

Thanks
for the advice
about Ben

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

1 May 1979

Rec'd
5/4/79

Dear Selma:

File

Thanks for your nice letter.

I sure enjoy you moving to the
San Francisco area, and looking
forward to working with people so
well-established there. The man I
am closest to there is Vic Calif.

I sold the reconstructed
Lobsterman's house 2 years ago in a
program to convert real estate into cash.
I laughed about the Crocker house

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

which predated my arrival in Maine
in 1942 by some 60 years - and
was named after some local yokels,
no kin to me. In 1974 some of the
marginal people in a family named Murphy -
who have stolen from us for years, stole a
Crocker House sign and posted it across the
road from their hovel. A few yards up the
road they posted another - SLOW-HORSE CROSSING.

Although we love our places on the
west shore of Hancock Point, I invested in
island and shore property in South Gouldsboro
(out by Counter Harbor) instead of in rocks and
bonds - and in many ways I prefer it to
Hancock Point. I'm a conservationist and
old fashioned - and that goes for my views
on psychoanalysis too. There's no substitute
for quality.

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

So I hope I will make it to Philadelphia. If not, I would surely love to have a reunion in San Francisco. The last time I was there I stayed with Sally at the Mark Hopkins (1968) and the new English desk clerk thought I was a San Francisco Crocker and gave us the Presidential Suite for a very low rate.

I wish you many happy years in California - and many satisfactions in the new work.

Give my best to Louis
Cordially
Dave.

11C
32-10317
MAY 1979
May 2, 1979

Mrs. Barbara Caudill
Social Services Department
Clovernook Home and School for the Blind
7000 Hamilton Avenue
Cincinnati, Ohio 45231

Dear Mrs. Caudill:

I am sorry but I have no experience with blind adults.

I am terribly sorry that I cannot help you.

Sincerely yours,

Selma Fraiberg
Professor of Child Psychoanalysis
Director, Child Development Project

SF/amw



Clovernook Home and School for the Blind

Rehabilitation Services-William A. Procter Center
Michael Sears, Director

Rec'd 5/1/79

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Executive Director

April 24, 1979

Dr. Selma Fraiberz
Department of Psychology
University of Michigan
Ann Arbor, Michigan

Dear Dr. Fraiberz:

I was informed that you have done extensive research on deaf-blind children with autistic characteristics. Therefore, I am writing you in regards to a particular person with these characteristics. I hope you can give me detailed information on how to train such a person for more independent living.

My facility currently has a 23 year old woman, who has a definite visual impairment, appears to be deaf, and has certain autistic mannerisms. Physically, she has the appearance of a 10 year old, as she has never matured as an adult. Mentally, she functions on even a lower level, as she has no speech or sign language skills for communication. She is very self-oriented and is not interested in learning.

I would appreciate any information you can give on how to work with such a person. My facility does not normally work with such a profound physically and emotionally handicapped person, so if you know of any public or private facilities anywhere that would be more appropriate, I would appreciate that information also.

Thank you.

Sincerely,

Barbara Caudill

Barbara Caudill
Social Services Department

BC/mw

April 25, 1979

Dr. David Crocker
2649 Berkshire Rd.
Cleveland, Ohio 44106

Dear Dave:

It was delightful to hear from you and to learn that Ben is graduating from Medical School in June. And I, too, am sorry that there will be no opportunity for us to meet in Ann Arbor when he enters the residency program.

I wish I could help you out with some information regarding housing for Ben. I am almost certain that there must be housing provided for residents by the University and that Ben should write directly to find out what might be available to him in low rent University housing.

I will be leaving for San Francisco some time mid summer and am looking forward tremendously to working with Bob Wallerstein and to the development of a new infant program at San Francisco General. Some of my close associates will be coming with me. Bob has done a magnificent job in putting together base support for the program.

It was sad to read in your letter about the continuing strains in the Psychoanalytic Institute and Society and the state of child analysis in general. It is the same report that one gets nearly every place these days. How sad for all of us and for thousands of children who might be the beneficiaries.

About two years ago (now moving to a happier topic) Louis and I were back in Maine and visited Hancock Point. We found our Lobsterman's Cottage (transformed where it was) and we found to our astonishment a place called "Crocker House! All of this brought back many memories of our summer in Maine and good times with you. Where do you stay now in Maine?

I hope that somehow there will be a chance for us to

-2-

see each other again soon. If not in Ann Arbor, remember that San Francisco is a delightful place for reunions!

If I see you in Philadelphia, let's by all means talk some more about Crocker and Fraiberg news.

Warm regards.

Sincerely,

Selma

SF/amw

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

17 April 1979

Recd.
4/20/79

Dear Belma and Louis:

It seems truly an age since I have been in touch with either one of you or seen you. I keep hoping I will bump into you at a meeting of the Association for Child Psychoanalysis.

My son, Ben, just about to graduate from Ohio State Medical School in June will start his residency in Psychiatry in Ann Arbor this July. I had hoped this would give me a chance to see something of you and

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

Then I heard you will soon depart for California. I must admit I have thought of moving to La Jolla - but I am hopelessly caught in my New England parochialism.

Maybe (if I get back from a week's trip to Maine on time), I can make it to Selma's Wadler Memorial Lecture in May. I have kept up my full membership in the Association because I cannot enjoy the perpetuation of old pretences in our Society. I feel somewhat different

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

about our Institute to which I
have devoted my energies for years -
and where I respect the integrity
and willingness to look within of an
important segment of those who support
and guide it. The stifling of child
analysis by a devastating struggle
for power has been one great sadness
- but I succeeded in persuading the
Educational Committee and the
membership to appoint Vic Cale as
a visiting instructor last year - with
extraordinary results in opening
things up. I fervently wish we

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

could do the same for Child Psycho-
analysis.

Sam Ritvo and Al Solent are
a nemesis to many here (since their
part in trying to help us solve the
schism with Bond) and we still have
one smouldering now! I spent some
time in ^{child analysis} seminars in New Haven in
1976-77 - and I respect that group
very highly. I also spent some time
with Marianne Kris, Charlie Feigelson,
Ted Becker and Jules Glenn -
and this made clearer some of the
alternatives to the narrower authoritarian

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

dogmas and control, mainly
emanating from the Center for
Research in Child Development here.

Vic Calef put it very well in his
closing remarks that psychoanalysis
does not belong to any institute or
group or person. It belongs to all
mankind - and, in a special way, to
specially gifted and sometimes
unorthodox people who come to be
more deeply in touch with the
process and the deeps - just as
Courtesan is with the sea.

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

And now to come down to earth
- do either of you know of anyone
in Ann Arbor who would know where
Ben might find a place to rent
more modest than the usual? He
says that Ann Arbor values (both
rental and purchase) are about double
those in Columbus. My own reaction
is that this is probably something he
will not be able to escape. My inquiries
to New York have convinced me that
economically I would be foolish to leave
Cleveland until I've saved enough to
do what I want and have paid off all
my mortgage indebtedness.

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

When I went for re-analysis with Phyllis Greenacre at the end of the 60's, I sometimes stayed at the Grace Square Hotel for \$15. - a night. I went in a few months ago to inquire the price of a room - now \$25. - for the privilege of staying in a glorified flop-house. Fortunately I remembered that I had once been a member of the Harvard Club, rejoined and lived in relative luxury for \$15. - a day! Just four buildings down the street, the Alconquin was \$40. -

I am sorry you are going to

DR. DAVID CROCKER
2649 BERKSHIRE RD.
CLEVELAND, OHIO 44106

leave Ann Arbor. I had hoped
that Ben might have a chance to
get to know you both - and that
I too - would have had the
pleasure of renewing our friendship.

With best regards to you both,

Cordially

Dave Crocker

35/2008
312/10/15/31
25/5/11/11/11/11
April 25, 1979

Patricia M. Campbell
c/o Professor Ferne Roberts
Teacher Education Program
Hunter College of the City University of
New York
466 Lexington Avenue
New York, N.Y. 10017

Dear Miss Campbell:

Mrs. Fraiberg has asked me to respond to your
letter of March 31st.

I am enclosing 3 reprints which I hope will be of
help to you and would also direct your attention to
INSIGHTS FROM THE BLIND, published in 1977 by Basic
Books, Inc. of New York. Mrs. Fraiberg is author of
the book and it is a compilation of many of her writings.

Sincerely,

Adele Wilson, Secretary
to Selma Fraiberg

Special Education, Teacher Education Program
Hunter College of the City University of New York
466 Lexington Ave., New York, N. Y. 10017

Rec'd
4/23/79

March 31, 1979

Professor Selma Fraiberg
Child Development Project
University of Michigan Medical Center
Ann Arbor, Michigan

Dear Professor Fraiberg:

One of the problems in working with multiple handicapped infants and young children is that of motivating them to respond to stimuli in the environment and to initiate consistent exploratory behaviors which can lead to further motor, cognitive, social, and language development.

With this problem in mind, I am doing research for a thesis on Developing Motor Exploratory Behavior in Preschool Multiple Handicapped Visually Limited Children. My research advisor is Professor Ferne Root Roberts.

I am contacting or visiting infant and pre-school centers for blind, deaf-blind, and multiple handicapped children in order to gain information in the following areas:

- Early intervention programs
- Stereotypic behaviors
- Assessment of preschool handicapped, visually limited children.
- Parent training
- Motivation
- Methods of initiating exploratory behaviors
- Motor training
- Play

Of primary interest to me would be personnel strategies in motivating multiple handicapped visually limited children to react to their external environment and to explore it, and any sequential activities designed to train these children to explore.

I would appreciate any reprints or references to research you have published in the areas of motor and cognitive development, or social and motivational aspects which might relate to my study on motor exploration. Enclosed with this letter is a list of questions relating to information I would like to have about your program. I would very much appreciate your sending me this material, c/o Professor Ferne Root Roberts, at the above address.

If you would be interested, I would be glad to send you a summary of my findings after I have completed my thesis.

Sincerely yours,

Patricia M. Campbell

Patricia M. Campbell

*Adelle: Please send
And give reference
to documents from
the Blind*

Encl. 1

P. S. Your published works have been informative, clear, and valuable for the education of teachers in this department.

QUESTIONNAIRE
RELATING TO MOTOR EXPLORATION

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1. Do you have a particular theoretical position in regard to child development?
2. Do you use any specific assessment instruments to evaluate cognitive, social and motor development?
3. Have you created your own assessment instrument or check list of behaviors?
4. Do you use any particular materials in sensory and motor development?
(Cratty, Pathway, Ayers)
5. Have you developed a specific program in motor or sensory-motor training which encourages motor exploration?
6. What techniques do you use to gain awareness and attention?
7. What materials do you use for passive children in order to stimulate interest? What are the behavioral reactions to this stimulation?
8. What activities do you have to help in development of children who have stereotypic behavior patterns?
9. Do you use a particular program in cognitive training, with games and activities for continuity in early development?
10. What kind of training program do you have for parents, teachers and child care workers which would include how to observe and respond to the behaviors of multiple handicapped young children?

April 10, 1979

Professor Jane Costabile
Director of Admissions
School of Social Work
University of Michigan
1063C Frieze Building
Ann Arbor, Michigan 48109

Dear Professor Costabile:

re: Lily Ladin

I am writing on behalf of Lily Ladin who has applied to the University of Michigan School of Social Work for admission to the Social Welfare Administration program. I enthusiastically recommend Mrs. Ladin to you.

During the past ten years Lily Ladin has served as administrative assistant at the Child Development Project (University of Michigan, Department of Psychiatry), but she has been, in fact, the administrative director of this program. Our program, which has been supported by the National Institute of Mental Health, the National Institute of Child Health and Development, the Grant Foundation and the State of Michigan Department of Mental Health, has united clinical services for children, training of residents in psychiatry and pediatrics, and graduate students in social work, clinical and developmental psychology and nursing.

All the administrative work has been largely centered in Mrs. Ladin's office. In taking on these large responsibilities, Mrs. Ladin has had to have a thorough knowledge of our clinical work, our research activities, our training program and of the complexities of our relationships with granting agencies and with the University. Grants, totalling well over a million dollars, have been entirely under her business management. Personnel management and personnel records have constituted another large part of her responsibility. She has been a superb administrator, praised by our granting agencies, by University administration and Departmental administration and praised and loved by all of us in this program.

Since there is no sharp distinction in our program between business management and program development, Mrs. Ladin has had a central role with me in all areas of program development and has participated in major policy decisions.

Our research, which, over the years, has grown to extraordinary complexity, has required Mrs. Ladin's thorough knowledge of child development and the methodology of child development research and, through supervision of the support staff, brought remarkable order to the maintenance of our data bank, to insuring the easy retrieval of data and maintaining a close collaboration between the support staff and the professional staff. Site visitors to our program have been uniformly impressed by the elegance of a system which she has helped to develop for maintaining our intricate records.

Mrs. Ladin, as much as anyone on the staff, has been responsible for creating a climate of warmth and mutual affection, of devotion to work and dedication to the highest qualities of work.

Her personal qualities are exceptional. She is balanced, good humored, with natural gifts in psychological understanding of people and has enormous tact in dealing with people and with personal issues. Her personal values are congruent with those of the field of social work. Decisions are always made on the basis of "What is best for the people involved."

With all of this, Mrs. Ladin has an extraordinary intelligence and wide ranging interests in literature and human affairs. She is also fluent in several languages and has served as official translator for our program on many occasions.

I am delighted that she is seeking admission to the School of Social Work. I think her education in social work administration will bring large rewards to Mrs. Ladin, her school and any program which has the good fortune to win her.

Sincerely yours,

Selma Fraiberg
Professor of Child Psychoanalysis
Director, Child Development Project

SF/amw

C

March 27, 1979

John W. ~~K~~arr, Attorney At Law
Karr and Graves
625 Washington Building
Washington, D.C. 20005

Dear Mr. Karr:

Many thanks for sending on to me your copy of
Bazemore v. Davis. I read it with considerable
interest. Naturally, I was very pleased that "Every
Child's Birthright" was cited.

It was very good of you to write to me.

Sincerely yours,

Selma Fraiberg, Professor
Child Psychoanalysis
Director, Child Development
Project

SF/bk

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-13-83 BY 1043

Rec'd
3/14/79.

LAW OFFICES

KARR & GRAVES

625 WASHINGTON BUILDING

FIFTEENTH STREET AND NEW YORK AVENUE, N. W.

WASHINGTON, D. C. 20005

(202) 737-3544

JOHN W. KARR
GLENN R. GRAVES
DOUGLAS R. SMITH
MONA LYONS

March 6, 1979

Dr. Selma Fraiberg
University of Michigan Medical School
Department of Psychiatry
Medical Science Building
1335 Catherine Street
Ann Arbor, Michigan 48109

Dear Dr. Fraiberg:

In Part III of your EVERY CHILD'S BIRTHRIGHT: IN DEFENSE OF MOTHERING, you remark that "[w]hat all of us are seeking is an enlightened court which affirms the priority of a child's needs and his affectional ties above all other considerations." With its recent opinion in Bazemore v. Davis (a copy of which is enclosed), the District of Columbia Court of Appeals revealed itself to be such a court. I am one of the lawyers who participated in shaping the outcome of the Bazemore case, and the purpose of this letter is to express my gratitude for your substantial, albeit unaware, assistance.

The issue in Bazemore was whether the presumption that female parents are the preferred custodians for children of "tender years" should be stricken from the law of the District of Columbia. In our briefing and argument as amicus curiae for the father, we relied heavily on EVERY CHILD'S BIRTHRIGHT for the proposition that it is the child's "affectional ties" rather than the gender of the putative custodian that should be a court's paramount concern. The Court of Appeals agreed, citing, inter alia, EVERY CHILD'S BIRTHRIGHT.

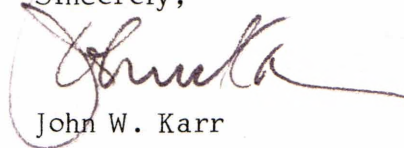
The Bazemore case does not, of course, directly decide what principles shall govern any other of the various kinds of custody problems discussed in Part III of EVERY CHILD'S BIRTHRIGHT, e.g.,

Page 2.

custody disputes between biological parents and foster parents. But the observation in the Bazemore opinion that "magic formulas have no place in decisions designed to salvage human values" augurs well.

Given the impact of your thought on the outcome of the Bazemore case, I hope you are as pleased as I at the result.

Sincerely,

A handwritten signature in dark ink, appearing to read "John W. Karr", with a stylized flourish extending to the right.

John W. Karr

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 12093

LAWRENCE BAZEMORE, APPELLANT,

v.

SHARON DAVIS, APPELLEE.

Appeal from the Superior Court of the
District of Columbia

(Hon. James A. Washington; Hon. Eugene N. Hamilton,
Trial Judges)

(Argued before the division * December 15, 1977
Argued en banc July 10, 1978 Decided December 1, 1978)

Fortunato J. Mendes for appellant.

Richard S. Bromberg, with whom *Glenn H. Angelo* and
Coolidge N. McCants, were on the brief, for appellee.

John W. Karr, appointed by this court, *amicus curiae*
for appellant.

Charles H. Mayer, appointed by this court, *amicus*
curiae for appellee.

Before NEWMAN,* *Chief Judge*, and KELLY, KERN,
GALLAGHER,* NEBEKER, YEAGLEY, HARRIS, MACK* and

FERREN, *Associate Judges*. (*Denotes members of the original division.)

Opinion for the court by *Associate Judge MACK*.

Associate Judge GALLAGHER, with whom *Associate Judges NEBEKER* and *HARRIS* join, dissenting in part and concurring in the result at p. 15.

MACK, Associate Judge: Circumstances of this case have precipitated en banc consideration of the issue of whether, in child custody disputes between natural parents, there is a valid presumption that the interest of a child of tender years is best served in the custody of the mother.

The dispute arose on April 18, 1975, when appellee Sharon Davis sued appellant Lawrence Bazemore to regain custody of their minor child, Tonya. The case was heard on appellee's motion for pendente lite custody by Judge Washington on February 10, 1976. As a result of that hearing, Judge Washington determined that

. . . the health and safety of the child are presently better served at the home of [appellant] than at the home of [appellee];

. . . the environment for the child is better in [appellant's] home than in [appellee's] home at this time;

. . . permanent custody of Tonya can only be awarded to either party after the Intra-Family and Neglect Branch, Social Services Division, Superior Court of the District of Columbia, investigates the home of both [appellee] and [appellant] and makes a recommendation available to this court; . . .

Accordingly, on May 10, 1976, Judge Washington issued an order awarding temporary custody to appellant Lawrence Bazemore, pending an investigation by the Intra-Family and Neglect Branch of the Social Services Division of the Superior Court. On August 20, 1976, the Intra-Family and Neglect Branch filed a memorandum recommending that permanent custody of the child be awarded to the father, Lawrence Bazemore. However, because of the intervening illness of Judge Washington, trial was held before Judge Hamilton on January 12, 1977, at the conclusion of which Judge Hamilton awarded custody to the mother, Sharon Davis. It is this last decision which was appealed, and which has now been reviewed by both the original division and the court en banc. We reverse and remand.

I.

The record reveals that the child, Tonya, was born on October 18, 1972, out of wedlock. From the date of her birth until July 1974, Tonya lived with her mother, appellee Sharon Davis, in the home of Ms. Davis' parents. Throughout this period Ms. Davis was attending school, and Ms. Davis' mother took care of Tonya. In August 1974, Ms. Davis voluntarily relinquished custody of Tonya to appellant Lawrence Bazemore, the child's father, who also was living in his parents' home. As Mr. Bazemore was both going to school and working, his mother took care of Tonya.

At the time of the trial—January 1977—Tonya was still living with her father, Lawrence Bazemore, in the home of his parents, and was still being cared for by her paternal grandmother. Tonya's mother, Sharon Davis, was also still living with her parents. She was still attending school, but had, in addition, made arrangements

to work part-time. Ms. Davis acknowledged that if she regained custody of Tonya, the child would be cared for once more by her maternal grandmother.

The trial court ruled from the bench in favor of the child's mother, giving the following explanation:

Now, as you both know, in cases of this nature, the law prefers the mother—the natural mother as the custodian of the child and only denies to the natural mother the custody of the child when it can be shown and demonstrated by reasonable convincing and clear evidence that such natural mother is unfit as a parent. That is to say, such natural mother is either unwilling or unable to discharge those duties and responsibilities normally required in order to properly and adequately in a reasonable manner provide for the child. And although defendant made that allegation in his answer in response to this petition of custody by the parent, it does not appear to me the evidence has clearly and convincingly established, as it must do under the law, that the natural mother is unfit—that is to say either unwilling or unable to perform those duties reasonably necessary for the welfare of the child.

* * * *

The next inquiry is what, under such circumstances, would be in the best interest of the child; but, we don't even reach that point under the law because, as I stated, the law does not deprive a natural mother—that is one of the rights of motherhood which only mothers can have, the natural right to have their offspring. And, unless it can be demonstrated that they are unfit to have it and, unfortunately, the civil law

has incorporated that the natural right of the mother to have custody of her offspring. That is the natural and the civil law.

So, under the circumstances, gentlemen, I don't know anything that I can do except give this child to its mother

In support of its ruling, the court prepared a brief written order citing one case. The order reads, in relevant part, as follows:

Undoubtedly, the mother of a minor child of tender years has the strongest claim to custody of her child and ordinarily cannot be deprived of that custody except upon a showing that she is unfit or unable to care for the child. (Matter of N.M.S., 347 A.2d 924). Here there being no such showing, it is hereby

ORDERED, ADJUDGED, and DECREED that Ms. Sharon Davis be awarded custody of the minor child, Tonya LaShurn Davis.

II.

In their briefs and in oral argument before this court, all parties to this case agree that the proper standard to be applied in custody disputes between the natural mother and natural father of a child is the best interest of the child. The best-interest-of-the-child concept has, indeed, been the standard in this jurisdiction since the beginning of the century. *Ross v. Ross*, D.C.App., 339 A.2d 447, 448 (1975); *Monacelli v. Monacelli*, D.C.App., 296 A.2d 445, 447 (1972); *Rzeszotarski v. Rzeszotarski*, D.C.App., 296 A.2d 431, 439 (1972); *Lindau v. Lindau*, D.C.App., 286 A.2d 864, 865 (1972); *Dorsett v. Dorsett*, D.C.App., 281 A.2d 290, 292 (1972); *Coles v. Coles*, D.C.App., 204

A.2d 330, 331 (1964); *Bartlett v. Bartlett*, 94 U.S.App. D.C. 190, 192-93, 221 F.2d 508, 510-12 (1954); *Stickel v. Stickel*, 18 App.D.C. 149, 151 (1901); *Wells v. Wells*, 11 App.D.C. 392, 395 (1897). See also *Utlely v. Utlely*, D.C.App., 364 A.2d 1167, 1170 (1976) and cases cited therein. Cf. *In re J.S.R.*, D.C.App., 374 A.2d 860, 863 (1977). The best interest of the child is also the standard used in custody disputes between the natural father and mother of an illegitimate child. See *Barrett v. Koppen*, D.C.Mun.App., 154 A.2d 132 (1959).¹

In the instant case, the trial court relied on the proposition that a fit mother can never be deprived of custody, and explicitly refused to reach the issue of the best interest of the child. In this, the court clearly erred.²

Counsel for appellee, however, argues that in spite of the trial court's error we can affirm that court's decision. The argument can be stated as follows: (A) the trial

¹ Although it did not become effective until after the trial in this case, the District of Columbia Marriage and Divorce Act deems a child born either in or out of wedlock as the legitimate child of its father and mother. District of Columbia Marriage and Divorce Act, D.C. Law No. 1-107, § 105 (amending D.C. Code 1973, § 16-908).

² The trial court relied upon *In re N.M.S.*, D.C.App., 347 A.2d 924 (1975). *In re N.M.S.*, however, did not deal with the rights of a natural mother as against a natural father, but with the rights of a natural parent as against third parties. We do not, in this case, need to delve into that controversial area, for whatever the appropriate standard in disputes between natural parents and third parties, see *Quilloin v. Walcott*, 98 S.Ct. 549, 555 (1978); *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816, 833-38 (1977), as between the natural mother and natural father, the best interest of the child is still determinative.

court explicitly found that in most respects the parties were similarly situated; (B) there is, in this jurisdiction, a presumption that young children are better off with their mother; (C) accordingly, we can infer that in this case it would be in Tonya's best interest to go with her mother.

III.

As to appellee's first assertion, the trial court did not find that in *all* respects appellant and appellee were similarly situated. Rather, the court found that with respect to financial, educational, cultural, and familial circumstances, there was no substantial difference between the parties. In spite of these similarities, at least one extremely important difference between the circumstances of appellant and appellee is clear from the face of the record, namely, that at the time of the trial, the child, then over four years old, was living with the father and had been living with him for the previous two and a half years. As to this, the court significantly noted: "Bouncing this child back and forth between mother and father, paternal and maternal grandmothers, has not and will not be healthy for her. Each time she is moved, she gets a scar and who knows whether if ever it will be healed."

As to the second part of appellee's argument, it is true that in this jurisdiction there is, at present, a presumption that small children are better off with their mother. *Ross v. Ross*, *supra* at 448; *Monacelli v. Monacelli*, *supra* at 447; *Rzeszotarski v. Rzeszotarski*, *supra* at 439; *Lindau v. Lindau*, *supra* at 865; *Dorsett v. Dorsett*, *supra* at 292; *Coles v. Coles*, *supra* at 331; *Boone v. Boone*, 80 U.S.App.D.C. 152, 154, 150 F.2d 153, 155 (1945). It is this presumption that we now reexamine. See generally Roth, *The Tender Years Presumption*, 15

J.FAM.L. 423 and articles cited therein at 423 n.1 (1976-77); *Johnson v. Johnson*, 564 P.2d 71, 75 (Ala. 1977); *Strand v. Strand*, 41 Ill.App.3d 651, —, 355 N.E.2d 47, 52 (1976); *Pratt v. Pratt*, 29 Ill.App.3d 214, 216, 330 N.E.2d 244, 246 (1975); *In re Marriage of Bowen*, 219 N.W.2d 683, 688 (Iowa 1974); *State ex rel. Watts v. Watts*, 77 Misc.2d 178, 350 N.Y.S.2d 285 (Fam.Ct. 1973); *Commonwealth ex rel Spriggs v. Carson*, 368 A.2d 635, 639 (Pa. 1977) (opinion of Nix, J.; three judges concurring in the result).

Under common law, there was no presumption in favor of the mother. To the contrary, *the father, as a matter of right*, was entitled to the custody of his children. Roth, *The Tender Years Presumption*, *supra* at 424-28; Annot., 70 A.L.R.3d 262, 267 (1976); 46 C.J. *Parent-Child* § 10(b) at 1225-29 (1928); 19 C.J. *Divorce* § 798(b) at 344-45 (1920). This was also the law in the District of Columbia. *Barney v. DeKraft*, 6 D.C. (1 Mackey) 361, 367 (1862); *Mauro and Forrest v. Ritchie*, 3 D.C. (3 Cranch) 147, 155-56, 158 (1827), *appeal dismissed*, 2 Pet. 243 (1829).³

³ By the law of England there are various kinds of guardians. 1, Guardian in chivalry; 2, in socage; 3, by nature; 4, for nurture

* * * *

3. Guardianship by nature, existed only where the ward was heir apparent of the guardian, and extended only to the person of the ward. *The father was always guardian by nature* of the person of his heir apparent

* * * *

Of the four kinds of guardianship at common law, it is believed that only one exists in this country, namely, guardianship by nature [G]uardianship by nature exists in this country, and applies to all the children. [*Mauro and Forrest v. Ritchie*, *supra* at 155-56, 158 (emphasis supplied).]

Towards the end of the nineteenth century, however, the traditional rule that the father was always entitled to custody began to give way to a standard under which the best interests of the child controlled. Roth, *The Tender Years Presumption*, *supra* at 425; Annot., 70 A.L.R.3d 262, 267 (1976). In the District of Columbia, this shift can be seen in *Wells v. Wells*, *supra* at 395, which was decided in 1897, and *Stickel v. Stickel*, *supra* at 151, which was decided in 1901.

Gradually, thereafter, in fact first, and then in law, the standard favoring the best interest of the child evolved into a preference for the mother. Roth, *The Tender Years Presumption*, *supra* at 425; Annot., 70 A.L.R.3d 262, 267-68 (1976). In this jurisdiction, although the best interest of the child standard persisted, and still persists, a presumption developed that the child's welfare was generally best served by awarding custody to the mother. The first mention of the presumption is in a 1945 case, *Boone v. Boone*, *supra* at 154, 150 F.2d at 155. There, the court stated, in dictum, that "[u]ndoubtedly, the presumption that small children are better off with their mother is entitled to weight." *Id.* In support of this proposition, the *Boone* court cites one case, which is inapposite,⁴ and offers no explanation.

Since *Boone*, the presumption in favor of the mother has been alluded to in many District of Columbia cases. *Ante* at 7. Yet in no case has any explanation of the rationale behind the presumption been offered.

⁴ The case cited is *Sardo v. Villapiano*, 65 App.D.C. 121, 122, 81 F.2d 255, 256 (1935), where it was said that

[I]t is established both by statute and common law that *as between the grandfather and the mother* the child should be intrusted to the mother, unless such a course is inconsistent with the child's welfare. Title 15, c.3, § 31, D.C. Code 1929. [Emphasis supplied.]

MCCORMICK, in his treatise on evidence, suggests that there are four principal reasons for the creation of presumptions. First, some presumptions are created to correct an imbalance resulting from a party's superior access to the proof. Second, notions, usually implicit rather than expressed, of social and economic policy incline the courts to favor one contention by giving it the benefit of a presumption, and correspondingly to handicap the disfavored adversary. Third, a presumption may be created to avoid an impasse, to reach some result, even though it is an arbitrary one. Lastly, a presumption may be based on a judicial belief that proof of some fact renders the inference of the existence of another fact so probable that it is sensible and time-saving to assume the truth of the other fact until the adversary disproves it. See C. MCCORMICK, *HANDBOOK OF THE LAW OF EVIDENCE* at 806-07 (2d ed. 1972).

The first rationale suggested by MCCORMICK would not justify a presumption here, as both parents have equal access to proof concerning their child's best interests.

Nor do the second, third or fourth reasons survive close scrutiny as a valid basis for the presumption here at issue, for they would be either arbitrary, or based on unwarranted assumptions. For instance, courts may have assumed that "... a mother keeps the home, performs household duties, and will have more time to devote to the children and their welfare." *In re Marriage of Bowen*, *supra* at 688. Such an assumption, however, fails to take into account the realities of the divorced or single mother, who must assume the obligations of both parents, and is often not at home caring for the child but out working. See Roth, *The Tender Years Presumption*, *supra* at 452-56; Podell, Peck and First, *Custody—To Which Parent?*, 56 MARQ.L.REV. 51, 53-54 (1972); Note, *Measuring the*

Child's Best Interests—A Study of Incomplete Considerations, 44 DEN.L.J. 132, 139-42 (1967); Behles, *Equal Rights in Divorce and Separation*, 3 N.M.L.REV. 118, 133 (1973).

If the assumption that female parents are the best parents is based upon some special judicial insight into the workings of human nature, it fares no better. Eminent child psychiatrists have demonstrated that what a child needs is not a mother, but someone who can provide "mothering." Mothering refers to the "nurturing of the human potential of every baby to love, to trust, and to bind himself to human partnership," FRAIBERG, *EVERY CHILD'S BIRTHRIGHT: IN DEFENSE OF MOTHERING* at xii (1977), or the giving of consistent and predictable affection, acceptance, approval, protection, care, control and guidance. See Howell, *Can Fathers Be Parents?* JUSTICE Vol. II, No. 1 (1974). And the ability of a person to provide "mothering" does not necessarily correspond to the gender of the parent or the biological relationship between adult and child. See generally, FRAIBERG, *supra*; see also *State ex rel. Watts v. Watts*, *supra* at —, 350 N.Y.S.2d at 288-90.

But it is urged upon us that the presumption is a useful tool for the resolution of custody cases. We do not think that it is. For even if the presumption had some indeterminable validity, in unspecifiable circumstances, it could serve no purpose other than to save time. See MCCORMICK, *supra* at 807. But this saving of time is accomplished at the price of tremendous legal and logical confusion,⁵ and accompanied by an intolerable risk of unnecessary error.

⁵ As to the confusion which clouds the subject of presumptions generally, THAYER wrote:

[Continued]

In the first place, a rule of law providing that a mother has the strongest claim to the custody of her child obscures, and indeed may be inconsistent with the basic tenet, overriding all others, that the best interest of the child should control. See *In re Marriage of Bowen*, *supra* at 688. Such a rule carries a ring of proprietorship and focuses attention upon the mother's emotional needs rather than upon those of the child. See J. GOLDSTEIN, A. FREUD and A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* at 12 (1973).

Besides obscuring the basic issue in the case, the presumption is itself obscure in application. Thus, as *amicus curiae* for appellant has pointed out, none of our cases define what a child of tender years is. Other jurisdic-

⁵ [Continued]

that the numberless propositions figuring in our cases under the name of presumptions are . . . quite too loosely conceived of and expressed, to be used or reasoned about without much circumspection. Many of them are grossly ambiguous, true in one sense and false in any other; some are not really presumptions at all, but only wearing the name; some express merely a natural probability, and others, for the sake of having a definite line, establish a mere rule of legal policy; very many of them . . . lay down a *prima facie* rule of the substantive law, and others, a rule of general reasoning, and of procedure, founded on convenience or probability or good sense Some are maxims, others mere inferences of reason, others rules of pleading, others are variously applied Among things so incongruous as these and so beset with ambiguity there is abundant opportunity for him to stumble and fall who does not pick his way and walk with caution. [J. THAYER, *PRELIMINARY TREATISE ON EVIDENCE*, at 351-52 (1898).]

See also Morgan, *Presumptions*, 12 WASH.L.R. 255, 255 (1937).

tions, in the absence of statutes, have struggled with the issue of whether the tender years doctrine is applicable only to infants, or only to children under five, or only to children under ten. See Annot., 70 A.L.R.3d 262, 287-93. There are likewise questions as to whether the presumption is controlling or persuasive, whether factors such as the sex of the child affect its existence or weight, whether the presumption is applicable only when other things are equal, and whether a showing of the mother's unfitness⁶ is a *sine qua non* for the rebuttal of the presumption. See Annot., 70 A.L.R.3d 262, 278-93. Compare generally the verbal formulations and holdings of *In re N.M.S.*, D.C.App., 347 A.2d 924, 927; *Rzeszotarski v. Rzeszotarski*, *supra* at 439; *Coles v. Coles*, *supra* at 331.

Finally, the presumption facilitates error in an arena in which there is little room for error. A court in a child custody case acts as *parens patriae*. *Rzeszotarski v. Rzeszotarski*, *supra* at 439; *Boone v. Boone*, *supra* at 154, 150 F.2d at 155. It is not enough to suggest that the task of deciding custody is a difficult one, or that the use of a presumption would result in a correct determination more often than not.⁷ A norm is ill-suited for

⁶ It is the suggestion that there must be a showing of maternal unfitness that has spawned one of the most unfortunate aspects of the presumption—the attack by the father upon the character and conduct of the mother, an attack which necessarily aggravates the acrimony between the parents, and can only be to the detriment of the child. See, e.g., *Braiman v. Braiman*, 44 N.Y.2d 584, 378 N.E.2d 1019 (1978).

⁷ Let us give a prosaic example, taken with modification from *Sargent v. Massachusetts Acc. Co.*, 307 Mass. 246, —, 29 N.E.2d 825, 827 (1940). See also the discussion of this case in Ball, *The Moment of Truth, Probability Theory and Standards of Proof*, 14 VAN.L.REV. 807, 822-23 (1961). Suppose we are told that according to one study, 99% of the cars

determining the future of a unique being whose adjustment is vital to the welfare of future generations. Surely, it is not asking too much to demand that a court, in making a determination as to the best interest of a child, make the determination upon specific evidence relating to that child alone. As one court has aptly noted, magic formulas have no place in decisions designed to salvage human values. *Lemay v. Lemay*, 109 N.H. 217, —, 247 A.2d 189, 191 (1968).

For the reasons stated, we now direct that, in a dispute between a natural mother and father over custody of their child, the trial courts shall decide the delicate question of what is the child's best interests solely by reference to the facts of the particular case without resort to the crutch of a presumption in favor of either party. See the District of Columbia Marriage and Divorce Act, *supra* § 108(d) and § 109 (amending D.C. Code 1973, §§ 16-911(4) and -914). Any of the prior decisions inconsistent herewith are hereby overruled.

IV.

In conclusion, the law is that in a dispute between the biological parents over custody, the sole consideration is the best interest of the child. In the instant case,

in the United States are black. We may have serious misgivings about the statistic because it is based on an arguably skewed sample. But let us assume, for now, that the study has some validity. If, then, we have no other information as to what color a given car is, we should guess it was black. But suppose instead, we had a car before us, and we closed our eyes and made a guess based on the probabilities. Truly by proceeding in this manner, we would guess correctly more often than not. It is equally true however, if we opened our eyes we could make a more accurate determination.

the trial court explicitly refrained from deciding what was in Tonya's best interests. Nor do we think that, on the basis of this record, we can say with assurance what would be best for the little girl. In these circumstances, we must remand the case to the trial court for a new determination of the question of custody.

It is so ordered.

GALLAGHER, *Associate Judge*, with whom *Associate Judges* NEBEKER and HARRIS join, dissenting in part and concurring in the result: There is perhaps no issue more important or more perplexing to come before the trial court than deciding on the custody of children of tender years. What standards to apply in awarding custody of a young child is a problem which has troubled judges at least since the time of King Solomon. In what has been termed in legal quarters as the leading case in this jurisdiction on child custody, this court said:

Out of a maze of conflicting testimony, usually including what one court called "a tolerable amount of perjury," the judge must make a decision which will inevitably affect materially the future life of an innocent child. In making his decision the judge can obtain little help from precedents or general principles. Each case stands alone. After attempting to appraise and compare the personalities and capabilities of the two parents, the judge must endeavor to look into the future and decide that the child's best interests will be served if committed to the custody of the father or mother. He starts with the premise, as did the trial judge here, that

the best interests of the child would be served by living in a united home with the affection, companionship and care of both father and mother, but that possibility has been eliminated before the case reaches the judge. So, the question for him is what is best for the child within the limitations presented. When the judge makes his decision, he has no assurance that his decision is the right one. He can only hope that he is right. [*Coles v. Coles*, D.C.App., 204 A.2d 330, 331-32 (1964).]

The majority has entered into this area of the law unnecessarily and, in an opinion containing mistaken assumptions and "straw men" erected so as to be knocked down, has sought to change existing law on child custody.

I have considerable difficulty in this case on two scores, (a) the way it got here procedurally, and (b) the majority opinion on the merits. I will discuss first the procedural anomaly, which is a matter of concern.

A. By a divided vote, the majority took this court en banc in this case sua sponte. I find this to be of interest because appellant had not so much as raised in his brief the issue which became the en banc issue, *i.e.*, the validity of the tender years presumption. To the extent it was even mentioned in the brief it was, if anything, accepted and certainly not attacked. Consequently, we are here en banc on an issue generated by the court majority, not appellant.¹ This court is here to decide issues, not create them.

¹ In opening its opinion the court puts it this way: "Circumstances of this case have precipitated en banc consideration of the issue"

As a result, what we have is essentially an advisory opinion stating it is changing the law in relation to child custody cases. Advisory opinions, after all, are "bound to move in an unreal atmosphere." Frankfurter, *A Note on Advisory Opinions*, 37 HARV. L. REV. 1002, 1006 (1924). "Every tendency to deal with [litigated cases] abstractly, to formulate them in terms of sterile legal questions, is bound to result in sterile conclusions unrelated to actualities." *Id.* at 1003. This case is no exception.

What is more disturbing is we have two very recent pieces of legislation in this jurisdiction relating specifically to child custody in the 1977 Marriage and Divorce Act.² It is inevitable that soon this court will have a case necessitating a construction of this new legislation on child custody. One has to wonder why the court chose not to await the early arrival of such a case. As a result, we will later have to construe the legislation in an atmosphere complicated by this decision—though this of course will be no reason not to unravel the situation at the proper time.

It is the holding of the majority opinion that the so-called tender years presumption in this jurisdiction is abolished. Since I do not find that the majority first explored in any depth what it considered it was abolishing, I will undertake to do so. I will begin first by tracing the decisions in this jurisdiction where reference is made to a tender years presumption without regard to whether the cases involve a contest between husband and wife over child custody or a contest between a mother and third persons (*e.g.*, foster parents).³ After doing

² D.C. Law 1-107 (1977).

³ As the discussion of both types of custody disputes will demonstrate, the fact of motherhood carries most weight in

this, there will be a discussion of the evidentiary nature of presumptions in general. This is followed by an analysis of the way the so-called tender years presumption has been applied in this jurisdiction in order to determine whether it is in reality a presumption, as that term is commonly used, and if not, what its actual significance is, and has been, in these child custody cases over recent years.

B. In this case the custody dispute is between the unmarried parents of a female child, who were about 16 years old at the time of the child's birth. The daughter will soon celebrate her sixth birthday. During her first two years, the infant resided with her mother in the home of the maternal grandparents. The mother was still attending high school at the time. After 21 months, the mother voluntarily relinquished custody of the child to the natural father (and the father's mother), apparently because of friction in the mother's home with her parents. Nine months later the mother filed a complaint to regain custody. It will be apparent when I get to the facts that what lay at the root of this case, realistically, was which *grandmother* of the infant was going to care for the child in day-to-day living, not which unmarried parent. Consequently, it is hardly a vehicle for an important discussion of the law on parental custody.

The Social Services report compiled before trial showed the father by that time to be a college student employed during the summer, with the child being cared for by the paternal grandmother. The report recommended that the child "remain in permanent custody of [the father]

this jurisdiction when a non-parent seeks to deprive a mother of custody.

and the paternal grandmother"⁴ (emphasis supplied). After a hearing the trial court said:

The next inquiry is what, under such circumstances, would be in the best interest of the child; but, we don't even reach that point under the law because, as I stated, the law does not deprive a natural—that is one of the rights of motherhood which only mothers can have, the natural right to have their offspring. And, unless it can be demonstrated that they are unfit to have it and, unfortunately, the civil law has incorporated that the natural right of the mother to have custody of her offspring. That is the natural and the civil law.

So, under the circumstances, gentlemen, I don't know anything that I can do except give this child to its mother

In its written order, filed January 21, 1977, the court awarded custody to the mother with visitation rights to the father on weekends. Incorporating the earlier trial ruling, the court stated:

The mother of a minor child of tender years has the strongest claim to custody of her child and ordinarily cannot be deprived of that custody except upon a showing that she is unfit or unable to care for the child (Matter of N.M.S., 347 A.2d 924).

The court returned the child to her mother, where she has remained. Subordinated, if not quite disregarded, by the trial judge was what should have been the domi-

⁴ It would appear from the record that it is primarily the grandmothers who have been rearing the child.

nant issue, that is, the child's welfare. Because the theory of a mother's natural right to custody preoccupied the trial judge, to the exclusion of appropriate inquiry, I would reverse and remand for a new trial.

The father appealed and after hearing oral argument, this court ordered sua sponte, by a divided vote, that the case be reheard en banc. I believed the case was readily susceptible of reversal under the authority of *Ross v. Ross*, D.C.App., 339 A.2d 447 (1975); *Lindau v. Lindau*, D.C.App., 286 A.2d 864 (1972); and *Coles v. Coles*, *supra*. Instead of remanding for a determination of custody in accordance with those decisions, the court majority formulated an en banc issue not raised by appellant: the continuing validity of the tender years presumption.

It seems my misgivings were warranted. After consideration en banc, the majority now inflates the tender years presumption in this jurisdiction to a magnitude unwarranted by our case law. If I may comment parenthetically, it is rather intriguing that an article prominently relied upon in the majority opinion states that this jurisdiction previously abandoned the tender years presumption now being abolished in this case. See Roth, *The Tender Years Presumption in Child Custody Disputes*, 15 J. OF FAMILY LAW 423, 458 & n.123.⁵

It is an established principle in this jurisdiction that child custody disputes between parents are resolved according to the child's best interests.⁶ It will be illuminat-

⁵ See also, to the same effect, "Life with Father," FAMILY L. QUARTERLY, Vol. 11, at 332 n.51 (1978).

⁶ See *Coles v. Coles*, *supra*; *Ross v. Ross*, *supra* at 448, quoting *Wells v. Wells*, 11 App.D.C. 392 (1897) ("the best interest of the children must be considered as paramount");

ing to turn now to a review of cases in this jurisdiction where the tender years presumption is mentioned.

As the leadoff, *Boone v. Boone*, 80 U.S.App.D.C. 152, 150 F.2d 153 (1945), has been cited for the presumption that small children are better off with their mothers. Although stating that the presumption was entitled to weight, this observation by the court was dicta. Reversing a trial court award of custody to the father (two children ages 9 and 6), the circuit court remanded for decision after an examination of the parents' qualifications and circumstances by disinterested persons (e.g., probation officers, social workers). As a source for the presumption, *Boone* cited *Sardo v. Villapiano*, 65 App. D.C. 121, 81 F.2d 255 (1935). *Sardo* involved a habeas corpus proceeding brought by the mother to regain custody of a 9-year-old child from the grandfather. Between a grandfather and a mother, the court held that the mother has a prior claim to custody, unless inconsistent with the child's welfare.

In *Bell v. Leonard*, 102 U.S.App.D.C. 179, 251 F.2d 890 (1958), a habeas corpus proceeding, the mother was awarded custody of her 9-year-old illegitimate daughter rather than a couple who cared for the child. In the absence of abandonment, consent to custody in another, or unfitness, the court on appeal reunited mother and child, refusing to deprive the mother of custody. The court stressed the importance of the family unit and of maternal love ("the welfare of the child and its best

Dorsett v. Dorsett, D.C.App., 281 A.2d 290, 292 (1971) ("paramount consideration . . . is the welfare of the child"); *Utley v. Utley*, D.C.App., 364 A.2d 1167, 1170 (1976) ("it is without question now that in any child custody case the controlling consideration is the best interest and welfare of the child").

interests are nourished by and inevitably traced to the well-springs of child's life with its mother"). The court concluded, "[i]n short, . . . 'the presumption [is] that small children are better off with their mother . . .,' as we reaffirmed in *Bartlett v. Bartlett*,^[7] . . . recognizing the experience of the ages." *Id.* at 184, 251 F.2d at 895.

In *Koppen v. Barrett*, 87 Wash. D.L. Rptr. 887, *aff'd*, D.C.Mun.App., 154 A.2d 132 (1959), the father of a 3-year-old illegitimate child appealed from an order awarding custody to the mother. The significance of the child's illegitimacy is not clear from the trial court's opinion. Although espousing the best interests test, the court mentioned a mother's preferential claim and natural guardianship. The court indicated that the preferential claim may be lost by contract or forfeited due to conduct affording strong evidence of the mother's lack of natural affection and fitness. Yet the court concluded that the mother had carried the burden of showing how she might better assist the child's development; in contrast, *the father merely attacked the mother's fitness*. Considering this evidence in light of the child's tender age, the trial court found that the best interests test required that the child remain with the mother.

In the leading case of *Coles v. Coles*, *supra*, the mother relied on a tender years presumption in her attempt to regain custody of a 4-year-old child. The law requires custody of a child of tender years to be awarded the

⁷ 94 U.S.App.D.C. 190, 221 F.2d 508 (1954). Interestingly, *Bartlett* mentioned the presumption in a footnote as guidance to the trial court on remand. *Id.* at 194 & n.17, 221 F.2d at 512 & n.17. The court reversed a custody award to the mother, because the trial judge was influenced by an erroneous finding as to the parents' adversary rights, rather than the child's welfare. The court noted, however, that reversal did not indicate a favoritism for either parent.

mother, she contended, where the mother is a fit custodian and there is no finding that her custody would endanger the child. This court affirmed the custody award to the father, finding neither abuse of discretion nor error as a matter of law. We there stated that *a showing of the mother's unfitness by the father was not a prerequisite* to an award of custody:

[T]he law of this jurisdiction does not compel the award of custody of a small child to the mother, although she is a fit custodian, if the trial court on consideration of all the evidence, concludes that the best interests of the child will be served by awarding custody to the father. [*Id.* at 332.]

The court's interpretation of the law in *Coles* was reaffirmed in *Schwier v. Schwier*, D.C.App., 207 A.2d 115 (1965), without mentioning the tender years presumption. This court stated:

As we have so often said, it is not the adversary right of either parent that is determinative of custody but the welfare of the child that is paramount, and the law of this jurisdiction does not compel the award of a small child to the mother if the best interests of the child will be served by awarding its custody to the father. *Coles v. Coles*, D.C.App., 204 A.2d 330, 332 (1964). [*Schwier*, *supra* at 117.]

In *Dorsett v. Dorsett*, D.C.App., 281 A.2d 290 (1971), this court found no abuse of discretion where custody of an 8-year-old son was awarded to the father. As we stated:

The paramount consideration in child custody cases is the welfare of the child. Although . . .

there is a presumption in this jurisdiction that children of tender years are better off with their mothers—absent a finding that the mother is unfit—that presumption does not preclude a trial judge from considering evidence pointing to another conclusion. [*Id.* at 292; footnote omitted.]

In upholding the award to the father, this court quoted at length from *Coles v. Coles*, *supra*, terming *Coles* “the leading case in this jurisdiction.” *Dorsett*, *supra* at 292.

If *Coles*, *supra*, had not settled the subordinate role of the tender years presumption, this court did so in *Lindau v. Lindau*, *supra*. There, we said:

The improper legal standards contention is grounded on appellant’s assumption that the trial judge “felt that in view of the ‘presumption’ in favor of maternal custody of small children . . . a husband seeking custody had first to prove the mother’s unfitness.” We disagree with this assumption. In our view a fair reading of the record indicates that the trial judge’s primary concern was the best interest of the child. On several occasions he inquired of witnesses about the child’s best interest. Moreover, he interviewed the child in chambers in an effort to gain additional information. The fact that most of the testimony related to the wife’s alleged adultery and unfitness was attributable to the way in which the husband chose to present his case, rather than to any misconceptions on the part of the trial judge. The detailed written opinion of the trial judge clearly demonstrates that the best interest of the child was considered.

Although the trial judge mentioned the presumption that small children are better off with their mother, *Winter v. Crowley*, 126 U.S.App.D.C. 103, n.13 at 106, 374 F.2d 317, n.13 at 320 (1967), *his decision was based on the correct legal standard, i.e., the present welfare of the child*. *Winter*, *supra*; *Coles v. Coles*, D.C.App., 204 A.2d 330, 331-332 (1964); *Cooley v. Washington*, D.C.Mun.App., 136 A.2d 583, 585 (1957). [*Lindau*, *supra* at 865; footnote omitted; emphasis added.]

In *Rzeszotarski v. Rzeszotarski*, D.C.App., 296 A.2d 431 (1972), the mother questioned a custody award to the father in light of the tender years presumption. In affirming custody in the father, although the mother was not claimed to be unfit, this court pointed out that the “presumption cannot be viewed as controlling but *merely* as a usually persuasive factor *relating to the issue of custody*.” (*Id.* at 439; emphasis added.) The court went on to say, “The record in the case before us shows extensive evidence presented by both parties regarding a determination of what would be in the best interest of the child.” *Id.*

In *Monacelli v. Monacelli*, D.C.App., 296 A.2d 445 (1972), this court refused to disturb a custody award to the father absent a showing of changed circumstances. The court stated that the controlling consideration is always the welfare of the children even though courts will, as a general rule, indulge the presumption that maternal custody best serves the interests of young children. This court made plain that custody cases are no place to consider adversary rights of the parents.⁸

⁸ In *Winter v. Crowley*, 126 U.S.App.D.C. 103, 374 F.2d 317 (1967), the circuit court held that a change in circum-

Although "aware" of the tender years presumption, this court in *Ross v. Ross*, *supra*, made a passing reference to the presumption and then, still again terming *Coles* a leading case on the subject, quoted from that decision:

"[T]he law of this jurisdiction *does not compel the award of custody of a small child to the mother, although she is a fit custodian*, if the trial court on consideration of all the evidence, concludes that the best interests of the child will be served by awarding custody to the father." [*Ross*, *supra* at 448-49, quoting *Coles*, *supra* at 332; emphasis added.]

We then proceeded to affirm the trial court's award of custody to the father.

Applying the best interests test to a custody dispute between foster parents and the natural mother, this court in *In re N.M.S.*, D.C.App., 347 A.2d 924 (1975), left the 9-year-old child *in the foster home*. This being a dispute between a mother and third persons, the court agreed that a mother, undoubtedly, has the strongest claim to custody of her child and ordinarily cannot be deprived of custody without a showing of unfitness. This case was distinguished, however, as an attempt to regain—not retain—custody; the mother had committed the child to the welfare division when four days old.

stances considered by the earlier court as a basis for the custody decree requires the court to hear testimony and determine anew the question of custody. The court suggested that circumstances relevant to the child's welfare would include the nonconclusive presumption that small children are better off with their mother. [*Id.* at 106 n.13, 374 F.2d at 320 n.13.] The court there stated, also, that "[t]he welfare of minors is not to be determined by . . . adversary rights as between the parents or other custodians." [*Id.* at 106, 374 F.2d at 320.]

In a recent case, *Moore v. Moore*, D.C.App., 391 A.2d 762 (1978), custody of a 5-year-old girl was awarded the mother. We disagreed with the father's contention that the trial court improperly accorded presumptive significance to the factor of "motherhood." Inclusion of the fact that the child had lived with the mother for most of her life, in the court's view, did not indicate that maternity was given presumptive significance. Because the trial court did not invoke the presumption, the issue of its propriety was not reached.

Although mentioned in several cases, the tender years presumption has rarely formed the basis of a decision in this court. As this review of our cases shows, if there is one thing that is evident, it is that custody does not go to the mother as a matter of law if she is a fit custodian. The trial judge retains broad discretion in defining the child's best interest and in determining what criteria may apply; and, as we have stated, we will abide by the trial court's determination on custody "as the law will only dictate reversal upon a finding of manifest abuse of discretion." *Ross v. Ross*, *supra* at 449, quoting from *Rzeszotarski v. Rzeszotarski*, *supra* at 440.

Whatever confusion exists may be due in large part to the blurring of distinctions between proceedings which terminate maternal rights in favor of a third party and custody disputes between parents. I note, for example, that *In re N.M.S.*, *supra*, is cited by the majority opinion. Yet, that case did not involve a custody dispute between parents, but between a parent and foster parents. It is in those cases where a nonparent seeks custody that the mother's preferential claim will be quite a telling factor. Indeed the fact of motherhood has *presumptive* significance in those situations because the nonparent must introduce rebuttal evidence of the mother's unfitness. *See*,

e.g., *Johnson v. Lloyd*, D.C.App., 211 A.2d 764 (1965). The ordinary preference of the mother over a third party "represents no new principle of law, but merely reflects the wisdom of human experience that children ordinarily will be best cared for by those bound to them by the ties of nature." *Davis v. Journey*, D.C.Mun.App., 145 A.2d 846, 849 (1958). See also D.C. Code 1973, § 21-101.

It is quite evident to me that the law on child custody as applied in this jurisdiction is essentially as stated in our "leading case" of *Coles v. Coles*, *supra*. That decision leaves no room for the "straw man" set up by the majority opinion. It requires that there be a balancing approach as between the two parents.⁹ If a trial judge

⁹ See, e.g., *Benvenuto v. Benvenuto*, 105 Wash. D.L. Rptr. 1033 (June 14, 1977), where the trial court stated in its findings:

A custody determination is more than an evaluation of love and affection. It is a composite, *inter alia*, of a totality of information concerning also the personal safety of a child, the morals and health of the child, the happiness of the youngster, where her bastions of security exist, where she derives most of her essential comfort and needs, where she has the greatest stability, what home environments are offered, what are the parenting capabilities or willingness to provide quality care, what has prologue shown us. Essentially, this decision-making must be an unbiased consideration of the best interests of the child based on her individual characteristics and the relationships of the parents and the child.

....

The Court finds that, on balance, and in consideration of all factors, the mother would be the more appropriate custodian and that the best interests of the child require that custody be so reposed. [*Id.* at 1039.]

In *Bergstrom v. Bergstrom*, D.C. Super Ct. (No. 3312-77, Feb. 15, 1978, unpublished findings of fact, conclusions of law), the court's task was there described as determining

applies a maternal preference as a presumption of law, it is contrary to the law of this jurisdiction under long standing decisions of this court.¹⁰ As often as not, when alluding to the "tender years presumption" this court has done so in affirming a custody award to the father.¹¹

C. The term "presumption" often is used loosely. According to a leading text writer, "the description of a presumption as a rule that, at a minimum, shifts the burden of producing evidence is to be preferred." MC-CORMICK, EVIDENCE § 342 at 803. Wigmore puts it this way:

So long as the law attaches no legal consequences in the way of a duty upon the opponent to come forward with contrary evidence, there is no propriety in applying the term "presumption" to such facts, however great their probative significance. [WIGMORE ON EVIDENCE, Vol. IX, § 2491, at 288.]

Thus, the essence of a presumption is not the probative value attached to specific facts or the inferences drawn, but the procedural consequences. *Id.*

What is often referred to as a "presumption of fact" should properly be called an inference. Actually, "the distinction between presumptions 'of law' and presumptions 'of fact' is in truth the difference between things that are in reality presumptions . . . and things that are

"between two good parents how the custody of the child must be arranged based upon the dictates of the best interests of the child."

¹⁰ E.g., *Coles v. Coles*, *supra*, and its progeny.

¹¹ See, e.g., *Coles v. Coles*, *supra*; *Dorsett v. Dorsett*, *supra*; *Monacelli v. Monacelli*, *supra*; *Rzeszotarski v. Rzeszotarski*, *supra*.

not presumptions at all." *Id.* at 288. Presumptions of fact or inferences, as a matter of reasoning, refer to the probative value of an evidentiary fact. The inference arises from the commonly accepted experiences of mankind and the conclusion which reasonable men would draw from experiences. *See, e.g., Manchester v. Dugan*, 247 A.2d 827, 829 (Me. 1968) ("[a]n inference is a deduction as to the existence of a fact which human experience teaches us can reasonably and logically be drawn from proof of other facts").

If the "tender years presumption" as applied in this jurisdiction is a presumption at all, it is a presumption of fact. The review of our case law demonstrates this. And as Wigmore puts it, a presumption of fact is not really a presumption at all; it is an inference. Whatever else it may have been in years past, our decisions show the tender years "presumption" in this jurisdiction is a misnomer.

D. My reading of this court's decisions leads me to conclude the inference that ordinarily a child of tender years is better off in the custody of the mother ordinarily operates in the trial court in this limited way: if both parties seeking divorce appear to be reasonably stable, conscientious parents with somewhat the same background, and, let us say there is a three-year-old girl child involved, the court would probably there infer the small child is better off being reared by the mother. If on the other hand it appears, for example, the mother is markedly self-centered and not as stable nor as parentally responsible as the father, then in all likelihood the inference never comes into play in deciding the custody issue in favor of the father. This is how, as I read it, judges are proceeding generally in the real world of the trial court in this jurisdiction. It seems a sensible

approach to me, and accords with reality. I do not think it should be necessary to explain why an infant girl child, for example, is better off being reared through early childhood by a loving, responsible, diligent mother than a loving responsible, diligent father.¹² I agree with the majority's view that "the ability of a person to provide 'mothering' does not necessarily correspond to the gender of the parent" (emphasis added). But that misses the point. It is not a question of what *necessarily* occurs.¹³

This court holds here that the "trial courts shall decide the delicate question of what is the child's best interests solely by reference to the facts of the particular case without resort to the crutch of a presumption in favor of either party. *See* the District of Columbia Marriage and Divorce Act, *supra* § 108(d) and § 109 (amending D.C. Code 1973, §§ 16-911(4) and -914)." ¹⁴

¹² If it were to be that all things being anywhere near equal, a father's superior financial position, an ordinary state of affairs, is considered a controlling consideration, then we will have taken a giant step back toward the last century when the father as the dominant figure almost automatically got custody of the children.

¹³ Where custody of small children is granted to the father, it is not unlikely that he will either remarry, or if affordable, employ someone to care for a home. The chances are the child-caring is in that fashion resumed and the father's "nurturing" recedes in the actual routine of day-to-day living. If there is a remarriage, the "mothering" would likely be done not by the father but by the child's stepmother instead of the mother.

¹⁴ In an interesting analysis of the 1977 Marriage and Divorce Act the authors concluded:

The Council specifically enumerated the criteria to be considered in custody and property distribution determinations. We believe, as did the bar groups, that these criteria should have been omitted in order to give more flexibility to the courts in the future in adapting the rele-

If my analysis of our case law as well as the law on the subject of presumptions is correct, we have neither a "presumption" nor a "crutch." It would have been a simple matter for the hearing division in this case to issue an opinion reaffirming *Coles, supra*, and its progeny and, to the extent felt necessary, remove any lingering uncertainty—if any there be—on how the trial court should approach the resolution of custody disputes.

I do not by any means read the majority opinion to prohibit a trial judge in a custody dispute involving a child of tender years from taking into consideration, while balancing all factors, realities such as those expressed by learned amicus curiae appointed by the court in this case:

A new-born baby and a young child have certain needs of physical warmth, of cuddling, of affection, to say nothing of food, which it can best receive from its mother. These needs diminish as the child grows older, and may disappear at age 7 or thereabouts. But, assuming both parents to be equally well motivated, it seems to your writer that the mother is better endowed by nature to provide for these basic needs. There are, after all, certain biological and physiological differences between male and

vant factors to reflect the changing values in society. Nevertheless, it is clear that neither the custody nor property-distribution criteria add anything significantly new to the law, and, at this point, *serve as nothing more than a codification of the principles developed in the case law. These changes will have little practical effect on either custody or property division cases.* [Green & Long, *The Real and Illusory Changes of the 1977 Marriage and Divorce Act*, CATH. U. L. REV., Vol. 27, No. 3 (Spring 1978) ; emphasis added.]

female which will withstand all assaults of modern day mores. [Brief of Amicus Curiae, *Charles H. Mayer, Esq.*, filed June 2, 1978.]

Though I do not read the court's opinion as prohibiting earthiness by a trial judge in assessing and balancing all the evidence, I might add a few words of clarification to avoid misunderstanding at the trial level. Because trial judges faced with custody decisions will look to this case for guidance, I think it unwise to even appear to be discouraging a realistic approach.

This decision does not change what is fundamental to our law in deciding custody disputes. The majority opinion seeks to abolish a rule that did not actually exist in this jurisdiction as perceived by the majority. The trial judge retains broad discretion in defining the child's best interests and in applying appropriate criteria. We have often said that we must abide by the trial court's determination on custody "as the law will only dictate reversal upon a finding of manifest abuse of discretion." *E.g., Ross v. Ross, supra* at 449, quoting from *Rzeszotarski v. Rzeszotarski, supra* at 440. As a practical matter, the majority opinion will have little or no effect on the future resolution of custody disputes in the real world of the trial court—or so it seems to me.

THE UNIVERSITY OF MICHIGAN

PSYCHIATRIC HOSPITALS
OFFICE OF THE ADMINISTRATOR

No. 79-106

MEMORANDUM

TO: Alan Brass
Albert Silverman, M.D.
Program and Discipline Chiefs
Administrative Staff

FROM: Marvin A. Cohen 
Administrator

DATE: March 8, 1979

SUBJECT: Time Away

I will be away from the Hospital Friday afternoon, March 9th through Tuesday, March 13th for business matters. Jim Bigwood is authorized to sign petty cash and emergent requisitions, and Deborah Bland will be available to answer any questions pertaining to Personnel matters.

MAC:klg



UNIVERSITY HOSPITAL

JEPHTHA W. DALSTON, PH.D., DIRECTOR
ANN ARBOR, MICHIGAN 48104

THE UNIVERSITY OF MICHIGAN

NEUROPSYCHIATRIC INSTITUTE

ALBERT J. SILVERMAN, M.D., DIRECTOR AND CHAIRMAN
DEPARTMENT OF PSYCHIATRY

CHILD DEVELOPMENT PROJECT
201 E. CATHERINE STREET
ANN ARBOR, MICHIGAN 48108

Dr. Justin D. Call
Professor and Chief of Child and
Adolescent Psychiatry Division
California College of Medicine
101 City Drive South
Orange, Ca. 92668

Dear Justin:

It was very good to speak with you the other day.
And thank you for writing on my behalf to the University
of California, San Francisco. I am sure that a letter
from you must have had tremendous weight.

As I mentioned in our telephone conversation, your
proposed document was read by me and other staff members
with considerable interest. Some of the memos that came
back to me showed such careful reading and appreciation
of your work that I shall probably ask two or three of
our staff members to write to you directly.

Perhaps I can report informally my own reactions as
I read your document and I will, of course, fill in the
questionnaire.

1. In the birth to 90 days of age, have you considered
including "smiles to mother's voice" which Peter Wolff reports
at 3 and 4 weeks of age and which I can confirm through my
studies of blind infants, at the same age.

Is it worth including the postural adaptations which a
baby makes when held by the mother which indicate pleasure
in closeness and intimacy. (On the aberrant side, we would
see the baby "who never liked to be held" "didn't like to be
cuddled.")

In states of moderate distress the infant can be comforted
through Mother's voice or by being held by her.

2. 3 months - 6 months. Again, I wonder if an item
"Can be comforted by mother's voice or holding when in moderate
distress" might not be useful in the inventory. (We have seen
babies of this age in our clinic who do not seek comfort from

mother when in distress nor respond to the mother's attempts to give comfort.

3. 6 months - 1 year. I think your item (d) the separation distress item gives too much license for interpretation and misinterpretation. For example, when you say, "when the infant is separated from its mother or when the mother leaves the infant with a caretaker" the observer, using your criteria, would never be in a position to observe the infant when he is left by his mother in the care of a caretaker. Under what circumstances might an observer make his own observations of separation reactions? Probably in a "mother leaves room momentarily" situation and then context becomes important. Is the observation made at home or in the examiner's office?

In a "mother leaves room situation at home" it is unlikely that a baby will panic. In the clinician's office he might.

Do you need to emphasize for the examiner that at "Six Months to One Year" all the indicators of attachment are present, further differentiated and are focused, preferentially on the mother.

Vocalizations to the mother and in a responsive "dialogue" with the mother, are very important indicators at this age. (Among our aberrant children it is their silence and the meager repertoire of vocalizations that inform us considerably.

4. One year to 18 months. Your item (h) "uses the secondary transitional object in the absence of mother" I don't buy. We have had a considerable number of healthy children in our studies with manifestly good attachments to their mothers who do not employ transitional objects. I think the case for the transitional object has been over stated in psychoanalytic literature with a very poor empirical base.

5. 18 months to 2 years. On your item (typo - should be (e)) "The infant demonstrates his capacity for finding missing objects." Are you saying that you would expect, for example, that if a child had lost or misplaced a toy, he would conduct a search for it which would demonstrate his "belief" that it exists? Or, are you saying that if he uncovers a screened toy he will conduct a search? In which case, what is the task and what are your expectations for the child 18 months to 2 years?

I raise this question because I believe, with you, that the Piagetian sequence leading to object permanence at 18 months can be a very important indicator, and if we don't state our expectations, the examiner might miss this. However, on reflection, your item (c) on "delayed imitation" would probably take care of my concerns since the capacity for representation in (c) would have to be at or beyond Piaget's Stage VI 18 months.

6. Age Two to Three Years. On page 4 your phrase, "begins to liberate himself from the attachment developed during the first 18 months" I think might be re-phrased. I think that the child becomes progressively freer of the dependency of that earlier attachment but of course you don't mean to imply that he becomes free of the attachment. (I know perfectly well what you mean, I am only worried how the unsophisticated might react to this.) In this day and age when self reliance seems to be the highest aim that parents have for infants, someone may misuse this criterion. (Thus, we have had several small children in our program who literally run away from their mothers in a department store or grocery and are found, after a search, complacent and unconcerned. Some parents have reported this to us with pride. It showed "how independent" their toddler was.)

On the whole, I think your inventory of attachment indicators covers the main points very nicely!

Now to Part II, "Primary Attachment Failure of Early Infancy." I and other readers on my staff questioned whether you wanted to link this early deprivation syndrome so specifically with "failure to thrive."

Thus, we have observed apathetic babies, indifferent to their mothers and to their surround, with a vacant smile and autonomic instability who fed well (if unenthusiastically) and gained weight at a steady pace.

I know that you have indeed put inferior weight gain under "association symptoms" but nearly the entire text is linking this to non-organic "failure to thrive". Isn't this diverting the attention of the clinician from a variety of grave attachment disorders in early infancy that may not be reflected in poor weight gain?

Your statement under "Complications", "A high mortality has been observed, up to 50 percent in the first year." What is meant by this? By the way, if this is a reference available in the literature, can you give me the citation?

Should a word of caution be introduced in "Differential Diagnosis?" In our own study of 11 "failure to thrive" f infants who were accepted into our treatment program, 2 were later found to have organic causes for growth failure. In outcome studies in the literature, approximately 5% of F.T.T. children in follow-up were found to have an organic etiology for growth failure. Should we also alert the clinician to the fact that alcohol and drug use and abuse during pregnancy can produce a syndrome that is very like the one you describe for "failure to thrive" (non-organic).

On page 7, "Attachment Disorder of Infancy, Anaclitic Type" there is little that I can add to this good and concise statement.

On page 10, "Attachment Disorder of Infancy, Symbiotic Type" Again, my objections to the criterion, "Failure to make use of transitional objects" on the same basis that I earlier objected. I don't think it is a significant differentiating characteristic.

Under "Associated Features," I think your point on "Later stages of object constancy and language are slow to develop" is a very important one. In the severe case in this group one can find babies at 16 months to 24 months and older who are unable to pass a Piagetian Stage IV task. However, thinking again of those who are using the criteria and many professionals may not have large experience in this area, wouldn't it be worth mentioning that a delay in achieving object constancy can also be associated with mental retardation and neurological impairment? Also, I think it is very important to mention that all children blind from birth and including those who are otherwise intact and a large number of children who are visually impaired will show a marked delay in the attainment of object permanence.

We should all be grateful to you for the enormous amount of careful work and examination of issues which you have brought through in this document.

As you will notice in the response to your questionnaire, we agree among ourselves (those of us who read the document on our staff) that these are useful categories and that they differentiate among highly aberrant children who have come into our own program.

With warm regards from all of us.

Sincerely,

Selma Fraiberg
Professor of Child Psychoanalysis
Director, Child Development Project

SF/amw

THE UNIVERSITY OF MICHIGAN

TO: Selma

February 12, 1979

FROM: Peter 

re: Dr. Call's diagnostic categorization
of disorders of infancy

I think what Dr. Call is trying to do is of great interest, and it is particularly significant to have something of this order in DSM-3. As I am sure you know, this diagnostic manual will be the one in current usage as we move toward a National Health Service and will reflect any inclusion of treatment of psychiatric difficulties.

But, I think there are a number of lacunae and errors in Dr. Call's attempts:

1. The major fault I find is that there is no mention throughout the normative behaviors of the paradoxical behavior of infancy which is indicative of attachment. Specifically I mean the ignoring and avoidance of the mother at reunion, following separation, which is so frequently seen as evidence of an attachment disorder, when actually it is evidence of separation occurring in a child with strong attachments.
2. I would quibble with some of the normative standards he listed. For instance, in birth to 90 days (under D), I am not sure that the reflexive mirroring of mouth movements has really been demonstrated as a normative behavior. I am only aware of an article in "Science". In the 3-6 month range, I question "A". It seems to me that this voluntary turning of the head in response to stimulation begins prior to three months of age. Also, I am not sure from our cases that this necessarily is related to attachment. In the 1 year to 18 months "B", this is very problematic and depends very much on the duration of the separation prior to the reunion. In the 18 months to 2 years "D", the "missing object" has to be clarified--is this referring to an inanimate object or the psychoanalytic human object? If the former, this obviously comes earlier.

One other issue which I think has been neglected in the criteria for normal attachment is the development of the capacity for play. I think this is particularly important since one of the associated features described on page 7 is a poverty of play.

As I look at the criteria as they flow through the first three years of life, I am struck by the literalness of the interpretation of attachment indicators. Only specific

THE UNIVERSITY OF MICHIGAN

TO: Selma

2-12-79 - pg 2

FROM: Peter

mother-infant interactions are referred to. There is no reference to play, there is no reference to developmental testing, or developmental achievement or lack thereof. It comes up to some extent in the description of associated features, but I would like to see more of it in the criteria.

Last, but not least, if we are going to have a nosology of attachment disorders of infancy, we must also include a fourth one, which is transitory. Whether we call this "situational reaction", or "transitory disorder", or "adjustment reaction" is not so important as that we have a recognized diagnostic category for transitory disorders. This is for two reasons: (1) It does exist; (2) Only if it is included will it be considered by third-party payers as a condition for which treatment is indicated.

I don't know if DSM-3 thinks in the following terms, but I think transitory disorders should be considered as a diagnosable illness because I think short-term intervention, consultation, etc, can be very helpful to ensure that it is transitory. On page 12, under severity criteria, this issue is alluded to but I don't think acted upon correctly. What I am talking about are behaviors which would be considered within the range of normal, given the stress, but nevertheless intervention can be very helpful to parents and infant in making the recovery to a normal situation.

QUESTIONNAIRE ON

DSM III - Attachment Disorder of Infancy

December 27, 1978

1. Do you agree with the general diagnostic conception of "Attachment Disorder of Infancy?" _____

Comment: Yes! See observations.

2. Do you agree that the three varieties selected for further definition are specifically definable? Yes.

And clinically and statistically useful? Generally yes. Statistically

Do you have any prevalence data? no

3. Could you or members of your staff utilize such categories in your work with infants? Yes.

4. What other psychiatric syndromes of infancy (birth to age 3) not presently included in either DSM III or in ICD-9-CM (International Classification of Diseases, Ninth Edition, Clinical Modification) have, in your experience, become specifically definable and useful and should be considered for inclusion in DSM III?

(Signed) Julius Fradley

(Address) 201 E. Catherine

Ann Arbor, Mich 48107

cc: Justin D. Call, M.D.
Robert L. Spitzer, M.D.

1/23/79

Thoughts on Dr. Call's criteria for:
"Three Varieties of Attachment Disorders of Infancy"

Dear Selma,

I found this quite interesting. Didn't necessarily agree with everything in it, but it stimulated a lot of thought. He's to be congratulated for the attempt, and I was grateful for the opportunity to share it with you.

Basically, I saw his three divisions in the following terms:

1. Primary Failure -- attachment never really develops
2. Anaclitic -- detachment
3. Symbiotic -- excessively anxious attachment

More specifically:

Primary Failure

I am not convinced that Primary Failure is simply a new name for FTT, as the description sometimes implies. It seems broader than that, and it is not demonstrated to me that primary failure necessarily

- a) has a discernable onset prior to one month
- b) leads to disturbance of eating

I do support the need for a rather narrowly defined entity which describes the most severe failure of the attachment process to become established. It does not trouble me particularly to use the term "attachment" when referring to behaviors which are still primarily reflex or biological. One simply needs to understand them as the biological anlagen of a later-developing social relationship.

It does make me want to question the advisability of claiming such potential for early diagnosis however, and the specific tie to non-organic failure to thrive.

Anaclitic Type

Once again, I question the ready use of specified age of onset. To illustrate my difficulty, there remains the concrete difficulty in differentiating the anaclitic type from primary failure in children of perhaps 8 - 14 months. EG. take a child of that age, who has experienced no acute, traumatic, complete loss of his mother, but who displays a general pattern of delayed, qualitatively muted attachment behaviors, delays in expressive language, imitation and/or play, a turning-away from his mother and from others, a high degree of self-absorption, or tendencies toward self-injury.

What should one call such a constellation? A "mild" primary attachment failure? A "moderate" disorder of the anaclitic type? The first choice is illogical -- primary means radical in my book, and there can be no "mild" radical failure here. The second choice is equally poor, for the untreated course will still be downhill over time and the end result may be just as disastrous as the acute *disorder* ~~disappearance~~ described by Dr. Call.

Even apart from nomenclature, there are still difficulties in describing the case I gave as an example, this time from an operational standpoint. Eg., by the time the 8 - 14 month old is referred, how good is the possibility of ever knowing anything about age of onset? It may simply be impossible to retrieve such data, for the very process of mutual distancing between parent and child often militates against obtaining the accurate, detailed history one would need in order to follow Dr. Call's "age of onset" criteria.

As a counter-suggestion, I would propose dividing the anaclitic disorder into two sub-components: acute, and progressive. By acute, I would continue to mean what Dr. Call describes. By progressive, I mean something else again. In progressive, there would be the following:

- a. ~~absence~~ normal attachment behaviors may not be entirely absent, but moderately to severely muted and/or deviant
 - 1) visual monitoring of mother from distance only
 - 2) late development of anticipatory reach to pick up
 - 3) failure to mold easily, or "aborted" clinging behavior (such as the fingertip manner of physical touch, unaccompanied by voice or gaze)
 - 4) muted quality, infrequent signs of preferential behavior to mother
 - 5) participation in deviant (painful, injurious, teasing) social play
 - 6) selective avoidance of one or more contact modes
 - 7) delayed/muted vocal behavior
 - 8) either heightened or muted response to separation
- b. onset may begin anywhere from 1 to 8 months, or more probably, cannot be determined with objectivity
- c. typically dull, somber mood (not as worrisome as apathy, but marked nevertheless)
- d. expectation of downhill course without intervention
- e. absence of continuing organic illness as a complication
- f. presence of associated factors, such as
 - 1) moderate perinatal medical complications
 - 2) moderate to severe depression in mother
 - 3) history of remote/recent loss or abandonment for mother
 - 4) recent history indicates gradual distancing from baby by the mother, psychologically ~~in~~ not physically
 - 5) functional disturbances in baby (sleep, eating, elimination) which, although not life-threatening now, are marked sources of discomfort and tension

Symbiotic Type

I question how this is shown to be an etiologically distinct entity from the previous. I.e., is it true that prior to 18 months, there was only an "exaggeration of all attachment behaviors"? At the least the picture should be better spelled out. I believe one would frequently find, not just exaggeration of stranger/separation responses, but qualitative anomalies (contact modes, preferential response, proximity-seeking, reciprocal voice and gaze). The latter would probably tend toward indicators of worry, anxiety, somberness than toward the "exaggeration" mentioned by Dr. Call. The overall picture might not be too different from the progressive anaclitic disorder I described above.

Which ~~disorder~~ brings me back to the etiological question. Is there not the possibility that some instances of ~~what I termed~~ what I termed progressive disorder, anaclitic type would eventually begin to look like what he calls the symbiotic type, but at a later age? This, if true, would argue to the conclusion either that the symbiotic is simply one possible later manifestation of the progressive anaclitic type -- or that the progressive anaclitic type itself should be subdivided

*Eg., what would we have called Seth, had we seen him at 12 months?

Summary

I think he brings more order to the overall picture that I at least have felt in my own head before. But I also think he is wed a bit too closely to a developmental theory of distinct phases of orientation, attachment, individuation. Therefore his age of onset criteria are overly rigid in appearance, and he loses sight of the slippery but very important phenomenon Mary Ainsworth tried to capture by the term "anxious" attachment. In real life, too many babies would not fall into one of the three categories described by Call. Yet to simply call them "mild" instances of one or another category misses the real point -- that these are potentially extremely debilitating developmental conditions.

Bill

P.S. I think senior staff would be very interested in reading Dr. Call's draft, and that it could be productive for our present research.

THE UNIVERSITY OF MICHIGAN

January 26, 1979

To: Staff

From: Selma

For review. Any comments?

Att: Dr. Call's letter

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SANTA BARBARA • SANTA CRUZ

DEPARTMENT OF PSYCHIATRY AND
HUMAN BEHAVIOR

Please Reply to:

California College of Medicine
University of California Irvine Medical Center
101 City Drive South
Orange, California 92668

December 27, 1978

Dear Colleague:

Enclosed is the fourth revision of my attempt to set forth clear criteria for three varieties of Attachment Disorders of Infancy which I was invited to prepare for DSM III by Dr. Robert L. Spitzer, following workshop discussions at American Academy of Child Psychiatry Meetings in October.

I would appreciate your review of this effort. In particular, I would appreciate answers and comments to the questions outlined in the enclosed Questionnaire.

Please respond by completing the Questionnaire and sending it on to me with a copy to:

Robert L. Spitzer, M.D.
Chairman, APA Task Force on
Nomenclature and Statistics
722 West 168th Street
New York, New York 10032

Dr. Spitzer has informed me that no author citations are permitted in DSM III descriptions.

Sincerely,

Justin D. Call, M.D.
Professor and Chief of Child and
Adolescent Psychiatry Division

JDC:bn

Enclosures

Done 1/22/79
1 copy for Bill
return

Rec'd 1/12/79

PROPOSAL FOR NEW INCLUSION IN A.P.A. DIAGNOSTIC AND STATISTICAL
MANUAL, DSM III, ATTACHMENT DISORDERS OF INFANCY - THREE VARIETIES

Submitted By

Justin D. Call, M.D.*

GENERAL DEFINITION

Attachment disorders of infancy are characterized by the absence, disruption or distortion of normally occurring developmental sequences of attachment behaviors in the infant which serve to orient and anchor the infant to his caretakers and provide for him a means by which to make an active adaptation to the wider social environment. Infancy refers to the time between birth and 36 months of age. Disorders of attachment can be recognized and diagnosed by comparing the attachment behavior sequences shown or not shown by a given infant with attachment sequences expected in a normal infant of the same age. Thus, the diagnosis of attachment disorder depends upon knowledge of how normal infants become oriented and attached to others in their social environment, especially to the prime caretaker here referred to as the mother.

CRITERIA FOR NORMAL ATTACHMENT

Normally occurring developmental sequences of attachment behavior have now been objectively defined and described for the normal infant between birth and age 3 as follows:

Birth to 90 Days of Age

Attachment behaviors observable in the normal newborn infant consists of the following:

- a. Normal rooting and sucking reflexes.
- b. Crying as an indication of organismic distress, and at 10 days specifically identified by the mother as hunger cry.
- c. Visual and auditory responsiveness and orientation to the mother's face, eyes and voice.
- d. Reflexive mirroring of mouth movements made by the reciprocative partner when in the alert attentive state in the en face position.
- e. Temporally organized, vocal and gaze reciprocity between mother and infant is observable at birth, especially during the first 8 hours in the infant whose mother has not been given barbiturates or systemic analgesics during labor.

Anticipatory approach behavior at feeding becomes manifest as an attachment behavior beginning at 4 days of age and should be present in all infants by 15 days of age. This refers to the infant's reaching toward the mother, turning the head toward the bottle or breast, and opening the mouth when placed in the feeding position but prior to any tactile stimulation of the reflexogenic zone for rooting, i.e., the face.

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Temporally organized vocal and gaze reciprocity between mother and infant undergoes further elaboration which is specifically characteristic for each mother-infant pair and characterizes style of interaction during the first 90 days of life.

Three Months to Six Months

From three to six months of age, attachment behaviors occur as follows:

- a. The rooting reflex is replaced by voluntarily directed head turning movements not only toward the breast or bottle, but also toward any source of alerting stimulation in the outside world.
- b. Anticipatory behavior at feeding is further expanded to include reaching toward the mother when approached for pick up.
- c. Spontaneous reaching for the mother occurs.
- d. Clinging and cuddling responses are shown to the mother when the infant is picked up and held.
- e. A vocalization and gaze reciprocity are further elaborated, i.e., more complex sequences are shown and predictable turn-taking of vocalization may be observed.
- f. A differential preference for the mother is shown by the infant when a stranger approaches.
- g. When the child is placed in a strange situation with the mother, clinging responses to the mother are observed.
- h. The infant shows a preferential social smile to the mother. This occurs to the mother's blank face at 2½ to 3 months, and then at 4 and 5 months is shown optimally in response to the mother's reciprocating smiling face and accompanied vocalization.

Six Months to One Year

All of the above indications for age three months to six months continue in the period from six months to one year. In addition to these, however, the following may be observed:

- a. Crawling or walking toward the mother.
- b. The infant demonstrates more subtle facial expressions such as coyness, flirtatious interest, attentiveness and subtle smiling may be seen.
- c. Early imitation of the mother's vocal inflections, facial expressions, hand and finger movements are observed.
- d. The infant's specific attachment and preference for the mother is intensified and is shown by distress (the blankworried face, crying and panic, clinging and crawling or walking after the mother) when the infant is separated from its mother or when the mother leaves the infant with a caretaker, or when the infant is stressed by illness or injury. These reactions to separation begin at about 8 months and reach a peak at about 15 months.

One Year to Eighteen Months

The above attachment behaviors described from six months to one year of

age continue during the period one year to eighteen months. In addition, the following additional attachment behaviors are observed during this period:

- a. A more fully developed separation distress and mother preference is seen.
- b. Affectively positive reunion responses are shown to the mother following separation.
- c. The pointing gesture (use of extended index finger) is utilized by the infant in referring to specific objects and as a communication to the mother.
- d. The walking occurs from and to the mother.
- e. The infant is involved in imitative jargon with the mother.
- f. The infant responds specifically to the mother's "no" and to simple directions (receptive speech).
- g. The infant uses the head shaking "no" gesture in the same way the mother has used the gesture in prohibiting actions.
- h. The infant uses the secondary transitional object (blanket, favorite toy) in the absence of the mother, especially at bedtime as a self-soothing measure in the absence of the mother and in the presence of stressful experience.

Eighteen Months to Two Years

The above attachment behaviors described for one year to 18 months are shown in addition to which the following are observed:

- a. Separation anxiety is diminished as compared to the above period. The infant moves away from the mother into the outside world, exploring objects freely and with relative independence from the mother and returns to the mother for sharing after such brief explorations (the rapprochement subphase of separation-individuation).
- b. The infant shows mastery of strange situations and persons when the mother is near.
- c. The infant shows evidence of delayed imitation, that is, does things several minutes, hours or days on his own which he has previously observed others do, thus indicating his capacity for increasingly stable mental representation.
- d. Combines word and gesture combination in communication patterns with the mother and with others in the environment.
- d. The infant demonstrates his capacity for finding missing objects.

Age Two to Three Years

The infant shows the above characteristics of attachment behavior plus the following:

- a. The infant is able to tolerate separations from the mother without distress when in familiar surroundings and verbal reassurances are given about the mother's return.

- b. Two to three word speech is shown and word strings indicate the child's knowledge of the grammar of the language spoken by the parents.
- c. Stranger anxiety much reduced.
- d. Stage of relative object constancy is achieved. This is characterized by the infant's capacity to maintain his composure and psychosocial functioning without regression in the absence of the mother, even during periods of stress, tension and hunger.
- e. Social play (cooperation with others, turn-taking, joint problem solving) begins.

It will be noted that most of the items described above from birth to 18 months refer to the way in which the attachment to the mother develops, becomes consolidated and elaborated, while from 18 months to three years of age, most of the items concerning attachment refer to the way in which the infant begins to liberate himself from the attachment developed during the first 18 months.

Behavioral criteria from these developmental studies as outlined above, provide objective data on which to base judgement regarding the nature and the developmental level of the infant's attachment to loving caretaking individuals in the environment. The diagnosis of attachment disorder of infancy should be used only when clear evidence of developmental distortion of these normal attachment and separation processes as observed within these normal developmental progressions can be demonstrated.

Varieties of Attachment Disorder

Three different forms of attachment disorder are diagnosable: 1) Primary Attachment Failure of Early Infancy; 2) Attachment Disorder of Infancy, Anaclitic Type; and 3) Attachment Disorder of Infancy, Symbiotic Type.

Primary Attachment Failure of Early Infancy

Primary Attachment Failure of Early Infancy refers to infants who, for various reasons such as prolonged hospital care, frequent changes in caretaker, failure of parenting figure to develop patterns of affection and synchronous reciprocity with the infant, have not developed a significant affectionate specific attachment to the mother. This disorder begins shortly after birth and may be diagnosed as early as one month of age. Criteria for the diagnosis include the absence of normally present attachment capacities in a newborn such as sucking, rooting, visual and auditory orienting responses to the mother, the absence of anticipatory approach behavior at feeding, the absence of temporally organized vocal and gaze reciprocity with the mother. The dominant mood in the infant is one of apathy. No organic illness or neurological disturbance is present.

Association Symptoms. These include inferior weight gain, poor muscle tone, a vacuous visual attitude, a weak cry, excessive sleep, mild to moderate autonomic instability and feeding disturbances without organic cause.

Whole Source X
Complications. Such a child may become a subject of neglect, and/or child abuse. A profound state of apathy may continue to develop. Such children may eventually lose interest even in food. A high mortality has been observed, up to 50 percent in the first year.

Predisposing Factors. A child who has had illness during the newborn period or who has had prolonged care in the intensive newborn care service may be predisposed to the development of this disorder because of the disruptive influence of such care upon the normal progressions of mother-infant attachment. A child showing defects in capacity for attachment behavior such as minor visual and auditory defects, failure of rooting response, prolonged lethargy due to the use of barbiturates during labor and early feeding disturbances or other illness may predispose a child to primary attachment failure of early infancy. Mothers unable to feel confident and competent in caring for their infants due to excessive anxiety, disappointment, guilt or conflict, may be unable to claim their infant as their own, and hence establish synchronized reciprocity with the infant. Thus, predisposing factors may lie within the infant himself, the medical care of the infant, within the mother or may be due to combinations of these.

Impairment. The disorder is extremely incapacitating. The course is usually downhill. Spontaneous recovery cannot be expected without intervention. Later sequelae include environmental mental retardation and autistic behavior.

Differential Diagnosis. Other diagnoses to be considered include starvation, mental retardation, floppy baby, early autistic behavior, physically ill infant, neurologically impaired child, abandoned child. The starved child is hungry, easily accepts food and responds rapidly

when fed. The mentally retarded infant is not apathetic and development shows an overall upward course which is slow. The floppy baby shows no affective disturbance and demonstrates characteristic floppy extremities rather than poor muscle tone. The child with early autistic behavior shows excessive rocking, tick-like movements of the face, bizarre affective expressions shown in isolation, avoidance of eye contact as distinguished from vacuous stare, and lack of reciprocity with caretakers. This disorder has been referred to previously as failure to thrive without organic cause.

Prevalence and Sex Ratio. No sex preference is shown. The incidence of the disorder is referred to in earlier literature as failure to thrive without organic cause and may be as high as one percent.

Diagnostic Criteria.

Diagnostic criteria for Primary Attachment Disorder of Early Infancy:

- a. Absence of at least 4 of the following indicators of normal attachment during the first 6 months of life:
 1. Visual tracking of mother's eyes and face.
 2. Anticipatory behavior at feeding.
 3. Anticipatory reaching when approached for pick up.
 4. Smiling in response to mother's face.
 5. Participation and playful games with mother.
 6. Gaze and vocal reciprocity with mother.
 7. Alerting and turning toward the mother's voice.
- b. Apathetic mood.
- c. Identifiable onset by one month of age.
- d. Downhill course without intervention.
- e. Absence of organic illness except as a complication.

Attachment Disorder of Infancy, Anaclitic Type

Attachment Disorder of Infancy, Anaclitic Type, refers to infants who show a history of having made normal attachments to the mother and who, on separation from the mother for more than a few days, regress in all areas of functioning and attachment to others. Attachment disorder of the anaclitic type may be seen in any infant between the age of 6 months and 36 months of age. Primary symptoms consist of depressive-anxious affect, the dropping out of attachment behaviors which had been achieved prior to separation from the mother. The infant's reaction to such loss occurs in several well defined stages after the age of 6 months. These are in order: protest, despair and detachment. The attitude of detachment refers to the infant's failure in making new attachments following the loss of the mother and occurs generally within a few days after such loss. Other major symptoms include psychosocial retardation, avoidance of others, gastrointestinal disturbance without organic cause, depressive withdrawal. This form of attachment disorder was described earlier by Spitz as anaclitic depression. The term "Attachment Disorder of Infancy, Anaclitic Type," is chosen because it more accurately describes the disorder in phenomenological terms and avoids the theoretical issue of whether or not an infant, before the stage of object constancy has been achieved, can indeed become depressed, i.e., before having achieved the stage of object constancy.

Associated Features. Associated clinical features include poverty of play, failure to progress in normal psychosocial and intellectual development, regression in language functions and toileting functions, turning away from others, rocking, thumb sucking, head banging, and a predilection toward physical illness and accidents as well as tendencies toward self-injury. If the mother is returned to the infant within a few days, a very positive reunion response can be observed and a brief acceleration in developmental progress, i.e., "rebound" phenomenon, may be observed.

Prognosis under the most favorable conditions, the infant is able to recover from the attitude of detachment and make new attachments to new caretakers. The number of infants capable of doing this in contrast to those who seem incapable of doing it, is not known. A generally downhill course in psychosocial and physical development is seen in those who are unable to make a transfer to a new caretaker and whose mothers are not returned to them.

Impairment. The disorder is extremely incapacitating and active attempts at restoration of the mother and/or provision of an optimal mother substitute if the original mothering figure is not available is indicated.

Course and Age of Onset. Anaclitic depression may be seen any time from 6 months through the age at which normal relative object constancy is achieved, i.e., approximately age 3.

Complications. Complications include continued regression in affective psychomotor and intellectual functioning, physical illness, accidents.

Long term complications include subnormal intellectual functioning, a predisposition toward depressive episodes and psychological regression in the presence of external stress, threats of loss and actual loss. Difficulty in adaptation to changes in the non-human environment is also seen.

Prevalence and Sex Ratio. No studies of sex ratio have been reported. The incidence of anaclitic depression in its mildest varieties is estimated at one out of every 100 infants. In the more severe varieties, it may occur on the order of one infant in 200 through the first 3 years of life.

Predisposing Factors. A normal mother infant relationship is a requirement for the development of anaclitic depression on loss of the mother. In general, the more intense and meaningful the child's relationship with the caretaking figure and the more sudden the loss, the more dramatic will be the child's reactions on loss of that figure. Concurrent loss of siblings, father and familiar surroundings predispose the infant to a more severe form of the disorder when the mother is lost. A series of previous losses may predispose the infant to subsequent loss reactions during the first 3 years of life.

Family Pattern. It has been observed that the leave-taking patterns of parents may have an intergenerational character, that is, if a mother has herself been abandoned by her own mother, she is more likely to abandon and leave her own child without attention to the consequences.

Differential Diagnosis

Conditions which must be differentiated from attachment disorder, anaclitic variety, include physical illnesses, particularly infectious disease, brain tumor, aseptic meningitis, nutritional defect. Traumatic reaction to physical injury or to surgery or hospitalization. Autistic behavior and mental retardation must be considered. An adequate history of physical illness, developmental history and careful physical and neurological examination should rule out most of the above. The child showing Attachment Disorder, Anaclitic Type, can be distinguished from the autistic child by virtue of a history of normal development with sudden onset of regressive phenomena on loss of the primary caretaker and in the absence of bizarre patterns of play and stereotypic movement patterns seen in autistic children. Aggressive anxious affect is seen in the child with Attachment Disorder of Infancy, Anaclitic Type, while indifference and bizarre affective responses are seen in the autistic infant. Primary mental retardation can be distinguished on the basis of developmental history. Recovery of function with return of the primary caretaking person is not observed in retarded or autistic children.

Diagnostic Criteria for Attachment Disorder of Infancy, Anaclitic Type

- a. Loss of primary mothering figure.

- b. Acute onset between 6 and 36 months of age without associated physical illness.
- c. Loss of attachment behaviors expectable for a child of given age.
- d. Detached-depressive-anxious attitude.
- e. Downhill course.
- f. Rapid recovery when mother is returned during early phase of illness.

Attachment Disorder of Infancy, Symbiotic Type

The infant with this disorder shows an exaggeration of all of the attachment behaviors characteristic of the infant 18 months of age or less, and fails to progress beyond that period into attitudes of independence and separateness from the mother. The infant with this variety of attachment disorder may regress back to an earlier stage of attachment after having achieved some level of independence. The primary symptoms include a high level of distress on separation from the mother, excessive clinging behavior, failure to establish independence from the mother after walking, i.e., holding on to the mother after the child is successful in walking independently, insistence on being carried, a high level of receptive speech with the mother and a low level of expressive speech with others, i.e., selective mutism shown specifically with the mother. Failure to make use of transitional objects on separation from the mother, excessive thumb sucking in the absence of the mother, more baby-like behavior with the mother, panicky cry and protest when the mother leaves. This often results in the mother's failure to leave. Severe regression in all functions when separation from the mother is insisted upon. The infant assumes a helpless attitude without the mother and insists on the mother taking over functions of self-care and communication. Various degrees of this disorder may be observed from mild to moderate and severe.

Associated Features. In the mild variety, the infant may show a more mature response in the presence of others as contrasted with the mother. In the moderate or severe variety, the infant may regress to states of complete helplessness when the mother is present. Often the prime mothering figure shares the anxiety with the child and demonstrates guilt on leaving, thus, lending the situation to manipulation by the infant, i.e., the child's protest secures the mother's return and prevents her from leaving. Family relationships between infant and the mother with other members of the family deteriorate. The child's concept of self is slow to develop. Later stages of object constancy and language are slow to develop. A high level of anxiety accompanies each new change of situation. Independent play is usually short-lived and impoverished. Affect is dominated by anxiety. Rage occurs with separation or threatened separation.

Impairment. This disorder is associated with severe impairment of the child's overall psychosocial development.

Course and Age of Onset. During the period of infancy, the course may either improve or may become worse depending on the success of the mother in resolving the prolongation of the symbiotic tie and her capacity to liberate herself from attitudes of anxiety and guilt regarding the baby as the child himself is able to deal with increasingly longer periods of separation. Later sequelae include immaturity of the personality, predisposition toward anxiety and depression, school phobia as well as borderline personality state. An intensification of maternal attachment may be observed during adolescence during the time the normal child is attempting to liberate himself from the family.

Complications. In addition to the above, such children remain shy in the presence of other peers, do not cope well with special situations, and are, because of high levels of anxiety, subjected to a variety of different psychosomatic symptoms including stomach aches, headaches, constipation, and manifestations of hypochondriasis. Such individuals later have considerable difficulty in making adjustments to change and in finding suitable mates for marriage, and if they have children themselves, often show overprotective, worrisome attitudes towards their own children. When the infantile problem has been moderate or severe, an increased risk to psychosis in adolescence and early adult life is shown.

Prevalence and Sex Ratio--not known.

Predisposing Factors. Parents who have a history of over-solicitous parental attentiveness and failure to fully differentiate themselves from their own parents, show continued attitudes of dependency on others and are predisposed towards such attitudes in the rearing of their own children. Illness or handicaps in the child may predispose a parent-child relationship to the development of attachment disorder of the symbiotic type. Iatrogenic factors, including prescribed bed rest and hospital care, unnecessary medication and caretaking anxiety by the physician, nurse or others, may reinforce a pathological symbiotic relationship. Chronic illness, especially if it is life-threatening, is a predisposing factor. The diagnosis of a handicapping condition or chronic illness or the occurrence of a massive trauma (fire, earthquake, etc.) may precipitate a symbiotic disorder when prior development has been normal.

Family Pattern. Intergenerational transmission of child-rearing attitudes which predispose the mother-infant dyad toward the development of excessive dependence or independence may be observed. These may be shown in highly specific ways. For example, a particular child may be chosen for an excessively dependent symbiotic tie with the mother in a given family because he or she physically resembles specific members in the mother's family with whom the mother experienced a similar relationship.

Differential Diagnosis

Psychosis or borderline states in the parent should be considered. Iatrogenically induced parental anxiety should be distinguished from anxiety emanating directly from the parent concerning the child. The severe form of symbiotic relationship should be distinguished from the mild and moderate form as noted above. Ordinary solicitous care occurring with acute illness and during early phase of convalescence should be distinguished from the pathological intensification and continuation of such care. A distinction should be made between the child who actually requires considerable amount of ongoing maternal monitoring and protection due to physical illness, life threat or handicap from the child who does not actually require such parental involvement.

Diagnostic Criteria for Attachment Disorder of Infancy, Symbiotic Type

- a. Failure of infant to progress independently outside of the mother-infant relationship between the ages of 18 months and 36 months of age.
- b. Intensification of attachment between mother and infant during the second and third year of life.
- c. Hypersensitivity of infant to moods, attitudes and behaviors of the mother.
- d. Hypersensitivity of mother to moods, attitudes and behaviors and physiology of the infant.
- e. Inhibition of both mother and infant in their capacity for interest and involvement in outside persons, things and activities which do involve the symbiotic partner.

Severity Criteria. During times of severe stress and illness, an increase in parental anxiety and protective attitudes toward the infant are expectable and should not be diagnosed as abnormal. When such reactions become extended beyond that called for by reality, and when they become fixed after the stressful event, a mild form of the disorder is manifest. When the symbiotic behaviors and immaturity persist and are not resolvable by educational explanations and external support, a moderately severe form of the disorder exists, and when a fixed severe form of symbiotic behavior persists and are totally unamenable to ordinary educational and supportive psychotherapeutic endeavors, a severe form of the disorder may be diagnosed.

Examples of Three Kinds of Attachment Disorder

1. An infant at two months of age shows no visual following behavior, does not look into the eyes of the mother, shows no smiling response and no anticipatory behavior when being picked up for feeding, and shows no apathy and has poor muscle tone in the absence of primary organic defect. The course has been progressively downhill. In this instance, Primary Attachment Failure of Early Infancy may be diagnosed.
2. An 11-month-old, first born girl showed normal weight gain, sleeping and play activities, was bright and alert, walked and said "ma-ma," and protested on brief separation from the maternal grandmother who was the primary caretaker. The infant's unwed mother suddenly decided to leave Michigan and come to California with the intent of seeking a happy reunion with the infant's biological father. This was for various reasons completely unsuccessful. The infant became withdrawn, lost weight and lapsed into sleep, no longer stood or walked, stopped talking, continued this course for 2½ weeks and was hospitalized. No organic disturbance was found. The infant made a slow recovery when the maternal grandmother resumed care. Diagnosis of Attachment Disorder of Infancy, Anaclitic Type, was made.

3. An infant 18-months of age who, on minor provocation, clings to the mother, fails to explore the world, fails to show early language exchanges, but shows a high level of receptive speech to the mother would be diagnosed as Attachment Disorder of Infancy, Symbiotic Type.

Shapiro

THE UNIVERSITY OF MICHIGAN

January 26, 1979

To: Staff

From: Selma

For review. Any comments?

I think this is a most interesting and
helpful way to conceptualize Attachment Disorders - I agree
with wanting some of data for 50% mortality rate of Primary
Attachment Problems - I was thinking of my cases - they would
line up as follows - Jimmy - Primary Attach. Failure
Ricky = Anaclitic Depression

Courtney = Symbiotic Type

Keith = falls somewhere in between - mixed picture

It seems to pull together a great deal that is known at this time - raises questions
for research in future. V.S.

THE UNIVERSITY OF MICHIGAN

February 26, 1979

To: Bill

From: Selma

I think Justin Call would find yours and Peter's comments on his diagnostic categories, attachment disorders of infancy, most valuable. I know that your remarks were really addressed to me in comment. Do you want, yourself, to send on these comments to Justin Call with a bit of judicious editing? No, on second thought, after re-reading it, I don't think it requires editing. Let me know and I shall mention to Justin Call that you and Peter may have some remarks to pass on to him.

Selma

By all means,
but I have misplaced my
copy of my comments. May
I review your copy?

Bill

copy given
to →

Return to Bill