 1971, specifically excluded parents who kidnap their own children. Consequently, the FBI is a useless agent for locating the whereabouts of a snatched child. Many parents have become frustrated by the FBI's refusal to offer assistance in locating or retrieving their children. Several bills to amend the Federal act have been proposed in both houses of Congress, but they have been stalled by strong opposition from the Justice Department and the FBI.

The Full Faith and Credit clause of the U.S. Constitution (Article IV, Sec. 1) states that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state," But the U.S. Supreme Court has never declared that the "full faith and credit" clause applies to custody judgments.[5] In 1975 a bill was introduced in both the House (by John Moss of California) and the Senate (by George McGovern of South Dakota) which would require courts to honor custody decrees from other states. To date, however, there has been no action on it.

Several states have recently passed statutes prohibiting child snatching. It is defined under differing terms, among them "interference with custody," "parental abduction" and "domestic child kidnapping." In Virginia, for example, the language of the statute is unclear but several felony warrants have been issued against parents for abducting their own children. California's new law (effective as of January 1977) is perfectly clear with regard to post-custody child snatching:

"Every person who in violation of a custody decree takes, retains after the expiration of a visitation period, or conceals the child from his legal custodian . . . shall be punished by imprison-

ment [maximum one year] or fine [maximum $1,000] or both."[6]

There is also the provision that the parent guilty under this law may be responsible for "any expenses incurred in returning the child."[7]

Correspondence with the Governor's office has revealed that several states have been asked to return fugitives to California to face charges for domestic child kidnapping, and that some have refused extradition, questioning "the propriety of using the criminal process for what are viewed as domestic disputes." There is no record in Virginia or California, or elsewhere, of how many felony convictions (if any at all) have occurred for child snatching.

Most states, however, have only the power of Contempt of Court for breaching provisions of a custody order and this power does not reach beyond the boundaries of the state. Consequently, the greatest number of snatched children are removed to another state. In the language of the single-parent community, these are known as "safe states." There are presently over 20 "safe states," depending on how the statutes are interpreted.

A "safe state" is one in which child snatching is not a felony, or one which has not passed the Uniform Child Custody Jurisdiction Act. The UCCJA was drafted in 1968 by the National Conference of Commissioners on Uniform State Laws. It seeks to avoid interstate jurisdictional disputes and to promote cooperation between states by creating a binding force and *res judicata* effect of a custody decree from another state. In other words, the UCCJA (Sec. 13) mandates that one state honor a custody decree (or modification) which was initiated in another state. The Act also provides a further deterrent against child snatching by assessing court costs, attorney fees and travel expenses against the person violating a custody decree of another state.

The UCCJA's nine purposes include an explicit statement regarding child snatching: "[to] deter abductions and other unilateral removals of children undertaken to obtain custody awards." Prior to 1977, only 11 states had passed the Act into law, but during 1977 alone, seven others passed it. Observers say that the rising number of child snatches and the visibility of the problem have encouraged legislatures to adopt the Act, and 28 states at present have endorsed the UCCJA.

M.E.N. of the USA, Inc.

M.E.N. (Men's Equality Now) of the USA, Inc., an organization which advocates for the removal of sex bias in the judicial system, has been successful in retrieving children who have been snatched and removed to states which have passed the UCCJA. In its organizational structure, M.E.N. of the USA has a special committee on the UCCJA which seeks to influence passage of the Act in every state and territorial jurisdiction. Two examples of how M.E.N. of the USA has legally retrieved snatched children are the recent cases of Mr. X and Mrs. Y.

Mr. X was awarded custody of his two daughters, aged 7 and 9, from a court in Delaware. Mrs. X, unhappy with the court's decision, snatched the two girls out of school one morning and drove them to Florida. Mr. X contacted a local chapter of M.E.N. in Delaware, and he was driven to Florida the next day. An exemplified (certified) copy of the Delaware custody decree was recorded in Florida and then presented to the sheriff of the Florida county where the children were taken. The sheriff executed the custody decree and the two girls flew home with their father that night. What could have been a much worse ordeal for the children was minimized because both Florida and Delaware had passed the UCCJA.

Mrs. Y was awarded custody of her 10-year-old son by a court in Colorado and Mr. Y was awarded limited visitation rights. During the Christmas vacation period, Mr. Y appeared at his ex-wife's home near Denver. He told her he had rented a cabin in the mountains and asked her if he could take the boy for a 3-day skiing trip. Mrs. Y was reluctant to let her son go, but he was so enthusiastic that she consented. Instead of going to a cabin, however, Mr. Y drove his son to Pennsylvania, where he petitioned the court for custody.

When she received notice of the hearing, Mrs. Y contacted a local chapter of M.E.N. of the USA and was immediately referred to a Pennsylvania chapter in the area where the petition was brought. After investigating the case and interviewing the boy, the M.E.N. chapter recommended a local attorney for the mother, who was still in Colorado.

Since the mother was absent from the hearing, the attorney and the local M.E.N. chapter (acting as "friend of the court") appeared in court and argued that Pennsylvania did not have proper jurisdiction in this case, since Colorado had determined custody by proper procedure and with proper jurisdiction. The "friend of the court" presented the report on the child—who was ambivalent about the custody decision he desired—and the attorney presented a copy of Colorado's UCCJA. Within half an hour the case was dismissed and the child was returned to his mother in Colorado by a member of the Pennsylvania M.E.N.'s group.

In both of these cases M.E.N. of the USA was able to successfully retrieve children who had been snatched by a non-custodial parent. Both Mrs. X and Mr. Y had violated valid custody decrees from states which follow legitimate and proper custody procedures. This is why the passage of the UCCJA by every state is so important.

The Role of Welfare Payments

Many social workers in public welfare agencies believe that the Aid to Families with Dependent Children (AFDC) program encourages child snatching. Some non-custodial parents believe that if they take their children to another state they will be eligible for AFDC benefits. Indeed, this frequently happens, most typically with non-custodial mothers. To the extent that AFDC applications are not scrutinized meticulously, this belief becomes a reality. In this sense AFDC can be considered a financial support for a successful child snatch.

On a typical application for AFDC benefits, there is a section called "Deprivation Verification." Reasons for deprivation include; incapacity; death; absence from the home due to desertion, abandonment, incarceration, divorce, military service, long-term hospitalization, etc.

Suppose, for example, that a non-custodial mother snatches her children from the custodial father in Alabama and takes them to North Carolina, where she obtains custody and child support. Claiming that she is not receiving her court-ordered support payments, she then applies for AFDC in North Carolina. On the application form she signs under oath that she was deserted or abandoned (thereby com-

(Continued on page 35)

recommendation to become more certain. In other instances, when time is important, speedy trials and hearings can be requested, and tactics to delay or circumvent a court from hearing the matter at an early date can often be effectively opposed.

Evaluation of the merits of a case with an eye to a successful legal conclusion will affect the timing, the assessing of an appeal and the choosing of the most favorable forum for the action. Here team coordination and expertise is the key. Working together, mental health workers and lawyers can unite disparate elements to achieve optimum results. Opportunities exist for the team to provide feedback to law-making bodies, the courts and public officials, and for providing much needed training sessions for those involved in the system.

Often reports written for the courts contain so much third-person hearsay and otherwise objectionable material that their usefulness is limited. Reports should be written by those knowledgeable about the legal standards under which an action is proscribed, the admissability of statements and their susceptibility to cross examination, and how specific facts and conclusions fit into existing case law. Occasionally a Memorandum of Law in support of an unusual or novel approach is necessary.

One sometimes hears of a lawyer representing a client who is so clearly unfit that it's incomprehensible that an attorney would argue for that person. Here the professions differ greatly. A lawyer's conduct towards his client is governed in part by "The Code of Professional Responsibility" which states: "The duty of a lawyer to his client . . . is to represent his client zealously within the bounds of the law." A lawyer is committed to advocate for his client even though he may feel that it's not in the best interests of the child for his client to keep custody. The decision is for the judge or jury to make and the concept of zealous advocacy binds the lawyer. Withdrawal, if allowed by the court, is possible but not if it will prejudice the rights of the client. So the client's right to a day in court with the lawyer's best efforts is mandated regardless of one's personal feelings.

Conclusions

Although clinicians and lawyers have had difficulty communicating and appear miles apart philosophically, the crucial issues of children's rights is providing a helpful bridge. The adversarial process may be distasteful and even frightening to clinicians, but it is within this framework that the destiny of children is decided. Our need to learn from each other is explicit. We hope that this presentation of our program will illustrate the need for collaboration by legal and mental health professionals in order to protect and advocate for the best interest of the child. ■

Child Snatching *(Continued from page 21)*

mitting welfare fraud). Most agencies are too busy to thoroughly investigate every application. She presents her North Carolina custody decree to the welfare department and receives AFDC monthly payments. The father in Alabama is investigated under the Uniform Reciprocal Enforcement of Support Act.

"The example is not merely supposition," says Jerry Smith, director of the welfare department in Wilson County, NC. "It is reality in far too many cases."

Protection Against Snatching

There is probably no absolute protection against child snatching by a natural parent. Some parents will risk anything to "steal" their children—particularly when they feel that they can provide a better life for them than the custodial parent. Nonetheless, some parents with custody feel the need for an amendment to the Federal Kidnapping Act which will exclude parental immunity. They believe that lobbying in Congress for such an amendment is certainly worth the effort.

Meanwhile, parents and others concerned with the issues involved can write to the following organizations for additional information:

- M.E.N. of the USA, Inc., 1 W. 6th St., Wilmington, Del. 19801 (Thomas J. Alexander, Jr., President).
- Single-Fathers Research Project, P.O. Box 3300, New Haven, Conn. 06515 (Ken Lewis, Project Director).

Information and referral service on all aspects of child snatching.

- United Parents of Absconded Children, Box 127-A, Wolf Run Road, Cuba, N.Y. 14727 (William J. Ralson, Coordinator).

Locates and retrieves children who have been snatched from custodial parents.

- Children's Rights, Inc., 3443 17th St., N.W., Washington, D.C. 20010 (Arnold I. Miller, President).

Information on all aspects of child snatching.

- Second Wives' Coalition, 1 W. 6th St., Wilmington, Del. 19801.

Support groups for women in reconstituted families.

- Parents of Kidnapped Children, 10555 153rd St., #46, Surrey, British Columbia, Canada (Lois Preston, Director).

Information on child snatching within Canada and between Canada and the United States. ■

[1] "The Parents Are the Kidnappers," *Chicago Tribune*, May 1, 1978.

[2] "Parents As Kidnappers," *Woman's World*, July/August 1977.

[3] "Kidnap: When Courts Won't Give, Some Parents Will Take," The Norfolk *Virginian Pilot*, February 23, 1978.

[4] Lindsy Van Gelder, "Beyond Custody: When Parents Steal Their Own Children," *Ms* Magazine, May 1978.

[5] See, for example, Jane A. Lewis, "Legalized Kidnapping of Children By Their Parents," 80 *Dickenson Law Review*, 305-327, 1976.

[6] California Statute 1399:4:278.5[a].

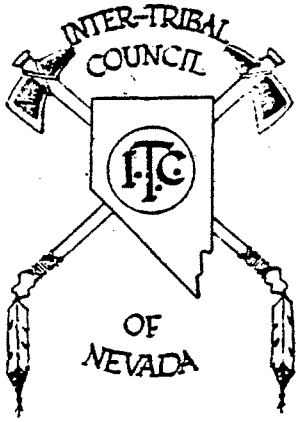
[7] California Statute 1399:4:278.5[b].

States that have passed the Uniform Child Custody Jurisdiction Act as of December 1978.

Alaska
*Arizona
California
Colorado
*Connecticut
Delaware
Florida
*Georgia
Hawaii
Idaho
Indiana
Iowa
*Kansas
*Louisiana
Maryland
Michigan
Minnesota
Missouri
Montana
New York
North Dakota
Ohio
Oregon
*Rhode Island
Pennsylvania
*South Dakota
Wisconsin
Wyoming

Kentucky (Has passed Section 3)
Illinois (Has passed Section 3)

*Bill passed in 1978



INTER-TRIBAL COUNCIL OF NEVADA

SOCIAL SERVICES PROGRAM
ROOM 121, CAPITAL PLAZA BUILDING
1000 EAST WILLIAM STREET
CARSON CITY, NEVADA 89701
TELEPHONE (702) 882-6663

TO: Assembly Judiciary Committee - 60th Nevada Legislature

FROM: Joe Braswell, Inter-Tribal Council of Nevada

RE: AB - 115

Since the bill includes child neglect and dependency proceedings the provisions of P.L. 95-608, the Indian Child Welfare Act of 1978, will impact on the implementation of several parts.

I will cite only three definitions in the bill that will be affected wherever these terms are used in the bill:

1. "Home state" will also apply to "home reservation",
2. "State" will generally include Indian Tribes, and
3. "Person acting as parent" will also include "Indian custodian" or used in the Federal statute.

I believe the advice of the Legislative Counsel is needed before final action is taken by this committee.

Also, I have provided two papers for your consideration, one dealing with Tribal government and the other with Tribal jurisdiction. They should help you to gain a better perspective of the issues at hand.

JB:caa

TRIBAL GOVERNMENT

Self-government is not a new or radical idea. Rather, it is one of the oldest staple ingredients of the American way of life. Indians in this country enjoyed self-government long before European immigrants who came to these shores did. It took the white colonists north of the Rio Grande about 170 years to rid themselves of the traditional pattern of the divine right of kings . . . and to substitute the less efficient but more satisfying Indian pattern of self-government. South of the Rio Grande the process took more than three centuries, and there are some who are still skeptical as to the completeness of the shift.

Felix Cohen
The Legal Conscience

Many people look on Indian reservations as internment camps in which Indians were confined and forgotten by their European conquerors. Others see the reservations as wildlife sanctuaries where a threatened species of mankind is protected for future generations of superior species to behold. And others view the reservations as temporary holding pens where atavistic Indians are allowed to live out fantasies of a long-dead lifestyle until such time a they can be willingly or unwillingly brought into the "mainstream of American life."

In truth, Indian reservations are the land base for tribes of people who have exercised sovereignty from time immemorial, and who refuse to surrender their right of self-government. Indian reservations are the homelands of Indian tribes, and Indian tribes are legal "dependent sovereign" nations within the nation.

Tribal governments were recognized as nations by the earliest Europeans that dealt with them—the Dutch, the Spanish, the French and the English. Yet, in spite of that inherent sovereignty, and in spite of its repeated affirmation in old and recent United States law, many Americans believe that tribal governments were created by treaties and conferred upon Indians as a benevolent dispensation of federal law. The reverse is true: the tribal government entered into treaties and conferred certain rights to the colonials, and later to the United States.

The United States makes treaties only with other governments, and for over 200 years has recognized the governments of Indian nations and tribes. In relating to tribal governments, the federal government acts under authority of provisions of the *Constitution*. In *Article I, Section 8*, the Constitution states: "The Congress shall have power . . . to regulate commerce with foreign nations, among the several states, *and with Indian tribes*."

The relationship between the Indian nations and the United States government is unique in a number of respects. First, the Indians are the only group specifically identified in the Constitution. Persons unfamiliar with Indian law mistake this distinction as one of a *racial* nature. Such is not the case. Indian tribes are *distinct political entities*- governments with executive, legislative, and judicial powers. Members of the tribes may be citizens of both their Indian nation and the U.S.

Many of today's tribal governments have been shaped or influenced by the *Indian Reorganization Act*. In 1934, Congress enacted the *Indian Reorganization Act* in an effort to correct many destructive federal Indian laws enacted previously, and to provide for the "formalization" of the tribal governments through written constitutions and charters.

While many of the tribes adopted a *written* constitutional form of government as provided for in *IRA*, others did not. However, a tribe's right to retain a *traditional* form of government with an unwritten constitution has been reaffirmed many times by the Supreme Court. The Pueblos and the Iroquois and examples of federally-recognized tribes with traditional constitutions. It must also be noted that the Cherokees, Choctaws, Creeks and Chickasaws had written constitutions and legal codes in force as early as 1830.

Dramatic improvements have taken place as tribal governments have begun to assume legal, contractual and administrative responsibilities for the many-sided aspects of modern economic and social concerns. Tribal governments are improving their courts and expanding their judicial role, and are more actively encouraging and regulating economic enterprise. They are taking greater initiatives to protect their natural resources and environment, and to deliver educational and social services to their people.

The tribal governments have not always had the opportunity to perform many of their governmental functions. The Bureau of Indian Affairs is the federal agency with the greatest responsibility to deliver services and exercise the trust responsibility inherent in the federal-tribal relationship. And, over the years, the BIA has been guilty of a kind of paternalism which one Senator described as "the most subtle and sophisticated form of tyranny," and the Supreme Court described as "bureaucratic imperialism."

The *Economic Opportunity Act* of 1964 acted indirectly to break the BIA monopoly over funding sources and services to Indians. As an alternative to the BIA, the *Act* provided an opportunity for tribal governments to develop versatility and administrative initiative. And in 1975, the *Indian Self-Determination Act* provided the administrative mechanisms for the tribes to contract for and fully administer federal funds for services that were previously delivered solely by the bureaucracy. The tribes have demonstrated repeatedly that they are more effective administrators of their own programs than their federal tutors and administrative overseers.

This local control and exercise of *sovereignty with federal aid* is akin to what *Federal Revenue Sharing* is to state sovereignty. But there are those who, through ignorance or prejudice, ask the question, "If tribes want to be self-governing and self-sufficient, why do they ask for federal subsidy?" The answer is quite simple when one compares the 287 tribal governments with the more than 80,000 state, county and municipal governments in the United States.

As governments, the tribes receive assistance on the same basis that state and other local governments receive federal subsidies for road and school construction, for impact aid in education, for public transportation, for urban renewal, and for other projects and services.

The tribes receive federal assistance for many of the same reasons that private industries receive assistance in form of tax relief, direct funds for research and development, and payroll and overhead subsidies for participating in job training programs.

Tribal governments are often painted in derrogatory terms by anti-tribal groups who describe them as inept and corrupt. A quote from *The Legal Conscience* by Felix Cohen, who is known among Indians as "the father of modern Indian law," probably best answers that charge:

> "Not all who speak of self-government mean the same thing by the term. Therefore, let me say at the outset that by self-government I mean that form of government in which decisions are made not by the people who are wisest, or ablest, or closest to some throne in Washington or in Heaven, but rather by the people who are most directly affected by the decisions. I think that if we conceive of self-government in these matter-of-fact terms, we may avoid much confusion.
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> "Let us admit that self government includes graft, corruption, and the making of decisions by inexpert minds. Certainly these are features of self government in white cities and counties, and so we ought not be scared out of our wits if somebody jumps up in the middle of a discussion of Indian self-government and shouts 'graft' or 'corruption.' "

The tradition of self-government is not a foreign idea, but one of the native concepts that guided the founding of the United States. As in the past from time immemorial, tribes will continue to be permanent ongoing political institutions exercising the basic powers of government necessary to fulfill the needs of tribal members.

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refusal to respond is largely attributed to white resentment over reservation exemption from state taxation—attitudes of, "Why should we protect you when you don't pay taxes and our salaries?"

In 1975, legislation was introduced by Sen. Henry M. Jackson that provided for reacquisition of jurisdiction from the states by the tribes. In hearings on that bill (S. 2010) Indian leaders hailed its provisions and, surprisingly, a number of spokesmen for key states affected by P.L. 280 joined in support of its passage.

James Dolliver, representing Gov. Dan Evans of the State of Washington (a P.L. 280 state) testified, "Let me begin by saying it is the policy of the Governor . . . that we believe in retrocession (of jurisdiction from the state to the tribes)." He concluded, "We feel that Indians are fully competent to conduct their affairs, and if retrocession is what they desire, we support it."

Jack Olsen, District Attorney for Umatilla County of Oregon, in supporting the bill, said, ". . . those very principles which we consider dear to the hearts of every American citizen, those very principles which served as the catalyst to the development of this great land—liberty and the right to self determination—are in fact still being denied to that very group of Americans who first settled this continent."

Regarding the practical application of the law, Olsen stated further, "it is essential that jurisdiction be returned, at least to the Umatilla Indian Reservation . . . (which encompasses) some 286,000 acres. With these vast areas, state and county law enforcement simply cannot provide the protection it ought to be providing. This applies both to the Indian and non—Indian living on or passing through the reservation."

The office of the Nebraska Attorney General opposed the bill for fear of loss of state tax revenue with the loss of state jurisdiction over the tribes. That question was subsequently mooted by the Supreme Court in the case of *Bryant v. Itasca County* wherein it was decided that P.L. 280 does not grant the state the right to tax the reservations with the assumption of criminal and civil jurisdiction.

To the extent that Congress has not expressly limited the exercise of power, Indian governments remain free to exercise their sovereign rights to administer justice and enforce tribal laws. The tribes are optimistically in process of upgrading their law enforcement capabilities and their court system. The American Indian Lawyers Training Program, the American Indian Tribal Court Judges Association, and the American Indian Law Center are all involved in programs to assist the tribes in their judicial development. The National Congress of American Indians will in the near future launch a national association of tribal police.

The tribes are determined to retain their sovereign rights, and to continue to progress as governments with the attributes of sovereignty including jurisdiction over their lands.

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EXHIBIT D

state of nevada

DEPARTMENT OF HUMAN RESOURCES
WELFARE DIVISION
251 JEANELL DRIVE, CAPITOL COMPLEX, CARSON CITY, NV 89710

8 February 1979

Honorable Assemblyman Karen Hayes
Chairman, Assembly Judiciary Committee
Legislative Building
Carson City, Nevada

Dear Assemblyman Hayes:

This letter is in reference to Assembly Bill 115, the Uniform Child Custody Jurisdiction Act. This bill is scheduled for hearing before the Assembly Judiciary Committee on February 9, 1979.

The Nevada State Welfare Division is in support of AB 115. Attached is a copy of "Children Today" published by H.E.W. On page 18 is an article entitled 'On Reducing the Child Snatching Syndrome'. This article addresses the problem that AB 115 is designed to alleviate. In light of AB 115 we thought this article might be of special interest.

Our Division is not planning to testify in relation to AB 115.

However, we did wish to make you aware of our support for this legislation.

Sincerely yours,

George E. Miller
by GH

GEORGE E. MILLER
STATE WELFARE ADMINISTRATOR

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