

THE PURSUIT OF PATERNAL CUSTODY

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ABSTRACT

Issues concerning children may be the most intense and emotive areas of divorce and can lead to spectacular legal battles. Social work practice revealed that it is often the father who leaves the court, stripped of his fatherhood by a court order that only grants him limited access to his own children. Some divorced fathers disengage from their children's lives but there is documented evidence of South African fathers who desire continuity in their relationships with their children after divorce. An interest in these fathers prompted this study. Fathers who challenged maternal custody were selected since it was assumed that their lived experiences would include non-custodial as well as custodial fatherhood.

The study was approached from a constructivist position and was further informed by a family systems theory.

South African and international literature was perused followed by an exploratory study in the relatively uncharted terrain of paternal custody. A qualitative method was used and one unstructured interview with a schedule was conducted with each of the five respondents who were selected according to non-probability purposive sampling methods. Interviews were recorded and transcribed verbatim. Data were analysed cross-sectionally around certain themes and categories which were extracted from the data.

The most significant findings of the study which appear to resemble some earlier national and international findings, are summarised as follows:

- Some fathers appear to have sound motives for pursuing custody of their children. These fathers, if afforded the opportunity, find fulfilment in parenting their children whom they perceive to be happy and prosperous in their care.
- There are fathers in whom divorce causes clear and profound signs of distress which appear to be related to the loss of the pre-divorce father / child relationship. The feeling of powerlessness to effectuate the well-being of their children as they see it was emphasised.

Recommendations generated from these findings relate to elimination of gender bias from custody decisions, including fathers in therapeutic interventions with divorced families and the provision of family courts and mediation services as suggested in the White Paper for Social Welfare. Recommendations for future research are also presented.

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TO MY HEAVENLY FATHER BE THE HONOUR.

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CHAPTER 1

INTRODUCTION

1.1. STATEMENT OF THE RESEARCH PROBLEM.

This study seeks to explore the motivations and experiences of non-custodial fathers who applied for the variation of custody orders in their favour.

A court granting a decree of divorce to parents with minor children, also determines which parent will have custody of those children in terms of section 6 (3) of the Divorce Act 70 of 1979. Since the 1970s this decision has been informed by the best interest criterion in South Africa. The establishment of the first Family Advocate's Office in 1990 in terms of the Mediation in Certain Divorce Matters Act (Act 24 / 1987), was an important milestone in making sure that the South African judicial system takes the time and trouble to focus on the best interests of every child of divorcing parents. The best interest criterion however has a reputation of being "notoriously indeterminate"(Van Zyl 1997:5) and it may leave room in some custody disputes for the values and beliefs of the presiding judge to influence the outcome. Considering that custody disputes occur mostly when both parents have some chance of obtaining custody, and with a guiding principle so vague and emotive for parents, one can suspect that custody orders will not always satisfy both parents, and that one of them may seek to have it varied. In this regard, the South African legislature in terms of Section 8 (1) of the Divorce Act (70 of 1979), made provision for this variation if the court is satisfied, on a balance of probabilities, that such a variation will be in the best interests of the child or children concerned (Hahlo 1985:404).

I am aware that there are fathers, although few in number, that follow this course and seek variations of custody orders, but little is known about these fathers, because divorced fathers can be considered a largely neglected population in the professional literature (Kruk 1994:16). I believe that a richer understanding of the lived experiences of these fathers could be of value for counsellors and mediators and could add to the developing body of knowledge which informs custody decisions in the first place.

1.2. MOTIVATION FOR THE STUDY.

I have during the course of practising social work, witnessed two scenarios that eventually motivated this study. Firstly, I observed how some divorcing fathers who want custody of their children, are disillusioned when their lawyers confront them with the financial implications of a High Court dispute and the unlikelihood of succeeding. As a result many fathers withdraw from the battlefield, which invariably results in undisputed maternal custody. Some of these fathers become disengaged non-custodial fathers, which some authors (Hetherington, Cox & Cox 1976 cited in Kruk 1994:20 & Bosman-Swanepoel, Fick & Strydom 1998:93) argue may not be so much a reflection of parental irresponsibility but rather avoidance of an intolerably painful and frustrating situation for them.

On the other hand I saw the distress of children whose most salient need after divorce was continuity in their relationships with both parents, but who were denied this opportunity due to factors beyond their understanding.

Against the backdrop of the awakening of a human rights culture that does not permit unfair discrimination on grounds of gender, and subsequently, a new awareness of the rights of fathers, I also considered the timing appropriate for research on paternal custody.

1.3. CONTEXT OF THE STUDY.

The social constructions of fatherhood have changed over historical epochs, and there is evidence in literature (Lamb 1997:2) that a new nurturing father has emerged since the late 1970s. This appears to be true for the South African context as well and according to Bosman-Swanepoel Fick and Strydom (1998:78) the father as a distant disciplinarian has in many families been replaced by a father who participates in all aspects of child rearing. South African studies like those of Rosen (1977), Arenstein (1989) and Davies (1994) indicated that a levelling of the playing fields for custody had to take place, and a judicial precedent has already been created in the decision of *Van der Linde vs Van der Linde 1996 3 SA 509 (O)* when the court held that “mothering” can be undertaken by the father in given circumstances. Van Zyl (1997:65) however, believes that South African society still has a cautious and conservative approach to paternal custody and that many people still believe

that parenting means “mothering”. Four years later some of the respondents in this study still related experiences they regarded as gender bias and it appears that some people still frown on paternal custody awards which remain the exception in South African courts (Van Zy1 1997: 65).

1.4. OBJECTIVES OF THE STUDY.

The intellectual puzzle (Mason 1996: 6) which prompted this study, comprised the following critical questions.

- What were the experiences of the father during the marital breakdown and divorce process when custody was awarded to the mother?
- What happened during the post-divorce phase that motivated the father to apply for the variation of the original custody order.
- How did the father experience the process of varying the custody order?

For the purpose of addressing these questions, the following objectives have been identified for this study:

- To peruse the available literature relevant to the research topic.
- To recruit a sample of respondents.
- To undertake an exploratory study of the fathers’ experiences and motivations.
- To transcribe, analyse and present the data that was collected in a way that it can generate knowledge about fathers pursuing custody of their children.
- To make certain recommendations for policy and practice in order to ameliorate the human condition brought about by divorce.
- To identify and recommend areas for future research.
- To observe ethical principles at all times.

1.5. THEORETICAL POSITION.

Authors like Schurinck (1998:240) and Hart (1998:51) claim that the nature of every scientific enquiry is influenced by the perspective of the individual researcher. I therefore deem it necessary to explain that I approached this study from a constructivist position, which I prefer to take as a researcher of the human condition. Since I believe that my perspective of the family and my theory of investigation were interrelated in this study, I will briefly explain both theoretical positions.

I prefer the same perspective as Margaret Robinson (1993:63) who describes the family as a complex system, moving not only through sequential individual and family life cycles or spirals, but also through those of the society they live in. This theory makes provision for more family forms than the patriarchal nuclear family and it also allows for an understanding of families in crisis and therefore helps to develop frameworks and models for intervention with those families in transition (Robinson 1993:22). The systems theory is furthermore particularly appropriate for this study, because the non-custodial parent is still recognised as part of the system, even if he or she does not share the same household or if he or she also fulfills a parenting role in another family.

From the constructivist position which I took, I see knowledge as part of a reality that is not “out there” but is constructed in the minds of the actors involved in the situation (Creswell 1998:254). Reality thus perceived is relative and therefore I do not claim that the construction of the lived experiences of the respondents reflects only one true picture (Schurinck 1998:240).

1.6. METHODOLOGY.

In this section, I will present a summary of the methodology followed for this study and which is discussed at length in chapter 3.

1.6.1. STRATEGY AND DESIGN.

This is an exploratory study for which a qualitative research method was used.

Marlow (1993:24) sees exploratory research as extremely useful for social work, because “we know so little about what works with whom.” Since this is particularly true for the situation of divorced fathers, an exploratory strategy was chosen for this study. My choice

of a qualitative research method was informed by my assumption that knowledge is not necessarily a set of verifiable facts. A further confirmation that this was the most appropriate method was Herbert's (1990:35) statement that social realities are too complex, relative and emergent to be measured by standardised instruments.

1.6.2. METHOD.

The respondents were selected according to the purposive non-probability sampling method (Marlow 1993:114). The Registrars of the High Court in Grahamstown and Port Elizabeth assisted me with the recruiting of suitable respondents. Since a big enough sample could not be recruited in this way, snowball sampling as well as an attempt at theoretical sampling was done until the desired size of sample was reached.

Qualitative methodology is, according to Schurinck (1998:242) dialectical and interpretive and involves a process of interaction, which in this case took place through an unstructured interview with a schedule with each of the respondents (Schurinck 1998:299).

The interviews were recorded and transcribed verbatim and data in the form of the respondents' spoken words were analysed cross-sectionally around certain themes and categories (Mason 1996:158). An inductive form of reasoning was used and concepts, insights and understanding were developed from patterns in the data (Schurinck 1998:242).

1.7. ETHICAL CONSIDERATIONS.

Kvale (1996:109-111) convinced me to view an interview inquiry as a moral enterprise since the personal interaction in the interview affects the respondents and the knowledge produced by the interviews affects our understanding of the human situation. I therefore made every possible attempt to meet the necessary ethical requirements which I explain in detail in Chapter 3.

1.8. LIMITATIONS OF THE STUDY:

- It is not possible to generalise the findings of this study, because purposive non-probability sampling methods were used and the sample was too small to have any claim to representation. For the purpose of this study it was however more important to add richness and depth to the investigation on divorced fathers, than to collect data in order to determine how representative they are.

- Data was collected from the perspective of the divorced fathers only, because the focus of this study was the fathers' motivations and experiences and none of the other family members could answer these questions. Ideally the family should however be studied from the perspectives of all the members. Future research on the entire family system in this context will therefore be recommended.
- Other limitations are mentioned in Chapter 3.

1.9. ANTICIPATED VALUE OF THE STUDY.

The rationale behind this study was to make an attempt to address the paucity of information available on the experiences and motivations of the divorced father who pursues custody of his children. In retrospect I believe that it has in a modest way contributed to a richer understanding of these fathers, and I trust that it will lead to more informed practice with family systems altered by divorce. In addition to this, I trust that it will in some way contribute to the elimination of stereotypical assumptions that all fathers are peripheral to parenting so that the quest of fathers for custody of their children can be considered as seriously as the mother's.

1.10. DEFINITION OF CONCEPTS.

Divorce is the term that normally refers to the legal dissolution of the marriage, but for the purpose of this study divorce is regarded as the period since the time of the final parental separation, because divorce is not only viewed as a legal process, but also as a psycho-social process with different dimensions of which the legal divorce is only one dimension (See 2.2.4.1.- 2.2.4.6).

Adversarial system is a system which arrives at a decision by having each party to a dispute present and argue its case before a neutral decision-maker decides what is true and who should prevail in the light of the opposing presentations and arguments (Saltzman & Proch 1990:28).

Other concepts are explained in the relevant chapters.

Pseudonyms have been used for the respondents and I have changed certain details in order to ensure their privacy.

CHAPTER 2: LITERATURE STUDY

2.1. INTRODUCTION.

In order to develop a theoretical and conceptual understanding of fathers in pursuit of custody of their children a literature study was undertaken. In this chapter the viewpoints of a number of both international and South African authors and researchers will be presented. The focus will be on the following aspects. Certain perspectives on the family, the concept “fathering”, perspectives on the divorcing family, legal and historical background of child custody decisions and paternal custody. Included in this discussion are also interventions like custody evaluations, mediation and the variation of custody orders.

2.2. THE FAMILY.

2.2.1. *THEORETICAL PERSPECTIVES ON THE FAMILY.*

There are many theories, frameworks and models which seek to describe the family and as many which seek to develop theories towards understanding the family and the relationships within it. According to Robinson (1993:63) there is no one comprehensive and proven theory. She sees family life not as just one rich, interwoven and living tapestry, but as a complex system, moving not only through sequential individual and family life cycles or spirals, but also through those of the society they live in. Each of these individual and familial cycles consists of a series of interacting levels and patterns of beliefs, relationships and episodes within which the family members, through communication, co-evolve and script their mutual life histories. One of the advantages of the family systems approach is that it allows for an understanding of families in crisis, and helps to develop frameworks and models for intervention with those families (Robinson 1993:22).

Other perspectives on the family as an interdependent dynamic system are those of Hetherington and Stanley-Hagan (in Lamb1997:196) who believe that changes in family

structure or in any family member or subsystem prompts changes throughout the entire system, and Lewis (in Lamb 1997:142), who sees the family as a sociological microcosm, where negotiations between members and displays of affection, interest and instruction may tell us more about the system than the individuals concerned.

The family, which started as a nuclear family consisting of father, mother and children, is the kind of family system this study is mainly concerned with. However it needs to be noted that the nuclear family is but one of many family systems in South Africa. Gerdes (1997:2) refers to an investigation into urban family households by Steyn in 1993/94, which identified 15 major kinds of family structures. She then cautions that families defined in terms of household living arrangements may overlook complex kinship interactions among members of for instance, black families. We can therefore assume that even more than 15 structures are recognised as family systems in South Africa. However, until recently, South African law only recognised monogamous marriages, and only couples legally married in terms of the Marriage Act 25 of 1961, could get divorced in terms of the Divorce Act, 70 of 1979. In terms of section 6 of the Divorce Act, only children born of the marriage were affected by custody orders, at the time of the divorce. After the Recognition of Customary Marriages Act, 120 / 1998, commenced on 15 November 2000, section 6 of the Divorce Act, 70 of 1979 and the Mediation in Certain Divorce Matters Act, 24 of 1987 will now also apply to the dissolution of customary marriages.

Since this study involves the father pursuing custody of his children after divorce, it will then focus on the nuclear family, even if that father fulfills the same role in more than one family.

2.2.2. Fathering.

A vast number of families across our planet have one husband and one wife as a core. A woman becomes a mother by having her husband's children, and the husband becomes the "social father" in the words of Mackey (1996:2). Arenstein (1989:61) elaborates on this when stating that the father is the first person the child loves on a purely mental /spiritual basis, because unlike the mother, the father was not bodily united with the child and is not an immediate source of nurture. The father is also usually the first "other" a baby encounters as he or she begins to take his or her first steps away from the mother, and it is in this empathic connection learned by fathering that the man has the chance to develop his own sense of mature masculinity. These perspectives on fathering can explain why Mackey

(1996:x) strongly denies that fathers are social inventions or, as some would have it, social accidents. He states that fathering for men is viewed as a behavioural imperative, and is as bio-cultural as is language acquisition or interpreting facial expressions or falling in love. Nevertheless, Arenstein (1989:60-62) in her study of South African fathers, with fatherliness as central theme, concluded that psychology has a long history of ignoring fatherhood in comparison with motherhood. She could not find a structured definition of fatherliness in the literature she consulted, but outlines the whole concept of fatherliness with the following definition of parental love: "Genuine love is an experience of productiveness and implies care, respect, responsibility, and knowledge..... an active striving for growth and happiness of the loved person, rooted in one's own capacity to love." In addition to this, she describes fatherliness as a definite quality of character that marks the man's whole personality and which is crucial for the understanding of the father-child relationship also in the post-divorce situation. It appears that the father's perception of fatherliness is shaped by a dynamic interplay of forces like his enthusiasm for the role of father, his own father as role model, his fulfillment as a father, his psychological well-being, fathering images projected by the mass media, the father's occupational role, the social, legal, cultural and economic class and religious orientation (Arenstein 1989:59,61&230). If all these influences can eventually lead to a father perceiving fatherhood as "a self-enriching experience that gratifies psychological and social needs" Pleck (in Lamb 1997:84) posits that it can be one of the indicators of high paternal involvement in care-taking.

There are a number of different views of what constitutes a good father. According to Lamb (1997:2), the bread-winning role, which Mackey (1996:x) also mentions, remains an essential component of the father's role, even in families with two wage earners. Through his economic support of the family the father contributes to the rearing and emotional health of his children in an indirect but important way. Economic support is also one of the ways in which the divorced non-custodial father can continue to ensure the well-being of his children. Notwithstanding this view, it is also true that bread-winning may be of utmost importance in one context, but it may lose ground to direct care and supervision, or emotional support in another family or community.

In the South African context, fathers are already far more involved in childcare than they used to be. Mothers, even those of very young children, are increasingly working outside the home, and fathers have to be more actively involved in child rearing as a result (Bosman-

Swanepoel, et al 1998:78). Champion (1995:70) holds that the rise of the role of the father correlates or may even be enforced by the decline in significance of the mother's role. Since an ever increasing number of mothers seek satisfaction and financial reward in the world of work, the mother then has to sacrifice her central position in her children's lives, which opens the way for others, including the father to colonise that position. There are indeed families in which complete role reversal has occurred, and the mother goes out to work while the father stays home doing the housework and caring of the children (Bosman-Swanepoel et al 1998:78). From his study on paternal influence on children, Lamb (1997:13) reports that the differences between mothers and fathers are much less important than the similarities and Arenstein (1989:64) strongly denies that a lack of biological preparation can justify the limited role fathers have traditionally played in taking care of infants and babies.

It also appears that the amount of time fathers spend with their children does not have as much significance as what they do with that time (Lamb 1997:13). In this regard, Galatzer-Levy and Kraus (1999:195) refer to the way fathers engage in rough-and-tumble play with their children. They refer to data which suggest that it is this type of more intense and active play that impacts positively on children's social development and peer relations at ages 3 and 4 years. These authors then conclude that fathers can parent even their infants and toddlers as effectively and developmentally supportively as mothers, and that their unique parenting style may make important contributions to children's early development.

Fathering in socio-historical context.

Mackey (1996:1) refers to the father as the male link between the child and the rest of the community. He said that no child should be brought into the world without a man that can assume the role of sociological father, being the protector and guardian of the child. Expectations on how fathers are to fulfill this role have however varied a great deal over historical epochs and in different social contexts. In, what Arenstein (1989:27) calls the "original family", the father had the hunting and gathering role, while child-rearing was the domain of women and grandparents. This hunting and gathering father was nevertheless still to a certain extent involved with his children, especially in teaching his sons hunting skills and religious customs.

From a historical perspective, it becomes evident that factors relating to the broader socio-economic structure do shape the intimate interactions within family systems. Greater wealth

came with the development of agricultural techniques and as men gained greater economic power, greater differentiation of gender roles in the family followed. In the patriarchal families that emerged, men were the heads of their families, and had a great deal of power and authority, but they were less involved with child-rearing. During this period, which lasted for several centuries, the father gradually started to withdraw emotionally from the family, and there was a decline in his absolute authority. As a result of the Industrial Revolution in the eighteenth century, which is where the father's primary role as economic provider began, the father worked away from home for long hours. Under common law fathers were considered the heads of their households, and thus the proprietors of not only all property but also of the individuals in the household. According to van Wyk (1997:70) the father's child-rearing function was restricted to maintaining strict and severe discipline, and teaching rigid religious and moral values. Technological developments further undermined possible opportunities for father / child interaction. In this regard, Van Wyk (1997:68) makes special mention of television, which became a kind of father figure in many homes.

The emancipation of women and their increased participation in the labour market, once again proved that the family system is not immune to changes in the macrostructure of society. Family roles had to be redefined because it became evident that fathers could make a unique contribution to their children's socialisation and development.

As mentioned earlier, fathers in the South African context are also far more involved in childcare than they used to be. The distant disciplinarian is a rarity and full participation in all aspects of child rearing is becoming increasingly common (Bosman-Swanepoel et al 1998:78). Arenstein (1989:232) who undertook a literature and empirical study to investigate the quality of the custodial father's post-divorce father / child relationship, found no clear evidence that fathers do not have the capacity to assume the day-to-day responsibilities for childcare. Her findings were supported by Davies (1994:131-132), who also studied the divorced father as primary caregiver. This researcher found that contrary to her belief, the fathers in her sample adapted well to the role of primary caregiver, and they also did not experience problems in expressing love and affection to their children. As far as the problems faced by newly divorced fathers are concerned, Hetherington and Stanley-Hagan (in Lamb 1997:205) report different studies which indicated that fathers and mothers experience much of the same problems, for example, feeling overloaded, socially isolated,

and worried about their parenting competence and interference with social life and work. It however appears that fathers have fewer problems in control and discipline and that they are more likely to assign household tasks to children.

2.2.3. THE DIVORCING FAMILY.

The current disintegration of family life, is according to Van Zyl and Bekker (2000:10) one of the most painful episodes in history and they hold that the real life drama of quarrelling parents and confused children, is performed daily in millions of families all over the globe. These authors describe the South African statistics as “mind-boggling” when they refer to the plus /minus 30 000 summonses, 10 000 settlements and 5000 formal investigations and mediations which the family advocates annually monitor. In 1998 alone 35 792 divorces were officially recorded in the South Africa, with a total of 45 123 minor children affected, therefore an average of at least one minor child per divorce granted (Lehohla : 2000 <http://www.statssa.gov.za/>). With this in mind, the work of several authors have been consulted in order to gain some sort of understanding of this vast number of divorced families.

Researchers and clinicians who are actively involved in the problems of divorce have rejected the traditional assumption that following divorce, the family dissolves, ending spousal and father-child relationships (Durst, Wedemeyer & Zurcher 1985:423). On the contrary, they recognise the existence of ongoing transactions between former spouses and continued paternal involvement after divorce. Emery (1994:18-19) also emphasises that the divorced family is still a family, although it is not defined by shared residence any longer but by shared relationships, which even when highly conflicted are still relationships. They therefore have to renegotiate relationships because conceptually and practically, the feelings, thoughts and actions of individual family members cannot be understood apart from the broader family system. He states that a major goal for successful post-divorce parenting, is to make the quality of parent-child relationships less closely tied to the quality of parent-parent relationships. This is supported by Durst Wedemeyer and Zurcher (1985:423-426) who found in their study that only families where new structures with clear and flexible boundaries between the parental and former spousal subsystems had evolved succeeded in maintaining co-operative co-parenting relationships after divorce. In addition to these they also identified the following contributory factors. (1) Both the mother and the

father place a high value on the opportunity to perform the parenting role, (2) both former spouses have cross-perceptions of the high quality of each other's parental role performance, (3) the couple have attained a high degree of resolution of inter-spousal conflict.

The work of Margaret Robinson (1993: 67) which looks at the post-divorce family from a systems perspective, also confirms that marital systems can and do break up, but that family systems cannot be dissolved. Arenstein (1989:229) after finding in her study, that the quality of the respondents' father-child relationships improved after divorce, concluded that divorce can also be viewed from a non-pathological perspective as a temporary dislocation of the family life cycle which offers an opportunity for growth. This is indeed confirmed by Luepnitz (1982:11) in quoting Rosenthal and Keshet who after having studied 127 fathers with varying degrees of contact with their children after divorce, stated that fathering had led to their own personal growth, as it required them to develop their empathy and emotional responsiveness, and to be less compulsive about their careers.

Jones (1995:96-97) nevertheless refers to divorce as a crisis of family transition. Unlike other crises, the crisis of divorce does not occur suddenly, but is preceded by a period in which marital conflict escalates and marital satisfaction decreases. Since it takes two people to make a marriage work, the decision of only one spouse to give up on the relationship can lead to the dissolution of the marriage. In the process of moving from married to divorced status the family goes through different transitions.

- (1) Systemic separation, referring to the physical separation of the spouses and the division of property and custody rights.
- (2) Systemic reorganisation, the paradoxical and complex process of redefining relationships within the divorced family when children are involved and clarification of roles and boundaries between parental and spousal subsystems is necessary.
- (3) Family redefinition, where the family is supposed to change from nuclear to binuclear with the children serving as the focus of two separate households. Robinson (1993:39) in this regards believes that family systems do not break like marital systems, because parents are forever the parents of their children, and the re-formed family system becomes changed and different (binuclear instead of nuclear), rather than lost altogether.

Thus far divorce can appear to be a civilised process of re-organising one's life when a marital relationship became unbearable for some reason, but authors like Galatzer-Levy and

Kraus (1999:74) remind us that it is also a process of social and psychological changes in the individual and in family relationships that can extend over many years, and that has no real counterpart in other crises of adult life. Simpson (1998:92) identifies clear and distinctive patterns of social and psychological problems for men and women after divorce. For women the sense of guilt, self-blame and sadness caused by the ending of a relationship is compounded by their children's distress, dependency and demands. These problems are likely to be described in terms such as depression and are part of a wider pathology which he refers to as the 'feminisation of psychological distress'. For men this channel of expressing their distress is not nearly so culturally acceptable. The result is that emotional problems are obscured leading to somatisation of stress. Health problems are often aggravated by drinking, smoking and over-working in the aftermath of divorce. A study by Kruk (1994:19) also generated a profile of non-custodial fathers who remained at a high level of distress several years after divorce, and this distress was directly and primarily connected to the loss of the pre-divorce father/child relationship. As aggravating factors, Hetherington and Stanley-Hagan (in Lamb 1997:197), add the ambiguity and powerlessness often found in the non-resident father's parenting role. The loss, which is critical component of this experience can according to Galatzer-Levy and Kraus (1999:74) be analogous to bereavement, but together with the grief they also identify other powerful affects like rage, sexual jealousy, and unrequited love, which are not normally present in bereavement.

Kruk (1994:23) believes that social work practice with divorcing families, remains largely maternally based but he urges social workers to recognise that fathers are also significantly affected by divorce and the threatened or actual loss of their children, and therefore need to be included in the therapeutic process.

Parkinson (1987:14-22) refers to the work of Bohannon who identified six different dimensions of divorce when he conceptualised divorce not only a legal process but also as a psycho-social process. These dimensions are the emotional, legal, economic, parental community and psychological divorces which will be briefly discussed.

2.2.4.1. THE EMOTIONAL DIVORCE.

This can take place long before the couple separates physically, or only long after the legal divorce has been finalised. This happens because some older couples gradually drift apart or some young couples part before ever becoming deeply attached. These mutual

disengagements however appear to be rather the exception than the rule and more common are the difficult divorces which occur when one partner desires to end the marriage while the other partner desperately wants to save it.

2.2.4.2. THE LEGAL DIVORCE.

This dimension is brought about by the Divorce Act 70 of 1979. In terms of section 4 of this Act a competent court may grant a divorce on the ground of the irretrievable breakdown of a marriage (Church 1992:2). This no-fault divorce is supposed to help reduce the acrimony and emotion, which previously characterised divorce proceedings, when the guilt of one party had to be proved. It appears that the primary aim of this law was not to make divorce easier or more difficult, but rather to take account of social reality. A serious flaw in the act identified by Van Zyl and Bekker (2000:10) is that the guilt principle which has been taken out of divorce, is still intact when it comes to custody and access disputes, where the parties will go to extremes to prove each other unfit to have custody of or access to the children. Another concern that became apparent in literature is that it appears that society permits divorce but it does not make sufficient provision for the consequences of divorce. The lack of services from family courts to all members of society is but one of the shortcomings of the South African society (Burman, Dingle & Glasser 2000:111-124). Justification for court connected, mental health-related work can be found from an example of divorcing parents mentioned by Pruett and Jackson (1999:283-310), who reported that the chance to have allegations heard and investigated, to be listened to, and to feel that the process was comprehensive and fair made a positive difference to how they felt during and after divorce.

2.2.4.3. THE ECONOMIC DIVORCE.

In this area divorce refers to the division of assets of the marriage, as well as post-divorce maintenance, which can often cause as much or even more conflict than custody issues. Although Parkinson (1987:18) when discussing the economic divorce, does not mention the legal costs ensuing from divorce it is an aspect not to be ignored. King, quoted by van Zyl (1997:8), refers to litigation as an expensive ritual and Arenstein (1989:247) says that the costly litigation of the High Court is beyond the reach of the average person. This situation has deteriorated since 1 October 1999 when the legal aid Board of South Africa terminated

the provision of financial assistance to people involved in divorce matters (Burman, Dingle & Glasser 2000:121). This causes great concern, considering Robinson's (1993:216) description of legal expenses in divorce as an additional burden that may even be excessive, for families already under financial stress. This is possibly also the reason why many fathers who contemplate contesting custody of their children during divorce are advised against it by their solicitors (Simpson 1998:90). As a result, there are fathers who do not want to lose their children only because the marriage has broken down, but they are so disillusioned when confronted with the financial implications of a High Court dispute and the unlikelihood of succeeding, that they decide against defending custody claims of the mothers, and mothers get undisputed custody of their children, while paternal custody awards remain the exception in South African courts (Van Zyl 1997:65).

Elster (1989:145-146), who also refers to decision making as a costly process, nevertheless reminds us that the costs of litigation are not enough reason for a judge to make snap decisions and therefore he will call expert witnesses or allow parties to call character witnesses and he will allow postponements and appeals within the limits of the law. In terms of section 10 of the Divorce Act 70 of 1979 the court is also not bound to make a cost decision in favour of the successful spouse (Visser & Potgieter 1998:174).

2.2.4.4. THE PARENTAL DIVORCE.

This appears to be one of the most difficult dimensions of divorce, possibly because the majority of parents find it difficult to deal with the reality that divorce ends marriage but not parenthood. It can easily happen that the conflict, which led to the dissolution of the marital relationship, can be perpetuated in this area for many years after the divorce.

According to Margaret Robinson (1993: 67) the demand on parents to let go of their marital relationship after divorce, but to retain and even improve their co-parenting relationship, poses a major challenge to vulnerable parents in the immediate aftermath of divorce. Parents also find it difficult to accept that children do not share the same dislike they have for their ex-partners.

The impact of divorce, specifically on the father, is emphasised by Simpson (1998:101-102), who refers to the marginality of his relationship with his children in the nuclear pre-divorce family, but holds that it is rarely problematic because it is interwoven with work patterns, notions of masculinity and the household division of labour into orthodox

constructions of paternal masculinity. After divorce however, this marginality is not only highlighted but it is actually compounded when the father realises the full sense of detachment, disengagement and disempowerment in relation to the mother-child dyad. The role of the non-custodial father in respect of his children is therefore an extremely vulnerable one, and from this father's perspective the custodial mother holds all the cards, with the trump card being the children themselves. Non-custodial fathers therefore often experience a radical shift from a context in which the power gradient is steeply inclined in their favour, to one in which considerable power passes to their former wives, and they are often displaced and in exile, with the opportunities to exercise control over the former wife and children, greatly diminished if not entirely absent. This, according to Mackey (1996:169), means that the divorced father, who is also vulnerable to human emotions, both pleasant and unpleasant, is placed in a complex, delicate and emotionally charged position. He continues saying that the ex-husband who is the non-custodial parent is still an ongoing father, and must deal with the psychological, emotional, and resource needs of his children through their mother. Simultaneously, the anger and resentment so often part of an acrimonious relationship, create additional barriers to a non-custodial father's ongoing relationship with his children, and only special strategies can protect these very delicate parent/child links over time and distance. One such a strategy suggested by Seltzer (1991:79-101) is allowing the non-custodial father a voice in parenting and child-rearing decisions, which according to her study usually positively influenced visitation and child support payments. In an attempt to explain why some fathers disappear altogether after divorce, Bosman-Swanepoel and others (1998:93) reason that it may be less a reflection of parental irresponsibility but rather a reaction to an intolerably painful and frustrating situation for these men. This corresponds with Kruk's (1994:21-23) position that the highly attached and involved father may find the markedly diminished contact with his children after divorce so painful that he eventually ceases contact with them altogether. On the other hand, the father who was less involved before the divorce, may find that the sole responsibility for his children in a visiting relationship may actually enhance his fatherhood.

2.2.4.5. THE COMMUNITY DIVORCE .

This dimension refers to the adjustment problems divorcees may encounter in their social

lives. Many divorced people experience material deprivation, and have to move away from their familiar environments, often with a sharp decline in living standards. This may explain research findings quoted by Luttig (1997:41) which suggest that most couples felt worse a year after the divorce than during the first few months, even in cases where they experienced euphoria and relief directly after the divorce. In this regard Braude and Francisko-La Grange (1993:53-56) recommend that social workers should work towards the awareness of the broader community, including other professionals like doctors and religious leaders, of the needs of divorced families and the support they can offer them. This recommendation is supported by Van Zyl and Bekker (2000:12) and they also emphasise the significant role churches can play in the lives of divorced people and their children.

2.2.4.6 THE PSYCHOLOGICAL DIVORCE.

The psychological divorce is defined as “the separation of self from the personality and influence of the ex-spouse” (Parkinson 1987:21). It can be extremely difficult to confront and master this problem of personal autonomy, at a time when one’s self-esteem is shattered. Johnston and Campbell (1988:15) explain that the separation experience evokes a well-known series of feelings of humiliation (narcissistic hurt), loss, anger, helplessness and guilt. Depending on their pre-existing character styles and defensive structures and on their specific early childhood and more recent traumas, divorcing couples have differing capacities to manage and integrate these divorce-engendered feelings. They proceed to say that most of the high conflict, litigating parents they dealt with, were more psychologically vulnerable and were less able to manage these feelings. Disputes then helped them to restore the delicate psychological balance that had been disrupted by the divorce and its aftermath. These disputes are elaborated on by Wallerstein in the foreword of Johnston and Campbell (1988:ix):

“Unable to move forward into a settled divorce and equally unable to move back into a working marriage, they remain at an impasse from which efforts to dislodge them often fail.

The consequences are frequently tragic.

Against this background we can proceed to focus on what literature further reveals about custody decisions and subsequent disputes.

2.3. LEGAL AND HISTORICAL BACKGROUND OF CHILD CUSTODY.

2.3.1. LEGAL BACKGROUND.

In the duration of a marriage both parents usually have custody of the minor children born from that marriage, but when the parents divorce, the court determines in terms of section 6(3) of the Divorce Act 70 of 1979, which parent will have custody of the minor children (Visser et al 1998:167). A court granting a divorce, may in regard to the custody or guardianship of, or access to a minor child of the marriage, make any order which it may deem fit and may, if in its opinion it would be in the best interests of the minor, grant to either parent the sole guardianship or sole custody of the minor. According to Hahlo (1985:389) the powers of the court under this section are so wide that it is difficult to think of any order the court cannot make. Section 6 (1)(a) of the Divorce Act 70 of 1979 determines that a decree of divorce shall not be granted until the court is satisfied that the provisions made or contemplated with regard to the welfare of any minor or dependent child of the marriage are satisfactory or are the best that can be affected in the circumstances.

For the sake of clarity it is necessary to briefly explain the concepts, guardianship, custody and access. The different custody options will also be mentioned:

Guardianship means a parent's authority to administer the assets and estate of the child, to manage his affairs, conclude contracts on his behalf, assist him in concluding contracts or when he has to appear in court as plaintiff or defendant. In the past the father was usually designated as guardian of the child in a divorce action while the mother normally received custody. In terms of the new Guardianship Act 192 of 1993 both parents are now equal guardians of their child and enjoy equal powers in this regard. The court however has the power to award sole guardianship to one parent if the other has proved to be incompetent or not interested in the children, or where that parent lives in another country or intends to emigrate to a foreign country (Visser et al 1998:171).

Custody refers to the physical control and supervision of children. The child will physically live with the parent who has custody and this parent will provide all the child's physical needs and control the child's daily life, which includes school attendance, religious matters, what clothes the child wears and the friends the child may have (Visser et al 1998:167). Arenstein (1989:44-48) explains that custody in general involves both physical custody (actual day to day control) and legal custody (arrangements regarding education, religious training and medical care). These two elements may be the responsibility of one or both parents. The different custody options mentioned are:

Sole custody is the most prevalent custody option, and refers to a situation where custody is awarded to one parent who maintains both physical and legal custody of the minor children involved.

Split custody apportions the children between the parents with each having sole custody of one or more of the children. Hahlo (1985:392) adds to this by saying that it may even be possible that the interests of the child will be best served by giving the custody first to the mother and later to the father. The advantages of this type of custody according to Arenstein (1989:47) appear to benefit the parents while the difficulties affect the children. The greatest difficulty she envisages is that the children may lose contact with the siblings in the custody of the other parent.

Joint custody empowers the parents to retain equal legal rights, authority and responsibility for the care and control of their children, much as in an intact family. Considerable controversy however exists regarding this custody arrangement. Some clinicians according to Luepnitz (1982:150), see it as an excuse for parents to stay married and to triangulate children in their love-hate dance, but other believe that it can cure a host of divorce related ills. In her own study Luepnitz (1982:150) found that the effect of sustained high parental conflict on children was the same regardless of the custody type, but she found no differences in the level of spouse conflict by custody arrangement. Factors which may possibly have a decisive influence on the success of joint custody, were mentioned in the case of *Venton 1993 I SA 763* when Didcott J indeed granted joint custody to parents whom he saw as "sensible, mature, responsible and temperamentally stable people whose relationship was remarkably good."

Another important aspect highlighted by Van der Merwe (1990:37) in quoting Schäfer, is that joint custody is consistent with the movement towards sexual equality. From a number

of studies to which Galatzer-Levy and Kraus (1999:88) refer it also appears that children prefer joint custody to sole custody and that they benefit from this arrangement, but these authors also emphasise the special effort and commitment that is required from parents. This may be worth the special effort if one considers that joint custody allows both adults the gratifications of parenting while eliminating the syndrome of the overwhelmed single parent said Luepnitz (1982:13 & 150) when she concluded after her study that joint custody at its best is superior to single parent custody at its best.

Access: According to Schäfer (1993:33-36) there does not appear to be any statutory definition of access in South Africa. He derived the following definition from case law:

“Ordinarily the right of access is a general right to see and speak to the child and enjoy its company while it is in the continued custody of the custodian parent.”

In *Marais 1950 1 SA 844 (C) 845* De Villiers A J posited that: “ What is aimed at is the preservation of some kind of parent-child relationship between the non-custodian parent and the child for the benefit of both, but in a manner not incompatible in substance with the vesting of undivided control and regulation of the care and upbringing of the children in the custodian parent”(Schäfer 1993:36). This author identified two kinds of access namely undefined access where the parties themselves decide what comprises reasonable access, and defined or structured access where the court has to intervene. The following options are available under defined access:

Supervised access: This access is usually in the presence of the parent or a person *in loco parentis*, such as a teacher. This order is made if there is a risk for the child or in cases where there has been a prolonged absence of the non-custodian parent.

Divided access: If custody is awarded to a third party, access may be divided between the parents. In other cases where a parent is allowed access to only one or more of the children but not to others, this type of access may be stipulated.

Visiting access: This allows the parent to visit the child and not remove him/her. This is particularly appropriate if a child is still very young and the parents live within visiting access of each other.

Staying access involves staying overnight, for example, over a weekend or during a holiday period.

Non-physical access. This type of access may be appropriate where physical access is deemed undesirable but some form of contact is considered necessary. This could be

restricted to telephone calls, letters and parcels.

Deferred access: This is a temporary denial of access but an application for access can be made at a later stage . In some cases the application can be deferred until certain conditions are met (Schäfer 1993:67-75).

According to Van Zyl (1997:83) the issues of access are disputed more often than custody and are more bitter and long-lasting. While parties normally adhere to even the most fiercely contested custody order once it has been made, each visit in terms of an access order can refuel friction between the parents. The reason offered for this is that visits may be the only occasion when parents who still harbour hostile feelings towards one another, come into contact. Their own agendas often override their concern for the best interests of the child. Lamb (1997:203) refers to a study by Seltzer and Brandreth in which resident mothers are blamed for acting as gatekeepers after divorce by limiting father's contact with children. In these cases defined or structured access is indicated. A reluctant custodial parent who is not reconciled to access or who tries to prevent it, can be found guilty of an offence in terms of section 1 of the General Law Further Amendment Act 93 of 1962. The same Act also stipulates that the custodian parent is obliged to inform the other parent in writing of change of address.

Whenever a decision has to be taken, the child's best interests (See 2.3.2) are the primary guidelines used by the courts to determine custody and access (Visser & Potgieter 1998:167).

A look at the historical background of custody decisions is likely to put the current approach in perspective.

2.3.2. HISTORICAL BACKGROUND OF CUSTODY DECISIONS.

Over the years the defining criterion of child custody determination has been based on radically different principles. The principle that, as a man, the father had a rightful claim to the custody of his children as he did to his other property, prevailed for centuries. It was finally superseded by the "tender years" doctrine, in which the development of the child was viewed as essentially and exclusively dependent on the emotional relationship between the mother and the child (Mc Whinney 1995:298-308). As a result of this paternal custody was almost completely replaced by maternal custody by the 1960s, and the only hope a father

had of obtaining custody was if maternal unfitness could be proved or if the mother was at fault in the divorce, usually based on conventional morality in particular relating to her sexual practices. This Roman Dutch principle that custody went to the innocent spouse was largely eliminated from law by that time, but in some cases it still lived on in the minds of judges (Elster 1989:152).

The “tender years” presumption was however eliminated from statutory law after it was realised that custody decisions should be based on the child’s best interest. Questions of gender bias and the acceptance of more egalitarian parenting roles, also contributed to this elimination (Emery 1994: 73). In South Africa it was only after the decision in *Fletcher versus Fletcher (1948 1 SA 130 (A))* that it was clarified that the best interests of the children concerned should be the real issue in custody awards.

This more child-oriented approach is now applied in South Africa in making custody decisions. A number of authors however hold that it is an extremely vague criterion and in any dispute the values and beliefs of the presiding judge can influence the outcome. Van Zyl (1997:5) describes this principle as “notoriously indeterminate”, while Parke (1996:204) claims that lip service is paid to the best interest doctrine. The concern raised by Wessels (2000:16) is that this principle is nothing more than a reflection of the decision makers’ own life experiences, prejudices and sentiments, and of what they consider to be the societal norms of the time. In the same vein, Elster (1989:126) also quotes Mnookin who argued that this principle is too indeterminate to be helpful in custody decisions.

The best interest principle according to Banda (1994:191) on the other hand has by “..... virtue of its non-specificity, the open-ended nature which is needed when applied in different cultural contexts”. Metzler (1998:1&21) sees this as of particular relevance in the South African context where the common law system favouring maternal custody and the customary law system which has so far theoretically favoured paternal custody, have to find common ground if the best interests of the children concerned have to be observed.

In presenting this historical overview, it is clear that the criteria used by courts to resolve child custody disputes have always been informed by the changes happening in society at large. In this regard the emergent shift towards men wanting to play a greater role in the parenting of their children has received the attention of different authors, which I will proceed to discuss now.

2.3.3. PATERNAL CUSTODY.

It was not only the more flexible approach to role expectations in parenting, but also feminists and father's rights groups who promoted gender-neutral standards for custody decisions since the 1970s. The message conveyed to lawmakers now, was that fathers were on balance interchangeable with mothers. This message supported both gender-neutral custody standards and primary caretaker preference, since it claims that fathers could fulfil this role as well as mothers. Social science theories were used not only to pave the way for more custody awards to fathers but also for awards of joint custody (Mason 1994:171-172). Other considerations mentioned by Wessels (2000:17) are developments in psychological research as well as the building of a human rights culture, with a Bill of Rights that does not permit unfair discrimination on the basis of gender. This played a major role in changing the maternal preference principle even in South African courts. In this regard she refers to the decision in *Van der Linde vs Van der Linde 1996 3 SA 509 (O)* where she says the Court laudably shed its rigid assumptions on parenthood, stating that the ability to 'mother' was not a biological characteristic belonging only to women but that it was also part of the male "persona". Despite these and other developments, including the recognition of the rights of natural fathers of children born out of wedlock, Van Zyl (1997:65) is of the opinion that South African courts are slow to follow new trends, and says that social attitudes towards parenting are slow to change, therefore many people still believe that parenting means "mothering". Luepnitz (1982: 157) explains this by stating that our notion that women are mothers and mothers are women is a part of our psychology, profoundly embedded and not likely to change over night. This may explain why Hetherington and Stanley-Hagan (in Lamb 1997:205) contend that only 14% of divorcing fathers are awarded sole custody of their children, and many fathers who would like sole or joint custody of their children, choose not to pursue it, because they either believe that the children will benefit more from remaining in their mother's care, their occupational responsibilities are not flexible enough to accommodate the demands of single parenthood, or they want to avoid exposing their children to prolonged acrimonious custody battles.

Joseph Cordell J D (www.dadsdivorce.com) adds to this saying:

“ Pruned from the trial docket entirely is the vast majority of cases (likely in excess of 95%) in which a dad was discouraged by his counsel from ever attempting to obtain primary custody in the first place. Men sit in law offices all across America every day

and are told (correctly in many cases) that they do not have a chance. They are told that they will spend \$15,000 and likely lose. They are cautioned that the judge could get mad if they persist. As a result, they may get less and pay more.”

The South African situation from the perspective of Van Zyl (1997:66) appears to be similar when he says that lawyers who know how difficult it is for a father to obtain custody also advise them against pursuing custody.

Despite these challenges and although in the minority there are however South African fathers who did gain custody of their children who were then raised in a home with the father as single caregiver. The effect of this reversal of the traditional childcare arrangement was the subject of some South African researchers' studies (Arenstein 1989 and Davies 1994). Their findings support the stance that fathers should be considered as suitable custodial parents within the framework of the present judicial system. These findings indicate then that South African custodial fathers do not differ from those described by Herman (1990:123) who said that single fathers as a group have been found to be caring and nurturing. They often completely change their work and leisure patterns to accommodate their children's needs. He refers to one father who opened a home-based business in order to spend time with his young child and another who was partner in a major law firm who was able to rearrange his schedule to pick up his children from school and be home to spend most evenings with them. Summarising all these statements in support of paternal custody Parke (1996:207) asserts that custodial fathers are not bumbling and ineffectual characters, but that they can raise their children competently and effectively.

Yet as mentioned above, mothers still normally obtain custody and Van Zyl (1997:66) claims that many mothers fight for custody because of the social stigma attached to a mother losing custody. Fathers on the other hand do not only have to prove their own suitability, but also the mother's lack of suitability if they want to obtain custody. Other South African authors like Bosman-Swanepoel Fick and Strydom (1998:78) share the same concern, for which they quote Schaffer's (1990:94) solution. He argues that an individual's motivation and personality are more important than gender, and that a father with the appropriate inclination and personality ought to be considered for sole parenthood as seriously as his ex-wife. If motivation is so important, what is it then that motivates parents to engage in the battle for custody of their children?

2.4. MOTIVATION FOR SEEKING CUSTODY.

It will be helpful to look at motivations for seeking custody in general before considering fathers' motivations for their pursuit of custody.

Van der Merwe (1990:13) refers to Musetto who identified five primary reasons for parents opposing each other for custody. This was not based on empirical research but based on his experience of family therapy. The reasons are:

- Parents may seek custody out of genuine concern for their children, but this concern can also be coupled with some other motive.
- Revenge originating out of anger towards a spouse is a powerful motive.
- By filing for divorce and fighting over the children's custody some people attempt to hold together a shaky relationship, or to get a passive spouse re-involved, because arguing over the children is perceived to be better than complete isolation from the spouse.
- Some people may see a custody award as proof of personal adequacy, and they may seek it to fulfill a personal need more than to meet a commitment towards the child.
- A parent may also try to obtain custody so that the child can fulfill his or her own emotional needs. According to Garrison (1991:85) this is often due to the parent's depression and alcoholism. Children may also have to offer emotional support to parents who turn to them from the desperation of frustrating marriages.
- For many mothers a custody award is important in order to avoid the social stigma that would attach to them if they did not get custody (Van Zyl 1997:66).

When considering the motivations of fathers specifically, Davies (1994:132) found that the fathers in her study actively sought custody both because of spousal difficulties and incapacities as well as for asserting their rights to continued parenthood. Some authors are however sceptical about fathers' motivations for seeking custody and Mason (1994:129), for example, states that some fathers who may have had no real desire for custody threatened mothers with the possible loss of custody in order to secure advantage in property division, spousal support and child support. She does however say that there are fathers who want custody in order to have more time with their children. Other authors also agree that there can be custody battles that have little to do with the interests of the children, but are much more about revenge or parent's needs (Robinson 1993: 89, 100; Bosman-Swanepoel et al 1998: 83, Van Zyl 1997:66). Burman and Swanepoel (2000:118), are however of the

opinion that parties with these hidden agendas, usually change their minds when they realise that the Office of the Family Advocate will do an investigation.

Custody battles, according to Galatzer-Levy and Kraus (1999: 240-241,250), frequently ensue at times of remarriage and it is mostly non-custodial fathers who seek changes in custodial arrangements. Their motives may be jealousy of the ex-wife's new relationship and fear of being displaced in the children's lives by the wife's new spouse. In cases where it is the non-custodial father that remarries, he may believe that his new wife can care for him and his children better than the ex-wife whom he still sees in a negative light. He may also want to do it for financial reasons, because the demands of the new household may complicate the payment of child support. On the positive side it can however also be true that remarriage reflects significant personal growth, and that the father may feel more competent to care properly for his children at this time.

From studies by Gersick, Santrock, Warshak and Elliott quoted by Robinson (1993:100) it was found that the reason why fathers sought custody was an indicator of its success. According to these studies some men seek custody either because their former wives do not want it, while other men actively want custody, some because they believe they are the better parent, and others because they feel vindictive enough to use a custody battle to intimidate their former wives. Economic gain can also be the sole motive of other fathers. Arenstein (1989:228) concluded from her South African study that the respondents actively seeking custody of their children were men who valued their father-child relationships highly. She found that contrary to her expectations, they were not a younger more radical group with unusual lifestyles, but were older well-educated and more established in higher socio-economic positions.

Although parents are often non-negotiable regarding their children, Bosman-Swanepoel Fick and Strydom (1998:83) do not necessarily consider this a pathological characteristic. They however warn that parents mostly have a strong need for winning and therefore they may present a picture of themselves, which may not be accurate. At the same time Froneman (1999:132) regards the parent's motivation to have custody of the child as one of the most important criteria to be considered in a custody evaluation. Considering this and taking heed of the caution by Bosman-Swanepoel and others (1998:83) it is evident that custody evaluations pose significant challenges to evaluators and other role players.

2.5. CUSTODY EVALUATIONS.

Although many child custody determinations are arrived at amicably with or without legal and mental health professional intervention, many become bitter disputes and these can be among the most traumatic events in family life (Venter, Van der Berg, Van der Merwe & Van Rensburg 1995:106). This may explain why child custody decisions were influenced by so many developments and changes, and it emphasises the complexity of this issue which according to Stahl (1999:xi) has increased over the years. Elster (1989:124) further explains that this is not only because the issues are so important to the parties involved, but also because decisions are seldom clear-cut and he argues that there is usually no rational basis for preferring one parent to another.

Literature available on the process of custody assessments, the role players involved as well as certain other interventions will now be explored.

2.5.1. THE PROCESS OF EVALUATION.

Custody evaluation comprises an in depth study and assessment of the structure and functioning of the family made by a social worker and written up in the form of an evaluative report which is then submitted to the family advocate (Hoffmann 1989:107). According to Galatzer–Levy and Kraus (1999:226) the goal of every custody evaluation is to recommend a caretaking environment that has a reasonable chance of fostering healthy development. The opinions of other authors consulted on these aspects, will now be considered.

Schäfer (1993:8) quotes Goldsein, Freud and Solnit in stating that physical, emotional, intellectual, social and moral growth does not happen without causing the child some internal difficulties. The instability caused by these inevitable developmental processes needs to be offset by stability and uninterrupted support from external sources. In intact families most of these needs are fulfilled in the normal course of life, sometimes even without the families being specifically aware of it. Smooth growth is however arrested when disruption and changes in the external world are added to the internal world. This explains why Breen (1989:17) refers to the effects of divorce on the so-called children of divorce as “developmental interference”, causing them many tasks in addition to the normal developmental tasks. Few children, even those from troubled families, experience relief when their parents divorce, and they are more likely to suffer from shock, anxiety and

profound sorrow (Galatzer-Levy et al 1999:80,84; Schäfer 1993:6; Van der Merwe 1990:21). At the same time parents caught up in the emotional turmoil of divorce often have diminished parenting capacities and cannot provide adequately for the needs of their children (Galatzer-Levy et al 1999:76). Both Stahl (1994:31) and Mason (1994:173) warn that even evaluators tend to focus more on parent's rights than on the developmental needs of these children. They also make the mistake of adhering to the fairly traditional understanding that a child needs a primary parent more than anything else. Custodial arrangements can then be imposed on these children regardless of the child's age and without reference to the vast body of developmental research that detailed the changes in children at different stages in their maturity. Stahl (1994:31) emphasises that it is important for the evaluator to take the needs of children of divorce in account in order to assess the parents' capacity for meeting their children's needs and also so that a suitable parenting plan can be recommended. These needs indicated by Stahl (1994:32-44) have been tabulated in Appendix 1.

In the case of *McCall vs McCall 1994 3 SA 201 (C) 204-J*, Judge King stipulated certain criteria for assessing parents, that Bosman-Swanepoel Fick and Strydom (1998:30) regard to be so complete and effective that they can serve as guidance for all. This guidance, according to Van Zyl (1997:77), is desirable since the best interest criterion is so vague and the judge's discretion is so wide. These criteria are discussed in a manual attached as Appendix 2.

Venter and others (1995:108) suggest a team approach and what literature reveals about the professionals involved in custody evaluations in South Africa will be perused next.

2.5.2. THE ROLE PLAYERS IN CUSTODY EVALUATIONS.

It is evident that working with families involved in custody litigation is difficult but important work, because the decisions can have life-shaping consequences for all the parties involved. Elster (1989:124) describes custody disputes as highly traumatic for families but also for third parties called upon to resolve them, and he quotes Goldzband who said that any judge or trial lawyer, any forensic psychiatrist or other mental health specialist will affirm that child custody is indeed the ugliest of all litigation. This is also confirmed by Van Zyl (1997:22) who refers to several South African judges who have already expressed their dislike of these cases.

While presiding judges in South Africa had to rely on their own judgement alone, in the past when they implemented a rigid set of rules and principles in deciding custody disputes, Bosman-Swanepoel and others (1998:105) hold that they now have recourse to the services of the family advocate, who in turn has access to numerous experts available to assess individual needs and situations relevant to custody awards. Although these authors refer to an immense shortage of funds available for the appointment of qualified experts whose services are too expensive for the ordinary litigant, it does appear that some sort of team work can be implemented in the process of custody evaluations when called for. The different members involved will be discussed below.

2.5.3.1. JUDGES.

According to Van Zyl (1997:22), judges are often criticised for their approach to custody and access disputes. They are often said to represent a conservative sector of society, to be uninformed about children's needs during and after divorce and always to come down on the side of well-entrenched community views. Van Zyl (1997:22) even says that their decisions can sometimes display personal prejudice and bias. He further contends that judges are members of a conservative profession, few of them are young and some of them are slow to accept new concepts like joint or paternal custody. There are, according to Van Zyl (1997:22) educational programmes for judges in America and Canada, which are intended to counteract the effect of stereotyped myths, beliefs and biases on decision-making in family law. Similar courses for making the judiciary aware of their own prejudices have not been introduced in South Africa yet.

Van Zyl (1997:22) however, also gives the assurance that judges are well aware of the grave responsibility they bear in these matters, which are even more complicated because they have to reach a decision as soon as possible for the sake of all concerned particularly for the children. At the same time previous decisions can only help them to a limited degree, because the personalities and individual circumstances in each disputed case are unique. This, as well as the fact that judicial discretion in custody cases is particularly wide, poses exceptional challenges to presiding judges in disputed custody cases. It is also true that despite the contributions from other professionals it is ultimately the judge that has to make the order. In this regard Campion (1995:74) also holds that there are many enlightened

judges who recognise the responsibility they carry but who also acknowledge the limitations of the law as an instrument for promoting good parenting.

It is the opinion of Johnston and Campbell (1988:14) that the court itself can instigate prolonged custody conflicts. Insufficient data or punitive reactions to angry unreasonable parents can lead to premature or unwise judgements. At the same time the authority and judgement of the court has powerful symbolic meaning to some disputants. If great care is not taken in interpreting the reasons for the court's decisions, court outcomes can legitimise each spouse's view of the other, so that the winner becomes the "good parent" and the loser the "bad parent".

2.5.3.2. THE FAMILY ADVOCATE.

The establishment of the first Family Advocate's Office in terms of the Mediation in Certain Divorce Matters Act (Act24/1987) in 1990 was an important milestone in making sure that the South African judicial system takes the time and trouble to focus on the best interests of every child of divorcing parents (Van Zyl 1997:117-123). Elaborating on this, Froneman (1999:16-20) states that intervention in divorce matters by the family advocate and family counsellors means in fact intervention by both the legal and mental health professions. These two role-players also work together as an inter-disciplinary team and they are eventually the child's legal team.

In some cases the family advocate is obliged to institute an enquiry and in other cases he or she has a discretion to institute an enquiry. This happens after the institution of a divorce action or after an application has been lodged for the variation, rescission or suspension of an order, with regard to the custody or guardianship of, or access to, a child made in terms of the Divorce Act 70 of 1979.

The role of the family advocate is further described by Bosman-Swanepoel Fick and Strydom (1998:34-39) who state that an obligatory enquiry must be instituted by the family advocate if requested by any of the parties or by the High Court. The family advocate must furnish the court at the trial with a report and recommendation regarding the welfare of the minor child. He or she is obliged to appear at the trial or hearing if requested by the court, but also has the discretion to appear at a trial or hearing to adduce evidence and to cross-examine witnesses. Even when not requested, the family advocate may apply to the court to

institute an enquiry similar to the above if he/she deems it in the interest of the minor child. In *Van Vuuren v Van Vuuren 1993 1 SA 163 (T)*, the court presented the following guidelines for the family advocate for an application to institute an enquiry:

- An intention not to place young children in the custody and control of the mother.
- An intention to separate siblings.
- An intention to award custody and control of a child to a third person.
- An intention to make an arrangement that is *prima facie* not in the best interest of the child.

The family advocate has wide powers including the right to require any person to submit affidavits, statements in writing, reports, documents or other things as he/she may deem necessary. The family advocate may gain access to medical or psychiatric records where necessary. In terms of Section 6 of the Mediation in Certain Divorce Matters Act (Act24/1987), the family advocate or family counsellor may appoint any other person to assist them with an enquiry. According to Van Zyl J in *Terblanche v Terblanche 1992 SA 501 (W)* and this can constitute a whole battery of services from all walks of life.

The family advocate's functions are :

- To monitor forms which are completed by each party instituting an action for divorce as well as all settlement agreements by the parties.
- Mediating certain divorce matters although this is not mediation as described in literature, or as commonly viewed by mediators. In this context it refers more to an attempt to settle the matter between the parties on terms most favourable to the welfare of the children.
- Evaluating in some cases where mediation is not appropriate, more specifically because of the high level of conflict between the parties which prevent them from reaching a settlement. Galatzer–Levy and Kraus (1999:219) are of the opinion that the need for a formal custody evaluation is in itself an indication of the breakdown in the parent's capacity to resolve differences for the benefit of the child. In many of these cases custody evaluations are conducted in conjunction with the family counsellor (Bosman in Hoffmann 1992:56). In her study Froneman (1999:137) found that this partnership may sometimes give rise to problems because some of the family counsellors she interviewed stated that the family advocate is sometimes not sensitive to people's needs and emotions and can appear harsh. She therefore recommended that the family advocate

should also receive some training in social work skills and communication.

2.5.3.3. FAMILY COUNSELLOR AND OTHER SOCIAL WORKERS.

The Minister of Justice may in terms of section 3 (1) of the the Mediation in Certain Divorce Matters Act (Act 24 / 1987) appoint at each division of the High Court of South Africa one or more suitably qualified or experienced persons as family counsellors to assist the family advocate with an enquiry. Although the Act does not define “suitably qualified”, the family counsellors are normally qualified social workers.

The functions of the family counsellor are also not described in the Act, but Froneman (1999:20) suggests the following:

- ◆ The family counsellor should not be seen as a “detective”, but must conduct the investigation in a respectful, open and honest manner. The family will then be more open in sharing information. However, Galatzer-Levy and Kraus (1999:219) remind evaluators that unconscious and conscious distortions are likely to become important as parents try to “win” custody and therefore they emphasise the need to obtain collateral information.
- ◆ The children must be able to depend on the social worker to recognise their distress, to act to remedy it and to speak for them.
- ◆ The family counsellor should conduct the custody investigation without unnecessary delay in order to keep this painful time for the families as short as possible. Prolonged litigation about a child’s future is deeply damaging to the child, because of the uncertainty it brings and the harm it does to the relationship between the parents (Neethling 1993:497).
- ◆ Home visits are also recommended. Although Froneman (1999:117) found that most of the family counsellors she interviewed believe that home visits should be included in the investigation, not all of them visited homes in every custody evaluation. She however emphasises the importance of a home visit during custody evaluations, so that the family counsellor can assess the social atmosphere of the home, and observe and better understand the parents’ behaviour and emotional reactions as they occur in day-to-day life.
- ◆ The Mediation in Certain Divorce Matters Act 24 of 1987, does not describe the powers

of the family counsellor, but the regulations stipulate that the family counsellor who institutes an enquiry in terms of section 4 of the Act may appoint a person or persons to assist him with such an enquiry. These people will often be social workers in the field. In acknowledging the skills of social workers for obtaining social histories and for interviewing small children, Van Zyl (1997:31) states that they play a major role in cases handled by the family advocate. He however also states that social workers are often overworked and that lawyers constantly complain about the length of time social workers take to complete reports. He however concludes that given adequate time to delve into all angles of a custody dispute and using their evaluative skills, they should be able to fill the gaps of lawyer's knowledge of child development. Although like the other role players, they are unable to predict the future, they are at least able to predict future dangers for the child. In the opinion of Kruk (1994:22), social workers can make a considerable contribution to families in transition, but he urges them to redefine some current conceptualisations of the post-divorce family system. Instead of intervening in a way that can erect barriers to the father-child relationship, they should rather direct their intervention at redefining family roles, relationships and boundaries in order to enhance the functioning of the post-divorce family system. Johnston and Campbell (1988:13) without denying the important role helping professionals can play, also warn that they can fuel the conflict between divorcing parties for example, when they see only one parent, encourage uncompromising stands, reify distorted views of the other parent and write recommendations and even testify on behalf of their client with little understanding of the child's needs, the other parent's position or the couple and family dynamics. Robinson (1993:184) suggests a systemic view of the family undergoing traumatic changes in order to prevent a natural tendency to side with one party.

It becomes clear why Venter and others (1995:107) hold that family counsellors are expected to be experts on basically all aspects of the family, including adult pathology, children, adolescents, families, psycho-diagnostics and even certain aspects of the law. They are however aware of the fact that social workers are often not trained in all the aspects of parenthood, or the needs and functioning of children. Based on her findings that the training of her respondents was limited and some of them had never received training regarding their role as family counsellors, Froneman (1999:134-135) supports this stance. She therefore recommends regular group training, also in order to address issues of being biased which

some respondents in her study reported. They suspected that this originated from their own style of thinking, moral judgements regarding parental performance, as well as assumptions about parent/child relationships which could be a result from their own childhood. In addition to this, Venter and others (1995:107) mention professional discipline, gender, age, personal / marital background and sexism as more factors that can influence the reliability and validity of professionals' opinions.

Guidelines and standards for conducting child custody evaluations suggested by Stahl (1994:223) can be helpful for avoiding many of the pitfalls mentioned above. These guidelines and standards are summarised in Appendix 3.

2.5.3.4. PSYCHOLOGISTS.

According to van Zyl (1997:25) input from mental health professionals is essential in custody decision-making because people from the legal professions are unlikely to be able to determine the mental health of the parties involved. In support of this statement, he quotes Trengrove who also confirmed that South African courts have always recognised the need for, and the value of input from behavioural and social scientists. Van Zyl (1997:25) however holds that the legal profession has certain reservations about their input, firstly because it is alleged that the social sciences can never be value-free and secondly because lawyers have some resistance to psychological theories which they claim, change with an alarming rapidity. The solution to this problem suggested by Hoffman and Pincus (1989:3) is that judges should try to gain some understanding of psychological theory and behavioural scientists should likewise obtain some knowledge of court procedures, the role of lawyers and what the courts expect from them.

2.5.3.5. LAWYERS.

Divorce is presently conducted within an adversarial legal system, but the extent to which divorces are adversarial in nature may vary. Some couples undertake do-it-yourself type divorces sometimes with assistance from a single attorney acting as a consultant, and sympathetic to the family as a whole, but other couples become embroiled in protracted and traumatic contests for custody, access and property and maintenance payments (Saayman & Saayman 1987 :15). It is likely that Robinson (1993:214) referred to the legal

representatives of this second group when she described the role of the divorce lawyer as unenviable. In this regard she considers the stressful situations they find themselves in because the unfortunate emotional and financial circumstances of their clients introduce significant tension in the lawyer / client relationship. At the same time, the adversarial nature of the legal system pushes lawyers towards tactics of competitive conflict while the informal norms and ties to their colleagues introduce strong counter-pressures to adopt a more cooperative stance. They also have to solve dilemmas for which they are ill prepared by their legal training which virtually excludes areas such as child development, family dynamics and counselling skills. She refers to research by Kressel (1985) in the United States which found that a large group of lawyers subscribe to the counsellor's stance, with a co-operative orientation towards divorce settlement negotiations, but that an equally large group are those who hold the advocate philosophy and choose the zealous pursuit of the client's interest through the adversarial approach. According to a study by Davis in 1988, which Robinson (1993:215) quotes, parties who are at their most vulnerable in conflict with one another and confronted with legal machinery which they do not understand, rely on their solicitors whose support is sometimes unashamedly partisan. Davis also found that one area in which solicitors fail to provide their clients with sufficient information is in relation to costs. While he did find evidence that there were what he calls "litigiously gladiatorial solicitors", the figures were much less than popular belief and only 19% of the clients in contested applications considered their lawyers needlessly aggressive.

It is however also true that Johnston and Campbell (1988:39) found that the manoeuvres by attorneys as they formulate their clients' positions, orchestrate their claims and engage in tactical warfare with other attorneys, serve to entrench the parties' dispute. This is done in several ways which can be:

- Advising the client not to communicate with the other spouse, hence cutting off corrective feedback.
- They advise their clients against making temporary arrangements lest they compromise their position, but in doing so it increases the client's unwillingness to collaborate.
- Some advise their clients to take an extreme position in order to have more bargaining power.
- Needing to show evidence to court, they submit a series of motions that attempt to characterize the other party in the most unfavourable light. These papers often cite

unhappy incidents and separation- engendered desperate behaviours of the parties often out of context, which then become public charges and counter charges. Separating spouses in the midst of this devastating process of making private sorrows into public issues, do not realise that all this can emanate from the strange practices of the adversarial system and they invariably see it as emanating from the other spouse. In many of these cases the motivation to continue the dispute drew its energy from the attorneys themselves and not from the parties.

In direct opposition to these strategies, Severson and Bankson (1995:684) believe that if couples can resolve their disputes in a minimally antagonistic, non-adversarial atmosphere, the volatile interpersonal nature of divorce disputes will be diffused, and the children involved will benefit. From the same perspective, Marlow and Sauber in their Handbook of Divorce Mediation, (1990:9) strongly suggest a paradigm shift from viewing divorce as a legal event, to viewing it as a personal event, because it is evident that what keeps a couple from an agreement is not their conflicting interests, as the law would have it, but rather the feelings like anger, hurt, disappointment and fear which are inherent to the personal crisis of divorce. It follows logically then that the dispute resolution procedure employed, should address these destructive feelings, and not intensify them, as is the case with traditional adversarial divorce proceedings. This is also the opinion of Emery (1994:109&113) who holds that the adversarial system is so harmful that any alternative which is based on a theory of cooperative dispute resolution is preferable .

A South African a judge of appeal, Mr Justice Goldstone (Hoffman 1992:3) also holds that there are a great number of cases which are more suited for alternative forms of dispute resolution, like mediation, rather than court adjudication. He makes special mention of cases where warring parties will be obliged to continue an on-going relationship after the resolution of their battle. In this regard he sees disputes about proprietary rights of spouses and the custody of children as the most important area. With this in mind, it will be useful to have a closer look at mediation as alternative dispute resolution procedure.

2.6. MEDIATION.

Folberg and Taylor quoted by Folb (1994:31) describe mediation as the process whereby the participants, with the assistance of a neutral person or persons, systematically identify disputed issues in order to develop options, consider alternatives, and reach a consensual

settlement that will accommodate their needs. An additional characteristic of the process mentioned by Lombard (1992:58) is that a third party assists the disputants but eventually they reach a mutually acceptable settlement themselves. This is an important consideration when resolving family disputes, because Emery (1994:109) argues that a system that takes away the responsibility from the parents to decide on their children's best interests, is overly invasive in family matters and can be divisive for parents. Van Zyl (1997:142&194) although questioning the value of mediation in respect of saving costs and time does attribute its value to its potential to reduce conflict even if an agreement or settlement is not reached. Another consideration which is particularly relevant for a study with the focus on fathers, is raised by Lamb (1997:194). He holds that fathers are more likely to report that their rights have been protected and that the agreements from mediation were more satisfactory, than decisions made through litigation. Perhaps this is possible because mediation in the words of Cohen (in Pretorius 1993:75-76) gives the law a human face in appropriate cases.

A more detailed comparison between mediation and the process of custody evaluations can be found in Appendix 4.

It is however also necessary to acknowledge that there are cases which will not be appropriate for mediation. Cases where one or both spouses are adamant to have their day in court, are often inappropriate, because a prerequisite is that both parties must have a genuine desire to solve their problems amicably (Folb 1994:32). The mediator must also be aware of sources of imbalance, because it can lead to a one-sided agreement, which will benefit neither side in the long run (Cigler 1986:199-203).

Literature indicates many different approaches to mediation, but in the end, they all have one common goal, namely to produce an agreement that spells out the parties' future behaviour. The parties can submit this agreement (that is not legally binding) to their advisors for scrutiny. If it is accepted it will be incorporated into a legally binding agreement, which the parties will sign and which can become an order of court. It is likely that parties will honour an agreement concluded between them in this way, because they will accept ownership for something they have laboured on (Van Zyl 1997:155-158; Van der Steege in Hoffmann 1992:79-81; and Cohen in Pretorius 1993:82-87).

2.6.1. *MEDIATION IN SOUTH AFRICA.*

The 1983 Hoexter Report on the structure and functioning of the courts of law in South Africa raised the expectations of proponents of court-connected mediation services when it recommended a single family court with comprehensive jurisdiction in family matters, but these expectations have still not materialised. The Mediation in Certain Divorce Matters Act, 24 of 1987 may have raised further hopes, but according to Cohen (in Pretorius 1993:73) the use of the word “mediation” in the title of the Act is a misnomer which Hoffman and Wentzel (1992:11) explain when they hold that the Act does not make provision for mediation as described in literature, but is dictated by the family advocate’s own understanding of the mediation process. They found that court connected mediation services had not materialised, and it was mostly people from the private sector that did family mediation as it is generally defined and practised.

On 31 March 1995 Mr. Justice Hoexter was once again appointed to investigate the need for specialised family courts and subsequently the 1997 Hoexter Report was published. The most significant recommendation in this report was that the Family Court was to be an independent court with superior court status. It also recommended that the Mediation in Certain Divorce Matters Act, 24 of 1987 be repealed and replaced by “The Family Advocate and Family Counselling Service Act”. The proposed Act provided for a Family Counselling Service as part of the Family Advocate’s Office. This service was supposed to be free of charge to all members of the public. It was further recommended that the Family Court would proceed on circuit in rural areas. While this report was still pending, and with political pressure to attend to the interests of women and children increasing, a Family Court Task team was formed, which eventually recommended that Family Court Pilot Projects be established. The first such Project was launched in Cape Town on 29 January 1999. When Burman Dingle & Glasser (2000:111-124) assessed the court, they found that all that actually existed in 2000 was a small under-funded isolated court, which nevertheless proved to be a surprising success as far as the demand for the court was concerned. It was however still a far cry from the recommendations in the Hoexter Report, and families were still not receiving the services which Saayman and Saayman (1987:21-22) recommended, after they found that interparental hostility generated by the adversarial process contributed significantly to maladjustment in children of divorce. They then recommended a system of divorce mediation via family courts, but more than ten years later, Tatchell (2000:34-38)

stated that the Office of the Family Advocate in the area she studied appeared to be still doing custody evaluations, which are rooted in litigation. Van Zyl and Bekker (2000:11) explain this by stating that parties that come to the family advocate have already taken an adversarial stance and therefore they come to do battle and not to negotiate. They nevertheless believe that there should be ways in which the adversarial system can be removed from custody and access decisions. Tatchell (2000:35) in this regard directs a challenge at the Department of Welfare, to implement provisions in the White Paper for Social Welfare (1997:46), which states that this Department will advocate the re-examination of the divorce laws and that couples will be encouraged to make use of mediation services.

With this theoretical base on custody and decision-making in divorce one question remains which needs to be answered. Are decrees on which many people laboured for so long and with so much emotional and other cost involved, supposed to be permanent?

2.7. VARIATION OF CUSTODY ORDERS.

As a result of the openness of human systems they are constantly in a process of change and movement, in an attempt to take meaningful goal-directed action (Compton & Gallaway1994:123). It follows logically that this also applies to families and that they remain dynamic, even after divorce, so that changes in their circumstances may cause the original custody arrangements to become outdated after some time. Arenstein (1989:250) therefore recommends that custody awards should be open to review so as to accommodate changed needs of parents and children, while Emery (1994:197) in the same frame of mind agrees that custody arrangements are not final either theoretically in the law, or empirically in parenting practices. He therefore suggests that the likelihood of change should be raised when custody is first negotiated. He holds that this will not only anticipate possible future events, but it may also alleviate some of the pressure parents experience when they make child rearing arrangements assumed to be permanent.

There appear to be several factors that can precipitate a renewed post-divorce custody dispute. One of the reasons can be because the best interest criterion is so vague and such an emotive one for parents, that it is suspected that the intervention of the family advocate does not always satisfy both parents and the court can often not persuade the parent who loses custody to do so with good grace (Van Zyl 1997:8). Johnston and Campbell (1988:10) also

identify some significant life events that can activate post-divorce disputes. Some possibilities are: involvement with a new lover or remarriage of a parent, developmental changes in the child like entry into adolescence, the intentions of a parent to relocate to another geographical area or symptomatic and disturbed behaviour in a child. A recent study by Pruett, Nangle and Bailey (2000:478) on divorcing families with young children also suggested that families that return to the Family Service Unit of the court most frequently are those in which both parents claim to have significant involvement with and commitment to the child, yet in which one parent expresses suspicions about the other's mental health, parenting competence, and motivation for wanting the child.

2.7.1. LEGAL PROVISION FOR VARIATION.

The South African legislature in terms of Section 8 (1) of the Divorce Act (70 of 1979) made provision for the rescission, suspension or variation of a maintenance order or an order in regard to custody, guardianship or access to a child, originally made in terms of Section 6 of the Divorce Act (Hawthorne 1992:26). The onus is on the applicant to show good cause for the variation, but there is no onus on him to show that the situation that had arisen was not envisaged at the time the previous order was made, or that there has been a change in the circumstances of the parties or any misbehaviour or shortcoming on the part of the respondent, or that the children are suffering injury or prejudice under the existing order. All the applicant has to do is to satisfy the court upon a balance of probabilities that a variation of the order will be in the best interest of the child (Hahlo 1985:404).

The fact that the term “custody” is used in both child welfare legislation and divorce legislation may give rise to confusion, but the Child Care Act (74/1983) does not provide, as does the Maintenance Act (Act 23 of 1963) that the children’s court may amend a High Court order. In *Weber vs Harvey NO and others 1952 3 SA 711 (T)* and various other decisions it was held that it is not the function of the children’s court to amend orders of the High Court made during divorce cases (Bosman-Swanepoel & Wessels 1995:44). Hahlo (1985:405) however says that this does not preclude the children’s court from dealing with a “child in need of care”. In this respect it is noteworthy that the Child Care Act 74 of 1983, as amended by section 6 (a) of the Child Care Amendment Act 86 of 1991, specifically makes provision for such a situation when it provides for a child found to be in need of care in terms of section 14 of the Act, *inter alia* to be returned to his parents or “if the parents

live apart or are divorced, the parent designated by the court”. Bosman-Swanepoel and Wessels (1995:44) interpret this provision as follows: “...although it would appear that the commissioner of child welfare may suspend the original custodial parent’s rights of custody for a period not exceeding two years, only the Supreme Court may amend a custody order from one parent to the other for an unspecified period.”

2.8. CONCLUSION.

The focus of this study is the motivations and experiences of divorced fathers pursuing custody of their children,

I have now attempted to present a holistic view of divorced fathers and their experiences from the perspectives of different authors. In doing so, literature not only on fathering but also on the family system, before, in the process of, and after it was altered by divorce was discussed. Child custody decisions with the emphasis on paternal custody in the legal and historical contexts were discussed as well as current approaches to this important work. Theories on the different role-players and the decision-making process, were also perused and in conclusion perspectives on mediation as an alternative dispute resolution procedure as well as the variation of custody orders were presented.

I hope that this broader perspective will facilitate a better understanding of the complexities of the human experience explored in this study. Another equally important function of this literature is that it also fills the intellectual vacuum which Coffey and Atkinson (1996:153) claim often keeps methods of data collection and data analysis, that will be discussed next, from making sense.

CHAPTER 3

RESEARCH DESIGN AND METHODOLOGY.

3.1. INTRODUCTION.

My understanding of research is based on the definition presented by De Vos (1998:20) which states: “Basic professional research, whether its objective is exploration, description or explanation, is a scientific enquiry into a relevant problem that provides an answer contributing to an increase in the body of generalisable knowledge about the particular profession”. When the profession is that of the social scientist, research will be a process of trying to gain a better understanding (knowledge) of the complexities of human experience, in the case of this study then, knowledge about non-custodial fathers pursuing the custody of their children. (Marshall & Rossman 1999:21).

People have different views of reality, and therefore they have different ways of gaining an understanding of some aspect of the world and different ways of confirming their understanding (which is their knowledge). This explains why literature (Schurinck 1998:240 & Hart 1998:51) claims that the nature of every scientific enquiry is influenced by the perspective of the individual researcher, which in the end determines his choice of research design and methodology.

As a researcher representing the social sciences, I prefer to view knowledge from a constructivist position, and therefore see it as part of a reality which is not “out there” but is constructed in the minds of the actors involved in the situation (Creswell 1998:254). It is also true that reality thus perceived is relative and the construction of the lived experiences of the actors cannot claim to reflect the “true picture” (Schurinck:1998:240). From this perspective, knowledge then is not a set of verifiable facts, but is rather constructed as a product of social and individual assumptions and is developed through language (Fisher1991:15).

This then constitutes my ontology which I understand as the researcher’s perception of the nature of reality or the world and what there is to know about it. This ontological assumption, together with my epistemological assumption (my assumption of where I stand in relation to reality or the world or those being researched) and my methodological

assumption (my concept of how I can find out about reality or the world) lead to the paradigm which guided the action in this study, and which I will proceed to discuss now (Schurinck 1998:240 & Creswell 1998:253-254). In this chapter, I will also discuss ethical considerations in this study, the limitations of the study as well as certain standards of quality and verification.

3.2. THE RESEARCH PROCESS.

3.2.1. RESEARCH DESIGN.

Informed by the paradigm just described, this research involves an exploratory study for which a qualitative research method was used.

Exploratory research adds richness and depth to an investigation and is described as extremely useful in social work because we know so little about what works with whom (Marlow 1993:24). This is particularly true in the case of paternal custody to which the South African society, in the words of Van Zyl (1997:119), still has a cautious and conservative approach.

When I decided on a qualitative method, I considered Herbert's (1990:35) statement that social realities are too complex, relative and emergent to be measured by standardised instruments, but it was Grinnell (1988: 196) who finally convinced me to use a qualitative method. He holds that both quantitative and qualitative research methods attempt to describe and explain social reality, but that quantitative methods are best used when enough prior knowledge is available in order to formulate testable hypotheses. Mouton and Marais (1988:43) also point out that hypotheses tend to be developed as a result of exploratory research rather than the research being guided by hypotheses. Since this research attempts to explore the relatively uncharted social terrain of fathers gaining custody of their children after having challenged maternal custody, it is evident that a qualitative method is the method of choice now. This however does not exclude the possibility that some of the findings may be tested by other researchers using quantitative methods in future research.

True to the nature of qualitative studies, which is also described by Schurinck (1998:242) this research was approached as follows:

- From my assumption that human behaviour cannot be explained in a causal

deterministic way but rather that it is intentional and creative and can be explained but not predicted, I attempted to understand reality by exploring the meaning people (fathers) attach to it in a specific setting (pursuing custody).

- The methodology involved a process of interaction between the researcher and the respondent. I placed myself in the respondents' shoes in an attempt to discover and interpret their lived experiences.
- The research design was flexible and evolved throughout the research process.
- Data is descriptive and presented in the form of the respondents' spoken words, which were transcribed verbatim.
- Data was analysed cross-sectionally around certain themes and categories that were extracted from the data (Mason 1996:158).
- I used an inductive form of reasoning and concepts, insights and understanding were developed from patterns in the data.

3.2.2. RESEARCH METHOD.

3.2.2.1 THE SAMPLING STRATEGY.

In order to ensure that the information collected was directly relevant to the problem addressed in this study, a purposive non-probability sampling method was chosen (Marlow 1993:114 & Silverman 2000:104). Respondents were purposefully instead of randomly selected, in order to meet the criteria suggested by this study. I do realise that non-probability sampling is limited in representativeness, but in deciding on this method, I considered Schurink's (1998:240 & 243) argument that the aim of qualitative research is not to explain human behaviour in terms of universally valid laws, but rather to understand (*verstehen*) and interpret the meanings and intentions that underlie everyday human action. In order to achieve this, Denzin and Lincoln (1994:202) give scope to qualitative researchers for employing purposive sampling methods in order to seek out individuals where the processes being studied are most likely to occur.

The preliminary criteria considered for participants in this study were:

- Five non-custodial fathers who were awarded custody through variation of the original custody order.

- Only fathers who had applied for variation orders in the period between January 1998 and December 2000 were going to be included in the study. This was to prevent the loss of important data as a result of time lapse.
- Since I only have full command of English and Afrikaans, the participants had to be fluent enough in either of these two languages so that meaningful interviews could be conducted with them.
- I also envisaged including only fathers who already had varied custody orders awarded to them. I anticipated that including those who were still going through the process, might have created unrealistic expectations and as a result, unnecessary distress for them.

3.2.2.2. GAINING ACCESS AND RECRUITING RESPONDENTS.

Since Section 12 (3) of the Divorce Act (Act 70 / 1979) allows access to divorce records for research purposes, and Offices of the Family Advocate have these records available, I approached the Family Advocate in Port Elizabeth but I was referred to the Registrar of the High Court in Grahamstown. Only one respondent was identified in this way but I discovered that custody and divorce files were also stored in Port Elizabeth. This branch of the High Court was then approached to assist me in identifying more respondents. Three other potential respondents were identified from these records, but could not be traced from the addresses on the files. Durst, Wedemeyer and Zurcher (1985:424) also encountered this problem in their study of divorced couples and concluded that the use of court records was not feasible, due to geographic mobility after divorce.

Since a big enough sample could not be recruited in this way, snowball sampling as well as an attempt at theoretical sampling was done until the desired size of sample was reached.

These two sampling strategies are described as follows:

- Miles and Huberman (1994:28) describe snowball sampling as a process that identifies cases of interest from people who know people, who know what cases are information rich. I obtained referrals from one of the respondents, a colleague in private practice, and an acquaintance, by means of this strategy.
- Theoretical sampling is a set of procedures where the researcher manipulates his

analysis, theory and sampling activities interactively during the research process. This sampling strategy is broadly intended to facilitate a process (sometimes called inductive reasoning) whereby researchers generate and test theory from the analysis of their data (Mason1996:100). After I had interviewed John, the fourth respondent, and did a preliminary data analysis, it appeared that, a better co-parenting relationship existed after they discarded adversarial court procedures in favour of an agreement on custody. This was also suggested by the literature I had reviewed prior to data collection (Severson and Bankson 1995:684; Marlow and Sauber1990:1-7; Emery 1994:109&113). A colleague who assisted with recruiting respondents for my study informed me about Carl and the fact that he also had custody of his children in terms of an agreement with the mother. After consulting Silverman (2000:108) who reasons that the theoretically informed flexibility of qualitative research allows researchers to redefine their sample if new factors emerge, which they want to explore, I decided to include Carl in the study.

Part of the rationale for deciding on a qualitative study was because flexibility is built into the design as discussed earlier. This was particularly useful in this study where potential respondents had to be recruited from a very limited number of people. As a result of the difficulty in obtaining an adequate sample size of respondents who met the original criteria I was compelled to allow certain adjustments to those criteria. In this regard two of the respondents (Andrew and Pierre) had orders already varied in their favour, one respondent (James) had his children in his custody in terms of an interim varied order which was awarded two years prior to the interview and one respondent (Carl) had his children in his custody on mutual agreement, pending the variation of the original order. The fifth respondent's (John's) divorce was not finalised yet, but he had his children restored to his custody in terms of an agreement after a two-year long custody dispute. Despite these deviations from the original design I found that the respondents could provide rich and useful data, because there were several vital characteristics they had in common. Amongst others all the respondents had experienced custody disputes of varying duration and intensity, and all of them had their children who were originally placed in the mother's custody, in their custody at the time of the interview.

I made direct contact with the respondent (Andrew) identified from the records at the High Court, because there was no other way of contacting him. All the other respondents were informed about this study, by a person already known to them and they consented to the

referral, before I was informed. As mentioned before, James contacted me voluntarily, after he heard about the research.

The understanding was that participation of all the respondents had to be voluntary. The person referring the potential respondents, provided them with a letter (see Appendix 5), containing sufficient information on the study, so that they could make informed decisions about participation, before their identities were revealed to me. I sent the same letter to Andrew and James after they agreed to participate during the initial telephonic contacts, prior to finalising the arrangements for the interviews.

Although I originally envisaged interviewing only people within the jurisdiction of the Eastern Cape Division of the High Court, it happened that the final sample represented three other divisions of the High Court as well. This makes more sense in retrospect than it did at the time when it was arranged. This was not economically practical in terms of travelling expenses and time, but it added to the richness of the data. Although not intentionally, it also contributed to maintaining the anonymity of the respondents recruited from this much wider geographical area.

3.2.2.3. DATA COLLECTION.

The data collection method utilised in this study was one unstructured interview with a schedule with each of the five respondents (Schurinck 1998:299). Because this is an exploratory study I considered interviews particularly suitable for studying people's understanding of the meanings in their world, and for describing their experiences (Kvale 1996:105). Silverman (2000:94) quoting McLeod also refers to this aspect, when stating that a relatively small number of open-ended interviews enable the researcher "to enter, in an empathetic way, the lived experience of the person or group being studied". In this study, entering in the "lived experience" had the advantage that the reality of the fathers was reconstructed in their own words, an advantage closely related to the objectives of qualitative methodology (Schurinck 1998:300). I also found that this type of interview allowed the respondents to raise issues which were important to them and which were not contained in the schedule. The elaborate description Carl gave of his conversion to Christianity serves as an example of this.

Despite the advantages of the interview as a data collection tool I am aware that it is also open to criticism particularly by those positivists who believe that the social sciences should follow the experimental quantitative methods of the established natural sciences. From that position a qualitative interview based on interpersonal interaction can easily appear to be unscientific. This argument is however based on only one limited understanding of science. Silverman (1993:144) from a different perspective argues that work becomes scientific by adopting methods of study appropriate to its subject matter and by rigorous, critical and objective handling of its data. Kvale (1996:61) in support of this view, holds that the qualitative interview can produce scientific knowledge if “scientific knowledge” refers to methodologically secured new and systematic knowledge. I attempted to achieve this ideal during the entire study.

Another common critique of interview studies is that the findings are not generalisable because the number of respondents is too small. Since this is an explorative study, understanding the lived experience of the respondents is more important than the representativeness of the findings. Rubin and Rubin (1995:35) argue that not everything that is important can be measured with precision and searching for universally applicable social laws can distract from learning what people know and how they understand their lives. It is nevertheless necessary to mention that Kvale (1996: 103) in this regard refers to examples from the history of psychology where Freud and Piaget, for example, focussed on a few intensive case studies which produced significant knowledge that was later found to be generalisable to larger groups.

Objectivity is also a controversial aspect of interviewing. According to Schwandt (1997:104) this term can be defined in more than one way. In one sense it refers to an accurate representation of reality and in another sense it refers to the eradication of human judgement that is regarded as subjective. Although Marlow (1993:71) holds that the objectivity of interviews is limited due to what she calls the interviewer / interviewee reactive effect, she also states that the opportunity to clarify ambiguous questions during the interview increases objectivity. Audio recordings and transcriptions allow review of interviews which can also contribute to objectivity. Kvale (1996:35) does not see the interpersonal dynamics as a serious problem, but suggests that the interviewer must be conscious of it in the interview situation and in the later analysis of the finished interview. The same author (Kvale 1996:64-66) holds that the interview can be an objective research

tool because:

- It can produce reliable knowledge that has been systematically cross-checked and verified and which can be undistorted by personal bias and prejudice.
- It also allows the “object” investigated to speak in the interview conversation.
- Different interviewers may, when following similar procedures in a common interview guide, come up with closely similar interviews from their subjects, although interviews can hardly be replicated.

During this study, I was constantly reminding myself of the risk of contaminating the research as a result of the close interaction between me and the respondents in the interview situation. In this regard I found the advice of Sapsford and Abbott (1992:112) very useful. They describe the correct role for the qualitative researcher as that of the “amiable incompetent”; in other words someone friendly and intelligent but lacking knowledge, someone who has to be told things. This was not a difficult role to adopt because I had no way of gaining an understanding of the motives and experiences of the non-custodial father in this context, other than to allow him to tell me.

The effect the interviewer can have on the interview became obvious in the interview with the first respondent, Andrew. I found that he referred to social workers and how he sees their role (Andrew 517-524), and I did not understand it because it was slightly out of context in that specific interview. On going back to the field notes which I wrote after the interview, I found that I remarked that I felt much more like a fact finding social worker than a data seeking researcher. Sapsford and Abbott’s (1992:111) views on reflexivity, explained how my presentation of myself could have affected Andrew’s account. They hold:

“The core of the open style of interviewing is a very lively appreciation of how you are trying to present yourself and the task and the way in which the informant is making sense of the task and of you (in a word reflexivity). Right from the start of any such project you would be watching carefully whether you came across in your professional identity (social worker, nurse, doctor), or as a student or as a researcher perhaps associated with an academic institution or as someone writing a book or whatever.”

I then considered the possibility that the sense this respondent made of me was more of me in my professional identity than as a student / researcher. This last role was very new to me while I was familiar with the role of social worker. This awareness helped me to be more

careful with the way I came across during the next interviews. In subsequent interviews it was easier because I was more experienced and more comfortable with research interviews.

I had an advantage in something that could easily have been a disadvantage in another kind of study. The fact that I was of a different gender than the respondents, helped me to be more open-minded to what they could tell me, because as a woman “I really did not know”. Although this aspect could also have a negative effect on the interview, I found that the different genders enhanced this study. It is however possible that some men may not confide in a female researcher, but there was no lack of candour on the part of my respondents. When I first contacted James, he actually voiced his surprise that a woman researcher would be interested in listening to fathers.

3.2.2.3.a The interview process:

Since the objective of this study was to enter the subject’s world in a naturalistic way, I left the respondents the choice of location for the interviews. One of the respondents invited me to his home. This proved to be valuable, because he proudly showed me his children’s rooms and I could form a vivid picture of the life they share. Two respondents invited me to their offices during working hours. They were in positions where they could control access to their offices which afforded us the necessary privacy for the interviews. The other two respondents asked me to arrange venues, which was more difficult because I met them in cities away from my home. They were however comfortable with the arrangements and it did not appear that the physical context had much influence on the respondents, but more natural surroundings did help me with entering their worlds.

In this study a schedule (See Appendix 7) was applied as a guideline for the researcher in order to make sure that all the important data was collected. The use of a schedule may suggest more structure in the interview but Schurinck (1998:299) describes this method as unstructured and holds that the schedule only serves as a guideline for the interviewer. Huysamen (1994:144) refers to the same procedure and suggests that interviews fall on a continuum from being completely structured with a questionnaire to being completely unstructured. He suggests that what he calls a “guide” can be used in the interview that is according to him, not completely unstructured. This guide will

consist of topics and aspects of these topics which are relevant to the theme and which the interviewer can bring up during the course of the interview if the interviewee does not do so himself. The schedule or guide for this study was constructed in a way that it both related to the theme of the research and promoted a positive interaction during the interview. Kvale (1996:131) suggests two sets of questions namely research questions which can contribute thematically to knowledge production and interview questions which can keep the flow of the conversation going and motivate the respondents to talk about their experiences and feelings. I attempted to achieve this by including open-ended questions related to the research questions. Although I had a schedule available I used it as suggested by Marshall and Rossman (1999:108) only to explore a few general topics in order to uncover the respondents' views, but otherwise I respected how they framed and structured their responses, which was quite unique in each interview. The interview with Carl serves as an example. Carl gave an elaborate account of his conversion to Christianity that at the time appeared to be out of context. In retrospect I realised that this account fitted the description of a story described by Rubin and Rubin (1995:25&232). Carl told a story in which his message, moral and beliefs were important, because it contained a point which he apparently urgently wanted to make, but may not have felt comfortable enough to say directly, perhaps because of its emotional quality. There is no doubt that it deepened the level of discussion. (Rubin & Rubin 1995:26) This story gave more credibility to his conversion to Christianity which appeared to have had a significant influence on subsequent events in his life for example, the way he values truth (352-358:P11 & 667-678:21), does not steal electricity any longer (361-363:11&418-421:13), forgives his wife (785-787:P24), and prays for his "kiddies" safety (828-830:26).

It appeared that the respondents actually enjoyed the interviews, and there was some laughter in all the interviews. None of the respondents gave the impression that they were in a hurry to terminate the interviews which eventually lasted between 60 and 90 minutes. Carl actually at some stage offered to fetch me more tapes from his home should it become necessary. It is possible that these interviews resembled in a way the feminist approach by focussing on those who have little or no societal voice. Literature (Luepnitz 1982: 157; Lamb 1997:205 Joseph Cordell J D & Van Zyl 1997:66) as well as the data from the interviews (Pierre 301; John 372; James 722) indicate that fathers may

not always have a voice in custody decisions. By allowing these fathers to “talk back” was then giving those who have been silenced a voice through interviews and this is what possibly contributed to the good rapport I experienced with the respondents. (Rubin & Rubin 1995:36).

3.2.2.3.b Transcriptions:

The interviews were tape-recorded with the participants’ consent and were transcribed verbatim. Demographic details were obtained before I switched on the tape-recorder and that was filled in on the interview schedule. I found that the respondents were comfortable with the tape recorders and although I had to keep an eye on the tape to make sure that it did not run out, it was still less distracting than taking notes would have been, had I not used a tape recorder. In the interview with Carl I became so absorbed in what he was saying that the tape did run out without me noticing, but when I noticed I made a point to remember what he told me, and wrote it down directly after the interview. I did not find it necessary to make notes during the interviews but I wrote some remarks and my own reflections down as soon as was possible after the interviews.

I transcribed the interviews as soon as possible afterwards. I deliberately chose not to seek assistance with this mammoth task because I anticipated that it would give me more time to remain in the worlds of the respondents. I was not disappointed, because the many hours I spent transcribing the interviews extended the time I could spend “in their shoes” and I experienced it in a more intense way because this situation was less demanding than the interpersonal dynamics of the interview situation. As a result I was better able to capture the essence of the respondent’s accounts and the interviews made much more sense to me. While attempting to do the transcripts as reliably as possible I also remembered Silverman’s (1993:149) caution that the search for perfection is illusory and time-consuming and that the aim should rather be to arrive at an agreed transcript adequate for the task at hand. In order to ensure agreement on the transcripts, I sent it to all the respondents mostly by means of electronic mail and invited them to make the amendments they liked, before returning it to me. James said that he was embarrassed by his “ranting and raving” during the interview but did not want to change it and John also said that he was not happy about all his uhhh’s and ah’s but he did not want to change anything. Carl voiced his appreciation for the work that

went into the transcript and said that he was going to keep it with his other valuables. None of the respondents wanted to make any amendments to the transcripts.

Field notes with descriptive accounts of the respondents and their settings were kept and I also made reflective notes on my experiences of the interviews and ideas that emerged as the study progressed. I found it convenient to enter these notes in the relevant files in my computer even when I first wrote it in a notebook. Now that I realise the value of these notes I do regret that I did not make more notes in the beginning.

The data collection tool I decided on, may have disadvantages, but I agree with Burgess, quoted by Silverman (1993: 95), in saying that the open-ended interview is seen to give greater depth than other research techniques because it is based on meaningful understanding of the person and wholeness in the human inquiry. To me it was also a powerful instrument for entering the reality of these fathers and for understanding experiences and reconstructing events in which I will never be able to participate (Rubin & Rubin 1995: 1).

3.2.2.4. DATA ANALYSIS.

Miles and Huberman (1994:10) posit that qualitative data provides thick descriptions that are vivid, nested in a real context and have a ring of truth that has strong impact on the reader, but the strength of this data, they argue rest with the competence with which their analysis is carried out. They describe data analysis as consisting of three concurrent flows of activity: data reduction, data display and conclusion drawing / verification.

3.2.2.4.1. Data reduction.

Miles and Huberman (1994:10) hold that data reduction already starts when the researcher decides on a conceptual framework, research design and the cases to be studied and so forth. In this study one of the first steps of reduction was when I decided to include only fathers that have applied for varied orders as opposed to all fathers with custody awards. Further episodes of reduction are coding, teasing out themes and forming clusters which were implemented as follows in this study.

An inductive approach was used for this study and therefore the concepts, themes and categories according to which the data was organised and coded were not developed prior to

collection, but emerged from the data collected (Marlow 1998:213). Schwandt (1997:16) refers to this method of coding as “a grounded, a posteriori, inductive, context-sensitive scheme” where the analyst works with the actual language of respondents in order to generate codes and categories and works back and forth between the data segments and the codes and categories to refine the meanings of categories. In order to ensure that this categorising produces useful “data slices”, Mason (1996:120) emphasises that the intellectual puzzle consisting of one’s research questions should also constantly be kept in mind during the back and forth interaction.

I found reading and rereading the transcripts as suggested by Marshall and Rossman (1999:153) most helpful in becoming familiar with the data in an intimate way. In addition to this, the fact that I did the transcriptions myself was invaluable in becoming more familiar with the data. While dealing with the data I remained aware of Miles and Huberman (1994:8-10) warning that qualitative data requires plenty of care and self-awareness on the part of the researcher, as well as vigilance over his or her own presuppositions. Schwandt (1997:135) refers to a critical self-reflection on one’s biases, theoretical predispositions, preferences and so forth, as reflexivity and claims that it can be salutary for any study. An important issue I had to address was whether I had a greater admiration for a single parent who is the father, because he is performing a so-called non-traditional role. I concluded that the possibility did exist but in the interviews it only contributed to a more empathetic understanding of their situations. This awareness however helped me to be more careful and rigorous in the analysis of the data.

Rubin and Rubin (1995:238-241) refer to coding as the process of grouping interviewees’ responses into categories that bring together similar ideas, concepts or themes that were discovered. They hold that this proceeds in stages and I attempted to reduce my data more or less according to the process suggested by them, but I also followed some of the steps suggested by Tesch in Poggenpoel (1998: 343). After completing the first two interviews as well as the transcriptions, I read through each of them and listed the ideas and concepts that emerged in the margins. After completing this process for both interviews, a separate list was made of all the ideas and concepts that emerged. Similar ideas and concepts were clustered together and organised under categories and subcategories. With this list in hand, I returned to the data. The preliminary organising scheme was tried again and new categories and codes that emerged were also entered. Eventually the categories were reduced by

grouping related categories together under themes, which happened to be closely related to the original research questions (Appendix 8.). I repeated the process just described after every subsequent interview, and added new categories to fit the data. The result was that I had to go back to the already coded data for recoding every time new concepts or ideas emerged. This could be a tedious task if one works with a large set of data but I did not find the data from this relatively small sample too difficult to manage. The repeated readings of the data also helped me to become familiar with the interviews and the emerging data. I was aware that computer software was available for data analysis but I did not have so much data that I had to use the computer for the creative part of coding, because I agree with Bryman and Burgess (1994:221) that software cannot substitute for the imagination. I did however find the basic word processing program of my computer very useful for developing the data display, which I will discuss in the following section.

3.2.2.4.2. Data display:

Miles and Huberman (1994: 11) describe data display as an organised compressed assembly of information that permits conclusion drawing and they advocate more systematic powerful displays and a more inventive, self-conscious iterative stance to their generation and use. I attempted to follow some of these suggestions by employing the following methods of display.

I printed all the interviews and marked the codes on these copies. All the material with the same codes were put together and for this step the word processing function of the computer was very useful. I colour coded each respondent's transcript with a different font colour and also used the same colour file cover for storing hard copies of the transcript and other documents relevant to that respondent. Each chunk of data pertaining to a specific subcategory was copied from the original transcript and pasted under that subcategory but in the font colour assigned to that respondent (See appendix 9). All the data relevant to that subcategory was assembled in the same place, but the use of the respondent's own colour helped to retain the individuality of the data and to an extent to preserve the context in which it was said. This process was repeated until all the data was sorted under the relevant categories. This method made it possible to use the same chunk of data under different categories where it was necessary and also to move chunks of data across categories when

other links emerged. After the process was completed, all the transcripts were perused once again to make sure that no data was lost. With this assurance, the pages of assembled data, named according to their subcategories, were printed. These pages with the different subcategories were filed in a ring binder under the relevant categories and themes. The data could then be studied in this format but it was also possible to take the pages out of the file for display, or to move the different pages across sections. The same files were saved on the computer, which allowed me to copy the chunks of data when I wrote up my findings. This method was not only custom-built to suit my personal strengths and weaknesses, but modern technology also freed me from the drudgery of manual displays so that I had more time to devote to the interpretation of the data. An additional advantage of this method is that it is easy for me to put my cards on the table for inspection as suggested by Kvale (1996:209) because I can present examples in the final report.

The control measures for interview analysis suggested by Kvale (1996:207-209) are explication of procedures, which I have attempted to do in this chapter, as well as the use of multiple interpreters. In order to meet this standard I requested a fellow student as well as one of the lecturers (not my supervisor) to check the final codes and categories I used. After I had analysed James's interview I also requested him to check it and he agreed with the way it was analysed.

3.2.2.4.3. Conclusion drawing and verification.

Conclusion drawing and verification form the third stream or flow of activity which, according to Miles and Huberman (1994:12), are interwoven with data reduction and data display before, during and after data collection. This flow of activity involves the researcher in making interpretations and drawing meaning from the displayed data. It appears that this is the same process Sapsford and Abbott (1992:122) refer to as "second-order analysis" where one goes substantially beyond what any one informant wants to say about his life and look for how respondents typify, stereotype or categorise the field of research. From the patterns that emerge in this way, conclusions are then drawn. Although final conclusions may only appear after data collection was completed, Miles and Huberman (1994:11) opine that the qualitative analyst will, from the start of the data collection process begin to decide about the meaning of things, and will start noting regularities, patterns, explanations,

possible configurations, causal flows and propositions. These authors suggest a number of tactics for generating meaning. In this study I mostly applied the noting of patterns and themes and clustering which already started during data reduction but was as suggested by these authors, held lightly in my mind, until the end, in order to avoid premature closure.

Miles and Huberman (1994:11) describe conclusion drawing as only one half of a Gemini configuration, with the other twin being verification, which can be as brief as a fleeting second thought crossing the analyst's mind or thorough and elaborate with lengthy argumentation and review among colleagues. For this purpose Sapsford and Abbott (1992:122) emphasise the importance of constantly testing tentative conclusions by returning to the data to look for contradictory evidence and to be continually reflexive on how the researcher's purpose, background assumptions and prejudices have influenced the process. While Miles and Huberman (1994:263-275) suggest a number of tactics which can in addition to these, be applied to increase the confidence of the reader as well as the researcher himself in the findings, I found two of the suggested tactics particularly useful for confirming my findings. One way of submitting "my beautiful theory to the assault of brute facts" (Miles and Huberman 1994:263) was by checking out rival explanations from the literature I had reviewed. The other tactic which is, according to the authors, intended for taking a sceptical demanding approach to emerging explanations, and which I found particularly suited for my study was getting feedback from informants. I considered my respondents capable of evaluating my findings because I recognised that they were bound to know more than I ever will about the pursuit of custody. I chose this approach for confirming my findings for other reasons as well. Although I had to acknowledge the fundamental limitation of this research to prove validity and reliability, I committed myself to the authenticity of the study. I considered feedback from the respondents as one way of ensuring just that. Another reason, which is according to the authors quasi-ethical, is that respondents have the right to know what was found. This will be discussed at greater length in the next section. None of the respondents altered any of the findings.

3.3. ETHICAL CONSIDERATIONS.

Kvale (1996:109-111) describes an interview inquiry as a moral enterprise because the personal interaction in the interview affects the respondent and the knowledge produced by the interview affects our understanding of the human situation. With this in mind the

following ethical issues were considered in this study.

3.3.1. *PROTECTING THE INTERESTS OF THE PARTICIPANTS.*

I was committed to protecting the interests of the respondents at all times. In the original design I planned to interview only men that had already been through the process of variation of the custody order in order to reduce the risk of harm to the participants. I anticipated that including those that were going through the process could have created unrealistic expectations and unnecessary distress for them. As a result of the problems I encountered in recruiting a big enough sample, I had to deviate from the original plan and I had to include fathers whose orders were not final yet. I was however satisfied that my concern was addressed within their individual circumstances. The three relevant respondents gave informed consent to the research and were therefore aware of the objectives of the interviews and the fact that the data could not be used beyond this study. Two of them (John and Carl) had already obtained signed agreements to a custody award in their favour from the mothers and these were already endorsed by the family advocate and referred to the High Court where it was likely to be incorporated in an order of court. The other respondent (James) who contacted me of his own accord, was from the legal profession and was fully aware of the process that influenced custody decisions and therefore did not have unrealistic expectations from his participation in the study. He also gave informed consent. Two months after the interview he informed me that his application for a variation was rejected, and I was able to offer him some support without the risk of contaminating the data which was already collected and transcribed.

According to Kvale (1996: 36) an interview can be a rare and enriching experience for an interviewee while Oppenheim (1996:69) states as an ideal for interviewing that the respondents should come away with a vague feeling of pleasure at having been of help and having had an interesting conversation with an attentive professional. Without asking directly (which I did not consider appropriate) any claim to the enriching effect of the interviews that I conducted, will be merely speculation. What I do know however is that pleasant informal conversation with all the respondents continued after the tape recorder was switched off and none of them was in a hurry to depart. Pierre showed me the children's rooms, James invited me to his house to meet the children and Carl described the interview as "it ties up"(Line 953) after the emotionally demanding episode he had with his

ex-wife prior to the interview.

I am confident that no harm was done to the respondents mainly because I carefully applied the basic principles of interviewing like respect and courtesy, empathy and understanding, confidentiality, honesty, sincerity and individualisation (Schurinck 1998:308) which I am familiar with, because these are also the principles applicable to the social work profession, which I have been practising for years. Another attempt to honour their lived experiences and voices throughout the process, was by asking the respondents for some advice to fathers in similar positions (Marshall and Rossman 1999:163-164).

Lee (1993:114) emphasises the importance of termination of individual interviews and that feedback should be given to the respondents and Allen and Skinner (1991:210) ask themselves how differently we may analyse if we knew that we have to report back to the respondents. In this regard I committed myself to inform the respondents once my study has been completed and to make it available to them if they so wish. After the interviews I sent the transcripts to them and also thanked them again for their participation. Before I finalised my report I sent a draft of my findings to the respondents. This was once again not only done to ensure the authenticity of the study, but also as suggested by Marshall and Rossman (1999:163) to avoid taking away their power and control over the representation of their lives. Rudestam (2001:100) also sees this procedure as a way of elevating the respondent from the role of participant to the role of co-researcher. This interaction with the respondents, could have been time consuming, was it not for modern technology. All the respondents had electronic mail facilities, which I could utilise for this purpose. This procedure also made it easier for them to respond, and it was a safe way of ensuring that they receive the material and for securing confidentiality.

Besides protecting the interests of the respondents, I also felt a moral obligation to the well-being of their children. In the interview with John, I recognised symptoms of child depression when he told me about his one child. Although I did not want to contaminate the data with my input at that point, I mentioned it afterwards and advised him to consult his social worker. I waited to do this until after the research interview was terminated.

3.3.2. *CONTRIBUTING KNOWLEDGE TO AMELIORATE THE HUMAN CONDITION.*

In order to be ethically justified, research with human participants should not only serve

scientific interests, but should also contribute knowledge to ameliorate the human condition and enhance human dignity (Kvale 1996:109). I consider this research suitable to meet this standard because a richer understanding of what fathers experience when they challenge maternal custody orders, will be of value for counsellors and mediators and could add to the developing body of knowledge which informs custody decisions in the first place.

Wallerstein in Johnston and Campbell (1988: ix) aptly describe the human condition which results from custody disputes by saying:

“ Divorcing parents who are locked in passionate unremitting conflict over their children baffle and dismay judges, attorneys and members of the mental health professions.....The consequences are frequently tragic. The persistent quality of the conflict, combined with its enduring nature, seriously endangers the mental health of the parents and the psychological development of the children”

Kruk (1994:16) believes that the social work profession can make a considerable difference to these families in transition, but holds that there is a paucity of information about one member of these families, the father. If the knowledge produced by this study can contribute in a small way to ameliorate the human condition in some families altered by divorce, I believe that it is ethically justified.

3.3.3. *ETHICAL ISSUES IN DESIGN.*

Informed consent was obtained from all participants. On arrival for the interview they were given information on the research and were also given the option to give written consent for participation. None of the respondents had a problem with this. I kept one copy of the letter of consent (Appendix 6) and gave them one copy which I suggested they read again after the interview so that they could still withdraw or change their data if they felt uncomfortable about it afterwards.

The respondents were given the assurance that confidentiality would be maintained at all times by using pseudonyms and by changing detail that could identify them. Andrew, John and Carl indicated that they were not very concerned with this aspect, but they agreed that the identities of other parties implicated in the interviews had to be considered as well and they accepted this principle as essential.

3.4. LIMITATIONS AND CONCERNS.

- It will not be possible to generalise the findings of this study, because purposive non-probability sampling methods were used and the sample was too small to have any claim to representativeness. For the purpose of this study it was however more important to collect data on the motives and experiences of fathers seeking the variation of custody orders, than to collect data to determine how representative they are.
- Because of the cost of High Court procedures, I first anticipated that this study would only focus on fathers from the higher socio-economic groups, while I was aware that there were non-custodial fathers who were equally concerned about their children but who could not afford a High Court hearing. I had to accept that they were beyond the scope of this study, but the possibility did exist that they could be considered for future research. After the interviews it however became evident that not only the higher socio-economic groups were represented. John said that their combined estate was not more than R10 000 and Carl did not have electricity in his house.
- Although marital and family issues should ideally be studied from the perspectives of the other parties as well, the focus of this study was the father's motivations and experiences and none of the other family members could answer for them. Future research on the views of the mothers whose custody was challenged or even of the children whose custody orders were varied may provide other valuable insights.
- The fact that I have, in the course of practising social work, been involved in the investigation of custody matters on numerous occasions, may lead to questions about researcher bias. I have however in practice and also during the course of my studies recommended both paternal and maternal custody depending on which parent, in my professional assessment, could best serve the interests of the children concerned.
- I am aware that custody matters are also decided in the Southern Divorce Court and it is unfortunate that respondents from this milieu could not be recruited for the sample.

3.5. ASSESSMENT OF THIS STUDY.

The ethical ideal that research should serve to enhance the human situation, compels every researcher to conduct investigations of quality and to communicate findings to the scientific

and general communities that are convincing and trustworthy, in other words noteworthy to these audiences (Kvale 1996:257; Schwandt 1997:164). Positivists, assuming that there is a single tangible reality, achieve this by assessing the validity and reliability of their quantitative projects. The constructivist position to which I subscribe, however is based on the assumptions that there are multiple ways of knowing and that the human experience consists of multiple realities. The challenge researchers from this position face, is therefore somewhat different. In order to convince their audiences they have to represent the multiple realities revealed by the respondents as adequately and “qualitatively” as possible. Some authors (Rubin and Rubin 1995:85 & Krefting 1990:215) hold that criteria appropriate to quantitative research are not adequate for the detail of qualitative research, and that attempts to apply those criteria have the potential to distract rather than to clarify.

The need for a different language to fit the qualitative view, is indicated by Agar in Krefting (1990:215). For this purpose Lincoln and Guba (1985:290-296) suggest terms such as, credibility, dependability trustworthiness and confirmability while Rubin and Rubin (1995:85) believe that the credibility of qualitative work can be judged by its “transparency, consistency-coherence and communicability”. Labe (2001:40& 57) however considers these attempts to rename the concepts of validity, a debate on the level of semantics that did not succeed in solving the deep problem of legitimation in non-positivist social research, which she suggest should be accepted as a fundamental limitation. I tend to agree with this author.

While acknowledging the limitations of this small study I am satisfied with its authenticity which Silverman (1993:10) claims rather than reliability is often the issue in qualitative research. This authenticity, which Bryman and Burgess (1994:219) describe as the views of those being studied, is what I attempted to retain, by presenting the rich thick descriptions (Rubin & Rubin 1995:35) of the respondents as far as possible. I trust that this will also be the conclusion the reader arrives at after having been informed about the findings, which will be presented in the next chapter.

CHAPTER 4

PRESENTATION AND DISCUSSION OF FINDINGS.

4.1 INTRODUCTION.

In this study I attempted to explore the lived experiences of five fathers, by inviting them to tell me about their pursuit of custody of their children. I will present and discuss the findings from these interviews in this chapter. In order to retain the authenticity of the data, I will allow the respondents to talk to the reader themselves as far as possible.

Jennifer Mason (1996:6) is of the opinion that all qualitative research should be formulated around an intellectual puzzle. The puzzle which lead to this study, consists of the following questions:

- What were the experiences of the father during the marital breakdown and divorce process when custody was awarded to the mother?
- What happened during the post-divorce phase that motivated the father to apply for the variation of the original custody order?
- How did the father experience the process of varying the custody order?

The findings will be discussed in terms of the themes and categories which emerged from the interviews, but the construction of the sample and the demographic detail of respondents will first be presented.

4.2 CONSTRUCTION OF THE SAMPLE.

The sample consisted of 5 fathers who had experienced custody disputes of varying duration and intensity, and all of whom had their children (who were previously in the mother's custody) in their custody at the time of the interview. It is however necessary to mention that James informed me 2 months after the interview that his application was rejected regardless of the family advocate's recommendation in his favour and the fact that the children had been in his care for 2 years.

4.3 DEMOGRAPHIC DETAIL OF RESPONDENTS.

The respondents recruited, were within the jurisdiction of four different divisions of the High Court of South Africa. Two were in the Eastern Cape, one in Kwazulu Natal, one in the Western Cape and one in the Orange Free State.

Other details are presented in table 4.1.

Table 4.1.

| NAME | Duration of marriage that ended in divorce | Current marital status | Number of children from marriage | Girls now in his custody | | Boys now in his custody | | Duration of current custody arrangement |
|---------------|--|---------------------------|----------------------------------|--------------------------|---------------|-------------------------|--------|---|
| | | | | No | Age | No | Age | |
| Andrew | 8 years | Single | 1 | 0 | | 1 | 13 | 2 years |
| Pierre | 14 years | Single | 2 | 0 | | 1 | 18 | 4 years |
| James | 15 years | Single | 4 | 3 | 18 12 9 | 1 | 10 | 2 years |
| John | 7 years | In a serious relationship | 2 | | | 2 | 7 4 | 3 months |
| Carl | 9 years | Single | 2 | 1 | 11 | 1 | 9 | 1 year |

From this table it appears that the marriages which ended in divorce lasted between 7 and 15 years, with two children being born from each of the marriages of **Pierre**, **John** and **Carl** while **James** had four children and **Andrew** had only one child born from his marriage.

Of the ten children in paternal custody, four were girls and six were boys, and their ages ranged from 4 to 19 years.

Split custody where each of the parents has sole custody of one of the children was only relevant in the case of **Pierre**.

Four of the five fathers, were single and only **John** was in a serious relationship.

Although Bosman-Swanepoel, Fick and Strydom (1998:78) maintain that there are families in which complete role reversal has occurred, with the mother fulfilling the bread-winning role while the father stays home doing the housework and caring of the children, this was not true of any of the pre-divorce arrangements of the respondents included in this study.

In another study on custodial fathers, Arenstein (1989:228) found that contrary to her expectations, the fathers she studied were not a younger more radical group with unusual lifestyles. This description appears to be relevant to the respondents involved in this study as well.

I will now proceed to present the responses of these fathers on the different research questions. Translations of the Afrikaans responses (which are numbered) are available in Appendix 11.

4.4. THE ORIGINAL MATERNAL CUSTODY ORDER.

4.4.1. PRE-DIVORCE PARENTING.

Pre-divorce parenting was an area that the original research questions were not concerned with, but which proved to be significant to three of the respondents (**Pierre, James and John**). Since flexibility is built into the design of this qualitative study and since I used an inductive approach, which allowed for concepts, themes and categories to emerge from the data collected, I decided to include pre-divorce parenting in the discussion of the data. In retrospect this was appropriate because it eventually contributed some insights which can be of value.

One father said that he was always very involved in all areas of his children's lives (**Pierre**, 276-289) and he showed me a photo taken on an overseas trip on which he accompanied his child when he was representing his country in sport. **John** said that he had to care for his two young boys while their mother was hospitalised after three suicide attempts before they separated. After one of her suicide attempts he sent her on a month-long overseas holiday while he looked after the home and children. His youngest child was between two and three years old then and he claimed that he was their source of security (*steunpilaar*) and their role model (Lines 18, 19 & 213-214). Galatzer-Levy and Kraus (1999:195) also claim that fathers can parent even their infants and toddlers as effectively and developmentally

supportively as mothers. This also corresponds with the statement of Bosman-Swanepoel, Fick and Strydom (1998:78) that South African fathers are already far more involved in childcare than they used to be.

Andrew on the other hand did not mention how he was involved in the pre-divorce parenting but he gave an indication of his general perception of parenting roles which was much more a reflection of the traditionally accepted role. He said: “.....or even being married you're still independent because you know that the wife is there to look after the kids.....although you put your share in..... but it's always the wife that normally does the cooking and the washing and looking after the kids.”(Lines 557-562)

James said that he did play rugby with his son when he came home from work, but “.....you tend to take them for granted when you're married, yes, it's only when they're taken away from you that you realise just how important they are and how much they need you.” (Lines 584-587) This statement perhaps refers to the same marginality of the father's relationship with his children in the nuclear pre-divorce family, that Simpson (1998:101-102) describes. This author sees this as rarely problematic in the intact family, but after divorce he holds that this marginality is not only highlighted but it is actually compounded when the father realises the full sense of detachment, disengagement and disempowerment in relation to the mother-child dyad.

4.4.2. FACTORS DURING THE MARITAL BREAKDOWN PHASE.

Andrew did not mention anything pertaining to the marital breakdown phase, but **Pierre** said that his ex-wife left him for another man, and when he discovered it she had already left him and took the children with her and the divorce became inevitable.

John described how problems occurred in their marriage after he changed work. He worked very hard in his new position and said that he sometimes neglected his family as a result. He nevertheless reaped the fruit when he was promoted to a managerial position after three years but some mutual blaming did take place when the marriage broke down (Lines 317-321). Before and after their relocation, his ex-wife attempted suicide three times and subsequently received psychiatric treatment. He sent her on an overseas holiday after the third attempt but when she made another attempt on her return, they separated and they agreed that he would keep the two young boys. This arrangement did not last long and

eventually the children were moved backwards and forwards between the parents, with court hearings and lawyers involved every time (Lines 13-61).

James told me about his ex-wife's serious drug addiction problem that resulted in him spending an average of R2000 per month on prescription drugs. "*.....and she was pumped full of drugs, anti –depressants, tranquillisers, analgesics, the whole repertoire, barbiturates you name itwhich I financed over the years*"(Lines37-40 &48-49). His wife eventually left him and he was initially denied access to the children.

Both **Carl** and his wife smoked dagga and other problems like alcohol abuse and family violence occurred which he described as follows: "*Physical hurt ja she broke my eardrums thrust a knife in my leg she did a lot of things that was really physical*" (Lines 502-504). "*.....things were very very very complicated between my ex-wife and I because she had been ongoing with the drugs and with the drinking and stuff like thatI just did it to participate....., and then I went off the rails worse than my wife ever was* (Lines113-117).

4.4.3. **FACTORS DURING DIVORCE.**

Pierre, Carl and **James** did not initiate their divorces while **Andrew** and **John** went into mutual agreements with their ex-wives to get divorced. All the respondents reacted differently when divorce proceedings were instituted against them.

Andrew said that although it is out of character for him, he did not defend any claims from her side. "*.....what's the use of all this fighting so I just said... O K well there.....you can have this and this and this and then obviously custody too*" (Lines 8-12).

James however did defend his wife's claim for custody, because he thought that such a ruling would be contrary to the children's best interests. What he calls the *energetic approach* (Line10) of his ex-wife's three different lawyers however, resulted in volumes upon volumes of applications and correspondence so that he eventually decided that he could not carry on with the case any longer, because his financial resources were limited. "*.....as a result of blackmail on her part we did settle the divorce favourably for her.....I accepted that this is how..... the system works and.....I settled. I was happy to settle the case just to get it finalised and leave it at that and hoped that now things.....we could carry on with the rest of our lives*" (Lines 70-74)

Like **James**, **Pierre** was also not happy about the custody decision in favour of his ex-wife, but since the costs were *frightening* (Line 68) he did not defend it in court.

Carl and his ex-wife were contemplating divorce when she asked him to accompany her to the sheriff of the court, where he was shown a document, which stipulated that they were getting divorced. He refused to sign this document which happened to be the official summons for divorce and before he knew it he was divorced and his wife left him with only two plates and two knives and forks and a bed. She also took the children since custody was awarded to her (Lines 26-42 & 347)

In **John's** case they mutually agreed to separate but the divorce was still not finalised after almost eighteen months, since the family advocate's recommendation was still pending.

Like the respondents in this study who were disillusioned when confronted with the financial implications of a High Court dispute and the unlikelihood of succeeding, Simpson (1998:90) also refers to many fathers who, entertain ideas of contesting custody of their children during divorce, but whose hope is dashed by the contrary advice of solicitors and the stark realities of single parenthood and finance. Hence it appears that many fathers withdraw from the battlefield, and mothers get undisputed custody of their children, while paternal custody awards remain the exception in South African courts (Van Zyl 1997: 65).

4.4.3.1. EXPERIENCE OF THE FAMILY ADVOCATE AND CUSTODY ASSESSMENTS.

Bosman-Swanepoel Fick and Strydom (1998:34, 36) explain that the family advocate is obliged in some cases to institute an enquiry and in other cases he or she has discretion to institute an enquiry (Section 2.5.2.2).

In **Andrew's** case he was not aware of any custody assessment at the time of his divorce. He knew where the Office of the Family Advocate was, because he had to fetch "papers" to hand in for his divorce but his impression was that they were just happy to see that he accepted that his ex wife was getting custody (Lines 461-465). "*No....I don't think anyone knows about the family advocate.....oh gee whiz.....I didn't know. You know was there someone like that around?*" (Lines 513-516).

The fact that **Andrew** did not contest the custody order in favour of the mother may explain the rather insignificant role the family advocate played in this custody decision, because an obligatory enquiry is only instituted by the family advocate if requested by any of the parties

or the High Court (Bosman-Swanepoel et al 1998:34). According to Bosman in Hoffmann and Wentzel (1992:56), custody evaluations are only conducted in cases where a high level of conflict between the parties prevents them from reaching a settlement, which was not applicable to **Andrew's** case. This was possibly also the case with **Carl** who also did not mention any involvement of the family advocate at the time of his divorce.

The Office of the Family Advocate was more involved in **Pierre's** divorce and he felt that "*he did not have a hope in hell*"(Line 71) and that he would have been "*outgunned*" (Line 78) as a result of the family advocate's recommendation in favour of a custody award to the mother. He also had some concerns about the role they played which he described as follows:

- "*... they didn't come and and see how we lived.... or interview close family or brothers and sisters or it was just like a very cold clinical thing*" (Lines 443-446)
- "*.....they don't actually look at where's the best place for the kids to go as far as I am concerned...they just stick the kids with the mother and when things don't work out then OK they'll look at it again* (Lines304-305)
- "*I mean his three and a half years of misery could have been avoided if they just really investigated the thing properly.*" (Lines323-324)
- "*They did not do their homework at the time of the original custody investigation.*"(Line 404)
- "*.....the adviser in my personal view was totally uselessyou know it was almost like she had a standard set of questions she had to ask and that was it.*"(Lines 419-426)

Pierre's dissatisfaction does not appear to be unique, because there are authors like Johnston and Campbell (1988:13) who warn that helping professionals can fuel the conflict between divorcing parties when those parties feel that they did not get fair treatment. Another aspect which evaluators should keep in mind is mentioned by Galatzer-Levy and Kraus (1999:219) who hold that unconscious and conscious distortions are likely to become important as parents try to "win" custody and therefore they emphasize the need for obtaining collateral information (Section 2.5.2.3.).

Robinson (1993:184) opines that it is a natural tendency to identify with one of the family members and to unwittingly take sides, but she also warns that it can exacerbate the conflict and she suggests that a systemic view of the family undergoing traumatic changes should rather be used to constrain this tendency. Considering the concerns raised by **Pierre**, it is not

clear whether a systemic approach was applied when this custody assessment was done.

Pierre also mentioned that his son's expressed wish to stay with him at the time of the divorce when he was about ten years old, "*meant nothing.... because I think around thirteen, fourteen they start basically listening to what the kids want.*" (Lines 316-320) In this regard, Bosman-Swanepoel Fick and Strydom (1998:5) emphasise that every child has a right to be considered as a separate person with individual rights which *inter alia*, is the right to express his or her opinion as to which is considered to be the most appropriate placement at the time of divorce. Froneman (1999:128) also holds that consideration should be given to the preference of the child, taking in account factors like the motivation, age, maturity and emotional state of the child at the time of divorce.

John eventually approached the family advocate after there were already a number of social workers from private welfare organisations as well as social workers in private practice involved in their custody evaluation (Lines 64-66). These reports were contradicting each other and therefore the family advocate advised them to appoint an independent social worker for a custody assessment. They both agreed to accept this social worker's recommendation but the condition was that **John** carried the cost of the assessment (Lines 75-80). **John** stated that he was in the privileged position that he could afford to pay for this assessment because he concluded that the social workers at the High Court did not have the manpower or the time to do a thorough investigation (Lines 185-188). This concern was also raised by Van Zyl (1997:31) who acknowledges the skills of social workers in obtaining social histories and for interviewing small children but this author states that social workers are often overworked and that lawyers constantly complain about the length of time social workers take to complete reports.

Like **Pierre**, **John** also felt that the social worker from the family advocate's office should pay home visits before making a recommendation to the court but they informed him that it was impossible (Lines 568-570). Considering the guidelines and standards for conducting child custody evaluations presented by Stahl (1994:223) this is not an unrealistic expectation because this author suggests multiple avenues of data collection like collateral information, home visits, observations, school reports and so forth.

James did not mention any involvement of the family advocate in his divorce, possibly also because they eventually settled the custody dispute. Given the mother's problem of substance abuse, a discretionary custody evaluation would not have been out of place,

(Section 2.5.2.2.). According to **James** “..... *what happened was even after we’d signed the deed of settlement and around the time the divorce order was granted and there after it was clear that she was still pumping herself full of drugs on a massive scale*” (Lines 86-89). This situation may have justified such an enquiry.

4.4.3.2. EXPERIENCE OF LAWYERS AND ADVOCATES.

Andrew handled his own divorce with only some guidance from a lawyer friend. He voiced his feelings about legal representation as follows: “.....*I’m sure there is an easier way...why do you need.....lawyers on either side fighting each other.....and the two of them are just sitting back....the parents actually sitting back....the lawyers are fighting and they’re earning all the money*” (Lines 473-478). What Andrew said was reminiscent of Johnston and Campbell’s (1988:39) argument that the motivation to continue the dispute sometimes drew its energy from the attorneys themselves and not from the parties (See section 2.5.2.5.). This was apparently also James’s experience which he described as “*the energetic approach*” (Lines 10 & 14) of his ex-wife’s three different lawyers, which resulted in volumes upon volumes of applications and correspondence so that he eventually decided that he could not carry on with the case any longer.

John who had to employ a lawyer every time he wanted access to the children (Lines 31 & 62), also found it difficult to understand why legal costs were so high and he referred to a lawyer as an “*uitbouter*”(exploiter). As far as these perceptions of lawyers are concerned, Davis quoted by Robinson (1993:215) found evidence in his study of what he calls “litigiously gladiatorial solicitors” but he contends that the figures were much less than the popular belief and only 19% of the clients in contested applications considered their lawyers needlessly aggressive. It appears that this could have been the case with **Pierre** who was aware that “*lawyers are quite happy to get hold of the money in your estate and they will suck you dry*” (Line 110), but he admitted that his lawyers were “*just truthful*” when they said that he really “*did not have a hope in hell*” of winning the case, after the family advocate recommended maternal custody (Lines 309 -313).

John also found that meetings between him and his ex-wife together with their lawyers normally ended in a confrontation after not more than five minutes when instead of discussing their problems, they were arguing about trivialities for example about a child’s

soft toy that was not sent back after a visit (Lines 416-424). Johnston and Campbell (1988:39) found that the manoeuvres by attorneys as they formulate their clients' positions, orchestrate their claims and engage in tactical warfare with other attorneys, serve to entrench the parties' dispute. (Section 2.5.2.5.).

Carl's divorce was unopposed and therefore there was no lawyer involved.

4.4.3.3. EXPERIENCE OF LEGAL SYSTEM AND JUDGES.

John described his experience with the legal system as “..bleddie frusterend..... *Frusterend is nie die woord nie dit grens aan malligheid genuine die hele sisteem*¹ (Lines 393-394). This was **John's** opinion while **Pierre** also said that he actually “*tore his hair out with the legal system*” (Line 93). It appears that the respondents' major objection was what **John** called a *biased rule* regarding custody decisions. He said that the woman knows that she will get the children in a divorce case (Lines 204-206). According to **Pierre** it had nothing to do with what is right or wrong but the outcome depended on which party had the money to pay the best lawyer or advocate. He also felt that they do not listen to fathers, and unless the mother is a drug addict there's “*no hope in hell*” for the father to get his children (Lines 301-303). In the same vein **Andrew** stated: “*But I think it's unfair that the woman gets the custody all the time. What the reason is I don't know. I don't think anyone can give you a proper reason why the woman must get it all the time. I think because of the laws that the woman gets it..... I don't know whose decision that is. It seems to be the judge's decision whatever if you go to court*” (Lines 394-398).

Some explanation for the concerns and frustrations expressed by the respondents can be found in Van Zyl's (1997:65) contention that South African courts are slow to follow new trends, and therefore social attitudes towards parenting are slow to change, causing many people still to believe that parenting means “mothering”. Luepnitz (1982: 157) also contends that this notion “profoundly embedded” and not likely to change overnight. In this regard it is interesting to note that even one of the respondents, although he felt aggrieved by the maternal preference principle, also made some provision for this embedded notion in saying: “... *you know these days the woman gets the custody.....why I don't know it should.... it should be until a certain age.... maybe until six years old or something where the woman gets the custody*” (**Andrew**:368-370). This statement may also hint at the tender years

doctrine. According to this doctrine, children of “tender years” were assumed to be best cared for by their mothers (Van Zyl 1997:64). This presumption was however eliminated from statutory law after it was realised that custody decisions should be based on the child’s best interest. The very questions of gender bias and the acceptance of more egalitarian parenting roles, which have been discussed now, also contributed to this elimination (Emery1994: 73).

Two of the respondents referred to their ignorance about the divorce process and court procedures. **John** said that he did not know what happens in court. “.....jy weet ek sal nie ‘n clue hê nie ek weet ook nie presies wat in die howe aangaan nie hulle verdraai die goed ook so”² (Line 365) and **Carl**: “You know I don’t know some people think that you should know all these things..... I didn’t know that there was in fact in that thing a date for the divorce court established.”(Lines 34-40).

John expressed the wish the legal system should make provision for a mediator at the family advocate’s office so that the court can also see the man’s side. “By die gesinsadvokaat verstaan jy, so ‘n derde persoon wat jy dan kan aanstel..... en laat die hof ‘n werklike kant kan sien van die man se kant af want ons mans is maar geneig om jy weet jy jy het geen kans nie.”³ (Lines 190-193) This is not surprising, because Lamb (1997:194) also found that fathers are more likely to report that their rights have been protected and that the agreements from mediation satisfied them more than decisions made through litigation, because he contends that mediation is more likely to result in joint custody and litigation in sole maternal custody.

4.4.3.4. EXPERIENCE OF ALTERNATIVE DISPUTE RESOLUTION.

John was the only respondent who experienced a process of alternative dispute resolution after the family advocate referred them to a social worker in private practice. He said when they first went for assessment and mediation there was no chance of him getting custody because every mother would feel that it is her right to get the children. Luepnitz (1982:157) found that some of the mothers in her study also had the perception that they had a right to the custody of their children.

John felt that the mediating social worker actually helped them more than the psychologists his wife had seen, because she helped the mother not to feel that she was abandoning her

children by settling for paternal custody. “...die feit dat ek die kinders het laat haar sien maar sy gee haar kinders weg verstaan jy? Sy het haar kinders afgeskryf en Willa se behandeling ten opsigte van daai siening het op die einde ‘n groter bydrae gelewer as wat haar sielkundiges ten opsigte daarvan vir haar en en ek dink dit is ‘n kardinale jy weet.”⁴ (Lines 155-166) He noticed a change in his ex-wife and specifically because she had not attempted suicide again even after the children were transferred to him. “...my eks vrou dit het gehelp sy ek kan sien daars ‘n verandering in haar”⁵ (Lines 412-413). He also felt that Willa gave him advice which improved the co-parenting relationship and he said that he listened to her advice (Lines 539-542). **John** was of the opinion that mediation can save a lot of money and asked why the Government Service did not have similar services available. “Jy weet dit is maar dit is nie nodig om daai lengtes te gaan as jy ‘n Willa Marais betaal en betrokke kan kry nie. Nou Ok Willa Marais gaan hoeveel egskeidings kan hanteer op dieselfde manier nie, hoekom is daar nie meer Willa Marais’s in die staatsdiens nie ?”⁶ (Lines 378-381)

Marlow and Sauber(1990:1-7) also hold that what keeps a couple from an agreement is not their conflicting interests, as the law would have it, but rather the feelings like anger, hurt, disappointment and fear which are inherent to the personal crisis of divorce. From **John**’s example, it appears that a process of dispute resolution, which addresses these destructive feelings instead of intensifying them, that is often the case with traditional adversarial divorce proceedings, should rather be employed.

John’s concern about mediation services provided by the Government was also addressed by

Saayman and Saayman (1987:21-22) after they found that inter-parental hostility generated by the adversarial process contributed significantly to maladjustment in children of divorce. They subsequently recommended a system of divorce mediation via family courts (See section 2.6.1).

4.4.3.5. FINANCIAL CONSIDERATIONS.

The cost of a divorce appears to be a major difficulty for men, especially if they wish to pursue custody. **Andrew** who chose to go through his uncontested divorce, without legal representation only had to pay up R104 in the end, but he said: “.....that’s why most people that get divorced, they don’t want to contest the custody so they give it to the female

anyway. Because if they had to contest it then it will cost a lot of money and they'd lose so.... so why contest"(Lines 399-402). **Andrew's** contention was indeed reflected in the situations described by some of the other respondents. **Pierre** for example, was not happy about the custody award in favour of the mother, but since he regarded the costs as "frightening" (Line 68) he did not defend it in court. He realised that his ex-wife was in a more fortunate position because she had the money awarded to her from their joint estate and she could afford to spend it all in her pursuit of custody since she was about to marry a new husband (Lines103-105).

Similarly, **James** said: "*I wasn't able to carry on with that case any longer. I mean the trial itself would have cost hundreds of thousands of rand and my resources were limited..... I had to borrow the money from the bank..... the court I might add wasn't worried about that when they granted the Rule 43 orders. They say that I've got access to credit so therefore I must continue to finance the action against myself.*" (Lines 17-2)

John's indignation arose from the fact that the value of their joint assets was not more than R10000 and yet the total of their legal costs even before the divorce was finalised, was already R30000. "*.....maar nou weereens kan ek vir jou sê in 'n huwelik waar die totale waarde van die bates R10000 is hoekom vat dit drie jaar om te skei hoekom maak prokureurs aan altwee kante R15000 ek meen haar prokureur obviously en myne is R30000 wat in die water gedonder is as jy my vra.*"⁷ (Lines 349-355)

What these respondents experienced appears to be the experience of some other fathers in other parts of the world as well, which Joseph Cordell (<http://www.dadsdivorce.com>) relates as follows: "Men sit in law offices all across America every day and are told (correctly in many cases) that they do not have a chance. They are told that they will spend \$15,000 and likely lose."

Pierre nevertheless said that he would do it again because "*money means nothing really in the end*" (Line 224). **James** in the same frame of mind said: "*I had to pay more than what was due to her and I accepted that. That was just money and I accepted that..... I know how the system works* (Lines 70-72) *.....we're not talking about costs,..... we're talking about children. People tend to forget about them*" (Lines 742-743).

4.4.4. CONSEQUENCES OF ORIGINAL ORDER.

4.4.4.1 CONSEQUENCES FOR THE CHILD/CHILDREN.

Literature refers to the difficulty some children may have in adjusting to the remarriage of their parents. One of the reasons for this, according to Emery (1994:56) can be that the remarriage can destroy fantasies of reconciliation and therefore confirm the finality of the parental separation. (See section 13.2 in Appendix 2). Two of the respondents related the difficulties their children experienced after the mothers had remarried.

Andrew's son was 8 years old when they divorced and his ex-wife, who had a boyfriend at the time, got married 6 months later. *"He always used to see him hitting her and what have you. Then they got divorced then she married.....another guy.....so she's in her third marriage already and now my son definitely doesn't like this new guy."* (Lines 26-34).

Pierre also referred to his son's displeasure with maternal custody and his dislike of the stepfather. *"He wasn't happy at all and he didn't get on with the stepfather, a guy who is very much older than the mother and he didn't get on with him...just nothing worked"* (Lines 88-90). **Pierre** described this period in his son's life in rather strong terms. *"....it was four years of hell for him and I (Line 57 P2)"; ".....she put him through hell ..she had him to about eight different psychologists" (Line 199). "It was just impossible for him to live there.....his schoolwork just went for absolute rubbish"* (Lines 87-88). His son threatened to run away and after a visit to his father during a long school holiday, he refused to go back to his mother, who eventually sent the sheriff to fetch him by force. Although the father resisted this when the son *"cracked up"* (Lines 20-23), he was fetched from school the next day. **Pierre** attributed his son's traumatic separation from him to the fact that they had always been very close. *".....the kids and I have always been the best friends.....that's why it was very traumatic particularly for Ted"* (Line 276).

In the other three respondents' cases the mothers did not remarry, but other problems threatened the success of the maternal custody.

In **John's** case he claimed that there was never any threat to the children's physical well-being, during the mother's repeated suicide attempts, but he felt that nobody took note of their psychological (*geestelike*) well-being (Lines 226-229). In his opinion, the care of the children became like a ball game because both parents felt that they could control each other's movements when they had the children *"die kinders het as 'n speelbal gely in my in*

*die in in my egskeiding uit en uit want wie ook al die kinders het het beheer soort van een oor die ander”*⁸ (Lines 288-291). In the period while the custody was in dispute the paternal grandmother noticed that the children were very insecure. The older one was always lazy and always complained about being tired and just wanted to sleep (Lines 463-464) He also became very cheeky and also started telling fibs (Lines 444 598-602 and 612-615).

John was also concerned about the effect of the mother’s life style and many relationships on the children. “.....*is daar ‘n moerse party met ‘n klomp pelle en ‘n klomp dronkgatte en die kinders lê in die bed hulle kan nie slaap nie want die musiek blêr”*⁹ (Lines 573-575).

Two other respondents shared John’s concern and related the problems their children experienced as a result of the mothers’ abuse of alcohol and other drugs.

James claimed that the mother’s drug abuse continued and she also had a drinking problem. “.....*she was still pumping herself full of drugs on a massive scale and having an absolute party from dawn till dusk not even getting up when the children go to school in the mornings not even getting out of bed just sleeping right through the whole thing”*(Lines 89-91). According to **James** he was “*no longer there as a punchbag and her focus of aggression and abuse had then turned onto the children.....not the younger ones so much they would just see it and perhaps feel the effects of it but the older ones would take the flack”* (Lines 55-57). **James** discovered that the eldest daughter had since left school in the middle of the year and it had been kept as a secret from him (Line 113). This child ran away from home to **James** who was actually not her biological father since she was born from a previous relationship the mother had, and he had adopted her after his marriage to the mother (Line 155).

Carl also related how his children were exposed to alcohol and drug abuse (Lines 574-579), child neglect, and physical and sexual abuse (Lines 610-611). Some of the examples he mentioned are:

- ♦ “*Eventually it came out no Mommy had got very drunk, Lisa had tried to run away down the road and Mommy had chased her grabbed her by the hair dragged her by the hair and by the arms..... it was a very very tragic circumstance”* (Lines 776-781)
- ♦ “*Quarter twenty to twelve that night Lisa phones me from a hotel outside of town near the one Spur. Mommy is still inside over there she’s drinking with her friends she doesn’t want to buy me and Ian food and I’m cold Daddy and I’m scared and then she burst into tears”*(Lines 830-862).

4.4.4.2. CONSEQUENCES FOR THE FATHER / CHILD RELATIONSHIP

Several respondents mentioned their frustrations regarding access to their children. **Andrew** explained how he had his son every second weekend “and that was it.”(Line 119) **Pierre’s** right of access was frustrated more than once when the children were not on the flight he booked for them, (Line 257) or when he could not find them at school, as agreed with the mother, when he was supposed to fetch them for a holiday (Line 335). **John** also experienced problems with access and visitation and had to approach the court on three occasions and even then, he still had limited access with little consideration of his work circumstances (Lines 31,49,62, 131,232-235,341-342).

James, in a “thick description” (Section 3.2.2.4.) explained how the divorce process reduced him from “*a father at home with your wife and you are the one who makes decisions about the kids and about what we are gonna do today*” to a *persona non grata*. “*Now the court, the system endorses that by saying hold on a minute she’s got custody of the kids you are not allowed to go near the kids you can only go near the kids at such and such and such a time. You’re not allowed to make any decisions with regard to their schooling or anything, that’s all removed from you, you are now a stranger to those children. But anybody that she approves of can..... have unlimited access to your kids but you’re forbidden from seeing them. Why.I’ve done nothing wrong I might be the innocent party in the divorce if there is such a thing in a divorce. And yet suddenly I can’t see my kids. I can’t exercise any influence over their lives any longer*”(Lines 594-605).

Despite this, **James** made a point of reassuring his children of his support but he said:“.....*they felt I think, that I was powerless to help them so they couldn’t really confide in me or rely on me because it was clear that mom had the upper hand on me.....she held all the trump cards..... she was all-powerful*” (Lines 236-238). Similarly, **John’s** experience was that his ex-wife felt that she had won the prize when the boys were with her and that he was heart-broken about it. “.....*sy’t gesien dat as sy die seuns het by haar het sy die prize gewen en ek is hartverskeurend daaroor*”¹⁰ (Line 284)

It is possible that not all fathers are that conscious of the impact of the divorce on their relationship with their children, but the experiences of powerlessness just described by **James** and **John** bear a striking resemblance with the vulnerability of the role of the non-custodial father described by Simpson (1998:101-102). He says that the father’s perception

is that the custodial mother holds all the cards with the trump card being the children themselves. The father's experience is often one of a radical shift from a context in which the power gradient is steeply inclined in his favour to one in which considerable power passes to the former wife, and he is often displaced and in exile with the opportunities to exercise control over the former wife and children greatly diminished if not entirely absent. Bosman Fick and Strydom (1998:93) offer this "intolerably painful and frustrating situation" as a reason why some fathers disappear altogether after divorce. These authors are nevertheless urging non-custodial parents whom they say are normally fathers, not to give up their parental roles because numerous children from divorced families have already indicated their longing for the absent parent. Evidence of this longing and continued need for the father was found in **Carl's** account of his post divorce relationship with his children. He refrained from visiting his children after the mother obtained a protection order against him, but the children still wanted to see him and therefore the mother used to take them to him. When Lisa, his daughter, was molested she confided in him (Line 611) and a psychologist who saw her later told him how much Lisa had relied on him (Line 808). The children were placed in safety in his care on two occasions when the mother was apprehended and subsequently sent for rehabilitation (Lines 699 and 863).

4.4.4.3 CONSEQUENCES FOR THE CO-PARENTING RELATIONSHIP.

Emery (1994:18-19) is of the opinion that the divorced family is still a family although it is now defined by shared relationships in stead of shared residence. He also reminds us that relationships, even when highly conflicted, are still relationships. The respondents reported as follows on these relationships:

Andrew took into consideration the fact that his ex-wife was highly strung and could get upset extremely easily and he said "*I just maar let things be.*"(Lines 93-95) he had his son "*every second weekend and that was it.....and if he wasn't home (with his mother) by such and such a time then there'd be big trouble and big drama.....*"(Lines127-129). He paid maintenance every month (Line 13). In **John's** case the mother threatened that she would get every cent out of him for maintenance (Line287), but he was well prepared for the court and his offer for maintenance was accepted. At a later stage he decided on his own to raise the amount he had to pay from R600 to R800 (Lines 246-255). His experience also taught

him that the parent who had the children at a certain point in time felt that he could control the other parent's life through the children (Lines 284-291).

Pierre felt that his ex-wife attempted to frustrate his right of access in order to make it uncomfortable and difficult for him (Line 349). Maintenance costed him "*an arm and a leg because he also had to pay school fees and books and everything else his ex-wife could think of*" (Line 132).

Van Zyl (1997:83) mentions the possibility that parents who still harbour hostile feelings towards each other, use visits and access for their own agendas and forget about the best interests of the child. In these cases, defined or structured access is indicated. The case of **James** provides an example because he said that his access to his children had to be set out in detail because the mother would never allow just reasonable access (Lines 83-85).

James's account however revealed acrimony which was not only limited to issues of access, but he claimed that the mother was "*continually pumping them full of poisonin other words she was telling them what a devil I was. Her entire day was devoted to telling them about what a terrible person I was and this wasn't doing them any good*" (Line 33).

Stahl (1994:122) refers to this type of behaviour as parental alienation and he describes it as a situation where one parent subtly and covertly gives message to the child about how bad the other parent is. A custodian parent who abuses his or her position by poisoning the minds of the children against the other parent is viewed in a serious light and Hahlo (1985:404) suggests that such a parent may be deprived of custody, while Froneman (1999:51) suggests removal of the child to the other parent's home as the only solution in severe cases where the alienating parent is filled with rage, paranoia and delusions. (See section 13.4. in appendix 2)

According to **James**, his ex-wife "*suffered from delusions of persecution you name it but the whole spectrum of psychiatric and psychological problems are all jammed into one, schizophrenia, depression, substance abuse all packed into one nice neat package* (Lines 194-198)). Despite this he used to tell his children to honour and obey their mother "*because I've never never ever fed them poison about their mother*" (Lines 232-233). However when he wrote letters to her complaining about the way she cared for the children, "*she would phone me just as she'd always done over the years initially conciliatory but within 30 or 40 seconds the call would turn into an abusive one and then she would start screaming abuse and then she would slam the phone down*" (Lines 97-103). She also told

people, even strangers that she met derogatory things about him, amongst others, that he used to rape the eldest daughter. He said that this *“is a fashionable complaint these days and it’s one that sticks very easily and it’s got a lot of stink attached to it. It’s very easy to make the allegation and it’s difficult to refute* (Lines 121-128). Stahl (1994:107) also notes that there has been a growing increase in the nature and extent of violence in the society. Incidents of child and spousal abuse, as well as sexual and emotional abuse of children have dramatically increased. Simultaneously, there is however, also a rapid rise in the false allegations of violence or abuse. These allegations, whether true or false, are seen as an indicator of emotional risk for the child who has to be protected from parents who would sexually abuse them, but also from parents who would lie about such issues (Stahl 1999:68). (See section 13.5. in Appendix 2)

Carl’s account of the co-parenting relationship with his ex-wife indicated quite a lot of ambivalence. It is interesting to note that Lamb (1997:197) also referred to divorced adults who often exhibit anger, anxiety and anti-social and impulsive behaviour and who are over-represented among suicides and homicides. **Carl** once attempted to cut his ex-wife’s throat when she stole the extension lead of his fridge and insulted him when he confronted her (Lines 479,490,514 and 517). He accepted the fact that a protection order was issued against him following this incident. The mother afterwards made contact with him because the children wanted to see him, and *“.....she used to want to come home and want to spend the night. I never would let her stay the night I never let her stay. I think she always had the second thoughts about what happened you know”* (Lines 539-542). On one occasion he discovered that his children were left alone in the house out of town late at night. When the mother did not come back after some time, he took the children home with him, *“..... then we left a note very polite note I’ve got the kids at my house, would you contact me when you get back home. The following day at eleven she came around and she fetched the kids and a lot of apologies.”* He did not want to cause any conflict then because he knew from previous experiences that it did not help to confront somebody in such a situation (Lines 558-569). Her friends nevertheless convinced her to lay a charge of breaking the interdict against him (Lines 572-574). However when the police wanted him to lay a charge against her regarding the drugs in her possession, he refused and explained: *“I do that, you create a massive gap between me and her and make it totally difficult on the children”*(Lines 621-626). When they eventually arrested her, he felt sorry for her when she had to spend the weekend in jail

(Lines 698-700). When his daughter did not want to stay with the mother any longer he encouraged her to give her another chance because the mother attended a rehabilitation program. “I said *no you’ve got to give your Mommy a chance here she’s been long time now with the rehab she’s been trying you’ve got to give her a chance.*” (Lines 737-744).

After **Carl** discovered that his ex-wife had physically assaulted their daughter, he went to her and had a long conversation with her on the steps outside her house. He said: “*I know that things really really got out of hand over here. You know that that God loves you that’s why I must love you even though I don’t feel like it at this point but but He has given me a chance and I’ve got to give you a chance and I want you to get it together*” *Always crying always remorse always* “*Yes I know the drinking is a problem.*” *Then the remorse started changing into arrogance: “Why am I interfering she can do what she wants”* (Lines 782-795).

Wallerstein in Johnston and Campbell (1988:ix) warns about the parental conflict that became evident from the respondents accounts. “The consequences are frequently tragic. The persistent quality of the conflict, combined with its enduring nature seriously endangers the mental health of the parents and the psychological development of their children”.

In view of this it is interesting to also have a closer look at feelings, emotions and experiences of the fathers.

4.4.4.4. THE FATHERS’ FEELINGS, EMOTIONS AND EXPERIENCES.

Mackey (1996:169) states that divorced fathers “as a class are quite human and thereby vulnerable to human emotions, both pleasant and unpleasant.” The feelings, emotions and experiences disclosed by the respondents, reflect some aspects of this complex, delicate and emotionally charged position described by Mackey.

Pierre referred to “*Four years of hell for him and I*” (Line 57) when he told me about the period while his son was in the mother’s custody, while **James** described the effect of the pending divorce as follows: “*..... it devastated me, I lost weight, like my clients do.... my work, my practice was in chaos and my partners were worried they started to restructure the profit sharings schemes..... I was going down the tubes fast*” (Lines 541-546). He however also said that he had a taste of bachelorhood again after he left the former common home and “*it was like heaven*”. Although he was worried about the children, there

was nothing he could do “*I was paralysed I could only take the law into my own hands which I wasn’t going to do*” (Lines 533-536). **James** used phrases like “*I discovered to my horror that my eldest daughter had left school*”(Line 113) and “*I was desperately concerned about what would happen were she to live with me and I was concerned about what would happen to the other children if she wasn’t there as a moderating influence*”(Lines 131-132). **James** also felt like a *persona non grata* in his children’s lives after the divorce (Line 594). **John**, said that he could not describe in one hour, what he had gone through for two years which he, like Pierre described as ‘hell’. He also told me about the weight he lost and his despair, but he said being worried all the time was the worst. He was worried, about the children, mainly about their immediate safety but also about their long-term well-being. “*Ja so in ‘n nutshell wat ek jou nou vertel het jy weet klink miskien nie so rof of moeilik nie, maar ek sal vir jou sê dit was hel want dit sprei oor ‘n twee jaar tydperk wat ek in ‘n uur vir jou verduidelik en dit vat aan jou ek meen ek het gedraai by 83 kilogram en ek weeg gewoonlik so 90 average. Ja nee dit is daar is dae wat ek met my hande in my hare gesit het waarvoor baklei ek jy weet niemand luister vir my nie, in die egskeiding natuurlik nie en niemand sien my punt in en my worries*” ¹¹ (Lines 425-437). He experienced coming up against blank walls all the time because nobody listened to him. The social worker spoke to the mother and all her therapists, but never looked at his circumstances or spoke to him until he approached her (Lines 220-225). Every time the children had to go back to the mother he had to be submissive and pack their belongings and carry on with his life. He went through a divorce and faced retrenchment as a result of a merger procedure at work but he had to remain sane and could not afford to get depressed because he is a man and a man does not do it (Lines 322-331).

John’s frustration in trying to find somebody that would listen to him is better understood when one considers Kruk (1994:24) who takes the social work profession to task because their practice with divorcing families, is largely maternally based, which he believes, can eventually contribute to the erecting of barriers between fathers and children.

Carl said that he was a wreck (*en toe was ek ‘n wrak*- Line 530) after he had assaulted his ex-wife and when she subsequently obtained an interdict against him he was amicable and apologetic. After this he realised that his children were neglected and it was very difficult. On the one hand he felt that he would go to jail for these children (Line 599), but he also wanted to avoid conflict and he decided to pray: “*Lord please take care of my kiddies look*

after my kiddies you know and help them stop that help Jenny with the whole story”(Lines 567-572). Afterwards there was one particular incident, which **Carl** phrased as follows: “*I said goodbye to the kids and I went and I sat after church in bed praying. I said: “Lord please”, now I was really distraught I mean I was broken. There the kids are I mean I could see the circumstances when I dropped the kids off. I could see they’d been kuiering and there was alcohol. I can’t if I confront Jenny it’s a fight. So where do you draw the line. The law says to me if I do anything the law was coming to grab me. I was totally helpless. I said: “Now it’s your turn Lord now you fix this one. I know what those kids need and I know what they don’t need and they’re experiencing what they don’t need”* (Lines 820-830)

The intensity of emotions and feelings of the respondents portrayed in the interviews are better understood when more literature is consulted. Simpson (1998:92) identified specific patterns of social and psychological problems for men and women after divorce, but he said that expressing their distress is not nearly so culturally acceptable for men, which is also **John**’s contention “*hoekom kan ek nie depressief raak en vir ‘n week in die hospitaal gaan lê in terapie nie. Ek’s ‘n man ‘n ou doen dit nie”*¹² (Lines 329-330). The result is that emotional problems are obscured leading to somatisation of stress, which manifests in a range of physical problems. The weight loss which both **James** and **John** mentioned may serve as examples. Drinking, smoking and over-working in the aftermath of divorce often aggravate health problems although none of the respondents in this study mentioned that they experienced these problems.

Kruk’s study (1994:19) also generated a profile of non-custodial fathers who remained at a high level of distress several years after divorcing, and this distress was directly and primarily connected to the loss of the pre-divorce father/child relationship. In this study **John** also admitted that two years after they separated he still feared that his ex-wife would keep the children from him in order to take revenge (Lines 261-264).

Lamb (1997:197) refers the ambiguity and powerlessness often found in the non-resident father’s parenting role as aggravating factors and in this study it was particularly the feelings of powerlessness that were recurring in words like: *there was nothing I could do; I was paralysed; suddenly you are now persona non grata; niemand luister vir my nie* (nobody listens to me) and *I was totally helpless*. Considering this it becomes clear why a sample of divorcing parents, studied by Pruett and Jackson (1999:283-310) claimed that the chance to have allegations heard and investigated, to be listened to, and to feel that the

process was comprehensive and fair makes a positive difference to how parents feel during and after a divorce.

4.5. THE VARIATION OF THE ORIGINAL ORDER.

4.5.1. THE FATHER'S MOTIVATION FOR APPLYING FOR A VARIATION.

According to studies by Gersick, Santrock, Warshak and Elliott quoted in Robinson (1993:100) some men seek custody because their former wives do not want it. In this study all the mothers wanted custody and had custody awarded to them at some time in the past. The researchers just mentioned further state that there are also men who actively want custody, some because they believe they are the better parent, others because they feel vindictive enough to use a custody battle to intimidate their former wives, while others seek it for economic gain. Similarly Johnston and Campbell (1988:10) hold that significant life events can activate postdivorce disputes and they identified the following as possibilities: Involvement with a new lover or remarriage of a parent, developmental changes in the child (like entry into adolescence), the intentions of a parent to relocate to another geographical area or symptomatic and disturbed behaviour in a child.

In this study each of the fathers had his own reasons for pursuing custody which they phrased as follows:

4.5.1.1. EXTERNAL MOTIVATION.

In **Andrew's** case his son actually initiated the variation in custody. He said : *".....so he actually wanted to come and stay with me. It was more his choice that I actually went through plus the help of my folks too (Lines 35-36).....but he did give an affidavit as well which he had signed at the police station to say that he did want to come and stay with me"*(Lines 58-59).

It was also his son's strong desire to be with him, that compelled **Pierre** to apply for a variation *".....you don't have an option when your boy says to you listen dad you've got to make a plan...and he's threatening to run away.....you don't have an optionthere's just no option"* (Line 247-249) and *"I was forced to do it for him. I mean I just had no option you know even if it had cost me every cent I had"* (Lines 49-50).

James related how his eldest daughter ran away from home and “*started spilling the beans about what actually happens at home. She started telling me the true story that all the children were afraid to tell me. And she told me about the continuous abuse that she’s subjected to and the really frightening way in which they had to live. So this made me resolve even more that I must take urgent action against her*” (Lines173-176).

One of the final alarms came for **Carl** when the mother of one of his daughter’s friends warned him that he should look carefully at Lisa, because the children have been talking about the drugs and drinking and that “*her Mommy would get cross and things strange happen*” (Lines 743-752) “*.....and Lisa said to me at that stage, Daddy, she doesn’t want to go back she wants to stay*”(Line 740).

It became evident that both **James** and **Carl** like the fathers in the study by Davies (1994:132), sought custody as a result of spousal difficulties and incapacities of which in their cases the most salient appear to be alcohol and drug abuse and the consequential child abuse and neglect by their ex-wives.

4.5.1.2. INTERNAL MOTIVATION.

Most of the respondents reported how their concern about their children’s well-being motivated them to seek a variation of the custody orders. **Pierre** said that it was also the worrying that eventually motivated him to apply for a variation. “*I mean Ted was eleven years old twelve years old and he was threatening to run away from Durban.... imagine how a guy worries about that.*” (Line 251). Similarly it was **James**’s desperate concern for his children’s safety and welfare that motivated him. “*I was concerned about them being killed I’ll be quite honest with you. In her raging drink and drug induced rage drunken rage she could do anything, she could also fall asleep and set fire to the house with a cigarette*”(Lines224-228).

John wanted his children from the onset of the dispute because he knew about the mother’s psychological background and suicidal tendencies (Line103). He said that he wanted the children for their own sake, because he knew all along that he could offer them a better home than their mother (Lines 530-536).

Carl was no exception and said: “*I was really distraught I mean I was broken*” when he saw the circumstances in which he had to leave his children after a weekend visit to him. “*.... I*

know what those kids need and I know what they don't need and they're experiencing what they don't need"(Lines 820-830).

Although some authors are sceptical about fathers' motivations for seeking custody Arenstein (1989:228) concluded from her study of South African fathers that the respondents actively seeking custody of their children were men who valued their father-child relationships highly. The data just presented also reflect the value **Pierre, James, John** and **Carl** attached to these relationships but in direct contrast to Kruk's (1994:21-23) finding that the highly attached and involved father may find the diminished contact with his children after divorce so painful that he eventually ceases contact with them altogether, the respondents remained involved in their children's lives and were available when they were needed.

4.5.2. THE FATHER'S EXPERIENCE OF THE PROCESS OF VARIATION.

Emery's (1994:197) contention that custody arrangements are not final either theoretically in the law, or empirically in parenting practices, was also reflected in the situations of the respondents when each of them had some kind of legal process implemented in order to bring about a variation in custody arrangements. Their experiences during this process were portrayed as follows:

4.5.2.1. EXPERIENCES WITH THE LEGAL SYSTEM.

The respondents had different experiences with the legal system during the variation of the custody orders. **Andrew** did not experience any legal complications, because a friend assisted him and his application was unopposed. "*.....we actually got this through quick quick so that we did not have to hand him back we just served the papers on her which were done and...that was it. And he actually just stayed with us*" (Lines 227-233). "*.....then it was the court date and we just sat in the court there..... It was.....five minutes and we were out there*" (Lines 215-217).

In **Pierre's** case he only mentioned that he found it very strange that the court ordered the variation of the order in his favour and on his application, but was reluctant to make a cost order against the mother (Line 380). However, in terms of section 10 of the Divorce Act 70 of 1979 the court is not bound to make a cost decision in favour of the successful spouse.

(Visser & Potgieter 1998:174).

Carl was also puzzled by certain aspects of the law and referred to his conversation with the police inspector : *“I said to him the law is? The law stops the welfare from going in over there and it makes you guys want to arrest me for breaking an interdict when I went to get my children who were alone”* (Lines 592-609).

James who referred to himself as *“a realist when it comes to these things being a litigator by profession”*(Line 722) was the respondent who gave an elaborate description of his experience with the legal system: *“But the odds stacked against me are overwhelming and to convince the court that the children should go to a male is an almost impossible task..... It’s only where the opposition by the female is token opposition or where she agrees to it or where she is in a lunatic asylum. She’s got to be certifiable before they’ll give custody to the male I’ve seen cases here at court custody suits I’ve heard them I’ve known the people involved and I’ve seen the guys fail lose their cases and they have to pay the wife’s costs tens of thousands of rands hundreds sometimes they lose because they can’t convince the court that it’s better for them to live in a perhaps a more structured environment with a less emotional person that is somehow held against him the fact that male will provide more discipline in the home and the fact that the male will be more consistent in his decisions with regard to the children doesn’t count in his favour at all. What counts in her favour is (a) she’s a woman (b) invariably she doesn’t work. If she works that puts her on equal terms, makes her case that much weaker. She mustn’t work if she wants to win..... she must have de facto custody of the children if she’s got it hardly any judge will ever take those children away from her (Lines 420-436)..... if you agree to custody today as I did and tomorrow you want to have it varied although the court cases say that you don’t have to show why circumstances have changed, all you’ve got to show is that it is in the children’s best interest, the factual situation is that in court you have to show the change of circumstances”* (Lines 721-737).

The so-called gender bias mentioned by **James** was also experienced by some of the other respondents during the original custody investigation and were discussed at length under (section 4.4.1.3.4.) in this chapter. **James**’s experience does therefore not appear to be unique and Van Zyl (1997:66) also claims that fathers do not only have to prove their own suitability, but also the mother’s lack of suitability if they want to obtain custody.

James’s perception of the reluctance of judges to interfere with the status quo of children is

also mentioned by Van Zyl (1997:67) who confirmed that courts are generally reluctant to move the child if he / she has found stability in the home of one parent. This approach is better understood when findings are considered that indicate that high degrees of environmental change are related to children's depression, social withdrawal, aggression and delinquency (Van der Merwe 1990:44, 60; Cumes & Lambiase 1987:123,124). However true this may be, it is also true that human systems, of which the family is one, are constantly in a process of change and movement in an attempt to take meaningful goal-directed action (Compton & Gallaway1994:123). This possibly explains why Arenstein (1989:250) recommends that custody awards should be open to review in order to accommodate changed needs of parents and children.

James also told me about the interim order which was made in his favour two years earlier, and was still in place because "*of the cumbersome system*"(Line 456) and "*the roll was clogged up and it had to be moved on and on and on and only as a result of those factors did I retain de facto custody of the children*"(Line 459).

This delay in the finalisation of the custody decision has to be viewed with dismay, considering Neethling's (1993:497) warning that prolonged litigation about a child's future can be deeply damaging to the child, because of the uncertainty it brings them and the harm it does to the relationship between the parents.

4.5.2.2. EXPERIENCES WITH THE FAMILY ADVOCATE.

The experiences of the role of the family advocate differed from one respondent to the other.

Like with his original divorce **Andrew** was not aware of any significant input from the family advocate. "*....I must try and think now.....now I can't remember if the...if the family er...what's the family.....Ja.....if they were involved or not. I think they were told about it. But I think they were advised of it ja*" (Lines 445-453). **James** said that he had a family advocate's report in his favour..."*They said that they agreed with the psychologist from Johannesburg that I should in fact have custody of the children and that they're going to confirm that at the trial for the main action as well*" (Lines 364-367). Although **John** had approached the family advocate they referred him to an independent social worker, and then both parents agreed to accept this social worker's recommendation (Lines 80-83).

Two different family advocates were involved in **Pierre's** divorce case and the variation of

the order, and he felt that there was a vast difference between the two with the first one “*just plodding along doing the job*” (Line 331). He did have some insight into the dilemma of family advocates “*they have to listen to a whole lot of bull shit but they should still take each case on merit*” (Lines 401-402) and he expected the family advocate to know not only the theory but to be a family person as well. In her study Froneman (1999:137) also concluded that family advocates should receive some training in social work skills and communication, because some of the family counsellors she interviewed also claimed that some family advocates can appear to be harsh and insensitive to people’s needs and emotions.

Another conclusion **Pierre** arrived at was that “*...they only listened to the child when he was thirteen although he said exactly the same as when he was ten*” (Line 317). The logic behind this may be in the same vein as Froneman’s (1999:45) contention that children of this age are in the process of establishing themselves as individuals in their own right and are therefore often capable of making adequate judgements and therefore their needs regarding custody should be taken into consideration. Bosman Fick and Strydom (1998:5) however argue that the individual rights of every child should be considered. This will mean then that even a ten-year-old child has a right to express an opinion about the most appropriate placement at the time of divorce.

4.5.2.3. EXPERIENCES WITH LAWYERS AND ADVOCATES.

Davis (in Robinson1993:215) found in his study, that parties who are at their most vulnerable in conflict with one another are simultaneously confronted with legal machinery which they do not understand, and therefore have to rely on their solicitors whose support he holds, is sometimes unashamedly partisan. In this study, **John** also said that he had to approach his lawyer even after an agreement was reached with his wife, because he admitted that he did not know the court procedures at all and that his lawyer could tell him any kind of story, but he needed her to finalise the process (Lines362-365).

The other respondents conveyed diverse messages about their solicitors, ranging from **Andrew** who felt that the fact that the lawyer who assisted him knew both him and his ex-wife, helped a lot (Lines 429-432) to **James** whose main frustration with legal

representation was that “.....*peripheral issues.....were argued at length while the meter ticked and thousands and thousands were earned by these counsels*”(Line 396). In contrast to this, **Carl** was very impressed with his lawyer and said: “*My attorney, Jack Jones from APC is a wonderful wonderful attorney wonderful attorney, he has tried to reconcile..... he gave me the right advice which was to sit down and write the details down (956-958). “I must give you Jack’s telephone number. He’s the most wonderful attorney for this child /parent, a case like this*”(Lines 973-975).

Kressel (in Robinson1993:213) in research conducted in the United States, also found strong differences in the approaches of divorce lawyers. It ranged on a continuum from advocates taking a narrow legalistic combatant view to counselling lawyers who preferred to focus on negotiated compromise and rational problem solving.

4.5.2.4. EXPERIENCES WITH JUDGES.

Andrew’s perception is that there is a bias when it comes to custody, and he said: “*I don’t think it is the law so much there is no law.....butwhat the judge decides..... or how good the lawyer is. I mean even the lawyers say you know most of the time it goes to the female. I wish someone could actually explain why*” (Lines 409-413). James who also felt that the judge was against him (Lines 321-324), attempted to explain this “.....*it’s my belief that especially the old school of judges it is the furthest thing from his mind that he could ever get involved in looking after children, it’s a woman’s job for starters his wife did it his mother did it they never worked they’re always women who don’t work.... And I think that has been one of the reasons for the existence and the continued existence of what they call the maternal preference rule which is said not to exist but in fact on the ground exists*” (Lines 494-502). He continued: “.....*the judge that granted our interim order without any hesitation was a coloured male from the ranks of I believe of the attorneys or a newly admitted advocate acting as a temporary judge, but I think it illustrates my point. He can conceive of circumstances where a male can look after kids*” (Lines 503-507).

In referring to some of the criticism against the way judges approach custody and access disputes, Van Zyl (1997:22) also mentioned some of the views expressed by the respondents. He maintains that judges are often said to represent a conservative sector of

society, to be uninformed about children's needs during and after divorce and always to come down on the side of well-entrenched community views, and that their decisions display personal prejudice and bias. Van Zyl (ibid) himself contends that judges are members of a conservative profession, but he also holds that a careful and conservative approach to the interests of children should not always be condemned.

Another possibility mentioned by Johnston and Campbell (1988:14) is that insufficient data or punitive reactions by the court itself, can lead to premature or unwise judgements which can instigate prolonged custody conflicts.

4.5.2.5. FINANCIAL IMPLICATIONS OF THE PROCESS OF VARIATION.

Both Ahrenstein (1989:247) and Robinson (1993:216) refer to the costly litigation of the High Court as beyond the reach of the average person and hold that it may even be excessive, for families already under financial stress. Data indicate that the respondents in this study did not necessarily represent higher socio-economic groups with unlimited resources. **John** said that their combined estate was not more than R10 000 (Line 353) and **Carl** did not have electricity in his house (Lines 406-421). **James**, a professional person, said: *"I bought a second hand automatic washing machine (Line 663) and "I've now bought a house..... It's a run down old house in a nice area. So I got it very cheaply" (Lines 562-568).* Their pursuit of custody had the following financial implications for them.

Andrew was assisted by a lawyer friend who did not charge him anything and he only had to pay the administrative costs. He nevertheless said: *" No it would cost a hell of a lot of money which she possibly would have ended up paying"*(Lines 73-74).

Pierre was less fortunate. He paid tens of thousands of rand at a time, not only for the variation, but also for psychologists. He nevertheless said: *"I was forced to do it for him. I mean I just had no option you know even if it had cost me every cent I had"* (Lines 49-50).

James's concern was *".....peripheral issues like this were argued at length while the meter ticked and thousands and thousands were earned by these counsels"* (Lines 396-397). He also said: *" I've seen the guys fail lose their cases and they have to pay the wife's costs tens of thousands of rands hundreds sometimes"* (Lines 425-426). He however believed that *"I can never be blamed by means of a cost order for acting in their, in the children's best interest or what I perceive to be their best interest"*(Lines 641-643).

John also found it difficult to understand why his legal costs were so high compared to the cost of the mediator, for which he paid R3 400 “.....kostegewys het ek die laaste twee jaar aan my prokureurs..... staan ons al op R16 000.....Willa het soort van alles in 3 maande se tyd uitsorteer en met haar hulp en haar kostes wat R3 400 is is dit jy weet ek kan dit nie verstaan nie ek kan nie die begrip bymekaar uitkry nie dat die prokureurs kostes so hoog is nie.”¹³ (Lines 123-127). It appears that **John** experienced mediation to be more effective in terms of cost and time, although Van Zyl (1997:194) is of the opinion that the value of mediation in these areas has not been proved yet.

4.5.2.6. RELATIONSHIP WITH EX-WIFE

The respondents experienced varying degrees of conflict with their ex-wives during the process of the variation of the original custody order.

Andrew who did not defend maternal custody originally, applied for the variation at the urging of his son, and decided not to claim any of the legal costs from his ex-wife. He said: “*But all of that was supposed to be for her cost anyway but we just left it.....didn't want to cause any trouble*” (Lines 89-92). Both Andrew and Carl's ex-wives did not defend the applications for variation. **Carl** said “*She decided that it will be pointless and it would be cost she couldn't afford and I advised her that it would be very foolish to do to to even bother. I said to her if she does get legal representation and appeal and she loses I'm going to dump all my costs on her, so I was just ek het net 'n ek het bietjie gemanipuleer*” (Lines 966-972).

In contrast with these two respondents, Pierre and James met with opposition from their ex-wives. **Pierre** said: “*.....she tried every trick in the book I mean she tried the trick of saying that I am aggressive and she tried the trick of saying that I am unstable and she oh well all that tricks and of course I had to be dragged off to psychologists and educational psychologists for all these various tests.....but e..I'm not aggressive so they all came out negative..so...but it all cost a hell of a lot of money*” (Lines 210-212).

James experienced even more severe resistance. He said: “*... I decided to keep them to push to see how far I could push this issue and what happened was then I notified my ex-wife that I wasn't bringing the children back....they're gonna stay with me and she must do her damnest but she must please hand over the school clothing, the school books etc. etc. which*

of course she refused to do because that was her trump card that was all she had and so I went around to her placeShe just screamed abuse and threatened to hit me with a crowbar and so on, my crowbar I might add” (Lines 251-263). He eventually faced a charge of kidnapping. “...Luckily for me they scaled it down to contempt of court and they released me on warning but then they never prosecuted me because they realised the futility of it (Lines286-291).

4.5.2.7. RELATIONSHIP WITH CHILDREN.

Both **Andrew** and **Pierre** related how their sons urged them to apply for the variations, because they wanted to be with them. “.....but he did give an affidavit as well which he had signed at the police station to say that he did want to come and stay with me”(Andrew: lines58-59). **Pierre** said: “Ja.....you don’t have an option when your boy says to you listen dad you’ve got to make a plan...and he’s threatening to run away” (lines 247-249).

James also told about his surprise when he first spoke to the children about the possible variation of the custody order: “.....they started spilling the beans and telling me about how they would love that and so on. They would rather go to mom every second weekend and stay with me. So this was quite a shock to me because until then I believed that especially the youngest two were still mommy’s children and that I was doing this forin their best interest but that they might not approve themselves but now it transpired that they actually did approve (Lines 239-246). He however also said “...the youngest one was still mommy’s girl and although she wanted to see more of me she would’ve rather live with mommy” (Line249). He proceeded to tell me how this changed when this child started spending more time with him: “The little girl said that she wants to live with her mother which is understandable at the time,I’ve always allowed her much more she goes to her mother all the time but lately she doesn’t talk about the mother and seldom goes to herif there’s a choice in other words if its daddy’s weekend she’ll never go to her mother. An incredible thing is the first time ever I got a call....on my cell phone from the little one on Mommy’s weekend on the Friday evening phoning me and asking me to please come and pick her up, she wants to come and stay with me” (Lines 760-770).

James continued to describe the relationship with his children, “...they know where they stand here’s daddy’s house, our house, daddy’s rules They know that they are safe from

the whole world in that house, its theirs and they can live there for ever and now that they know that daddy is able to pull this off, now their confidence in me has been restored and I've risen in their esteem you know” (Lines 562-568) “They can see daddy goes to work, what for to support them and he comes home every night and then he's still got time to do homework with them and make supper you see”(Lines 687-689).

From this data it appears that Arenstein's (1989:228) finding that fathers actively seeking custody of their children were men who valued their father-child relationships highly, is also applicable to the respondents of this study.

4.5.2.8. OTHER CHILDREN NOT INCLUDED IN THE APPLICATION.

Pierre was the only respondent who had a child that was not included in the varied custody order. He did consider changing her custody and it was a very difficult decision to make:

“ because I didn't want to tear her up;” (Line 44) but “ because obviously once I got custody of Ted it would have been a hell of a lot easier to get her down here but as I am saying she is just doing so well at school and in her sport.....that I just feel to have to go and.....and uproot that would probably not have been the right thing. I mean she is sixteen now so I would not consider doing it now”(Lines 186-190). He however gets on exceptionally well with his daughter and phones her just about every day. She spends half the long holidays and alternate short holidays with him (Lines182-184).

It appears that the custody arrangement in respect of **Pierre's** children is what Arenstein (1989:47) refers to as split custody. The greatest difficulty in this custody arrangement is that the children may lose contact with the siblings in the custody of the other parent.

Pierre showed me his children's rooms, and explained that the children spend every school holiday together either with him or with the mother.

4.6. THE FATHER'S EXPERIENCE AFTER THE VARIATION.

4.6.1. EXPERIENCE OF PATERNAL PARENTING.

Parke (1996:207) asserts that fathers with custody are not bumbling and ineffectual characters, and he claims that research has proved that they can raise their children competently and effectively. The respondents in this study made the following contributions

in this regard.

Andrew was the only respondent who was not actively involved in single parenting. *“Well since I’m at my folks it’s pretty easy. I don’t cook food.... I don’t do his homework because my mother actually does all of that. Uhm....so that makes it easy for me ”*(Lines253-258:8). He does however have the odd outing with his son. *“...I mean like last night we went to the beach. So then we chatted and what have you and he tells me about..... his girlfriends.....and all the jokes he’s heard and all sorts of things like that”* (Lines 288-290).

Pierre was delighted with the opportunity to care for his child. *“ It was incredible.....it took four long years but I eventually got him (Line 142).* He was willing to admit that it was not easy to cope with all the responsibilities, but felt that it was worth it (Line 168). *“...we do our own cooking and I take him to school, fetch him from school sport and extra maths and all those good things”* (Line 172). *“We have a great time. ... We go hunting and fishing.....we’re like brothers really”* (Line 164). He also showed me his son’s room and also the room he keeps for his daughter’s visits. The house was well kept and although some of the interior decorations lacked a woman’s touch, the hunting trophies, etc. contributed to create very pleasant atmosphere for a young man.

When describing his approach to paternal parenting, **James** reminded me of a similar situations reported in literature by Herman (1990:123) who said that single fathers often completely change their work and leisure patterns to accommodate their children’s needs. This author also refers to a father who was a partner in a major law firm who was able to rearrange his schedule to pick up his children from school and to be home to spend most evenings with them. Similarly **James** could explain the logistics in detail of fetching a sick child from school and caring for him or her while he was working as a professional person. He also had a well-worked out plan for running the house. He had no problem in preparing meals (Line 665), but *“we have a roster system for dishwashing, the five of us”* (673-674) and *“the thirteen year old does washing every day. I bought a second hand automatic washing machine and she does that washing hangs it up and takes it down”* (Line 672). Lamb (1997:205) also observed that fathers are more likely to assign household tasks to children.

James continued telling me about his parenting in other spheres of his children’s lives: *“.....when they see me they.....I’m bombarded with the stories about what happened that day”* (Lines 709-710). *“I get home it’s let’s say 5:30 and what I do is now I I’ve got to get*

cracking on the homework and I usually work one child at a time on the homework and when the homework is finished which will be at about 8 o'clock I've got them, the other ones showering in the meantime and by that time they've eaten and everything and they get in bed" (Lines 658-662). *".....the kids since they came into my care their marks steadily increased at school they've got they've got reports that are glowing reports glowing glowing glowing reports.....I mean these children are doing well in class they're above average their teachers say how well they adapted....were called as witnesses to say when I took custody of them that suddenly the children's marks started improving"* (Lines 508-520). Galatzer-Levy and Kraus (1999:219) refer to different studies on children of school-going age and hold that parents of both genders can be equally committed to homework and school achievement as their children grow older.

John whose children are relatively young (seven and four years old), also outlined the sense of satisfaction a single father can experience. He said that it was fantastic to have his children. He did not get upset when the mother did not fetch them when it was her turn to have them, because he wanted them all along and enjoyed being with them. *"Al verskil is die kinders is nou by my vir my maak dit nie saak of of sy hulle kom haal of nie jy weet ek geniet die kinders by my ek wou hulle nog altyd by my gehad het"*¹⁴ (Lines 291-293).

He is not a single parent in the true sense of the word, because he is in a stable cohabiting relationship, but he is actively involved in the care of his children himself. He, for example, described the bedtime routine he followed, when he would spend some time with them talking to them and reading them stories (Lines 237-243). He had to address some problems the older child had which John suspected, resulted from the divorce. He had a tendency to tell fibs and to be cheeky. **John** would punish him by sending him to his room to read instead of allowing him to watch television (Lines 443-451). He nevertheless felt that the children were much happier now. The older one used to be tired and listless before, but they were both energetic now and they also gained weight. *".....hy is baie onseker jy weet en hy is lui en hy wil net slaap hy's moeg die healtyd..... hulle is nou al klaar in drie maande in drie maande ja drie maande is hulle die ou kinders van self. Jy weet hulle is die besige twee seuntjies wat hulle nog altyd was"*¹⁵ (Lines 464-472).

Ahrenstein (1989:230) holds that a father's perception of fatherliness is shaped by a dynamic interplay of forces like amongst others, his enthusiasm for the role of father, his fulfilment as a father, his psychological well-being and his religious orientation. The latter

appeared to be relevant to **Carl** who, talking in a very calm and soft voice, compared his opportunity to care for his children with that of a missionary: “.....when you are a dad that gets your children you have a mission brought to you. Ja then then God brings you a mission field right into your own house because and it's the hardest of the lot. Oh its easier to go somewhere to the other side of the world and go and evangelise to a strange kid than to have your own child say they hate you or say they hate their Mom or something, you have to carefully go through the process of introducing love and the ministry” (Lines 989-995).

He explained the demands of parenting as follows: “I looked all over both my children you know especially on their backs anywhere, I was looking for the little place where you take the batteries outbut I now just realise I found out that there is no place to take the batteries out their batteries stay there [laughing]they just come at you like the sea and they never ever stop and they're not a part of your life, your life is either the kids or your life is not the kids,.....I'm giving them my time and my life now its not a problem anymore it was an adaptation process”(Lines 1003-1009). He also described how well he had adapted: “I've just said to a friend of mine the other day I said when I start growing boobs-Babs as ek beginne borste groei sê net vir my laat ek ophou [Good laugh] want ek voel nou soos ma ek is seker dit begin my affekteer. ¹⁶ Ja I started to feel like a mommy” (Lines 1013-1018). Ahrenstein (1989:64) indeed strongly denies that a lack of “biological preparation” can justify the limited role fathers have traditionally played in taking care of infants and babies. **Carl** however compared himself with a mother, who can do several things for her children simultaneously and said: “.....A man can't do that. We can't. We'll never be able to do that we must do one thing at a time and that's the difference between a man and a woman that makes this job a little harder for a man than for a woman” (Lines 1050-1052).

“But other than that there's such a wonderful reward in it..... the children when they treat you like you have to specify often that you are not God. You know. It's me and there's God.... That's a nice feeling to be in that position” (Lines 1052-1057).

4.6.2. SUPPORT SYSTEMS UTILISED BY THE FATHER.

Herman (1990:123) alleges that single fathers as a group have been found to be caring and nurturing and they are quick to make use of community support and will seek professional advice when necessary. The single fathers involved in this study gave indications of varying

sources and degrees of support available to, and utilised by them.

Three of the fathers, **Andrew**, **Pierre** and **Carl** had the support of their parents that they used as follows:

Andrew: *“It’s such like my mother is....she’s always helping him.....with his homework and obviously everything else basically.” He also said “ If you want to do it you’ve got to have support otherwise you won’t come right. And the ex will know that too that you haven’t got support anywhere”* (Lines 259 and 391-394).

Pierre’s parents lived on a farm about ten kilometres out of town so their washing was done out there (Line 171). His parents also helped out when he had to go away on a business trip (Line 242). **Pierre** also attended a father’s club at his child’s school that proved to be of help (Line 168).

Carl’s mother offered to take the children to school in the morning but he preferred not to take advantage of the support available. *“Usually you can make a plan until you can’t well then then the offers are available. So my parents are around and and that’s invaluable help....”*(Lines1021-1026). **Carl** however also related how his experience of religion had contributed in this regard: *“.....it was an adaptation process but with the help that God’s Holy Spirit and the wisdom that he has given me in the Scriptures..... usually about how to address self my problems “I want” “No you don’t” “You have to” “I will” “No you won’t” “I won’t” “Yes you will” Its all this process and then you get up in the morning and you make the kiddies breakfast”*(Lines 1007-1010).

Other sources of support were also utilised. **James** had a part-time domestic worker who sometimes assisted with the preparation of meals (Lines 666-670). Otherwise he enjoyed the support of his friends and girlfriend in entertaining the children. *“.....and I’ve got male friendswho are almost sort of father figures as well who, who are also playing sport with us who participate and bring their kids as wellor perhaps my girlfriend as well and all three go to go and play tennis or rugby or whatever”* (Lines 700-706).

According to Lamb (1997:226) remarriage can also offer parents and children additional supports and resources as well as an escape from the threats of single-parent households. It appears that this was what **John’s** stable cohabiting relationship provided for him and his children. As an example of this he explained that the visits to the biological mother used to be very traumatic for the little one, but his new partner had eventually succeeded in preparing the child properly and afterwards he happily visited his mother and came back

without any problems (Lines 495-506).

4.6.3 PATERNAL PARENTING AND THE FATHER'S CAREER.

Lamb (1997:205) suspects that many fathers who would like sole or joint custody choose not to pursue it because their job responsibilities are not flexible enough to accommodate the time demands of single parenthood. In her study on South African divorced fathers as primary caregivers, Davies (1994:131-132) however found that contrary to her belief, the challenge of combining the providing and nurturing roles did not produce major stumbling blocks, to the fathers in her sample. The fact that only three of the respondents referred to this area of their lives may indicate that it was not a major consideration in the context of this study either.

Andrew who was self-employed asserted that his flexible working hours caused his position to be unique (Lines 357-364). **Pierre's** work circumstances had changed so he did not have to be out of town so often which also made single parenting easier for him (Line 238).

James a single father of four children was practising law, and said “*No it can be done with ease with ease, people don't realise how you can do it*”(Line 693). While the divorce was pending his practice was in chaos..... “*after I got the children back my work picked up and I'm back in business again you know I'm now Ok*”(Lines 542-547).

4.6.4. PATERNAL PARENTING AND THE FATHER'S SOCIAL LIFE.

Lamb (1997:205) reported different studies which indicated that single fathers and mothers experience much of the same problems, for example, feeling overloaded, socially isolated, and worried about their parenting competence and interference with social life and work. Of the 5 respondents in this study, only 1 reported being in a serious relationship, although 3 other mentioned that they had girlfriends. Each of them, had a unique way of combining parenting and socialising, which they reported as follows:

Andrew had been going out with a girlfriend for a year and although there was mutual acceptance between her and his son, the latter preferred to socialise with his own friends and therefore never accompanied him on weekend visits to her (Lines 347-351).

Pierre did not have much of a social life, but said that it was as a result of work demands. When he had the time, he liked to go on fishing or hunting trips with his son (Line 230).

According to **James** single parenting did cut into “drinking time”. He continued: “*....but I*

still make time for leisure time and instead of sitting in a bar and drinking as some husbands might be doing, I'm either out playing rugby on the field to kick over the poles every night in the winter or playing tennis with the kids after work and on the weekends" (Lines 693-700).

His parenting responsibilities also sometimes impacted on his relationship with his girlfriend. *"I got a call much to my disgust because I was just getting passionate with my girlfriend at the time I might add. I got a call on my cell phone from the little one on Mommy's weekend on the Friday evening phoning me and asking me to please come and pick her up, she wants to come and stay with me. So as you can imagine I didn't appreciate that particular call, but anyway I left in my car and went and fetched her"(Lines 766-772).*

In **John's** case he had the opportunity to attend to the relationship with the new person in his life, while the children were still in the mother's custody and his new partner was overjoyed when he got the children (Lines 476-479).

Carl was philosophical about this aspect and said: *"But at the end of the day its fine you just got to reprioritise your life so that you're not wishing that you could but now you can't. So you're with the children because if you're wishing that you're somewhere else then the kids uhmm will know" (Lines1026-1030).*

4.6.5. THE EXPERIENCE OF CO-PARENTING WITH THE EX-WIFE.

Both **Andrew and Pierre** did not have frequent contact with their ex-wives. **Andrew** said: *"No I have not spoken to her for er....about three months now"(Line 137),* but as far as her rights of access to the child are concerned he said : *".....you know after I got custody...I actually said to her, he can go there whenever he wants to go there that's up to him..... I don't want to stipulate that he can only go every second weekend" (Lines105-113).* **Pierre** also reported that his child had contact with his mother and visited her during school holidays, but he did not communicate with his ex-wife. *"I really have no reason to talk to her" (Line 273).* He also said that he had not had a day's problems with access to his daughter since the variation (Line 354).

Durst,Wedemeyer and Zurcher (1985:423-426) found in their study of parenting partnerships after divorce, that only families where new structures with clear and flexible boundaries between the parental and former spousal subsystems had evolved succeeded in maintaining co-operative co-parenting relationships after divorce. This could have been the

case with both **Andrew** and **Pierre** who did not have much contact with their ex-wives but the children did not appear to be caught up in any parental warfare.

James decided: *“I don’t poison their minds against their mother at all I’ve never believed in that and I’ve seen what it does when she does it to them”* (Lines 572-574). He allowed that *“she can see the children whenever she wants she sees them, the youngest two every day because she goes to school.....to fetch them and take them home to her place for the afternoon”* (Lines 652-657).

John did not describe his ex-wife as a bad mother and he acknowledged that she did her part *“Sy is nie ‘n sleg ma nie jy weet sy het sy het haar deel gedoen ek meen oor en oor ek sê nie sy is ‘n sleg ma nie”*¹⁷ (Lines 579-582). There are however still misunderstandings between them *“..... maar daar is nog ons kan nog nie eye to eye sien oor sekere goed nie, verstaan jy”*¹⁸ (Lines 118-123). He did not claim any maintenance from the mother (Line 538) and when the children need something he sometimes gave their mother the money to take them on a shopping trip (Lines 539-540). His ex-wife was English speaking and therefore he decided to send the children to English schools, not only because it gives them an advantage, but also because he did not want to take the language affinity away *“.....dit is oor dat my vrou Engels is ek wil dit ook nie wegvat van haar af nie my eks vrou. Ek wil nie daai Engelse gedeelte wegvat nie”*¹⁹ (Lines 616-621).

Carl readily shared with me how he and the children took pity on the mother the night before the interview when she arrived at their place: *“Now when she comes in she says: I can’t take the kids this weekend I’m not in a condition and she just burst into tears she says: No I’m just depressed I don’t know what’s happening and I don’t know what to do, she’s really in a toestand (state). Now I said come inside..... we’ll make you coffee. Eventually my girlfriend left,..... till after nine o’clock we were just talking and the kids were consistently getting up and hugging her and what have you and then we all said our regular prayers together.....You know because we always pray for Mommy and now Mommy is here so we can just pray with Mommy it’s much better* (Lines 898-920).

4.7. ADVICE TO FATHERS IN SIMILAR POSITIONS.

Andrew advised fathers as follows: *“Well I think if they get the opportunity to do it they must actually do it..... But I think that fathers should still fight for..for custody, although they’re not gonna get it* (Lines 356&363). **Pierre** also felt that a father does not have an

option if his child asks him to make a plan (Lines 247-252).

James being “*a realist when it comes to these things being a litigator by profession*”, was not that confident, because “*the odds are stacked against the male. I will only advise a client to proceed if we’re guaranteed of success because we have reason to believe that she, the mother will capitulatebut I will advise most men not to bother, because they don’t stand a chance. May be in 2 or 3 years time things could change*” (Lines 721-730).

John thought that he was fit to be a consultant because he had gone through the process. He concluded that he would advise anybody to go to a mediator even before consulting a lawyer. “*..kyk want ek self was daardeur gewees en ek sal eerste vir hom sê gaan sien vir Willa Marais voordat jy nog eers by ‘n prokureur uitkom en laat dit gefinaliseer word*”²⁰ (Lines 400-402).

Carl advised other fathers “*.....not to run from it,..... but to go for it the change..... it will make them appreciate woman, mothers* (Lines 1033-1034).

4.8. CONCLUSION.

While very little was initially known about fathers pursuing custody of their children, the respondents whom so readily shared the challenges they faced, their despair, their joy and ultimately the wisdom they gained, made it possible for the reader to dwell for a short while in their shoes. This would nevertheless be a futile exercise which could even lead to ethical problems did it not contribute knowledge with the potential to ameliorate the human condition and enhance human dignity (Kvale 1996:109). However, the authentic understanding which developed from the rich thick descriptions of their lived experiences, made it possible to arrive at conclusions and to formulate recommendations which will hopefully serve both scientific and human interests. These conclusions and recommendations will be discussed in the next chapter.

CHAPTER 5.

CONCLUSIONS AND RECOMMENDATIONS.

5.1. INTRODUCTION.

In order to be ethically justified, an interview study should ideally, beyond the scientific value of the knowledge obtained, also contribute to the improvement of the human situation investigated (Kvale 1996:111). I want to believe that this ideal can be achieved by this study. Beyond the knowledge gained on the original rather narrow research topic which is the non-custodial father in pursuit of custody, some of the findings relate to much broader social issues which may influence policy and practice and may therefore in some small way contribute to improve the situations of not only fathers, but of all the members of family systems altered by divorce. After I have discussed the conclusions I arrived at and made certain recommendations in this chapter, I trust that the reader will share my conviction that this study had some value despite certain limitations, which have already been acknowledged.

I will first present the conclusions from the study, then make some recommendations and

finally some suggestions for future research.

5.2. CONCLUSIONS.

5.2.1. PRE-DIVORCE PARENTING.

The respondents reported different degrees of involvement in pre-divorce parenting ranging from involvement in all areas (Pierre, 276-289) and caring for two pre-school boys while the mother was hospitalised (John :18-19) to only a marginal role (James: 584-587). The data did not indicate that any of the respondents was fulfilling the full-time role of primary caretaker, that Van Zyl (1997:77) refers to as the parent who is most intimately involved in the daily life and care of the child.

5.2.2. THE DECISION TO DIVORCE.

None of the respondents reported that they took a sole decision to divorce. Two of them mutually agreed on divorce with the ex-wives, while the ex-wives instituted divorce proceedings in the other three cases. The respondents mentioned different prevailing factors in the marital breakdown phase. Some of the factors mentioned were an extra-marital relationship of the ex-wife, drug and alcohol abuse of one or both parents, suicidal tendencies of the ex-wife, and over-involvement of the respondent in his work and subsequent neglect of his family.

None of the respondents explicitly blamed their ex-partners for the divorce. James (Line 630) in actual fact questioned the existence of an innocent party in divorce, while Carl (Lines 115-117) understood why his ex-wife divorced him in the way she did.

5.2.3. THE DECISION ON CUSTODY.

As far as the custody arrangements at the time of the divorce were concerned, only one of the respondents agreed to a custody award to the mother. Two of the respondents had to withdraw from the dispute when the costs became what one of them called *frightening* (Pierre: Line 68). Another respondent was not aware that a divorce order and a subsequent custody order were made. The fifth respondent after having spent more money than the joint estate was worth on legal representation, was referred to a social worker in private practice and they then followed a route of alternative dispute resolution.

It appears then that, similar to other South African fathers Van Zyl (1997:65) refers to, some of the respondents could have felt that they were divorcing their wives, but not their children, but they eventually had to withdraw from the battlefield and four of the mothers got undisputed custody of their children. Only one respondent received his children after a mutual agreement on paternal custody was arrived at, through a process of alternative dispute resolution.

5.2.4. THE FAMILY ADVOCATE.

Although Van Zyl (1997:117-123) holds that the purpose of the Office of the Family Advocate is to make sure that the South African judicial system takes the time and trouble to focus on the best interests of every child of divorcing parents, the data suggest that there may still be children of divorcing parents who do not benefit from this provision.

Only two of the respondents mentioned the role the Office of the Family Advocate played in the custody decisions during their divorces. Family advocates may have been involved in the cases of the other respondents, but their roles may have been more obscured, because custody was not in dispute.

Both respondents who were aware of the family advocate's input, were dissatisfied with the way the investigations were done. The most salient objections were that home visits were not paid, collateral sources of information were not consulted and that the child's wishes were not considered. Considering the guidelines and standards for conducting child custody evaluations presented by Stahl (1994:223) the respondents do not appear to have had unrealistic expectations from the Family Advocate's Office, because this author also suggests multiple avenues of data collection like collateral information, home visits, observations, school reports and so forth.

It appears then that some of the Offices of the Family Advocate may not pay home visits or consider collateral sources of information. It must however be noted that the respondents only referred to their experiences with two of the Offices of the Family Advocate and therefore it is possible that other offices may include home visits and information from collateral sources in their investigations. However, Froneman (1999:117) also emphasises the importance of home visits but found that most of the family counsellors she interviewed believed that home visits should be included in the investigation, but not all of them did home visits in every custody evaluation.

It can be concluded that some of the respondents did not feel that the investigations undertaken by the family advocates were comprehensive enough since home visits were not done and collateral sources of information as well as the child's opinion were not given enough attention.

5.2.5. LAWYERS AND ADVOCATES.

The data revealed that although the respondents found some lawyers to be more orientated to divorce settlement negotiations, there were also those who preferred an *energetic approach* (James: Line 10) to their client's interests, which has the potential to lead to protracted and expensive litigation.

Respondents also differed in their insight into legal procedures. While one was from the legal profession, and another handled his own divorce with only some assistance from a friend, two of the respondents indicated their ignorance of legal procedures. This perceived ignorance is a cause for concern when one takes in account that it is about procedures that can have far-reaching and life-changing consequences for them.

It can be concluded that although divorce is presently conducted within an adversarial legal system, the extent to which the respondents perceived their divorces to be adversarial in nature varied, to an extent depending on the role the legal representatives of the parties played.

5.2.6. EXPERIENCE OF LEGAL SYSTEM.

In referring to the legal system, the respondents used words like "*bleddie frusterend*" (bloody frustrating); "*grens aan malligheid*" (bordering on madness); "*tore my hair out with the legal system*"; "*no hope in hell* " and *I was paralysed I could only take the law into my own hands which I wasn't going to do*". The fact that custody decisions are taken in a "*cumbersome system*"(James Line 456) is a cause for concern. The most significant cause for the indignation of the respondents however appears to be what one of them called "*a biased rule*" in favour of the mother. Van Zyl (1997:65) explains this bias by stating that South African courts are slow to accept new trends, one of which is that parenting does not necessarily mean "mothering". Some of the respondents put the blame for this bias at the door of the judge whom Van Zyl (1997:22) maintains are often said to represent a conservative sector of society, and to be uninformed about children's needs during and after

divorce. There are also authors who blame the best interest principle for this bias, because it is described as “notoriously indeterminate” (Van Zyl 1997:5) while Wessels (2000:16) opines that this principle is nothing more than a reflection of the decision makers’ own life experiences, prejudices and sentiments, and of what they consider to be the societal norms of the time.

In conclusion it can be said that despite the fact that the maternal preference rule was supposed to be eliminated from the South African legal system, some of the respondents in this study believed that they experienced the effect of gender bias in their pursuit of custody.

5.2.7. *EXPERIENCE OF ALTERNATIVE DISPUTE RESOLUTION.*

Only one respondent had the experience of alternative dispute resolution in the form of mediation through a social worker in private practice. He felt that the Family Advocate’s Office should make provision for such services which he found very helpful. He perceived mediation as helping the court to also see the man’s side of the situation (John: Lines190-193). This perception is supported by Lamb (1997:194) who found that fathers are more likely to report that their rights have been protected and that the agreements from mediation satisfied them more than decisions made through litigation, because he contends that mediation is more likely to result in joint custody and litigation in sole maternal custody. The custody arrangement may be the reason, but Marlow and Sauber (1990:1-7) hold that mediation also addresses feelings like anger, hurt, disappointment and fear which are inherent to the personal crisis of divorce and which they see as keeping a couple from an agreement rather than conflicting interests, as the law would have it.

The respondent saw a positive change in his ex-wife after the mediation and he also noticed that their co-parenting relationship improved because they followed the mediator's advice.

Although Van Zyl (1997:142 & 194) alleges that the value of mediation in respect of saving costs and time has not been proved yet, my respondent compared the R3 500 he spent on mediation to the R30 000 the two of them spent on legal costs without having reached an acceptable custody arrangement in the process (John: Lines352-356).

Considering the advantages mediation had for this respondent one can understand his question about the provision of mediation services by the Government. I realise that mediation may not have the same positive results in other custody disputes, but it can be concluded that it saved time and money for this respondent and an agreement was reached

which satisfied him. It is however possible that they were better motivated for mediation, because they already had experience of the expensiveness of litigation to which King in Van Zyl (1997:8) refers.

5.2.8. FINANCIAL CONSIDERATIONS.

Ahrenstein's (1989:247) contention that legal costs are beyond the reach of the average person was illustrated in the accounts of two of my respondents who referred to these costs as "*frightening*" and one said that he had to borrow the money from the bank because "*the trial itself would have cost hundreds of thousands of rand and my resources were limited.*" Both these respondents eventually had to withdraw from the dispute and settled for maternal custody at the time of the divorce. The other respondent together with his ex-wife had spent almost three times the value of their joint estate on legal costs before they opted for mediation which was discussed in more detail in the previous section.

The same respondents who settled for maternal custody at the time of divorce as a result of the inaffordability of litigation, indicated that they had done some prioritisation when they applied for the variation of custody orders and held that: "*I mean I just had no option you know even if it had cost me every cent I had money means nothing really in the end*" (Pierre: 49-50 & 224) and "*.....we're not talking about costs,..... we're talking about children. People tend to forget about them*"(James: Lines742-743).

From the accounts of the respondents it appears that financial considerations can be decisive factors in some custody disputes during divorce. It can however also be concluded that some of the respondents in this study, did not hesitate to incur these expenses when they perceived a variation of custody to be imminent.

5.2.9. CONSEQUENCES OF ORIGINAL ORDER.

5.2.9.1. CONSEQUENCES FOR THE CHILDREN INVOLVED.

The data on the consequence of the original maternal custody order for the children of the respondents elicited certain questions about custody decisions and the best interest principle. Two of the respondents' children found it difficult to settle in the mother's custody that could, according to the respondents, have been influenced by the presence of stepfathers.

Other children found themselves in situations which would in terms of section 14 of the Child Care Act (Act 74 of 1983) be defined as being “in need of care”. *“Living in a haze of drugs and dirty dishes and filthy house and sick children.... you know real drug addict stuff”* and . *“.... her focus of aggression and abuse had then turned onto the children”* (James: Lines 55, 89&92). The children of another respondent were removed from the care of the mother twice when she was arrested for drug related offences while the data also indicated incidents of physical and sexual abuse of the children.

These accounts may raise questions about the claim that custody orders are supposed to be in the best interests of children. The reader who asks these questions may find an answer in Parke (1996:204) who claims that only lip service is paid to the best interest doctrine. Before arriving at that conclusion it must however be considered that the respondents’ original divorces were all eventually unopposed and it is unlikely that the court had sufficient evidence to its disposal for making a finding other than the one the parties agreed on. It must however be reiterated that the provision of the Office of the Family Advocate was one way of securing the best interests of every child of divorcing parents, whether the parents arrived at an agreement amicably or whether the custody was in dispute. In the cases just discussed, no discretionary investigations were done while the data suggested custody arrangements which could be considered not in the best interest of the children.

It can then with hindsight be concluded that the custody decisions for some of the children discussed in the data were not necessarily in their best interest.

5.2.9.2. CONSEQUENCES FOR THE FATHER / CHILD RELATIONSHIP.

Data also suggest that the original maternal custody order had consequences for the father/child relationships. While all the fathers related some kind of problem with access to their children it was not totally unexpected, considering that Van Zyl (1997:83) did indicate that parties normally adhere to even the most fiercely contested custody order once it has been made, but each visit in terms of an access order can refuel friction between the parents. In this regard Lamb (1997:203) also refers to a study by Seltzer and Brandreth in which resident mothers are blamed for acting as gatekeepers after divorce by limiting father’s contact with children.

Another effect of the maternal custody order which emerged from the data and which needs to be reflected on, is the father’s sudden demotion from the decision-making role in the

family to, what one of the respondents described as a *persona non grata* (James: Line594). This father could no longer exercise any influence over his children's lives and his access to his children was more restricted than that of the mother's boyfriends or family, while the mother "*held all the trump cards.... she was all powerful*"(James:Line237). Another respondent referred to his similar experience and said the mother acted as if she had won the prize (John: Line284). Simpson (1998:101-102) refers to this perceived powerlessness as the vulnerability of the role of the non-custodial father. He says that the father's perception is that the custodial mother holds all the cards with the trump card being the children themselves. He further refers to the radical shift from a context in which the power gradient is steeply inclined in his favour to one in which considerable power passes to the former wife, and contends that the non-custodial father is often displaced and in exile with the opportunities to exercise control over the former wife and children greatly diminished if not entirely absent.

Bosman-Swanepoel, Fick and Strydom (1998:93) posit that some fathers disappear altogether after divorce in order to escape from this intolerably painful and frustrating situation. The respondents in this study however remained involved in their children's lives and were available and prepared to come to their rescue when problems occurred in the maternal custody arrangement.

It can be concluded that some of the respondents experienced the same powerlessness which literature refers to as the vulnerability of the non-custodial father. I also suspect that the legal system may even reinforce this vulnerability, as discussed under 5.2.6. This may not only have a negative impact on the non-custodial father, but also on the children of divorce, who are mostly no less vulnerable and who can in this way be denied the influence and support of the second parent.

5.2.9.3. CONSEQUENCES FOR THE CO-PARENTING RELATIONSHIP.

What the respondents had to say about their co-parenting relationships with their ex-wives, bore evidence of the post-divorce continuity in relationships which Emery (1994:18-19), refers to when he posits that the divorced family is still a family although it is now defined by shared relationships in stead of shared residence. Data suggested that the co-parenting relationships of the respondents varied from profoundly acrimonious to fairly co-operative.

Two of the respondents had hardly any contact with the mothers while another two mentioned incidents of physical and verbal abuse as well as warrants of arrest and protection orders. Some data also suggested what could be parental alienation which Stahl (1994:122) describe as “one parent subtly and covertly gives message to the child about how bad the other parent is”. James said: “*Her entire day was devoted to telling them about what a terrible person I was and this wasn’t doing them any good*”(Line 33).

While John said that they would never be best of friends, he felt that their co-parenting relationship improved after they reached a mediated settlement. Carl related how his post-divorce relationship changed from murderous rage to remorse and forgiveness. The following statement may indicate that his conversion to Christianity had some impact. “*..God loves you that’s why I must love you even though I don’t feel like it at this point but He has given me a chance and I’ve got to give you a chance and I want you to get it together(Lines 784-786)*

I concluded that parental conflict, consisting of physical and verbal aggression, was evident in most of the post-divorce co-parenting relationships of the respondents. It is true that it was more profound in some cases than others, but Galatzer-Levy and Kraus’s (1999:430) warning that parental conflict, has emerged as the most robust predictor of childhood behaviour problems before, during and after divorce cannot be ignored. Interventions like mediation and the support from religious institutions as suggested by Van Zyl and Bekker (2000:12) appear to have had a positive effect on some of their post-divorce relationships.

5.2.10. THE FATHERS’ FEELINGS, EMOTIONS AND EXPERIENCES.

In contrast to the common conception that fathers walk away from divorce unscathed and carefree, Mackey (1996:169) portrays the divorced father as a person who is also vulnerable to human emotions, both pleasant and unpleasant. From the accounts of the respondents in this study it appears that they were no different. Although James admitted that his taste of bachelorhood was like heaven, he also experienced the same unpleasant emotions as the other respondents for which they used words like *devastated, depressed, horror, distraught, broken, going through hell*. What appeared to have affected them significantly, was constant worrying about the children when they realised that there were problems in the maternal custody and once again the recurring theme was their helplessness to do something about it. Two of the respondents explained how they lost weight and one of them said that he could

not afford to get hospitalised for depression, because he felt that it was not acceptable for a man. Simpson (1998:92), who refers to social and psychological problems experienced by both men and woman after divorce, hold that men do not have a channel of expressing their distress which is as culturally acceptable as it is for woman. These obscured emotional problems can result in what he calls the “somatisation of stress” and manifests in a range of physical problems of which the weight loss of the respondents may be an example.

In conclusion it can be said that the respondents in this study experienced clear and distinctive patterns of distress after divorce, which were mostly connected to the loss of the pre-divorce father/child relationship and their subsequent powerlessness to address the problems they perceived in their children’s lives. It is possible that the opportunity to be listened to and to have their allegations heard and investigated, may have helped them similar to a sample of divorcing parents, studied by Pruett and Jackson (1999:283-310).

5.2.11. THE FATHER’S MOTIVATION FOR VARIATION.

Literature reveals a wide range of fathers’ motives for wanting custody of their children and some authors are quite sceptical about them, claiming that they can have little to do with the interests of the children, but are much more about revenge or parent’s needs (Robinson 1993: 89, 100; Bosman-Swanepoel et al 1998: 83, Van Zyl 1997:66). Burman and Swanepoel (2000: 118) however suspect that investigations by the family advocate are likely to eliminate such applicants.

In this study two of the fathers were urged by their children to apply for the variation of custody. These children were both boys in early adolescence and it is possible that their developmental changes may have played a role as suggested by Johnston and Campbell (1988:10). The other three fathers sought variations when they considered themselves more suitable for custody as a result of ex-spousal difficulties and incapacibilities caused by suicidal tendencies, alcohol and drug abuse.

In addition to external motivating factors the data also suggest that the respondents were prompted to act as a result of their constant uneasiness about their children’s safety and well-being.

While at least two of the respondents had to surrender their claims for custody at the time of divorce, it is evident from the data that all the respondents remained involved in their children’s lives and were available when the children needed them.

My conclusion is that the respondents in this study, who were all recommended for custody by the family advocates involved, had motives which were centred in the children's well-being similar to other South African fathers who valued their father-child relationships highly (Arenstein 1989:228).

5.2.12. THE FATHER'S EXPERIENCE OF THE VARIATION PROCESS.

Emery's (1994:197) contention that custody arrangements are not final either theoretically in the law, or empirically in parenting practices, was also reflected in the situations of the respondents who each had some kind of legal process implemented in order to bring about a variation in custody arrangements.

The respondents experienced different reactions to their applications. As far as the children were concerned, all the fathers indicated that the children were consulted before applying and most of the children were eager to be transferred to the father's custody.

This process involved different degrees of conflict for the ex-spouses, varying from accusing the father of being unstable and aggressive to assaulting him and having him arrested. One mother did not defend the application while three others eventually capitulated and only one father received an interim order against the mother's wishes, through court.

Johnston and Campbell (1988:15) suggest that disputes sometimes help couples who are psychologically more vulnerable, to restore the delicate psychological balance that had been disrupted by the divorce and its aftermath. In the case of my respondents I did not conclude that their applications for variations served these ends. This is not to say that it did not play a role in the mothers' response to the action against them, but it will be inappropriate to speculate on this since I did not interview them.

Only one of the respondents' application resulted in split custody with his daughter remaining in her mother's care. He indicated that this arrangement did not have a negative effect on either the father/ child relationship or the sibling relationship.

It can be concluded that the respondents persevered in their pursuit for custody when they thought their children needed them, even when they had to face setbacks.

5.2.13. EXPERIENCES AFTER THE VARIATION OF THE ORDER.

5.2.13.1. EXPERIENCE OF PATERNAL PARENTING .

After I had listened to the respondents' accounts of how they handled the tasks associated with caring for their children, I concluded that they appeared to be as competent and effective as can be expected of any single parent, regardless of gender. This assumption admittedly was based on subjective information offered by the respondents themselves. However I also observed what I perceived to be unmistakable enthusiasm, fulfilment and pride in the accounts of their parenting (See section 4.6.1.)

Lamb (1997:84) posits that one of the indicators of high paternal involvement in care-taking is a perception the father has of fatherhood as a self-enriching experience, which gratifies psychological and social needs. This is further supported by Ahrenstein (1989:230), who holds that the father's perception of his fatherliness is shaped by a dynamic interplay of forces like his enthusiasm for the role of father and his fulfilment as a father.

Based on this authority I consider the data sufficient to suggest that there are some fathers who are enthusiastic about caring for their children, which they can do competently and effectively. These fathers appear to take pride and find fulfilment in their parenting task.

5.2.13.2. SUPPORT SYSTEMS.

The data revealed that most of the respondents in this study appeared to be quite self-sufficient. This may suggest that the respondents, as did custodial fathers studied by Davies (1994:131-132) and Arenstein (1989: 232), coped well with combining the providing and nurturing roles, and therefore did not need that much support. Supporting my contention, is the fact that none of them explicitly reported feeling overloaded or socially isolated, like the fathers Lamb (1997:205) refers to. What has to be remembered however is that this was a select group of fathers who had to fight for the custody of their children and they may have been more motivated to prove their suitability, as did the sample reported in the Arenstein (1989:228) study. Having said that, it is also true that Van Zyl and Bekker (2000:12), in a recent article, mentioned their concern about the dearth of support available to families in

their state of disintegration and emphasised the significant role churches can play. The possibility therefore also exists that some custodial fathers have to cope without support because it is not readily available.

5.2.13.3. PATERNAL PARENTHOOD AND THE FATHER'S CAREER.

In her study on South African divorced fathers as primary caregivers, Davies (1994:131-132) found that contrary to her belief, the challenge of combining the providing and nurturing roles did not produce major stumbling blocks. The fact that only three of the respondents in this study referred to this area of their lives may indicate that it was not a major consideration in this context either.

One of the respondents who is a professional person actually recounted how his practice was affected in the distressful period directly after divorce but said “...*after I got the children back my work picked up and I'm back in business again you know I'm now Ok.*” (James:546) and said about combining the bread-winning and nurturing roles, “*No it can be done with ease with ease, people don't realise how you can do it*”(James: 693).

It can be concluded that similar to custodial fathers in other South African studies (Arenstein 1989 and Davies 1994), the respondents in this study did not report major stumbling blocks in their combined roles of primary caregiver and breadwinner.

5.2.13.4. PATERNAL PARENTHOOD AND THE FATHER'S SOCIAL LIFE.

Lamb (1997:205) contends that the new roles of custodial fathers may interfere with their social life and some of this interference was evident in the accounts of my respondents as well. I concluded that their patterns of socialisation may have changed, and were likely to be more child-centred now, but it did not appear that any of them felt socially isolated.

As far as heterosexual relationships are concerned, only one of the respondents was involved a serious relationship but three other reported that they had girlfriends. It is possible that the interference Lamb (1997:205) refers to, may also have an effect on these relationships as indicated in section 4.4.3.4.

In conclusion I did not get the impression that any of the respondents was perturbed by what I perceive to be the price they were paying for having custody. My conclusion is perhaps best supported by Carl's philosophical statement: “*But at the end of the day its fine you just got to reprioritise your life so that you're not wishing that you could but now you can't. So*

you're with the children because if you're wishing that you're somewhere else then the kids will know" (Lines1026-1030).

5.2.13.5. EXPERIENCE OF CO-PARENTING WITH THE NON-CUSTODIAL EX-WIFE.

The data suggest that these can be multi-faceted relationships varying from severe acrimony to reasonable placidity and co-operation. Durst Wedemeyer and Zurcher (1985:423-426) found in their study of parenting partnerships after divorce, that only families where new structures with clear and flexible boundaries between the parental and former spousal subsystems had evolved succeeded in maintaining co-operative co-parenting relationships after divorce. While this could have been the case with both Andrew and Pierre who did not have much contact with their ex-wives, it cannot be said with certainty without the input of other members of the binuclear family, which is beyond the scope of this study.

Similarly it will not be possible to determine if or which of the factors mentioned by Durst Wedemeyer and Zurcher (1985:423-426) (See section 2.2.4.), contributed to the apparently slight decline in the conflict levels particularly in the area of access and visitation, since custody was varied. The following statements led me to this suspicion: *"..... I don't want to stipulate that he can only go every second weekend"* (Andrew :110) while he described the situation before the variation as *".....I had him every second weekend and that was it"*(Line 119). James sketched his situation as follows *"I was initially denied access to the children for months and months on end.... they eventually capitulated on the access aspect..... , but that was after almost about five months after the divorce"* (Lines27-30). After the children were transferred to his custody, he contended *"...she can see the children whenever she wants she sees them "* (James: Line 652). Parke (1996:211) reports research results that claim that children in paternal custody see their mothers more than children in maternal custody see their fathers, but he also mentions studies that contradict this evidence. Data from this study, appear to be more in support of the former position.

Some of the respondents reported fairly respectful attitudes towards the mothers in other areas as well. One for example related how the children were left in English schools because the mother was English (John: Line 619) and Carl told me how he and the children always used to pray for the mother (Line 918).

It appears that some more positive aspects of the co-parenting relationship became apparent

which appears not to have been part of that relationship before the variation of the custody order.

5.3. ADVICE TO FATHERS IN SIMILAR POSITIONS.

Most of the respondents were convinced that fathers should not refrain from pursuing custody and John advised them to approach a mediator before even considering adversarial procedures. Carl answered in a different tone by suggesting that fathers will appreciate mothers more if they decide to take responsibility for the custody of their children.

James called himself a realist and cautioned fathers that the odds are stacked against them but ended in a hopeful frame of mind, saying: "*May be in 2 or 3 years time things could change*" (Lines 721-730).

5.4. CLOSING REMARKS.

Due to certain limitations inherent to the design and method of this study, I do not claim that the results can prove anything. What I do believe however, is that it can support a modest conclusion, that contrary to the opinion of some judges and other practitioners there are some fathers who appear to have sound motives for persisting in their pursuit of custody of their children. These fathers, if they are afforded the opportunity, find fulfilment in parenting their children whom they perceive to be happy and prosperous in their care.

Thus far the results do not reveal significant cause for concern. However they also suggest and are supported by evidence in the literature (Lamb 1997:197) consulted, that there are fathers in whom divorce causes clear and profound signs of distress which appear to be related to the loss of the pre-divorce father / child relationships. One of the most salient experiences the data elicited was the feeling of powerlessness to effectuate the well-being of their children as they see it. These distressing experiences can be intensified by the substantial challenges they sometimes face in their pursuit of custody of their children.

If the helping professions have any hope of alleviating the debilitating effect divorce has on some children, the plights of some fathers in pursuit of custody of their children also have to be recognised and addressed. From my view of the family as a system, I believe that the family members are interdependent and that distress, frustration and conflict experienced by any one of the members or in any of the subsystems, will prompt changes throughout the system. This contention is supported by evidence from at least twenty-four studies quoted

by Lamb (1997:197) that parental distress and conflict at the time of divorce can cause a broad range of emotional and behavioural disorders in the children who are exposed to it. In support of Marlow and Sauber's (1990:9) position, I contend that it is possible that suppressed feelings of anger, hurt and powerlessness experienced by the father, can impact negatively on the post-divorce co-parenting relationship, while there is also evidence that it is parental conflict rather than the custody arrangement that predicts poorer adjustment in children of divorce (Luepnitz 1982:149 and Galatzer-Levy & Kraus 1999:430).

Considering the findings of this study and the conclusions, which emanated from these findings, it appears that the following can be useful goals for policy and practice :

- To provide a custody decision-making process in which both parents can participate and which both can perceive as comprehensive and fair.
- To minimise parental conflict and the subsequent involvement of children in endless power struggles in the post-divorce parental dyad.
- To encourage the constructive involvement of both parents with all the children in the family system altered by divorce.

In order to achieve these goals some recommendations are suggested.

5.5. RECOMMENDATIONS.

5.5.1. RECOMMENDATIONS FOR PRACTICE AND POLICY.

- In line with the Constitution of the Republic of South Africa, issues of gender bias should be eliminated from the custody decision-making process, since there are fathers who also have the potential to be adequate custodial parents.
- In order to counteract the possible effect of stereotyped myths, beliefs and biases (See 5.2.6) training should be available for judges involved in family law as suggested by Van Zyl (1997:22).
- Social workers and others in the helping professions should recognise that divorce can have an emotional impact on fathers as much as on other family members (See section 5.2.10). They should therefore encourage fathers to talk about their experience of divorce even if this means that they first have "to combat the father's emotional inexpressiveness" (Kruk:1994:23)
- Divorcing parties should be informed about the effect protracted litigation can have on

them and their children and should be encouraged to resolve their disputes in a minimally antagonistic, non-adversarial atmosphere as far as possible.

- As suggested by the White Paper for Social Welfare (1997:46), divorcing couples should be encouraged to re-organise their post-divorce family system, through a process of mediation, involving both parents. Terminology like “custody award” “win custody” or “lose custody” and “Mother *versus* Father” may suggest adversarial divisive procedures and should be used with caution since a family dispute should not be viewed as a contest and the children not as prizes (See section 4.4.4.2 Page 79 John)
- Offices of the Family Advocate should be empowered so that conciliatory procedures like mediation can be available to all divorcing families regardless of their financial positions (See section 4.4.3.1 Page 71).
- Furthermore the Offices of the Family Advocate should be empowered so that the custody decision for every child can be monitored and /or evaluated thoroughly (See section 5.2.9.1).
- Where evaluations are indicated, family counsellors should be in a position to follow multiple avenues of data collection, including home visits and collateral information, in order to get a holistic view of the family system (See section 5.2.4).
- The right of every child to express his or her opinion as to which is considered to be the most appropriate placement at the time of divorce, can be observed without exposing him/her to direct decision taking (See section 4.4.3.1. Pages70-71).
- It may be difficult to implement the procedures suggested within the present judicial system, therefore it is further suggested that Family courts with comprehensive jurisdiction in family matters should be established in all areas including rural areas as proposed in the 1997 Hoexter Report.

I hope that the results, conclusions and recommendations from this study will be of value to those involved either professionally or personally with the reorganisation of post divorce family systems. However the uniqueness of each individual and each family should be respected when contemplating the application of any of these recommendations.

This is an exploratory study, which may spark ideas in the reader, for more exploration in future. The following are suggested for future research.

5.5.2. RECOMMENDATIONS FOR FUTURE RESEARCH.

- A replication of this study with larger samples involving all the divisions of the High Court and together with that all the Offices of the Family Advocate, may produce valuable data.
- Investigations of custody arrangements, which were effected through the Family Court pilot projects, as well as the Southern Divorce court, may elicit valuable data that can influence future policy.
- A limitation of this study was that only fathers were involved. Future research on the views of the mothers whose custody was challenged or even of the children whose custody was varied may provide other valuable insights.
- Longitudinal studies on paternal custody can be of value.
- Although sole custody still appears to be the predominant form of custody, an ever-changing society has to guard against too rigid assumptions of family forms. Further research on joint physical custody, joint legal custody, split custody and even informal arrangements regarding custody in the South African context will be of value.
- Longitudinal investigations of custody arrangements negotiated through mediation are suggested.

The impact of divorce on all the family members including the fathers, challenges our society. This study was but one of the numerous attempts to address this challenge. For all its limitations I trust that readers will gain some knowledge which may have the potential to ameliorate the human condition brought about by custody disputes and that it may ultimately contribute to the realising of the sublime ideal suggested by Lansden (1993:3) who said:

“Maybe two adults bowing to someone smaller than themselves and something larger than themselves was not a bad idea after all”.

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Appendix 1
TRANSLATIONS: CHAPTER 4

This is a free translation from Afrikaans sections in Chapter 4. The respondents read the translations and were satisfied with it.

1. bloody frustrating, actually frustrating is not the word, the whole system genuinely borders on madness.
2.you know I will not have a clue I also do not know what happens in the courts they wrest things so much.
3. At the Family Advocate, you see, if they can appoint a third person so that the court can see the truth from the man's side, because us men tend to know that we have no chance.
4. the fact that I have the children made her feel that she gave her children away you understand? She signed off her children and Willa's treatment with regard to that perception eventually contributed more in that respect than her psychologists and and and I think this is cardinal you know.
5.my ex-wife it helped she I can see she has changed.
6. You know it is not necessary to go that length if you pay a Willa Marais and get her involved. Now OK Willa Marais will be able to handle how many divorces in the same way..... why are there not more Willa Marais's in the Government's service?
7. but now once again I can tell you in a marriage where the total value of the assets is R10 000 why does it take three years to get divorced? Why do lawyers on both sides earn R15 000? I mean her lawyer obviously and mine it's R30 000 that was wasted if you ask me.
8. the children suffered as play-balls in my in the divorce over and over because whoever had the children, had sort of control the one over the other.
9.there is a hell of a party with a lot of pals and a lot of drunkards and the children lie in bed they cannot sleep because the music is blaring.
10.her perception was that she had won the prize when she had the boys in her care and that I was heart-broken about it.
11. Yes in a nutshell what I told you now does not sound rough or difficult, but I can tell you it was hell because what I explain to you in an hour, stretched over a two-year

period and it got to me I mean I ended up weighing 83 kilogram and I usually weigh an average of 90..... Sure there were days when I was at wits' end why do I fight and I know that nobody listens to me, during the divorce of course and nobody understands my point of view and my worries.

12. Why can I not become depressed and lie in hospital for a week for therapy? I am a man, a bloke does not do that.
13.costwise I have paid my lawyers during the last two years..... we are already at R16 000..... Willa had in a way sorted out everything in 3 months time and with her assistance and her cost of R3 400 you know I cannot understand I cannot comprehend why the lawyers' costs are so high.
14. The only difference is that the children are now with me.... it does not make a difference to me whether whether she fetches them or not you know I enjoy having the children I have always wanted them with me.
15. he is very insecure he is lazy he just wants to sleep he is tired all the time..... already now in three months in three months yes three months they are the same they always used to be. They are the two busy little boys they have always been.
16. I've just said to a friend of mine the other day I said when I start growing boobs- Babs if I start growing boobs just tell me so that I can stop [good laugh] because I feel like a mother now I am sure it starts to affect me. Yes I started feeling like a mommy.
17. She is not a bad mother.... you know she did her part I mean I repeat she is not a bad mother.
18.yet there are still we still do not see eye to eye on certain matters do you understand.
19.because my wife is English I did not want to take that away from her as well my ex-wife. I do not want to take that English side away.
20. look I went through it myself and I will first tell him to see Willa Marais and get it finalised before he even gets to a lawyer.

APPENDIX 2: DEVELOPMENTAL NEEDS OF CHILDREN OF DIVORCE

| <u>AGE group</u> | DEVELOPMENTAL TASKS | DEVELOPMENTAL NEEDS | TASKS PARENTS | TASKS EVALUATORS | POSITIVE OUTCOMES | NEGATIVE OUTCOMES |
|--------------------------|---|--|---|--|--|--|
| 0-12 MONTHS | Primary attachment | <ul style="list-style-type: none"> • Safety • Trust • Routine | <ul style="list-style-type: none"> • Primary attachment figure available most of the time. • Frequent • non-competitive contact with other parent. | <ul style="list-style-type: none"> • Consider bonding • and primary attachment figure. | <ul style="list-style-type: none"> • Primary attachment intact. • Begins secondary attachment. | <ul style="list-style-type: none"> • Anxiety • Fear • Insecurity |
| 12-18 MONTHS | <ul style="list-style-type: none"> • Basic trust • Attachment | <ul style="list-style-type: none"> • Predictability in relationships • No time concept yet-out of sight can mean out of mind quickly. | <ul style="list-style-type: none"> • Reduce child's sense of loss and abandonment. • Visit in child's home. Overnight visits gradually introduced. | <ul style="list-style-type: none"> • Consider bonding • Determine primary attachment figure. | <ul style="list-style-type: none"> • Good bonding with both parents. • Developmental milestones in place. | <ul style="list-style-type: none"> • Regression • Developmental delays • Irritability. |
| 18 Months-3 Years | <ul style="list-style-type: none"> • Separation • Individuation • Language skills | <ul style="list-style-type: none"> • Secure attachment • Consistency in structure and discipline • Nurturing. | <ul style="list-style-type: none"> • Parents must be cooperative and supportive • Minimize conflict and competition. | <p><u>Assess</u> Child's autonomy Language skills.</p> <p><u>Educate</u> Parents re child's needs.</p> | <ul style="list-style-type: none"> • Developed autonomous self. • Healthy bond with both parents. • Adequate language skills. | <ul style="list-style-type: none"> • Splitting of parents • Language problems • Anxiety • Regression. |
| 3-6 Years | <ul style="list-style-type: none"> • Grows in socialisation • Sex role identification • Begins to understand feelings and emotions. • Conceptual understanding of ideas, place, time and relationships. | <ul style="list-style-type: none"> • Growing relationships with both parents. • Predictability • Consistency • Concrete structure. | <ul style="list-style-type: none"> • Both parents actively involved in daily activities and friendships of child • Short structured overnight visits to non-custodial parent. | <ul style="list-style-type: none"> • To encourage conflict free environment & • parenting plan to meet developmental needs of child. | <ul style="list-style-type: none"> • Healthy attachment • Free of anxiety and • Splitting • Understands and expresses emotions. • Zest for life. • Cognitive skills • Socialisation skills. | <ul style="list-style-type: none"> • Sleep disturbances • Separation anxiety • Confusion • Aggression • Regression • Delayed development |

| AGE | DEVELOPMENTAL TASKS | DEVELOPMENTAL NEEDS | TASK S PARENTS | TASKS EVALUATORS | POSITIVE OUTCOMES | NEGATIVE OUTCOMES |
|---------------------------|--|---|--|--|---|--|
| GRADE SCHOOL YEARS | <ul style="list-style-type: none"> • Develops cognitive skills • Masters school work • Socialisation skills • Self confidence | <ul style="list-style-type: none"> • Free of guilt • Shield from parental hostility • Routine • Structure • Needs time and own place for schoolwork and receiving friends. | <ul style="list-style-type: none"> • Both parents actively involved • Shield child from conflict • Not to use child for own needs. | <ul style="list-style-type: none"> • Understand need for structure • Understand loyalty conflicts • Observe peer interaction. | <ul style="list-style-type: none"> • Success in school • Self confident with peers and in activities. • Minimum loyalty conflict • Assertive • Grasps complexity and meanings of relationships. | <ul style="list-style-type: none"> • Inadequacy • Insecurity • Inferiority • Sadness • Depression • Powerless • Temper tantrums • Dependency to parent/s • Hostility to parent/s • Fears replacement • Fantasises • Under achieves |
| Adolescence | <ul style="list-style-type: none"> • Independence • Autonomy • Need to make decisions. • Need to learn from mistakes. • Try to resolve conflict | <ul style="list-style-type: none"> • Single place to call home. • Values status symbols • Mercenary attitude • Primary relationship with one parent. | <ul style="list-style-type: none"> • Provide one stable home. • Understand child's need for one parent. • Primary parent must promote relationship with other parent. | <ul style="list-style-type: none"> • Assess ability to understand & meet child's needs. • Listen to child's expectations of parents. • Explain child's need for respite to parents. | <ul style="list-style-type: none"> • Feels successful • Positive about future. • Self-control • Self-determination • Self-confidence • Self-acceptance • Success in relationships. | <ul style="list-style-type: none"> • Immature behaviour • Academic problems • Depression • Splitting • Drugs • Inappropriate sexual relationships. |

Source: Stahl P M. 1994. Conducting child custody evaluations: a comprehensive guide. Pages 32-44 London: Sage.

APPENDIX 3

CRITERIA FOR CUSTODY EVALUATIONS.

These criteria for custody evaluations were suggested by Judge King in the case of *McCall vs McCall 1994 3 SA 201 (C) 204-J* and are, according to Bosman-Swanepoel, Fick and Strydom (1998:30), so complete and effective that they can serve as guidance for all.

1. LOVE AND AFFECTION AND OTHER EMOTIONAL TIES AS WELL AS PARENT'S COMPATIBILITY WITH CHILD.

Empirical findings suggest that children need love warmth and kindness in the relationships close to them if they are not to run the risk of developing deviant anti-social behaviour (Cumes & Lambiase 1987:123). Attachment is defined by Bosman-Swanepoel Fick and Strydom (1998:65) as “a bond of caring and craving that binds the child and caregiver” and according to Froneman (1999:31), the strength of the attachment will not always depend on the time spent together, but rather on the quality of the parent's involvement and responsiveness to the child. Secure attachment will be formed when parents are available, responsive and helpful, in other words, committed to the child. Bosman-Swanepoel Fick and Strydom (1998:65) emphasise that an evaluator has to determine the person to whom the child is attached and on whom he or she is mostly dependent for his or her needs. For many years it was believed that only the mother could fulfil this role, but Cumes and Lambiase (1987:123) quote research findings that indicated that the father was the main attachment figure for one-third of 18-month-old children in that study.

As far as attachment is concerned, Galatzer-Levy and Kraus (1999:70) warn that the fitness of the parent is also an important factor to be considered, because children are not always wise in selecting figures to whom to become attached and this criterion should therefore not be followed at all costs if there are indications of serious deficiencies in parenting skills which outweigh attachment.

With regard to the parent's compatibility with the child, particular qualities of a child are often relevant to the choice of custodial parent. Such issues as the child's temperament, talents and interests and their match to the parents, may make placement with a particular

parent in the child's interest (Galatzer-Levy & Kraus 1999:219).

2. CAPABILITIES, CHARACTER AND TEMPERAMENT OF THE PARENT AND THE IMPACT THEREOF ON THE CHILD'S NEEDS AND DESIRES.

The parents' personality characteristics play a central role in the development of children, as children model themselves on their environment. Although there have been changes in societal ideas as to what is acceptable behaviour in parents, the evaluator is sometimes faced with critical ethical considerations. During custody evaluations, the influence of specific conditions need to be considered, for example, parenting by a homosexual. The SA Constitution Act 108 of 1996, forbids unfair discrimination on grounds of sexual orientation, but the term unfair does leave room for judicial discretion. It is however acknowledged that the quality of the relationship with and the care of the child are more important than the sexual orientation of the parent. It appears that the parent's moral character is considered, only in so far as it may have an effect on the parent's quality of parenting.

The following are undesirable attitudes and characteristics of parents which Bosman Fick and Strydom (1998:70) caution against:

Over-emotional parents who tend to be unaware of their excessive emotionality and explosive behaviour.

Over-protective parents: They discourage the children to mature and the children are likely to have weak egos.

Childish parents: They need motherly care and security and mostly want it from their children.

Alcoholic parents: They tend to have mood swings and are unpredictable and their children could experience a range of psychological difficulties, including learning disabilities, eating disorders, compulsive achieving, depression, shame and guilt.

Seductive parents: The parents are unaware of the child's perception of them and the child may respond to the parent sexually.

Rejecting parents: These parents do not provide their children with a loving and caring environment which is essential for their growth.

Over-conscientious parents: They attempt and strive to avoid all possible frustration in their children's lives.

Uninvolved and neglectful parents: These parents are unable to give any encouragement or love to the child and will make no effort to control the child. They will distance themselves emotionally from their children and view parenthood as a burden.

Froneman (1999:120) is of the opinion that the capabilities, character and temperament of the parent should be addressed in all the custody evaluations, in order to determine if the parents take the best interest of the child into consideration. She holds that this should help the judge to form a clearer picture of the personality and abilities of the parents to care for the child.

3. THE ABILITY OF THE PARENT TO COMMUNICATE WITH THE CHILD AND THE PARENT'S INSIGHT INTO, UNDERSTANDING OF AND SENSITIVITY TO THE CHILD'S FEELINGS.

The secret of communication lies in the unconditional acceptance of a child, which is indicated by parents who show the children that they understand their feelings and who give them the freedom to express both their positive and negative feelings. It is also important to determine whether the parent allows the child to express positive feelings about the other parent or whether the parent empathises with the child's grief about the loss of the other parent.

Parents who repeatedly criticise their children and who use moralising tones and keep pinpointing their children's faults alienate their children and cannot hope to establish meaningful communication with their children (Bosman-Swanepoel et al 1998:81& Froneman 1999:35).

4. THE DISPOSITION OF THE PARENT AND CAPACITY TO GIVE THE CHILD THE GUIDANCE WHICH HE REQUIRES.

Without effective discipline a child cannot develop self-discipline and self-direction. The goal of discipline is to model behaviour so that the child will grow up to behave in a socially acceptable way. Punishment is an essential part of discipline but it must be appropriate to the transgression, and it must be consistent and constructive. It must be aimed at conscience

building and not humiliating the child or relieving the parent's frustrations. The evaluator must assess which parent is best able to cope with this responsibility, and it is helpful to consider the different parenting styles which parents indicate in the way they exercise their authority (Bosman et al 1998:75-77)

- The autocratic parent who is over controlling, expects unconditional obedience, rejects the child when disobedient and has little meaningful communication with the child.
- The democratic parent gives clear consistent guidelines, observes joint decision making, is warm and sensitive and shows respect for the child..
- The permissive parent allows children to decide without adequate guidance and has little or no parental control.

5. THE ABILITY OF THE PARENT TO PROVIDE FOR THE BASIC PHYSICAL NEEDS OF THE CHILD, THE SO-CALLED 'CREATURE COMFORTS', SUCH AS FOOD, CLOTHING, HOUSING AND THE OTHER MATERIAL NEEDS - GENERALLY SPEAKING, THE PROVISION OF ECONOMIC SECURITY.

The evaluator must be realistic, but certain minimum standards are not negotiable. According to Froneman (1999:122), the wealth of a parent should not be a consideration in custody decision-making, but it must be borne in mind that parents who are unable to meet their financial commitments and who are unable to provide adequate housing, are a risk in providing stability to their children. It must also be remembered that newly divorced families, especially those headed by a woman, often experience economic strain (Van der Merwe 1990:47; Cumes et al 1987:121).

6. THE ABILITY OF THE PARENT TO PROVIDE FOR THE EDUCATIONAL WELL-BEING AND SECURITY OF THE CHILD, BOTH RELIGIOUS AND SECULAR.

The educational well-being of the child refers to the involvement of the parent with the schooling of the child. Parents can play an important role in creating a supportive environment and encouraging the development of specific skills in order to help children to succeed academically. In considering custody it is important that a child's educational

programme must not be disrupted unnecessarily.

7. THE ABILITY OF THE PARENT TO PROVIDE FOR THE CHILD'S EMOTIONAL, PSYCHOLOGICAL, CULTURAL AND ENVIRONMENTAL DEVELOPMENT.

Children of different ages have different developmental needs, with some children more sensitive and reactive to their environment than others. It is therefore important to determine which parent is most aware of the child's needs and not necessarily what he / she wants for the child.

Another relevant factor is the parent's ability to create an emotionally safe environment for the child and be able to provide age-appropriate emotional care. This will depend on the ability of the parent to control himself / herself and to let the child feel safe and secure. The parent must show understanding of the child's feelings and the child must be able to trust the parent with his / her feelings. The self-esteem of the child must be reinforced (Froneman 1999:39). The same author (1999:123) refers to the indoctrination and alienation of the child by one parent and found in her study that most of the respondents consider this important issue when conducting child custody evaluation.

8. THE MENTAL AND PHYSICAL HEALTH AND MORAL FITNESS OF THE PARENT.

The mental stability of a parent is an important consideration because the family is a system and the pathology of the parent does have an influence on the rest of the family. Even if the parent is not psychotic or seriously disturbed, mental instability can have an effect on impulse control, nurturing, etc. (Van der Merwe 1990:51).

The evaluator must have knowledge of the divorce process and be able to recognise which stages of divorce the parties are experiencing. At the same time the evaluator must be able to recognise an intense period of shock, anger, depression and grief and evaluate whether it is only an isolated incident or whether the person has a history of inadequate coping. Emery (1994:13) cautions that parents often intentionally or unintentionally project their own emotional experiences onto the children.

It does not appear that the physical health of the parent should be considered as a criteria in custody evaluations, unless the physical illness of the parent is of such a nature that he / she is not able to care for the child (Froneman 1999:124).

The moral character of the parent will be taken into account by the courts only if it influences the parent's suitability in looking after the child. An example is the abuse of alcohol or drugs, especially in the presence of the children (Froneman 1999:40).

9. THE STABILITY OR OTHERWISE OF THE CHILD'S EXISTING ENVIRONMENT, HAVING REGARD TO THE DESIRABILITY OF MAINTAINING THE *STATUS QUO*.

Divorce as a serious and unnatural disruption of family life can destroy stability and disrupt the life style of every member of the family. It is advisable to allow the child to stay in well-known surroundings. The social worker must take into account the support systems that the children have and not totally cut them off from systems such as friends, school, neighbourhood and the domestic help in the house, especially if she has been present for a long period. It is also important to be aware of the parent's support system, which can enhance both the parent and the child's chance of re-adjusting and maintaining constructive social functioning after divorce (Bosman-Swanepoel et al 1998:59, 63).

The continued relationship between the child and non-custodian parent is of utmost importance. The child usually experiences the loss of continuous close contact with the non-custodian parent as the most serious disruption which can affect the child's emotional security and leave a permanent scar. The continuity of a contact relationship can be considered the most important consideration in decision-making about children (Schäfer 1993:6; Luepnitz 1982:150). If the child has been in the custody of one parent during pre-divorce separation or pending an appeal, this could be a factor in favour of the parent who has custody. The courts are generally reluctant to move the child if he / she has found stability in the home of one parent (Van Zyl 1997:67). There are findings that indicate that high degrees of environmental change are related to children's depression, social withdrawal, aggression and delinquency (Van der Merwe 1990:44, 60; Cumes et al 1987:123, 124).

10. THE DESIRABILITY OR OTHERWISE OF KEEPING SIBLINGS

TOGETHER.

The courts will not separate siblings if possible, as this may fragment their sense of stability and security. In cases where siblings have to be separated, there should be sufficient access to each other to maintain their relationship. It is important that the siblings' companionship and mutual support should not be neglected or undermined, especially in the time of emotional turmoil after the divorce (Van Zyl 1997:67; Hoffman & Pincus 1989:38)

When children are older and role models become more important, boys may be placed with their fathers and girls with their mothers as was the case in *McCall v McCall*.

Froneman (1999:126) recommends that the criteria of keeping siblings together be applied in every custody case where two or more children are involved, but that each case be evaluated on the individual circumstances, taking the children's best interests in consideration. She also recommends further research on this aspect.

11. THE CHILD'S PREFERENCE.

Stahl (1994:71-73) asserts that it is best not to ask the child about his or her preference, but when the child states the preference spontaneously, and it does not appear to be a mimic of one of the parents, it has to be considered. If it is not considered we risk alienating the child and the child may feel that his or her opinion is not important to adults. Based on the work of several authors, Froneman (1999:45) contends that children who approach the age of puberty are already in the process of establishing themselves as individuals in their own right, and are often capable of making adequate judgements. Therefore their needs regarding custody should be taken into consideration, if they are emotionally mature enough. It is however interesting to note that Garrison (1991:85) suggests that children even younger than nine years may be deemed competent to participate in the decisionmaking process. This she argues, can culminate in their enhanced post-divorce adjustment and heightened sense of personal autonomy and self-efficacy. In this regard, Bosman- Swanepoel Fick and Strydom (1998:5) also emphasise that every child has a right to be regarded as a separate person with individual rights which *inter alia*, is the right to express his or her opinion as to which is considered to be the most appropriate placement at the time of divorce. These authors however also caution that this decision cannot be left solely to the child who may already be overburdened by the divorce of the parents.

A strong negative attitude towards one parent must be explored because it can indicate what Stahl (1994:122) describes as parental alienation when he refers to a situation where one parent subtly and covertly gives a message to the child about how bad the other parent is. The same author has written extensively on this syndrome (Stahl 1999:1-25), where he holds that the child becomes obsessed with hatred of the alienated parent that can be precipitated by conscious, subconscious and unconscious factors within the preferred parent, but it can also arise from factors within the child. This syndrome can manifest itself on a continuum from a slight increase in loyalty conflicts to a situation where there is a clear consistent derogation of the alienated parent by the alienating parent and by the child. Galatzer-Levy and Kraus (1999:78) refer to the study by Wallerstein and Blakesly, that indicated that many young people when growing into adulthood deeply regret that they have been cheated out of a relationship with the other parent and they acknowledge that it was due to responses which they did not truly share. They often regret that they were not allowed to form their own judgement and they can experience profound and pervasive guilt at having participated in lying and other hurtful behaviour towards the alienated parent. No wonder that Hahlo (1985:404) is of the opinion that a custodian parent who abuses his or her position by poisoning the minds of the children against the other parent may be deprived of custody.

Froneman (1999:128) concludes that consideration should be given to the preference of the child, taking in account factors like the motivation, age, maturity and emotional state of the child at the time of divorce. She also suggests that the evaluator must be skilled in interviewing children and in using indirect assessment techniques such as symbolic play and open-ended questions.

12. THE DESIRABILITY OR OTHERWISE OF APPLYING THE DOCTRINE OF SAME SEX MATCHING.

It appears that neither the law nor psychological literature places much emphasis on this criteria, possibly because placing the child with the parent of the same gender should only be considered as an important criteria if that particular parent seems to be better able to provide for the physical and emotional needs of the child (Van der Merwe 1990:118). According to Galatzer-Levy and Kraus (1999:219), a particular child may benefit from a closer relationship with a parent of a particular gender, but no generalisation can be made

about the impact of the gender of the custodial parent on the establishment of gender identity in the child. Authors like Parke (1996:211) and Cumes and Lambiase (1987:122) support this view and argue that the sex role self concept of children is not negatively affected if the child is not placed with the same sex parent, possibly because it is not only the biological parent that can provide a role model. In *McCall v McCall (supra)* King J however referred to the importance of the teenage boy's need for the discipline and guidance of his father, rather than the protection of his mother (Froneman 1999:48). Cumes and Lambiase (1987:122) nevertheless hold that it may sometimes be preferable to place children in adolescence with the same sex parent, but it is the parenting style that provides optimum security and developmental opportunities for the child which will tip the scales in favour of a specific parent in the end.

13. ANY OTHER FACTOR WHICH IS RELEVANT TO THE PARTICULAR CASE WITH WHICH THE COURT IS CONCERNED.

Any important factor which is relevant to the specific case, could be evaluated by the family counsellor or be discussed in the custody report. The following are examples :

13.1. THE PRIMARY CARETAKER.

This criterion is another development in considering custody awards, which according to Van Zyl (1997:77) has much to recommend it, although it may not always be appropriate. The primary caretaker is defined as the parent most intimately involved in the daily life and care of the child. A legal presumption in favour of the primary parent merely means that if both parents are fit, the court will consider which parent has served as the primary parent before the divorce. This rule is not inflexible and it is not gender biased, because either can present evidence that he or she has served as primary parent. Contrary to the belief of some father's rights advocates, this presumption does not reintroduce the maternal preference rule, but will help modern fathers who play the role of primary caretaker and who are currently at the mercy of open-ended judicial discretion. This presumption will however not be of much help where both parents work and the caretaking is done by a third party. (Mason 1999:29-32)

13.2. THE PARENT'S INVOLVEMENT IN A NEW RELATIONSHIP AND

SUBSEQUENTLY THE CHILD'S RELATIONSHIP WITH THIS PERSON.

On the remarriage of one parent, custodial or not, it appears that the loss is the greatest for the children, who may still mourn the loss of the former nuclear family system or the loss of the recently established primary role in the single-parent household (Stanton 1986:202 & Robinson 1993:120). Jones (1995:132) contends that remarriage is good for adults but not so good for children. The remarriage does not only destroy fantasies of reconciliation, but it may also rekindle jealousy in the former spouse or among the children (Emery 1994:56). According to Parkinson (1987:58), there is evidence that children who maintain good relationships with both parents, will find it easier to form new relationships with stepparents. This is often not appreciated by remarried parents who can see their former partners as a threat to the stability of the new family. If the stepparent is then foisted on the child as a substitute for a parent who is greatly missed, the child may experience deep resentment towards this stepparent because children do not normally perceive their parents as disposable or interchangeable. Stanton (1986:201) identified the following as some of the causes of stress in stepfamilies: discontinuities in children's socialisation processes, conflicting lifestyles of biological families and stepfamilies, power and authority issues, distribution of material and emotional resources, different phases of family members' life cycles and changes in the children's ordinal position in the family. According to certain studies quoted by Lamb (1997:214), these challenges of re-creating families and establishing new relationships and family roles can be so overwhelming for some remarried people that they divorce again. This is however not to deny that remarriage can offer parents and children additional supports and resources as well as an escape from the threats of single-parent households, of which the large number of successful stepfamilies provide proof (Lamb 1997:226).

13.3. THE ATTITUDE OF THE PARENT TOWARDS ACCESS.

This appears to be an important factor that could be taken into consideration during custody evaluations. It is the primary right of the child to visit a parent and not the right of the parent. The long-term involvement and emotional support from both parents helps the child make a successful adjustment after divorce. As we have seen earlier, a reluctant custodial parent who is not reconciled to access or who tries to prevent it, is viewed in a serious light

by South African courts. This could be a clear sign of immaturity and a lack of insight into and awareness of the child's need (Van Zyl 1997:82).

13.4. THE PARENTS' RELATIONSHIP WITH EACH OTHER.

This aspect could play an important role during the custody evaluation. Parental conflict, defined as verbal and physical aggression between them, has emerged as the most robust predictor for childhood behaviour problems before, during and after divorce. It appears that the divorce per se is far less traumatic for children than the extremely dysfunctional relationship that develops between the parents after the divorce. It is also true that children prefer to be and feel safer with a patient understanding parent than to be with an angry hostile bitter person all the time (Galatzer-Levy 1999:430). In severe cases of parental alienation syndrome, the alienating parent is so filled with rage, paranoia and delusions, that the only hope is the removal of the child to the other parent's home (Froneman 1999:51).

13.5. PHYSICAL, EMOTIONAL AND SEXUAL ABUSE OF CHILDREN.

With a dramatic increase in violence in society, there is also a growing awareness of physical, emotional and sexual abuse of children and an increase in the number of divorcing wives accusing their husbands of sexually abusing their children (Stahl 1994:107). According to Herman (1990:129), these allegations may be difficult to substantiate when they occur during the turmoil of a custody dispute and they are even harder to evaluate, because Stahl (1999:64) indicates that high-conflict custody disputes are likely to produce a range of symptoms in children that closely resemble many symptoms of sexual and other abuse. The evaluator therefore has a difficult task in investigating allegations of child abuse. A complete review of all the physical evidence, psychological testing of both parents, and both separate and joint interviews with the child and each of the parents will be necessary. It is also important that the timing of the allegations in connection with the custody dispute be considered. In false allegations, there could be a pattern in which the alleged event was discovered just when the custody dispute was erupting. The more the evaluator understands the exact nature of the allegations, the psychological dynamics of each parent and the beliefs and experiences of the child, the clearer it will be for the evaluator to make at least short-term recommendations that can help the family to move forward in meeting the immediate

needs of the child and for protecting the child where necessary (Stahl 1994:107-112). These allegations, whether true or false, are seen as an indicator of emotional risk for the child and an evaluator has the responsibility to protect the child from parents who would sexually abuse them, but also from parents who would lie (Stahl 1999:68).

13.6. THE VALUE OF AN ADEQUATE SUPPORT SYSTEM.

Adequate support systems like steady employment, close ties with relatives and friends are likely to contribute to a good self concept of divorcing parents, and it can address the realities of their lives without utilising their children as support systems, especially when discussing the reasons for the divorce at the time of divorce. Both the parent and the child with a positive support system will have a better chance of re-adjusting and maintaining constructive social functioning (Bosman et al 1998:63). Wallerstein and Kelly (1980:222) found from their interviews with children of divorce, that the presence of loving devoted grandparents was particularly meaningful to them. At the same time, Braude and Francisko-La Grange (1993:19) quote different findings which indicate that grandparents can feel insecure in relation to their grandparenting as a result of the new set of circumstances brought about by the divorce and for which they may not have clear prescriptions. They quote the study by Ahrons and Bowman, who found that grandparents had significantly more contact with their divorced sons and daughters the year after the divorce, than during their marriages. In their own study Braude and Francisko-La Grange (1993:52) found that children received more practical than emotional support from grandparents. One child indicated that it was not helpful to talk to grandparents because they “took sides”. Johnston and Campbell (1988:50) caution that support can have a double-edged nature. What can be individually supportive from significant others can be destructive for the larger system and often for the children within it. Most disputes that are litigated are of lengthy duration and gather an entourage of supporters. This can have implications for resolving disputes and for mediation because these authors found that it is not uncommon for divorcing parents to make important shifts toward co-operation with each other only to have extended kin, new partners and other “shadow parties” in mediation, undo the progress, because they are the ones the parents have to account to when a settlement is reached. This medley of voices only the parent can hear is often manifested in unreasonable stands, resistance to settling

and failure to abide by agreements made. According to these authors it can even happen that attorneys can play a role in this.

14. CONCLUSION.

This set of criteria can offer valuable guidelines for custody assessments, which according to Van Zyl (1997:77) is desirable since the best interest criterion is so vague and the judge's discretion is so wide. However, the uniqueness of every divorcing family and the complexity of every situation, require custody arrangements to be tailor-made if they are to address the children's best interests effectively.

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APPENDIX 4

GUIDELINES AND STANDARDS FOR CONDUCTING CUSTODY EVALUATIONS.

Table 2.2

| | |
|---|--|
| Do no harm | This means that ethical standards must be observed at all times |
| The child is the most important client. | The needs of the child must come before the wishes of the parents or the needs of court. This includes protecting the child against too many evaluators and too much acrimony during the evaluation process. |
| The evaluator must be neutral at all times | Advocacy for either parent must be avoided and the evaluator must be open to all appropriate interpretations of the data. |
| Dual relationships must be avoided. | Prior relationships as friend, therapist or mediator may influence neutrality. |
| Multiple avenues of data collection is recommended | Collateral information, home visits, observations, documents like school reports etc. contribute to the validity of the report. |
| Multiple factors must be considered. | This includes strengths and weaknesses of both parents and the fact that no single factor is paramount must be recognised. |
| One-sided recommendations must be avoided. | If only one party was assessed no recommendation must be offered and comments must be limited to the person assessed. |
| Substantive communication with lawyers must be avoided. | When necessary it is best done by communication in writing with copies to all parties. |
| The evaluator must be aware of own biases. | Everybody has biases. An awareness of his/ her own biases, will help the evaluator to be vigilant against their distorting effect. |
| All parties must be informed about limits of confidentiality. | Parents have to sign consent for release of information even for court proceedings and informed consent must also be obtained from them. |
| Quality of service must not be dictated by fees. | Ethical practices must be adhered to regardless of fees charged. |
| Evaluators must avoid practicing beyond the boundaries of competence. | Adequate training, post-degree experience and competent supervision are recommended. It is also the evaluator's responsibility to keep up with literature in this area. |
| In testimony the evaluator must remain professional throughout the experience. | He/ she must refrain from advocacy or speculation beyond what data supports or making statements about anyone not seen as part of the evaluation. |

Source: Stahl P M. 1994. Conducting child custody evaluations: a comprehensive guide, Pages 223-225. London: Sage.

THE FUNDAMENTAL DIFFERENCES BETWEEN MEDIATION AND EVALUATION

| Evaluation | Mediation |
|---|---|
| Custody evaluation is rooted in litigation. | Mediation attempts to steer away from the adversarial process. |
| A third party frames a view on a possible parenting plan. | An objective neutral third party structures and controls a joint decision-making process in which the two people who know their children best, participate, thereby reinforcing parenthood. |
| The custody evaluation report is submitted to court as part of evidence on which a decision is made by the judge. | The agreement containing the decisions reached by the two parents are submitted to court for ratification. |
| Parents, are mostly only seen together at the beginning and at times at the end of the evaluation process | Both parents participate in the mediation process, throughout all its phases. |
| The evaluation process investigates and questions parental roles and responsibilities. | The rationale underlying mediation of custody is to reinforce the parental roles and responsibilities of both parents. |
| Custody evaluation emphasises the weaknesses of the parent, accentuating the negatives in the social functioning or social environment of that parent. | Mediation subscribes to the empowerment of the weaker parent. |
| Self-determination is not generally promoted in custody evaluation. | Self-determination features as a principle underlying mediation. |
| The process of custody evaluation leading to an awaited decision can increase anxiety. | Mediation aims at the reduction of anxiety in the parents by gaining consensual decisions. |
| Fact-finding and assessment constitute the dominant technology of custody evaluation. | Negotiation and bargaining constitute the dominant technology of mediation. |
| Evaluation tends to be past and present focused. | Mediation emphasises the present and the future. |
| The goal of a custody evaluation is to study and assess individual and family functioning with a view to recommending custody to a particular parent. It reinforces the adversarial process and exacerbates conflict. | The goal is conflict management and its reduction. |

| Evaluation | Mediation |
|---|--|
| In custody evaluation information is obtained from significant others and collateral sources. | In divorce mediation the parents remain the two principle sources of information. |
| An agreement is not necessarily sought nor are solutions and options generally sought by both parents together. | The mediator plays an active role in seeking out options and solutions together with both parents, in order to reach agreement or consensus between the two parents. |
| Custody evaluation can foster competition between the two parties. | Mediation fosters co-operation between the two parties. |
| Custody evaluation envisages the court making the decision which one or at times both parents may not favour, and consequently would find difficult to accept and to adhere to. | The process of mediation prepares the parents to accept the consequences of their decisions made together. |
| The model presented to the parents by custody evaluation is to seek litigation. | Mediation process serves as a model process in decision-making for the parents, strengthening their own skills and motivating them to reach future decisions regarding their children, consensually. |
| At times psychometric testing is done and submitted as evidence in custody evaluation. | Mediation does not rely on professional evidence of this kind. |
| The custody evaluation process being an adversarial process can block settlement of other issues. | The mediation process facilitates the settlement of financial, property and spousal maintenance issues. |
| In custody evaluation the principle of confidentiality does not apply and information must be revealed to at least the judge. | In mediation no information is revealed by the mediator to either the judge or the attorneys, except in rare instances. |

Source: Hoffmann W. 1989. Mediation and custody evaluation: fundamental differences. *Social Work/Maatskaplike Werk*, 25(2): 109-110.

Appendix 6

Tyziena Pieterse
Box 437 Queenstown 5320

Mr.....

.....

.....

Dear Sir,

Participation in research on paternal custody:

Your lawyer / therapist has agreed to forward this letter to you.

I am a registered candidate for the Masters degree in social work at Rhodes University, and I have been authorised to conduct research on the motivations and experiences of non-custodial divorced fathers who applied for the variation of custody orders in their favour and whose applications were successful.

This research is worth attempting because a richer understanding of what fathers experience when they challenge maternal custody orders, will be of value for counsellors and mediators and could add to the developing body of knowledge which informs custody decisions in the first place.

Since you are one of the few such fathers, you can make a valuable contribution to this research by sharing your experience with me.

If you are willing to participate in this research by making yourself available for one interview with me, at a time and place convenient for you, I would be most grateful if you can contact me at any of the numbers provided.

Your participation will be voluntary and I will not know about you until you decide to contact me. I undertake to maintain confidentiality at all times, and to use the information obtained from you for no other purpose than for the research.

Thanking you in anticipation.

Yours faithfully

J.T. Pieterse.

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Pieterse

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Mnr.....

.....

Geagte Meneer

Navorsing oor beheer en toesig aan vaders.

U prokureur / terapeut het onderneem om die brief aan u te stuur.

Ek is 'n geregistreerde kandidaat vir 'n meestersgraad in maatskaplike werk aan Rhodes Universiteit en toestemming is aan my verleen om navorsing te doen oor vaders wat nie tydens die egskeiding beheer en toesig oor hul kinders gekry het nie, maar wat later aansoek gedoen het vir wysiging van die egskeidingsbevel, en wie se aansoek suksesvol was.

Hierdie navorsing is sinvol omdat 'n dieper insig in die belewenis van vaders wat materne beheer en toesig opponeer, van groot waarde kan wees vir professionele persone wat gemoeid is met beheer en toesig besluite tydens egskeiding.

Aangesien u een van die min sodanige vaders is, kan u 'n belangrike bydrae lewer tot die navorsing deur u ervaring met my te deel.

Indien u beskikbaar is vir deelname aan die navorsing, sal ek dit baie waardeer as u my by een van die onderstaande nommers kan kontak.. Ek sal dan graag met u 'n eenmalige onderhoud wil voer op 'n tyd en plek wat vir u geleë is.

U deelname is vrywillig, en ek sal nie van u weet voordat u my nie self kontak nie. Ek onderneem ook om te alle tye die strengste vertroulikheid te handhaaf. Ek sal nie die inligting vir enige ander doel gebruik as net vir navorsing nie.

Baie dankie by voorbaat vir u tyd en aandag.

Die uwe

J. T. Pieterse.

INTERVIEW SCHEDULE

Critical Questions:

- What occurred during the marital breakdown and divorce process that resulted in the original custody award in favour of the mother?
- What happened during the post-divorce phase that motivated the father to apply for the variation of the original custody order?
- How did the father experience the process of varying the custody order?

Questions for interview

- How did it happen that the original custody order was granted to the mother?
- Can you explain the reasons for your application for a varied custody order?
- Tell me about your experiences with the legal system and other sources of help when you were challenging maternal custody.
- Describe what it is like having custody of your child /children now.
- Given the opportunity what would you say to fathers in positions similar to yours?

Data to be obtained in unstructured interview with a schedule:

- Demographic data about the father and the children.
- Detail about the father's experiences with the legal system and other sources of help during the divorce.
- Information about the post divorce experiences of the father with emphasis on the altered father/child relationships.
- The father's motivation for applying for a variation of the original custody order.
- The father's feelings and experiences during and after the process of varying the original custody order.

Appendix 9

An overview of themes, categories and subcategories derived from interviews.

| Themes | Categories and subcategories |
|--|---|
| <p>1. The original maternal custody order.</p> <p>2. The variation of the original order</p> <p>3. The father's experience after the variation of the order.</p> | <p>1.1 <u>The father's experiences of :</u></p> <ul style="list-style-type: none"> • Pre-divorce paternal parenting • Factors during marital breakdown phase. • Factors during divorce <ul style="list-style-type: none"> • Family advocate / custody assessments • Lawyers / Advocates • Legal system / Judges • Financial considerations <p>1.2 <u>Consequences of original order</u></p> <ul style="list-style-type: none"> • Consequences for the child/children. • Consequences for father/child relationship • Consequences for the co-parenting relationship • Father's feelings/ emotions/experiences <p>2.1<u>The father's motivation for applying for a variation of the order</u></p> <ul style="list-style-type: none"> • External motivation • Internal motivation <p>2.2 <u>The father's experience of the process of variation.</u></p> <ul style="list-style-type: none"> • His experience with the legal system • Family advocate • Lawyers / Advocates • Judges • Financial implications • Relationship with ex-wife • Relationship with children • Other children not included in the application <p>3. <u>Consequences of varied order</u></p> <ul style="list-style-type: none"> • Paternal parenting • Support systems • Influence on career • Influence on social life • Experience of co-parenting with ex-wife <p>4. Advice to other fathers in similar positions</p> |

EXTRACT FROM ANALYSIS ACCORDING TO CRITICAL QUESTIONS**THE FATHER'S MOTIVATION FOR APPLYING FOR A VARIATION OF THE ORDER****EXTERNAL MOTIVATION**

- (.....) and then he also saw I don't know the fighting and the carrying on so he actually wanted to come and stay with me. It was more his choice that I actually went through plus the help of my folks too (33:1-36:2)
- Anyway it was basically because he wanted to come and stay with me plus his schoolwork wasn't er.....it was dropping a bit so..... he decided to do something about it.(39-41:2)
- but he did give an affidavit as well which he had signed at the police station to say that he did want to come and stay with me.(58-59:2)
- I was forced to do it for him. I mean I just had no option you know even if it had cost me every cent I had. (Line 49-50 P2)
- Ja.....you don't have an option when your boy says to you listen dad you've got to make a plan...and he's threatening to run away.....you don't have an optionthere's just no option. (Line 247-249 P8)
- When he realised that the mother was still abusing drugs and alcohol he first wrote letters with his complaints to her (97:3) and afterwards also sent formal demands and warned her that he would sue her for custody of the children if she did not improve (105-106:4) These demands were ignored.
- The eldest daughter ran away from home and “ then the eldest daughter started spilling the beans about what actually happens at home. She started telling me the true story that all the children were afraid to tell me. And she told me about the continuous abuse that she's subjected to and the really frightening way in which they had to live. So this made me resolve even more that I must take urgent action against her (173-176:6)
- And I brought a psychologist from Johannesburg who was an expert in this particular field and who had done many cases of this type....to interview us all, the children and myself and my ex-wife and she came to the conclusion that my fears were justified, that I should take urgent action to get these children away from her for their own safety and

- well being and so I brought an urgent application on the strength of these findings, which was then granted (202-207: 7)

NO EXTERNAL

- ♦these one of the final alarms came was when somebody at school says to me one of the teach the the kind of kid's parents the parent of Lisa's close friend, uhmm by the name of Angie Douglas. *Carl Carl please just before you go can I speak with you for a few seconds?* I said *sure*. She said *I wanna be straightforward with you uhmm (.....) this is actually quite strange but you know how these kids talk hey what these kids share at school and what not and Lisa has been saying some weird stuff to to to Tanya*. I said *uhmm kind of what? No man* and then she told me that that drugs and drinking and the stuff was happening and that her Mommy would get cross and things strange happen and what have you (.....) and (...) I should really look at Lisa carefully (725-743:23)
- ♦and Lisa said to me at that stage, Daddy, she doesn't want to go back she wants to stay.(740:23)

INTERNAL MOTIVATION

NONE

I mean Ted was eleven years old twelve years old and he was threatening to run away from Durban.....how's he gonna get to East London? You know.... imagine how a guy worries about that? So..... no you don't have an option.(Line 251 P8). I was really worried about him (142: P5)

- I was also desperately concerned about the fact that they had no..... the eldest daughter was no longer there. I was concerned about them being killed I'll be quite honest with you. In her raging drink and drug induced rage drunken rage she could do anything, she could also fall asleep and set fire to the house with a cigarette (224-228:7)
- I was desperately concerned about their welfare and I then spoke to them for the first time about the possible variation of this custody order. (230-231:7)
- I also value my freedom I had a little taste of bachelorship after I left the former common home although I was worried about them there was nothing I could do I was paralysed I could only take the law into my own hands which I wasn't going to do. I had to leave them in her care and I became a bachelor again it was like heaven you can imagine, uhmm but I sacrificed all that and I was prepared to become a single parent just to look after those children and to make sure that they are happy. (533-538:16)

- ♦ John wanted his children from the onset of the dispute because he knew about the mother's psychological background and suicidal tendencies. (103 :P3)
- ♦ He said that he wanted the children for their own sake, because he knew all along that he could offer them a better home than their mother. *".....ek meen dis waaroor dit vir my gegaan het dit gaan oor oor die kinders jy weet en as sy dit vir hulle kon gegee het by all means gee vir haar die kinders maar ek weet dit ek weet dit ek was getroud met haar vir ses jaar ek het die selfmoorde deurgegaan ek het geweet sy sal dit nie vir hulle kan ..ek kan ek kan dit vir hulle gee dis uit en uit waaroor dit gaan. Wie gaan vir hulle die beste plek gee om groot te word ek of sy? As hulle as sy dit is ja gee die kinders vir haar ek sal nie eers baklei daarvoor nie as dit ek is en sy kan dit nie doen nie hoekom moet sy baklei daarteen".(530-536:P16)*

NONE

THE FATHER'S EXPERIENCE OF THE PROCESS OF VARIATION.

HIS EXPERIENCE WITH THE LEGAL SYSTEM

- ♦ he had decided to come here so if anything happened at the court and the judge needed to talk to him then he would obviously say no he wanted to stay with his dad. Then maybe the judge would then listen to what he had to say.....instead of going with what the female wants all the time So we just went for it and er.....and that's it. She did not contend it so.....(49-53:2)
- Afterwards (.....) uhm (.....) when I did the custody that was also (.....) Well then I went through my friend and he did....he raised everything. His girlfriend at that time was then working for the same company so..... they typed all the letters and they sent all the letters out and all of that nonsense.....so we didn't do anything I just spoke on the phone or he'll phone and say well this is gonna happen now and that's gonna happen and then we had to go to Grahamstown for.... to see the advocate as well. He was down there so.....chatted to him and then.....then it was the court date and we just sat in the court there. (.....) It was.....er... five minutes and we were out there.(208-217:7)
- she did not defend. (69)
- She wasn't even there so. But I think because she couldn't get time off at work and she didn't have the money and then everything like that so what have you.(221-222:7)

- and before we had to hand him back to her or I had to hand him back to her we actually got this through quick quick so that we did not have to hand him back we just served the papers on her which were done and er...that was it. And he actually just stayed with us. Then he just went round there uhm....just to get some..... get his school things and what have you like that... so. So it was done sort of..... as I say.... in a hurry.....while he was still in my care (227-233:7)

He also found it very strange that the court ordered the variation of the order in his favour and on his application, but was reluctant to make a cost order against the mother (380 : P12)

- it's brought to the court without giving her notice and we motivated why we didn't give her notice. (a) because we're concerned about the children's (b) because it's urgent and (c) were she to receive notice she might be able to frustrate the proceedings by removing the children from the jurisdiction whatever might be. And we presented these facts to the judge on the day in question (444-450:14)
- in the meantime these proceedings had been instituted for variation of the order by way of summons as opposed to by way of notice of motion because we knew they were going to be defended and the correct procedure was to sue rather than bring an application (199-102:6)
- So anyway what happened was I brought this urgent application and I managed to get interim custody of the children without giving her notice of the application and then it was a finely carefully worked out operation. I went with the sheriff and a police escort to her house at twelve o'clock in the morning to collect the children's stuff the children in the meantime I fetched from the school and I now put the children into my girlfriend at the time's house in the flatlet in a suburb (291-296 &303:9)
-the interim order as a result of various factors is still in force some almost two years later. So the children have been with me for two years (307-308:10)
- The main action is still pending although it's part heard...I was cross-examined for almost 1½ days in the witness box about what a terrible person I was..... but they haven't really got anything on me (319-321:10)
- BUT the odds stacked against me are overwhelming and to convince the court that the children should go to a male is an almost impossible task. It's only where the opposition by the female is token opposition or where she agrees to it or where she is in a lunatic asylum. She's got to be certifiable before they'll give custody to the male I've seen cases here at court custody suits I've heard them I've known the people involved and I've seen the guys fail lose their cases and they have to pay the wife's costs tens of thousands of rands

hundreds sometimes they lose because they can't convince the court that it's better for them to live in a perhaps a more structured environment with a less emotional person that is somehow held against him the fact that male will provide more discipline in the home and the fact that the male will be more consistent in his decisions with regard to the children doesn't count in his favour at all. What counts in her favour is (a) she's a women (b) invariably she doesn't work. If she works that puts her on equal terms, makes her case that much weaker. She mustn't work if she wants to win..... she must have de facto custody of the children if she's got it hardly any judge will ever take those children away from her. I would never ever have custody of these children had I not got that interim order. (420-437:13)

- Now that interim order that was granted gave a return date that she should show cause on a such and such day why that interim order should not be made final and that return date as a result of the cumbersome system that we have here was only a year later because of family advocate's reports outstanding, the fact that they don't argue these applications here, that they get transferred to if they're opposed they get transferred to another branch, where the roll was clogged up and it had to be moved on and on and on and only as a result of those factors did I retain de facto custody of the children and in that way strengthen my case for the main action. If I didn't have de facto custody now I very much doubt that I would no matter what evidence I presented I doubt if I'd ever dislodge those children from her (454-463:14).
- I've said before the odds are stacked against the male and I'm I a realist when it comes to these things being a litigator by profession (722:22)
-we're not talking about costs, we're talking about children. People tend to forget about them (742:22)
- ♦ the inspector who got the case phoned me and told me to come and make a statement. I said to him you have got to be kidding. I was there this time of the night I picked up my children now you're telling me to come in to you. He said that's it I'm afraid that's it the law is such and such. I said to him *the law is? The law stops the welfare from going in over there and it makes you guys want to arrest me for for breaking an interdict when I went to get my children who were alone*. I said to him *maar come in do get into your bakkie get come along you guys come around over here and come and arrest me*. That's how I felt about it. I really I really couldn't be bothered. I will make an issue about this thing but I will go to goal for these children for this but I definitely won't get into the car and come and make a statement so that later an attorney can look at me and say did you or did you not be found

guilty of breaking an interdict yes or no. Yes but don't answer me anything else don't say were the kids were err err you know in the night were there and that's what you were doing don't say any of that stuff just were you or were you not guilty of breaking the interdict yes or no? Yes. Thank you Mr.X. You sees you are an unstable character. You are still un..... I didn't want that. I knew it would come. So I said I I refuse to give that statement. I said *you contact Tania Benson from Welfare , Nina Hutton from the child protection unit uhmm and you you find out what is going on there (580-609:18-19)*

- ◆ They asked me there on the scene would I mind to look after the children and I gave them my details and I said I will have the children with me.

Researcher: How long ago was that now?

Carl: Uhmm April (.....) May, June (.....) its more than a year more than a year. Could have (....) May last year (....) so its now a year and two months. Any case so I had the kids since then.(863-869:27)

FAMILY ADVOCATE

- ◆but what we did have to do, is we had to take my son to....er....a clinical psychologist. And ...er....he had to get evaluated over there. Then she drew up a report and then that report went with our custody papers to....to the court.(437-440:13)
- ◆ Er....my lawyer advised us to do it. But he didn't advi....er....I must try and think now....er....now I can't remember if the...if the family er...what's the family...er(.....).....Ja.....if they were involved or not. I think they were told about it, but I don't know if the lawyer got hold of them or if the clinical psychologist got hold of them. But I think they were advised of it ja. (445-453:14)
- He said that they only listened to the child when he was thirteen although he said exactly the same as when he was ten (317: P10)
- Two different family advocates were involved in Pierre's case and he felt that there was a vast difference between the two with the first one just plodding along doing the job (331: p10), when he expected her to get involved when his access was frustrated.. He did have some insight into the dilemma of family advocates (they have to listen to a whole lot of bull shit)but they should still take each case on merit (401-402 : P12) he expects the family advocate to know not only the theory but to be a family person as well.

I had a family advocate's report in my favour. They said that they agreed with the psychologist from Johannesburg that I should in fact have custody of the children and that they're going to confirm that at the trial for the main action as well. (364-367:11)

- ◆ After John had approached the family advocate and they referred them to an independent social worker, both parents agreed to accept this social worker's recommendation. (80-83: P3)

None

LAWYERS / ADVOCATES

- So may be that's why you know (sigh) each one gets their own lawyer, the lawyer only hears one side.....he doesn't hear the other side. So when you get someone who knows both of you it does help a hell of a lot.(429-432:13)

NONE

.....peripheral issues like this were argued at length while the meter ticked and thousands and thousands were earned by these counsels (396:12)

NONE

- ◆ Willie said to me uhmm you know I must give you Willie's telephone number. He's the most wonderful attorney for this child /parent, a case like this and he he would be the right kind of guy to be involved with something like that.(973-975:30)

JUDGES

- ◆ If the laws were equal when it comes to custody.....I don't know maybe you know more about it than me, but er....I don't think it is the law so much there is no law.....but er.....what the judge decides..... or how good the lawyer is. (.....) I mean even the lawyers say you know most of the time it goes to the female. (.....) I wish someone could actually explain why. (409-413:13)

NONE

-the judge is very anti me I can feel it going by what he says, what he tells my legal representatives and what he tells me in the witness box and I have reason to suspect that he is anti me. He's... I might add that I only just managed to get that interim order confirmed (321-324:10)
- The judge I might add is an ex attorney I think. and also it so happened that he wasn't a white man and that I think also counted in our favour as terrible as that might sound it was actually luck that I got those children on that interim order (451-454:14)

-it's my belief that especially the old school of judges it is the furthest thing from his mind that he could ever get involved in looking after children it's a woman's job for starters his wife did it his mother did it they never worked they're always women who don't work.... for him to admit that somebody perhaps is better than him in that he's a male and from similar circumstances but he's able to look after children as well as work and hold down a similar job to him I think is a bitter pill for him to swallow. And I think that has been one of the reasons for the existence and the continued existence of what they call the maternal preference rule which is said not to exist but in fact on the ground exists (494-502 :15)
- Now as coincidence would have it the judge that granted our interim order without any hesitation was a coloured male from the ranks of I believe of the attorneys or a newly admitted advocate acting as a temporary judge, but I think it illustrates my point. He can conceive of circumstances where a male can look after kids (503-507:15)
- I might add in my case at my insistence the judge interviewed the children. (744:22)
- the boy is very close to me by the way the boy tells me that he told the judge that he wanted to live with me. The judge in the witness box put it to me that my son said that he wants to live with his mother. That disturbed me. I don't believe it. Once again I say that with the greatest of respect because we're talking about a judge now, but my son did describe the manner in which he was questioned by the judge. The judge said to him now listen here boy,..... if I were to order you to go and live with your mother would you refuse? Now here's a man sitting with a big red gown on in a in a place and he's sitting with the judge of the supreme court, a little boy of ten, what's he gonna say to the judge, bugger you judge. No surely not. So I think perhaps it was a little unfairly put.(749-758: 23)

NONE

INTERVIEW WITH CARL.

A transcript of the interview with Carl which was done verbatim, will be presented in this section.

- Translations of the Afrikaans sections in the interview will be provided in numbered endnotes.
- The following transcript conventions were used (Silverman 2000:298)¹ :

| | |
|-------------------------------|--|
| (.....) | Dots in parentheses indicate pauses in speech. |
| I <u>shudder</u> | Words and phrases emphasised by the speaker are underlined. |
| WORD | Capitals, except at the beginnings of lines, indicate especially loud sounds relative to the surrounding talk. |
| () | Empty parentheses indicate the transcriber's inability to hear what was said. |
| (word) | Parenthesised words are possible hearings. |
| (()) | Double parentheses contain author's descriptions rather than transcriptions. |
| <u>have got to be kidding</u> | Underlined words were said slowly and with emphasis on every word. |
| <i>Daddy don't kill Mommy</i> | Italicised words are quotations used by the respondent. |

Date: 2001-06-30

The respondent signed the form for informed consent and the researcher obtained his other particulars. Some introductory talk first took place when the respondent told the researcher that he is comfortable with a dictaphone but that his got stolen. He also asked about the course she is doing and they were having coffee. The research interview then followed.

Carl: Finished coffee

Researcher: Now you can tell me.

Carl: OK wat wil jy weet? Sê vir my bietjie.¹

Researcher: How did it happen that the original custody order was granted to the mother?

Carl: To the mother. Uhhh there's an an an act or a bill or a something which was passed in South Africa to do with the aliens that you as a as a mother whose husband is gone or missing or hasn't been around for a very long time you can go to uhm the court or the sheriff of the court and then you can appeal for, for a divorce or an annulment of your marriage uhhh which comes from people in this whose husbands have been in the mines and they can't find the husband or he hasn't been around for a long time. He might have died in the mine, he might have whatever millions of things could have happened to him, so then they come to the balju and they say I want to, I have met now mister such and such and I would like to marry him. I have been staying with him for so many years and I want to marry this guy, and then they get asked where's your husband? *I don't know* and the *I don't know where my husband is*, is accepted and uhhh my (...) ex-wife now she asked me to come to the sheriff of the court one day to explain about uhhh this the divorce and I went to the thing and I got shown a document which stipulated that we were getting divorced, but we were in the process of an amicable agreement which we were just establishing one or two of the details of that you know, one or two issues as to where the kids will go to school and things like this but we were trying to finalize things like that and I said I'm not signing this document this thing there because we're busy with an amicable settlement and when that is concluded then we will do the divorce and she agreed and the balju heard what I said, the sheriff and I and I left, not realising that that was an official. You know I don't know some people think that you should know all these things. How must you know when you get a document to do with divorce what the legal procedures are. You know you gonna to get divorced now does peo do people have experience in this matter you know. Certainly some study this, others never anticipate that so that is I didn't know that there was in fact in that thing a date for the divorce court (.....)established. I didn't read that I didn't know that uhhh I hadn't scrutinize the document because I was in disagreement with the document on the whole as it was. And then uhhh I uhhh had a uhhh an experience down in Durban where where God showed me uhhh the the truth of my situation 'cause I 'd gotten involved with smoking

marihuana and drinking quite a lot and I was uhmm (.....) down at the coast to actually buy marihuana uhmm uhmm dagga in the trans in the Transkei. I met a guy who I had become convinced that he was Jesus in the flesh come to be with me and to help me and and what have you and every time I asked him sort of stuff to do with the scriptures, tell me do you believe in Jesus Christ the Son of God, you know that that scripture he would he would sort of look at me saying, how can he, and I was under the impression that he was (.....) coming to share with me in my life physically so that I can understand him. Uhmm if I smoked a joint he would have a puff as well and it became apparent to me that every time I did that, you know you have Jesus living in your heart, now His Spirit is inside of you when you its like that when you smoke a joint you actually force Him, Jesus to to do it, and He doesn't like it, but He was doing it with me anyway and I was blinded by the fact that this guy was actually uhm (...) not at all Jesus, he was actually uhmm rather encouraging some of the stuff that I was doing (.....) and uhmm on an evening the issue of me dying came out and he looked at me in my eyes in this incredible way that made me so so so scared and in an instant he said he's glad that I asked that question. He's been waiting for me to ask this question all along. And I looked at him and I said when is the point when you lie down on the ground and err you know in a in a () because I felt that I was going through a transition from life into death it was a really really weird feeling and I must tell you because I had felt that I had Jesus with me, I was smoking uhm out of those four days uhm that joint that I smoked that day was the first joint in the evening at about 10 o'clock that I had smoked the whole day now I was used to smoking half a bank packet nearly a whole bank packet of dagga every day. I would smoke several joints before breakfast uhmm and then joints and pipes and what have you through the day as we went along. Because I now had Jesus there (...) I I I was now not smoking you know I wasn't sitting and just smoking dagga all the time I was busy and I was (....) so I wasn't really going off on the the drugs, people would be inclined to think I was probably tripping on the drugs again uhm anybody that smoke dagga full out will understand you smoke a lot of dagga after a while hy maak jou muf² you just sit there and you you don't get any satisfaction that is the reason why it actually leads you on to other drugs and it is guilty of that it really is guilty of that because you actually find that it gets to the point of dissatisfaction. It only can do so much to your brain it it it it tranquilises and tranquilise to a point of sleep and then you wake up and then you can tranquilise your brain to a point of sleep and that's basically all that it can do but it numbs the reality of life. It's so ek-kannie-worry.³ So my experience down there with this guy was uhmm was based on my my true beliefs, my thoughts, my conscience, my feelings who I was what I was doing and whatever. When confronted with death and I found myself praying and I said in Jesus name for the first time that I'd prayed properly like that since pre 1996 because I started in August 1996 smoking a bit and then

more and more between '96 and '98. Following I must tell you the Grahamstown art festival which in my mind is a par runs a par with Rusta's festival for drugs op die koppie and all of that its just a a big screen for for mindless abuse of of uhhh of this the the legal structure. The police are sidelined and the people do what they like and I don't I don't see these places and things as being very good at all. The freedom of expression is being abused completely with that. And I I was off drugs from 1987 until August 1998 the Art Festival. 1996 in June I'd run the Comrades and I ran myself a silver medal

Researcher: Wonderful

Carl: Ja⁴ and then in August I smoked dagga at the Art Festival and I get hooked

Researcher: Is that 1998,1996

Carl: June 1996 I ran the Comrades, uhm 16th uhhh and and then I in August '98 in '96 couple of months later mid Art Festival, things were very very very complicated between my ex-wife and I because she had been ongoing with the drugs and with the drinking and stuff like that (.....) and we (...) I I I like I I just did it to participate I suppose its nice to and easy to pass the blame a little bit away but the truth is that I participated in what was going on in my house all the time and I was just part of it for a couple of months now I was actually part of all the people that had considered me a (...) a freak and what have you suddenly thought that I was cool I was considered *oh well Carl is here -no its OK he's cool now with the drugs* you know. Suddenly I was included into my ex-wife or then my wife's circle of friends, and then I went off the rails worse than my wife ever was. I smoked more dagga I drank more than I I uhhh I got aggressive everything then went wrong and uhm her reason for divorcing me in the in the way that she did which is where we're onto what this is all about was actually justified at the end of the day.

Researcher: In 1998 then?

Carl: Yes at the end of the day because uhhh there were lots of things that happened that she did but I was also really uhhh my head was chaos you know and I was chaos and I I (.....) whereas before on the incidents when she had attacked me, and hit me with stuff and I'd held her and pushed her back and done the odd little thing, I will hit her back you know flat hand push flat hand uhhh but I would I would if she walked if she grabbed me and what have you and she would be hitting me if she gave me a stiff klap⁵ then I would give her a klap back you know that sort of thing and and that was the drugs doing that through me and I I I don't pass the buck but I do know that when I stopped smoking and doing the drugs in 19, in 1986 '87 that when I finished it in '87 then uhm I categorically said that I knew that I didn't have control over drugs and over drinking and over the smoking and all that stuff that's why I knew I couldn't do that stuff not even passively I had to stop.(.....) But er when it when I had the relapse what I feared about myself happened. I had no... ek

het nie bietjie gehad nie hoor⁶. The dagga that they smoke in Bloemfontein is not very good it comes from Lesotho its grown in dry temp dry atmosphere they don't know how to keep male and female plants apart they don't know how to make it work very well you know. Down in the Transkei the climate is right the dagga there grows very well you know so I wouldn't smoke the worst stuff which you get around here and I couldn't afford to pay the price which is about R50 a bank packet of the stuff here.

Researcher: For the Eastern Cape dagga?

Carl: For the Eastern Cape dagga in Bloemfontein so I would drive down over there and pay R2 a cup ag R5 a cup down over there and a cup is about 2½ bank packets which works out just over R2 a bank packet.

Researcher: So you can become fussy about your dagga as well?

Carl: O very very dagga smokers are invariably very very fussy..... white dagga smokers. The black ones you know I think their circumstances make them satisfied with a loaf of brown bread and and uhm majahd they call it here that's a mixture of male and female plants with a lot of seeds and they smoke those seeds. White guys are very specific they want white bread and then they want to go and get dagga that hasn't got seeds 'cause they're lazy and they want to buy down over there and you must smoke a little bit of that and it must blow your socks off you know.

Researcher: That's very interesting.

Carl: Ja so I I I was I was very typical in that and I went off and I used to get the stuff down over here and it was very (...) I never sold it in the Free State I did once or twice down there when they wanted to phone us which they especially the Australians *Tell me mate where can I buy some of this stuff this stuff is fantastic* you know and I'd say listen you 've got to take*oh no I don't have the time now I' on my way now the Baz bus is going off to Durban you know and tomorrow I'll go to Cape town can't I get some of the stuff.* You know and then I'll give him one or two of the stuff. And I sold about five bank packets or eight bank packets in all that period of time and it was each time to foreigners specifically to these foreigners I never sold a bank packet in Bloemfontein never sold one bit of the stuff here I gave quite a bit of it to a couple of my friends uhhh they tried desperately to get me to take money for them and buy it for them and all this kind of stuff but uhhh I think I think there was once that I actually did take some money from some guy that said to me *please take this and please get me some too in fact don't just.. Here's the money from me you don't have to give me any* because they knew how I felt about it *but when you come back will you give me some, a little bit more than like may be that you gave me last time* you know and uhhh I tried it just once but immediately there was a errr errr a band. You know I immediately felt this is just going over into something that I wasn't comfortable with and that didn't happen. But my dagga

was also always very very quickly finished and I found that my friends did have more dagga and then one day after I was divorced a long time speaking to other people I found my wife was selling my dagga ((having a good laugh)) to my friends. It was a weird situation so we had chaos in our house and it was my fault. And err it was it was a weird thing and then she divorced me because she was friends with a guy who was in the police and she had a lot of information from this woman who was very into her errr err what do you call these things (....) crystals you know this fortune telling Christian Christian uhhh uhhh totally open to all sorts of new age style Christianity with all the crystals involved and positive powers in the sky...not Christianity positive entity in the sky and negative vibes and positive stuff and (.....) and she had a huge butterfly tattooed on the back of her neck and uhhh this lady was friends with a guy who was in the narcotics division and a lot of the stuff that he he they used to confiscate she used to not get on an organized basis from him but she used to get by means of the way that a woman and her hus.. a woman can really (..) holding the mockers on a man in a strange way she used to manipulate the stuff from this guy uhhh and obviously then dished it out in small quantities to her friends. What I'm talking about really uhhh totally high quality uhhh Swaziland dagga that was that had been done in factory circum.. environment into little bricks you know completely compressed just the drug aspect of thethe stuff we used to get was very leafy and bushy and a lot of takke en goeters⁷ like that. That stuff is in a like in a shape of a brick of butter. You carve a piece of it off and then you it smells totally different and its really really powerful. She gave my wife a lot of advice on err don't uhhh *moenie vir hom luister nie*.⁸ I always used to say *we shouldn't be doing the drugs, shouldn't we stop this and we shouldn't have got involved in this, why are we doing this stuff* and err and err you know *who's he to tell you*. I would tell her that she, she can't be out 'cause she used to every time that I wanted to get home and get into bed she wanted always to go out and have a party so invariably we ended up with her going out and coming back all hours of the morning and got herself into serious trouble by doing that specifically once. She came back and uhm and she organised a divorce and then got a divorce organized then I spoke to her on the 11th of November. 25th of October '98 I had the experience in Durban I was born again when I realized that I shouldn't be smoking dope cause that guy that had been involved with me that night uhhh when I started to pray I couldn't relate to God because I was kept on thinking well that guy there is Jesus and uhhh there was an entire day's worth of discussion about what actually happened all the details of what actually happened through that evening the discussion that we had the the err mental conversation me and this guy had uhhh the ferocious spiritual powers that this guy actually had. When I think back about it now I I shudder I know who I was dealing with then. Now I know I was dealing with somebody in the flesh in person who uhm is really from a very dark part of the of of (.....) this age. And this guy when I

wanted to rebuke him I had no power to do so because after after all as the the overwhelming thing to me was in Jesus name forgive me in Jesus name. Who's Jesus? Jesus is is this guy sitting here. Ja but I now realize that its not its somebody else. Ja but then how do you how.. which Jesus are you talking about? This was this feeling inside. Waar is jou (.....) waar is die krag wat jy geken het ...dis weg dis of dit is dit is nie waar nie . Dis nie vergewe nie. Wat het jy hier gedoen? Met wie is jy te doene hier? Erken dit.⁹ (.....) No I can't do that. I had this little Bible I must show you ((taking a small Bible from his pocket)) I put this thing on the table I said to him what about in here ? What about what's written over there ? What it says? Somebody had given this to me three weeks before that. He had chucked me into a car he drove me to a place. He said to me *I must give you something*, I want to give you this. I just had it in my suitcase by chance I hadn't read it I hadn't opened it. As I gave this thing to him and he picked it up and he looked at it this guy, I thought in the back of my mind this is the issue of the not forgiven part I thought he was gonna go to the back and I hadn't written in anything there yet and he was gonna say *Ahh I see you didn't write your name in there so you you didn't believe* and that's why and then something was gonna happen however death comes I thought it was coming. But he didn't do that. He looked at this thing he says ja he knows everything that's in there . He pushed it to the other side of the table. I said no I said *now I want to ask you a question. I want you, you have to answer me* I said to to him *and I wanna say this thing I have been to embarrassed to ask you must I I insist that you answer me. Just who are you?* Now you've been speaking to Jesus and then you deny him in his face its also bad you know so I was now trying to be straightforward I wanted to get to a point there now. I said to him *listen if Jesus do you believe that Jesus is the Son of God, that He lived on earth that He was he was killed on a cross by hanging on the cross that he died and on the third day He rose again from the dead for your and my salvation. Do you believe do do you believe that he died for my sins and my salvation that he's now seated at the right hand of God?* No but I should know you know was Jesus a Jew or was he a Christian was he was he somewhere in between you know. I know that. I said to him *no no but I want you to answer me. Do you believe that Jesus Christ is the Son of God. Emmanuel with us?* (.....) He looked at me and the he stopped and just said: *No no Carl. No I don't believe that.* And then to him I said if you're not Jesus toe hoor ek sommer my my woorde in my kop voordat hulle nog uitkom jy sommer hoor dis al amper soos 'n profesie nie 'n wonderbaarlike wonderlike profesie nie want jy weet wat jy gaan sê want jy gaan mos dit self sê so jy het nogal beheer oor wat jy gaan sê, maar dit is soos 'n profetiese ding jy weet dit gaan die woorde wees wat gaan gesê word. As jy nie Jesus is nie dan is jy¹⁰ ..and I said to him *you must be the devil.* And I expected as I said then you must be the devil I knew first of all that I was guilty I knew that the power of Jesus as my Lord and Saviour was was it was gone temporarily for the moment ..to me it felt that it was completely

gone that it didn't exist. And I new that the words that I spoke condemned me of death that I was guilty of death I was guilty of separation from God I was guilty of turning my back on God I was guilty of of everything. I felt my guilt I just new my guilt totally I realised it. Where I was sitting what I was doing was my fault and uhm and I new I'd been deceived cause earlier in the day I hugged this guy calling him my lord and there I'd hugged satan and I'd given him my pledged him my allegiance you know I wrote something in a book of him. So I knew and then (...) as I said those words which were the first proper words of scripture to this guy, which I don't know where I remembered it from, but I remembered it when I gave him those words it as if it was as if I'd taken uhmm a redhot fist and punched it into his chest its like BAH!! Just like this *I've been only good to you I've only been nice to you and now why are you so ()*. I said to him *if you don't believe Jesus Christ is the Son of God then you are not Jesus you must be the devil. I have been talking to you and trying to help you and trying to calm you and now you call me the Satan. Why do you do that?* I said to him *because you have been demonstrating so many powers which are kind of of the spirit world and you have been involving me in stuff and (.....) and I I was ready to go with you (.....) I was ready to go with you* I was ready to leave with this guy and *and now I know that you are not what I thought you were* and he just jumped up over there and just ran away just ran out to the bedroom did some stuff and I didn't see him until later when I went and he was sleeping in the bedroom. And I sat there. Ek het nie gebewe nie, ek het gehop my hele lyf het so gehop ek het so... ek was bevange ...ek het om my gekyk ek het heeltyd gewag

Researcher: Jy was?

Carl: Ek was vreesbevange ja ek was so bang en toe het ek opgekyk en ek het geweet dat daar nêrens is om te hardloop nie. Toe het ek maar net gesit. Daar was nêrens om te gaan nie toe het ek net gesit. Ek het net geweet dat wat ook al ek moes mee afhandel het ek op daai oomblik het ek in die in die gesig gekyk en na dit baie lank na dit het ek besef dat ek daar vir die eerste keer van 1996 of voor dit onthou dit was 25 ste Oktober 1998 hierdie het ek vir die eerste keer waarheid raakgesien die eerste keer met waarheid dit was die tweede keer wat ek met waarheid te doen gehad het want ek het met uhmmm uhmm paar maande voor dit het ek te doene met die waarheid gehad ek het 'n konfrontasie situasie gehad waarvan ek sal eendag vir jou vertel maar uhmm ek het daar het ek te doene met die met my sonde. Die hele aand deur het ek gelê en bewe ek kon nie slaap nie, want as my hart begin af stadiger en stadiger dan hoor ek hoe klop hy stadiger en stadiger in my keel en dan dink ek dis nou wat ek nou doodgaan en dan skrik ek my dood en dan is hy natuurlik weer 140 150 seker en dan het die die sweet het uit my uit gespuit dit het geloop uit my uit dit het sommer so uit my uitgepars. Ek voel sommer weer my hele gesig weer weer van voor af ontplof soos ek skrik en uhm ek het so na die een deur gekyk die deur van hierdie kamer waarin ons was die

weirdste ding was die mure in daai gang was so 'n oranje kleur en daar was 'n lig in die gang en onder deur daai deur op die houtvloer het dit so bloedrooi vir my gelyk en toe het ek ewe skielik die ervaring gehad Ek het altyd gewonder waar is die hel jy weet. Dis net hier en die kombinasie van die dinge soos dit met my gebeur het iemand het 2 uur in die oggend terug gekom van 'n party af of 'n jol of 'n ding af en hulle was in dieselfde dit was double bunks ek was in die onderste bunk hierdie vrou het in die bunk bo my geslaap. Sy het per toeval daar aangekom maar omdat dit 'n houtvloer was het sy stadig en versigtig met die gang afgekom maar haar voetstappe het vir my soos 'n ewige tyd geklink en ek het haar voetstappe so gehoor kom so na die deur toe en ek het toe die skaduwee van haar 2 voete onder die deur gesien toe het die deur so s-t-a-d-i-g oop gegaan en toe wag ek vir wie daar uitkom jy weet. Daai arme vrou sy sal nooit dit weet in haar hele lewe maar toe ek sien dis sy het ek haar amper uit daai bed uit bestorm ek het dit nie gedoen nie maar ek wou haar bestorm en haar vashou maar ek wou haar gehouvas het. Maar ek het niks.... Ek wonder wat het sy gedink. Ek kan net verbeel wat het sy gedink. Die volgende dag was my bed pap pap pap papsopnat. My duvet was so nat jy kon hom amper die sweet uit hom uitdroog. Toe die eerste lig in die kamer kom toe's ek weer op toe gaan staan ek buite toe sien ek hoe kom die son uhhh toe sit hy net so op die horison hy was al eintlik uit gewees. Daai lig toe ek toe ek buite gaan toe ek na die toe ek die son sien weer opkom toe het die waarheid en die begrip van die genade van die Here tot my toe weer deurgedring ((his eyes filled with tears)). Toe kom dit weer die genade (...) jy's uhhh ja jy is skuldig maar ja jy leef nog. Hoekom? Uhhh (.....) laat ek nou nog hier is, is (..) jy moontlik nog lief vir my (...) jy weet, moontlik. En en die die gevoel van ek is nog hier en ek lewe nog was weer vir my die eerste keer wat ek besluit het ek wil nog lewe (.....) jy weet ek uhhh (...) ek wil nie meer doodgaan nie so want ek wou dood wees (.....) uhhh ek het 'n paar goeters deurgemaak daai tyd wat nie wat nie nice was nie en ek wou die heel tyd wou ek dood wees ek het geprobeer maar ek kon nie rêrig by dit uitkom nie en ek het die heeltyd my dogter se gesig langs my kis gesien dat sy lê en ek het altyd gevoel sy kyk na my en sy terwyl wanneer sy my gesig sien (.....) uhm weet sy dat ek geweet het dat sy sou daar staan maar al het ek dit geweet het ek nog steeds¹¹ ((Tape stopped without researcher noticing. He finished the sentence saying that he still wanted to die even though he knew that his daughter was there. It was only a while later that somebody told him how much his daughter depended on him. He then told me about the divorce, when his wife left him with only two plates and two knives and forks and a bed. A second shock after that was when he received an electricity account of R9000 because he never paid for electricity in his years of chaos. Tape changed))

Carl: Die waarheid is 'n wonderlike ding sê mos jy kan nie ver af die waarheid gaan nie né ? Kan nooit ver met die waarheid gaan nie jy's gewoonlik onmiddellik deur waarheid vasgepen (.....) maar

maar jy kan altyd terug gaan presies waar jy was met waarheid en onmiddellik daar wegspring uhhh met leuens kan 'n ou baie ver kom jis in hierdie lewe kan 'n mens verskriklik ver met leuens gaan uhhh (..) maar jy kan nooit terug gaan nie. Jy kan nooit terugkom waar jy was nie

Researcher: Goed gestel..

Carl: So mens moet (...) as jy commit is dis lekker. Sorry ons het nou mos gepraat van die krag nê ? Uhm (...) die Here het my uhhh¹² (.....) he he con he convicted me about about it he said no uhhh you you you stole it now you live with the consequences but as in all things uhhh you are forgiven for other things so you will now (.....) I'll provide for you uhm I won't come with a magic wand and delete the account in your in your name, I will I will just provide for you and He's blessed He's blessed me so much with the stuff. In my mom's garage my folk's garage they had closed up in a sheet from years and years ago a three plate gas a lovely cooker, a wonderful thing. I used to.. I used to work with a stove that had one plate not working uhhh so that meant that there were, because it was a three plate stove so there were only two plates and then I used to have another two plate hotplate that one of the things only had full volume when you switched it on it was already hot. It was really it wasn't good cooking facilities uhhh suddenly I had a three plate cooker that worked perfectly and I was able to put two saucepans on it one 10 liter pressure cooker that I had and another saucepan that I got and for R195 I then bought a uhhh everytime I had some money I'd buy a gas bottle when it was possible and it was feasible. I bought another three plate boiling table and a friend of mine came through from another town she's err err errr waarnemende burgemeester¹³ (.....)whatever they call them ja of that town. She came through and she came and visited myself and another guy called Patrick who was who was who gave his heart to Jesus there in the house one day a total drug addict now doesn't touch drugs and what have you. Uhm she she said no man she she years ago she used to make lots and lots of on the farm huge pots of of vrugte goeters and what have you and she's got these two twenty thirty liter or what have you pots that are standing over there. When I come through that town again I must just fetch them. I said to her well I'll come there very fast ((laughing))

Researcher: ((Laughing)) to fetch the pots?

Carl: Yes to fetch the pots. So a couple of weeks later I picked up these two huge pots. I then had these two pots on the boiling table on that thing one hour and you've got a full bath, I mean a full bath.

Researcher: That was your geyser then?

Carl: That was my geyser and it was fine it wasn't quite so convenient as a nice little gold trim tap but it was hot water with a soft feel (.....) dra dit deur na die badkamer toe,¹⁴ but it was hot water and uhhh and I got a gas heater given to me, big thing standing on a tripod. And uhhh you know

people see your your situation and (you've been with nothing there) the next second you arrive home and they say *listen I didn't use this anymore here's a light with a gas bottle fitting* you know so so suddenly I'm organized with gas and now the day before yesterday my folks *no the power was off* and it was this disaster because at the moment the power is off every couple of days, the municipality hasn't got the money to upgrade the the wiring and whatever so they're having a disaster with electricity now and every couple of days people are all freaked out about this and that and I just say *O ek het nie eers geweet nie.*¹⁵ My my gas is set up now. I've now got a gas stove. I've made an offer by the way to the electricity department for R6000. I said to them I'll give you R6000 switch on my electricity and then I'll pay you R500 per month on top of my electricity account. No. When I have the whole amount paid in full then they will switch on the electricity and I don't have it. It was R900 now its 14 ja. I'm now paying R200 per month on that, which means and it works out about R80 with the water and the levies and what have you. So so I'm coming down by a hundred odd rand a month and now but it took me a long time before I could pay anything on it which I was I was just not able to pay and because there was no electricity I didn't bother to pay and in the end it was running up they won't gonna let me off and its not as if I'm pinching from them I'm not using any thing and all this time the box stands there all you have to do is walk up there switch it off but I'm not allowed to do it. I don't think they actually believe that I don't. I'm sure that they think that I'm stealing electricity from them somehow.

Researcher: Ja because you're still clean and you still cook.

Carl: When the welfare came out over there they had a look at this lot and they what have you and I said to them listen here this it works OK it's not as it's not like people are not used to people have been doing this for many many years and its been perfectly fine and I would when I have the finances I 'll pay my electricity off would like to redo my house with gas totally I would like to cut the pipes away from the the thing and I'd like to have electricity into my house for my borehole pump because I believe that's convenient to have that. One day maybe I'll want a windmill to stop that the borehole pump runs the sprinkler system and fills the tank and the swimming pool pump. That's the only thing my swimming pool hasn't worked since then. That's the only thing that's a problem because the pump doesn't work so the pool gets dirty and then I get the boy to chuck all the water out and then the rain fills it up again you know. So I mean so what so we had that. The welfare looked at that when they came around.

Researcher: Now with the custody assessment?

Carl: With the custody assessment yes. Just after what happened was in the year after '98 let me see now, '98 we got the divorce went through uhmm 1999 (.....) February, uhmm my ex-wife was

arrested for possession of marihuana and they gave me cu cu they gave temporary place of safety and used me to keep the children.

Researcher: The welfare not the family advocate?

Carl: No the welfare you know at the police station with the child protection unit and the drug squad. That had come from (.....) a situation where uhmm (...) they had done an investigation for uhmm (.....) such a long story that's because a lot of things happened and weirdly enough this ex-friend of hers from Cape Town then who was now in Cape Town, Beatrice, whose husband had been on the narcotics was very good friends with a woman who was in the child protection unit and after I'd given Jenny a whack on the last day that was the one I punched her once () I actually punched her once which is something I am totally ashamed of it was just before that time down in Durban it was about two months before that. Uuhm she bought a new fridge and she came to my house when I was not there walked out with my extension lead it may sound like I am justifying hitting her and and I can never take that that punch back I would every day, every opportunity and even given the opportunity to take that punch back I WOULD NOT DO IT AGAIN. I I believe that I lowered myself to the lowest place that a man can be. When you when you hit a woman uhmm in any way whatsoever you lower yourself to the worst when you close your hand and you punch her you just make yourself the bottom of the list you you are now the dregs of of you of society. I lowered myself to that but I was very angry (.....) but is maybe the wrong word, however I I just just you know that that there's no justifying. I was mad I was beside myself I was beserk and I went there I was normal, I was fine and I said to her my extension (...) after I had accused all my staff, the guy boarding over there uhmm everybody I said where's my extension lead my fridge is off you know the thing where's that extension lead uhmm don't forget I my house still had electricity I was still stealing electricity at that stage. OK our fridge is off eventually a couple of days later I found my extension lead at my ex-wife's house after she's bought a nice new fridge for herself and I said to her where is my extension lead. I want to point to this thing because its the reason its where the custody came from actually. What happened was (.....) ((sighed)) uhmm I actually uhmm when I said about the extension lead she denied it and Lisa said: *Oh Mommy you know its the extension lead that's behind the fridge.* You know (.....) and Jenny erupted she went mad. She said to Lisa keep your mouth shut and what have you what have and she storms into the kitchen and when I see her walking in over there I said (...) ((sigh)) *its the old story that causes all this stuff in the house (...) all the hurt and all the stuff its the old story its lies always lies, always lies now you want Lisa to lie about it you lied about it (...) you steal my stuff if you want an extension lead tell me.* I accused everybody my stuff in my fridge stood without blooming electricity you've got a bright new fridge and err what have you and then you come and take mine, my extension lead no where

can you get an extension lead oh you can get an extension lead over there. Its total disrespect for me and she went and took my extension lead and (...) and she turned and she said something to do with me and why she'd done things that she did and she just looked at me and she said you know why I've done such and such and such stuff because you were just to something to do with not being a man (.....) and she specifically hit me with one or two specific details like and the I looked at her and she waited she knew that I was not going to hit her, out of the blue and the strangest thing happened I (..) suddenly (..) went the colour of not, they say you go red see red myself doesn't go like that. What happens is that you got like err a grey feeling that comes from your cheeks and it goes into into the back of your eyes and then it starts getting all sparkly and speckles and I tried to hold onto this thing and then suddenly its just as if it was it went grey like this and the next thing inside I just had this feeling of, so what, and I let go and I punched her uhhh that was the first time. She knew that I could have hurt her all along. She never knew before that I could actually hurt her because she used to hurt me lots and lots and lots of times.

Researcher: Physically?

Carl: Physical hurt ja she broke my eardrums (.....) thrust a knife in my leg she did a lot of things that was really physical stuff but it was always, I'd be between her and the door and she would be trying to get out or I'd be in the room and she wanted to get in and there would always be this confrontation and I never hurt her but then one day that one day was (.....) I punched her (.....) it was the sensation of of the letting go and I I it was suddenly like err err err a mock world me moving sort of slow and what have you and she she had this strange expression on her face and her hair was sort of going like this and I I grabbed that hair and there was a paring knife a short knife that you peel potatoes with and what have you on the table and then one move I swung around and put this thing against her throat and I wanted to cut it and I was going to cut it. I was going to actually kill her. I wasn't going to kill her I was going to cut the throat the throat you follow me? And I was going to stop it and then I heard out of the back of my subconscious I heard this sound of my: daughter's voice saying *Daddy don't kill Mommy* like that and then I heard that the the voice that I was hearing inside my head was'nt inside my head it was mixed with a child banging the door. She was outside of the kitchen but she just must have seen something on Daddy's face. And there wasn't much for her to hear she just was shouting. No 'cause there was nothing I mean we didn't smash any pots didn't do any of that stuff there wasn't even much much screaming she had shouted some stuff at me and and what have you and then it was probably very silent and then Lisa just screamed *Daddy don't kill Mommy*.

Researcher: How old was she then, Lisa?

Carl: Uhmm '99 its now 2001 so it 9, 8 just before this photo that you've got just before that time OK that was about 6 months before that and uhmm (.....) she (...) uhmm just said quietly to me uhmm *please don't kill me now* Lisa uhmm Jenny Please don't kill me now (...) uhmm and I let go her hair slowly and I stood up en toe was ek 'n wrak and she got up and I said something to her with I think you should get the police and she laid an interdict against me and I was quite amicable the police came round took a statement I gave him a statement I was guilty I I wasn't argumentative about it and I just gave him an apology and uhmm that was it I knew I couldn't go there anymore I wouldn't go there but uhmm the kids wanted me and so shortly after that she came round to visit and to do with the kids so we did get in contact immediately afterwards by her own doing and so she broke her own terms of actually her own interdict. There were I've got the documentation that she wrote and left me at my house because she used to want to come home and want to spend the night I never would let her stay the night I never let her stay. Uhmm I think she always had the second thoughts about what happened you know it doesn't matter uhmm uhmm I then uhmm (...) had the process of of of of being born again and the whole thing happened and then I was with err err err friend of mine I'm still friends with her now, Lynette, uhmm she we were out at a place in town and then we saw Jenny and another guy and I could see that she had she was being kuiering lekker and I only went up to her and I said *Hi Jenny. How are you* She said *I am fine*. I said *how are the kids?* *No they're very well thank you* I said *well fine Lovey have a nice evening bye bye* and we left and busy driving home I just had this this silly simple feeling. Go out go now go and check go out to the kids check on your kids. No you can't do that I don't check on Jenny I never ever have never will never. No you must go and have a look at your kids. We got over there and its half past twelve and there they were alone in a house out of town what have you. I went into the room, *No Mommy is sleeping*. I said: *Are you sure your Mommy is sleeping?* uhmm goes through comes back in the passage *Oh Mommy's out again*. I said: *Excuse me what do you mean Mommy is out again?* *No sometimes in the night when we're sleeping then Mommy goes*. I I OK we'll wait for your Mommy and then we waited and then Mommy didn't arrive and then we left a note very polite note I've got the kids I've got the kids at my house (..) would you contact me when you uhmm when you get back home. The following day at eleven she came around and she fetched the kids uhmm and a lot of apologies and no she knows that she should not have done that and she you know and it never ever happened before and it will never happen again and that story and I said ja ja OK well fine just don't (..) you can't leave the kids alone at night that's the way it works and I don't want to cause any conflict now I know from my previous experiences and what have you that it doesn't help to confront somebody with something like that and I know when she goes I must just pray. Say *Lord please take care of my kiddies look after my kiddies you know and help them stop that help Jenny*

with the whole story. And I left it and then uhhh her friend Beatrice advised her or her friends advised her to lay a charge of breaking the interdict against me and I had said to Tania at the welfare well listen here uhhh Jenny is using drugs smoking in front of the children openly they use it by their nick names they don't even call it marihuana or dagga they call it dope they uhm my daughter about knows how to roll one of those things and what have you and I'm very unhappy because they they're subjected to this all the time and I didn't want it to be like this. She said *well we can do nothing* . The welfare is not allowed to walk into that house unless they're invited by the owner of the house. If Jenny does not ask them to come around they may not just knock on the door and go and say we want to see. Even if they are involved in it directly involved in the case of the children because at that stage there was involvement uhhh (.....) *We may not do that.* I said but for goodness sakes you can't bust somebody smoking or doing something illegal by them inviting you in to come and see them doing it and the children are.... *No they are not allowed to do that.* After my ex-wife had laid a charge against me she did it at one police station. Uhhh Bennie Coetzee the investigating, the inspector who got the case phoned me and told me to come and make a statement. I I said to him you have got to be kidding. I was there this time of the night I picked up my children now you're telling me to come in to you. He said that's it I'm afraid that's it the law is such and such. I said to him *the law is? The law stops the welfare from going in over there and it makes you guys want to arrest me for for breaking an interdict when I went to get my children who were alone.* I said to him *maar come in do get into your bakkie*¹⁶ *get come along you guys come around over here and come and arrest me.* That's how I felt about it. I really I really couldn't be bothered. I will make an issue about this thing but I will go to jail for these children for this but I definitely won't get into the car and come and make a statement so that later an attorney can look at me and say did you or did you not be found guilty of breaking an interdict yes or no. Yes but don't answer me anything else don't say were the kids were err err you know in the night were there and that's what you were doing don't say any of that stuff just were you or were you not guilty of breaking the interdict yes or no? Yes. Thank you Mr.X. You sees you are an unstable character. You are still un..... I didn't want that. I knew it would come. So I said I I refuse to give that statement. I said *you contact Tania Benson from Welfare , Nina Hutton from the child protection unit uhhh and you you find out what is going on there* 'cause Lisa had had a problem with one of Mommy's boyfriends and we laid a charge against this guy for indecent behaviour with with the kid trying attempted indecent behaviour. Lisa had told me (.....) much trauma. And I said you find out there then you come back to me.(.....) Uhhh he says yes OK and then he contacted me and he said to me please come in he doesn't want me to make a statement but we we've got to discuss some stuff so come in over here he says. First of all as far as making a statement is concerned that won't be necessary that issue

is being withdrawn would I mind going to speak to Nina Hutton from Child Protection. I said I wouldn't mind it depends what it's about. He said we need we need if you want us to go and check the situation with your with your ex-wife we need you to confirm yes there is drugs on the premises, or no there is not. I said to him do you know I alienate myself from my ex-wife by saying to her go there.... drugs she finds out I do that you create a (...) massive gap between me and her and make it totally difficult on the children. He said no legally he's putting me in the position where they're telling me what I must do. So I said OK ask me a question. *Are there drugs on the premises* he asked. I said *yes there are. Do you suspect that if we go there right now we will find marihuana on the premises? Yes I do.* So he said *OK fine would you mind sharing this conversation with Nina Hutton I'll get her to contact you.* Nina phoned me she says come (...) in same procedure. *Do you feel that there are drugs there. Ja. Do you feel that your children are threatened by this? Yes. Do you feel that they are.....? Yes.* A bunch of things. And uhmm I said *thank you that that will be it* and then I left it. A week or so later I get a phone call (..) from her. *Carl uhmm we're driving in a motor car would you get yourself ready I think we're going now to Park Road Police station. Just get yourself ready and what have you we we've () some stuff over here and we've actually found some drugs there so ()* I said *Yes Ok* and then I waited and then a little while later Tania Benson phoned me and she said *Carl we're at Park Road Police station Jenny is in apprehension tonight would you mind ...?* So I went around over there and I I uhmm uhmm got my kids for a errr errrr place of custody for three months.

Researcher: With a children's court order?

Carl: Ja. (.....) Then (.....) Jenny was booked in in the court arrangement was (....) by the way the reason (...) that she got bust (....) was that Nina Hutton from Child protection was very involved with friends was I don't know any more so we say maar friends with the then divorced uhmm uhmm ex-husband of the girl who had advised Jenny to divorce me (.....) and he had no time for my ex-wife as what I had no time for his ex-wife.

Researcher: That's Beatrice?

Carl: ((Nods)) When he discovered that it was (....) uhmm when Bennie Coetzee had begun the investigation into my (.....) back with the interdict Nina Hutton said discussed this issue with Henk and Henk said to him to her jissie man that problem is not to do with that woman, I mean with that guy, its with the woman. She's a total drug addict. Just like that and then then the conversation came back to me *she's a drug addict is she not? Has she got drugs there?* I said *yes (....) you guys had woken up at last* but but because of Jenny's involvement with Beatrice at the end of the day it totally backfired on her right at the end of the day and I never planned that I never tried to do that I never manipulated I don't think I have that much brains I didn't see it coming but Nina was

involved with Henk who had been involved with her best friend and so so eventually Nina, the Child Protection uhhh investigating officer was involved with her best friend's ex and that was dit was die deksel op haar blikkie¹⁷. Ja it came out eventually. Truth is mos like a ping pong ball. I've been doing this with my kids you push it down in a bucket of water, the deeper you push it the faster it wants to come up and then you can ask any kid this it's lovely for kids. You say *OK I'll tell you what. You know that a lot of water if you put it on top of something it will push it down Yup*. So I say *take a ping pong ball and you push it then to the bottom of the swimming pool that's with all the water of the swimming on top of it right pushing it all down*. The kid always looks at you thinking about that one and then they say *Nnno. You know what it's gonna do its gonna stay Nno its gonna come to the top. Oh so you take it to a deep deep river or a deep lake take it to the bottom now how much water is on top of it. No lots of water. Obviously with that much water it won't get up. No it will come to the top. And the bottom of the sea? That miles of water surely that much water will push a ping pong ball down. No the further down it goes the more viscously that ball wants to get to the surface. And that's just how the truth is*.

Researcher: Mmm.Very good example.

Carl : The further down you try and push a ping pong ball in the water (...) you can keep it there for a while but it's always trying to get out.

Researcher: Mmm that's exactly what happened here.

Carl: Yes it just came out. It just..and that's how it worked so then the the the uhhh the making of the (.....) uhm of by her laying a charge against me she opened the welfare's doors to her own house. Previously they wouldn't have been allowed to go because she had laid a charge now the police were allowed to go investigating this case between her and me now they were allowed to go and knock on her door; we want to talk to you. So she was expecting them so she wasn't awake she was (.....) because she had sent them. So she's now dealing with them against me and then of course they're gonna come round to her. And they said while there *this is great ah listen we wanna to search your place for marihuana* and she nearly fell off of her chair you know so and then she attacked the cops. Very much. She was very cross. It was a Friday uhhh it was a Thursday they made sure that she wasn't able to get a court hearing on the Friday morning they arranged it the way that police can just fix things because it was to late by the time she should have gone to the court because she could have been out the next morning they made her sit in jail the whole weekend. They were just not cause she'd really given them a hard time. And I felt very sorry for her actually. Then she did then she did a period of rehabilitation a couple of weeks rehab. I think three weeks. But I had them for three months.

Researcher: In '99?

Carl: Yes. She got them back (.....) on the same day, the day the day before she got them back lets call it (...) that's April, she got them I think it was the 19th of April she got them back. On the 20th of April from from a claim that that I had with her

() hospital for negligence in an operation that they've done on her, she got R57000 given to her. The day after she had been given the kids back (.....) in front of the child advocate there was a whole lot of conditions about drinking and driving with the children in the car (.....) drugs uhm all the stuff that's involved there were 9 points. That document is there for you to go and investigate and find out if you want to. Uhhh (.....) she does that the very following day she drives over the pavement with the kids in the car, has a hell of a fight with the kids because she is totally intoxicated when she picks them up from school. The second day that she fetches them she goes like that she's drunk out of her mind. (.....) My uhhh it was the Thursday Easter Friday no the Thursday Easter uhhh Easter coming up the weekend uhhh the die die kruisiging?

Researcher: The Thursday before Good Friday?

Carl: Yes. Thursday night Lisa and myself were reading in a what we have a Tenebrae service at the church, die aand voor die kruisiging is daar altyd so 'n stil diens dis wat ons het en dan lees verskeie mense goeters en my dogter is geneig om daar te wil lees, sy hou daarvan om te lees, sy het 'n goeie lees stemmetjie.¹⁸ And uhhh (.....) so so we we're busy waiting we're supposed to be there 6 o'clock to practice for the you know just to try what what were gonna do just before the service that starts at 7 o'clock. Ten to 7 my mom and dad coming over there I've been waiting for Lisa and I don't know where they are (.....) Ja here's Lisa and Ian they've just fetched them from Jenny's house. They were phoned by the nursery school and of course they were worried and they went they took initiative and they went straight to Jenny's house. They get over there and they found a totally totally intoxicated mother who was not able to to do anything. They just got the two kids into the car ((Changed tape))

Carl: Have you got more tapes here?

Researcher: This is the last one.

Carl: If you want I've got more tapes at home. So they arrived over there we did the we did the reading. I took them home, the following day half past eleven she arrives and snot and trane and promised the kids this was just a binge and she will never drink again, and all that more stuff, the the alcohol speech. And uhhh (...) so (...) we all said OK fine and Lisa said to me at that stage, *Daddy*, she doesn't want to go back she wants to stay. I said *no you've got to give your Mommy a chance here she's been long time now with the rehab she's been trying uhhh you've got to give her a chance. Yes Ok but what what what stops all of this.* Uhhh (.....) these one of the final alarms came was when somebody at school says to me one of the teach the the kind of kid's parents the

parent of Lisa's close friend, uhmm by the name of Angie Douglas. *Carl Carl please just before you go can I speak with you for a few seconds?* I said *sure*. She said *I wanna be straightforward with you uhmm (.....) this is actually quite strange but you know how these kids talk hey what these kids share at school and what not and Lisa has been saying some weird stuff to to to Tanya*. I said *uhmm kind of what? No man* and then she told me that that drugs and drinking and the stuff was happening and that her Mommy would get cross and things strange happen and what have you (.....) and (...) I should really look at Lisa carefully when I was picking them up on the Friday for school... for the weekend or something like that and I said OK, I would. Then I saw Lisa's arm she had blue marks like this ((indicating his upper arms)) you know four big blue marks with cuts on them so obviously on each side (...) nails. After(...) two or three weeks of Lisa denying that that wasn't from her falling out of a tree uhmm I had Ian say to me ja but Lisa, in a conversation whatever, he said but *Mommy hurt Lisa that day* and then that was that was why and then I said *excuse me* and then I got Lisa. I said: *Lisa tell me did your Mommy hurt you? No*. And then she started crying, she said: *Mommy told me that if I ever ever tell you then I will be in big trouble and all that so I'm sorry*. I was speaking to them about honest straightforward and what have you and Mommy made her promise never to tell me now if she told me then she is breaking her own promise to Mommy and she didn't know how to do this and I said *No there's some things that when you realise that you've got to tell then you've got to tell. Other things you don't have to tell but that's for you to decide. I'm not telling you that you have to tell but if there's something that makes you scared and it keeps on making you scared and its not your fault then you should talk about it to somebody that you can trust. And its not a secret that I want to keep or its not a secret that anybody else will keep but if you don't want me to talk about it to other people then you just have to tell me about that and then we can discuss whether I can talk or not on this*. Eventually it came out no Mommy had got very drunk, Lisa had tried to run away down the road and Mommy had chased her grabbed her by the hair dragged her by the hair and by the arms and what have you and then Ian had attacked Mommy he wanted to punch Mommy in the back and then Jenny had flat handed Ian away told him to leave her alone and (...) it was a very very tragic circumstance and lead to me eventually after this conversation what have you and I went and I leveled with Jenny and I said to her I know that things really really got out of hand over here. We sat on the steps outside her house and had a long conversation and I said to her: *You know that that God loves you that's why I must love you even though I don't feel like it at this point but but He has given me a chance and I've got to give you a chance and I want you to get it together*. (.....) Then there was another circumstance we ended up sitting in the coffee shop another drinking session. You know driving drunk and and what have you and lot of stuff and I and Lisa had been terrified. I spoke to her I said to her come on get it together.

Always crying always remorse always yes I know the drinking is a problem. Then the remorse started changing into arrogance: *Why am I interfering she can do what she wants...* and I knew that the effect of the rehabilitation's policies was wearing off now she was now: *Man I can do what I flipping want*. You know and she wasn't smoking marihuana in front of them anymore because there was a law that says. So it was very easy to go BANG you're smoking marihuana that's illegal you can get locked up and then I get custody straight away uhmm but drinking how can you say don't sip that sherry and then you and I can afterwards speculate ja but it wasn't one sip it was one of three hundred sips that you had that day that's why you were so drunk. That's why don't want to do that speculation unless we have a blood test you can't say don't drink to somebody. You legally cannot say to somebody don't drink. So uhmm she started to realize that and uhmm (.....) Lisa uhmm had a (.....) a progression of of crises at her school. She had a child psychologist resident child psychologist by the name of Karin. I'm giving you these names so that if there's ever any follow up work that needs to be done. Karin () former resident uhmm scholar of St. Anne's who then went on to be doing child psychology and what have you. Karin told me that I should never fall because if I fell Lisa would fall and Lisa was going through a lot of trauma and Lisa was starting opening up to Karin and then Mommy forbade Lisa to continue discussions with Karin. Then we knew that something was seriously wrong and the headmaster called us into the office myself and Jenny and said listen Lisa is now displaying this and this and this (....) sexually () conversation and motivation. It turns out that there were certain scenes when Mommy was intoxicated that she wasn't careful that the kids didn't see.

Researcher: Scenes they were exposed to?

Carl: Ja. Uhmm (.....) and and that that was traumatizing Lisa. Her her sense of being a child and then uhmm (.....) let me just (.....) carefully just explain to you how (....) the process went. Uhmm then there was an incident where I dropped off the kids quarter to seven on a Sunday night. I said to Jenny uhmm I said goodbye to the kids and I went and I sat after church in bed praying I said: *Lord please*, now I was really distraught I mean I was broken. There the kids are I mean I could see the circumstances when I dropped the kids off I could see they'd been kuiering¹⁹ and there was alcohol (it was self-evident). I can't if I confront Jenny its a fight. So where do you draw the line. The law says to me if I do anything the law was coming to grab me. I I was uhmm totally helpless. I said: *Now its your turn Lord now you fix this. You you I know what those kids need and I know what they don't need and they're experiencing what they don't need*. Quarter twenty to twelve that night Lisa phones me from (....) the Formula 1 Hotel outside of town near the one Spur. *Mommy is still inside over there she's drinking with her friends she doesn't want to buy me and Ian food and I'm cold Daddy and I'm scared* and then she burst into tears and then I phoned the police and I

arranged. They went and I also went. Got over there Jenny attacked me. One of the (...) follow one of the repeat uhmm things in court was on Friday. Uhmm 27th was the custody hearing in the (...) advocate on on Wednesday 29th on Friday was the court on the assault because Jenny's friend.

Researcher: This Friday now?

Carl: Ja. Can I say this was the fourth because this woman never comes to court. Her legal counsel withdrew from her representation yesterday because she doesn't pitch when it comes to the actual case. And err she. this woman uhmm Jenny charged at me and I just stopped her and the police grabbed her the two policemen that were there stopped her and then her friend after one or two things happened her friend arrived on the scene coming out of the Spur charged up to Lisa and said: *Sien jy wat veroorsaak jy tussen jou ma en jou pa dis alles jou skuld ek het vir jou gesê dis jou skuld.*²⁰ I suddenly as she said it, understood the stuff that had been coming out of Lisa's mouth. It's my fault. That syndrome that kids get. You always think to yourself where the hell does that come from. Why do the kids say its my fault my Mommy and Daddy get divorced. Yes you know you get adults that do that to the children. They can't solve their problems so they blame the kid you know. *Jou skuld!* And Lisa said: *Dit is nie. Sy sê: Ek sê vir jou dit is* Lisa said: *Dit is nie my skuld.*²¹ So this woman smacked Lisa WHAA() this nine years old little girl and I just ripped myself () and I ran as I ran I (neared) the cop and I got between the two of them pushed Nella back and I grabbed Lisa I said come. The cop took this woman one side and the woman still klapped that policeman, sy't hom deurmekaar geklap hoor²² and got herself thoroughly thrown into a police van, gegooi ...into the cell for the night. Charge of assault on me, on the child, on the on the policeman laid against my ex-wife and against this woman and they asked me to look after the children. They asked me there on the scene would I mind to look after the children and I gave them my details and I said I will have the children with me.

Researcher: How long ago was that now?

Carl: Uhmm April (.....) May, June (.....) its more than a year more than a year. Could have (...) May last year (...) so its now a year and two months. Any case so I had the kids since then. And Mommy's Mommy is having the time of her life she's actually what have you she's been carrying on with her own stuff and in the meantime thereafter I went to obviously the welfare. I went straight to Tania then she said to me *you must do it, I can't change the custody. If you want custody you must go to the attorney.* I said I can't afford the attorney. She said *you must go to the attorney I don't wanna do it, you must file for custody of your child.* The attorney must then go to the the child court and there apply for custody and then the whole thing comes round. It takes its taken more than a year for a start of of all right the kids are now with me. Let's get the custody thing finalized. That's the only thing that's incorrect on this thing ((reading from the letter for

informed consent)) is where it says: "I have been authorized" uhmm "I consider this" oh man where "I have been authorized to conduct research on the motivations and experiences of non-custodial divorced fathers who applied for the variation of custody orders in their favour and whose applications were successful." Mine is not completed the transfer yet, so, note that.

Researcher: No no I understand that that's what the the family adviser told me when she told me about you. So I understand that.

Carl: Yes but the fact that she contacted you, knowing your research this type of research was very encouraging for me. It would have been concluded on Wednesday but myself and my ex-wife were called to that hearing and she didn't attend. Uhmm that, combined with the fact that she didn't attend on Friday where she was also subpoenaed to be at, uhmm there and I contacted her to say telling her later that she should go there because there's a warrant out for her arrest and she should even go now to the clerk of the court getting her letter of attendance so that when the police arrived she's not thrown into jail. (.....) She didn't get my messages, she was in such a toestand ²³ yesterday, the day before yesterday she never yesterday she never could manage it and uhmm when she arrived last night my friend Lynette was sitting and talking to me at home when she arrived and Jenny stopped and she parked the car outside in the street she didn't want to come in and I said to the kids go your Mommy is out go quick maybe there's something wrong. Lisa came in she said Daddy Mommy's not very well. So I said: *Oh boy tell Mommy she must come in anyway.* Now when she comes in she says: *I can't take the kids this weekend I'm not in a condition* and she just burst into tears she says: *No I'm just depressed I don't know what's happening and I don't know what to do,* she's really in a toestand. Now I said come inside just come on just come inside we'll make you coffee eventually my girlfriend left, Lynette left and she left Jenny and myself to talk and Jenny sat on the chair in my bedroom and I sat on the bed with the kids and we, till after 9 o'clock we were just talking and the kids were const consistently getting up and hugging her and what have you and then we all said our regular prayers together.

Researcher: With her?

Carl: With her. And the kiddies won't Ian didn't pray he didn't want to pray he sometimes prays, he prays very nicely. I've got a lovely tape of him praying uhmm at his Smurfieland his Kleuterskool ²⁴ the last year that he was there, he had them in snot and trane the way that he prays he really knows how to pray but uhmm but he didn't want to pray and Lisa prayed and we thanked God that Mommy was with us. You know because we always pray for mommy and now Mommy is here so we can just pray with Mommy it's much better. And uhmm (.....) this fairly upset Lynette that she came round later again and there was her car and she just drove past. I had to go and get to

a phone and phone Lynette and say to her listen here, my cell phone was charging at my folks place. Do you understand why it was charging there?

Researcher: Mmm because you can't do that on gas.

Carl: ((Laughing)) No that you can't do. Another thing I need electricity for is to charge my cell phone. So at the end of the day that was (...) Mommy is still struggling.

Researcher: But she took them with her this morning when she went back.

Carl: Yes. She eventually slept with with Ian in his bed and snuggled up and what have you and I told her just now I'm gonna phone Lynette because I think she's gonna be freaked out and she's very accepting of that and understood. I went off got my cellphone from my folks quickly phoned Lynette said to her. Lynette was very upset and this morning was still a bit upset not sure, because Jenny has never done that before. I said please for goodness sake. *Nee dis nie omdat sy my nie meer vertrou nie dit is omdat sy het ons net gemis gisteraand.*²⁵ I said *Ja ja I understand* but am I coming to watch rugby with her and what have you this evening and I said that I'll contact her later, I don't know because I I I just I also need a little bit of time just today, not later. So Jenny had just left, I had just gotten outside uhhh and was busy feeding the dogs when you phoned. I clean forgotten about this totally forgotten. Ag I didn't think about it this morning I didn't say anything about it and they left at about twenty past ten. What time (...) When you phoned they had left

Researcher: That was about quarter to eleven when I phoned.

Carl: Ja if I had put a kettle on when they had left i would have been sitting drinking coffee when you phoned. But I was busy cleaning out where the puppies are and moving their because they are now 2 weeks old I'm moving their sandbox outside and making a channel between where they stay inside and the door so hulle kan net soveel vuil maak.²⁶

Researcher: Thank you Carl for still making yourself available. It was totally up to you whether you were still available or not so I really appreciate it in view of the circumstances you had to go through last night.

Carl: Its ironic but it actually ties up.

Researcher: Mmm. (...)Tell me now now that the children are with you it's just a mutual arrangement you've got no legal custody of them yet?

Carl: My attorney, Jack Jones from APB is a wonderful wonderful attorney wonderful attorney, he has tried to reconcile he has tried to get (...) he gave me the right advice which was to sit down and write the details down. I don't want to. Sit down and write the details down. I'll take a day or two to do it for you. He says ja ja ok write it down and then two months later I eventually gave him the completed document. Every time I start but this is from OK go back a bit more right from back....ok

start again you go back to eventually it was about to once upon a time my great great great uncle arrived in South Africa ((Laughing))

Researcher: Has she got legal representation or is she not defending?

Carl: She didn't. She decided not to at all. She decided that it will be pointless and it would be cost she couldn't afford and I advised her that it would be very foolish to do to to even bother. I said to her if she does get legal representation and appeal and she loses I'm going to dump all my costs on her, so I was just ek het net 'n ek het bietjie gemanipuleer ²⁷ once I had realized that I was been given my kids and I had to do the stuff to get it finalized uhmm then I I I said OK and I sat with Jack and Jack said to me uhmm you know I must give you Jack's telephone number. He's the most wonderful attorney for this child /parent, a case like this and he he would be the right kind of guy to be involved with something like that ((proceeded to give the number))

Researcher: Just tell me a bit of how it feels to have your children with you now?

Carl: ((Talking in a very calm and soft voice))Uhmm uhmm when when I became actively involved in being a Christian again you always hear the stories about mission work and you're waiting, you wait as a Christian that's serious about it for God to send you to the other side of the world, to go and evangelize Singapore or the tribes in a jungle in darkest America or something, and something that will be so tough that uhmm that it just creates an opportunity or a challenge that you can't resist and you know that's what you sort of wait for you know, and you see the little mouths and kids that you have to feed and in the evening you make a little church thing you show them the Jesus film and you do the whole Christian evangelistic thing, and you wait for God to give you that mission uhmm when you are a a a dad that gets your children uhmm you have a mission brought to you. Ja then then God brings you a mission field right into your own house because and its the hardest of the lot. Oh its easier to go somewhere to the other side of the world and go and evangelize to a strange kid than to have your own child say they hate you or say they hate their Mom or something, you have to carefully go through the process of introducing love and the ministry and so. And uhmm I looked all over both my children you know especially on their backs anywhere, I was looking for the little place where you take the batteries out

Researcher has a good laugh

Carl: ...but I now just realize I found out that there is no place to take the batteries out uhmm their batteries stay there ((laughing)) you don't switch them off and bêre them in the cupboard until you want to play with them again. Uhmm they just come at you like the sea and they never ever stop and (.....) uhmm there is no there is no they are (...) they're not a part of your life, your life is either the kids or your life is not the kids, but you cannot introduce them as a piece of your life and they must fit in. You you you drop that you fit into them and you give them this time of life I'm giving

them my time and my life now its not a problem anymore it was an adaptation process but with uhmm the help that God's Holy Spirit and the wisdom that he has given me in the Scriptures uhmm usually about how to address self my problems "I want" "No you don't" "You have to" "I will" "No you won't" "I won't" "Yes you will" Its all this process and then you get up in the morning and you make the kiddies breakfast. I've just said to a friend of mine the other day I said when I start growing boobs (...) Miems, when I was when I left her place when I was sewing when you phoned I said to her *Miems as ek begin borste groei sê net vir my laat ek ophou* ²⁸ ((Good laugh)) want ek voel nou soos ma ek is seker dit begin my affekteer. Ja I started to feel like a mommy.

Researcher: And you've got support from your parents and Lynette?

Carl: Yes yes yes Lynette sometimes too. I don't I don't I don't use that. I've got my mom has told me she'll take the kids to school in the morning I refused that one I don't want it to be made easier for me, I'll take the lot when I have to have to ask somebody to do it they can't then say that I've abused it up until now, so today they can't. Usually you can make a plan until you can't well then then the offers are available. So uhmm my parents are around and and that's invaluable help and uhmm friends. But at the end of the day its fine you just got to reprioritize your life so that you're not wishing that you could but now you can't. So you're with the children because if you're wishing that you're somewhere else then the kids uhmm will know.

Researcher: And other dads in the same circumstance what would you advise them to do?

Carl: Uhmm not to run from it, (.....) but to go for it the change it will make them it will make them appreciate woman, mothers. You know I really appreciate (..) mothers around the world now. I see mothers in a shopping centre with a baby in the arm with two kids round their legs and this one woman was looking at chutney prices just comparing chutney prices. The two above her feet were fighting were fighting with each other around her legs and the one in her arms wanted to get down and uhmm she continued between this all going on and between the chutney and the looking and the (..) I just walked up to her and said you know that's the difference between a mother a woman and a man, regardless of whether we are with our children or not. I would have lost my my cool told the two kids at the bottom to now shut up and stand still be quiet just for a moment or to go just to the other side of the aisle and play, they're allowed to race trolleys in the shopping centre so. but to shut up and then I would have looked at the prices, worked it out and then I could have dealt with the fight further. But a woman can handle this all going on just think this one is 500grams and this one is 500 ml and this one is 750ml and what the prices are and take the cheapest one. A man can't do that. We can't. We'll never be able to do that we must do one thing at a time and that's the difference between a man and a woman that makes this job a little harder for a man than for a woman. But other than that there's such a wonderful reward in it (.....) the children when they

treat you like (.....) you have to specify often that you are not God. You know. Its me and there's God.

Researcher: That's wonderful, that is wonderful.

Carl: That's a nice feeling to be in that position.

Researcher: To know that they see you like that. Thanks Carl Thanks very much for sharing this with me, and may God bless you and your precious children. If you've got nothing to add I think I can switch this off now. Thanks man.

END NOTES.

1. Ok what do you want to know? Tell me.
2. it makes you dull.
3. I cannot worry
4. Yes
5. slap
6.listen I did not have just a little.
7. stems and stuff
8. do not listen to him
9. Where is your (.....) where is the strength you knew...it's gone or it is it is not true. It is not forgiven. What did you do here? Who do you deal with here? Admit that.
10. Then I heard my my own words in my head before they were even uttered I just heard it. It's almost like a prophecy not a miraculous wonderful prophecy because one knows what one is going to say because one is saying it oneself and so one can control what is said but it is like something prophetic one knows these are the words that are going to be spoken. If you are not Jesus then you are.....
11. I did not shiver, I bounced, my whole body bounced I was so I was overcome..... I looked around and waited all the time.

Researcher: You

were?

Carl: I was panic-stricken

yes I was so scared. I looked up and knew that there was nowhere to run. Then I just sat. There was nowhere to go to then I just sat. I just knew that whatever I had to deal with I faced at that moment and afterwards, long afterwards I realised that there for the first time since 1996 or even earlier, remember this was 25 October 1998 I faced the truth for the first time the first time with the truth. This was the second time that I dealt with the truth because uhmm uhmm a few months earlier I dealt with the truth I had a confrontation situation about which I will tell you one day but uhmm there I dealt with the with my sin. I lay shivering all night I could not sleep because as soon as my heart started slowing down, I heard it slowing down in my throat and then I thought its now that I am dying and then it would start pounding again 140 150 and the I started perspiring severely. I can once again feel how my face exploded from fear and uhmm I looked at the one door the door of the room in which we were and a weird thing happened, because the passage walls were orange-coloured and there was a light in the passage and under that door on the wooden floor there was a scarlet red blaze and the all of a sudden I had the experience. I have always wondered where the hell is you know. It was just here with the combination of things that happened to me, that somebody came back from a party or jollification or something at two o'clock in the morning and they were in the same it was a double bunk and I was in the bottom bunk and this woman slept in the top bunk. It was coincidence that she arrived there, but because it was a wooden floor, she walked slowly and carefully down the passage but her footsteps seemed like eternity to me. I heard her footsteps coming towards the door and then I saw the shadow of her two feet under the door and then the door opened s-l-o-w-l-y and I waited to see who was there. That poor woman will never know but when I saw her I wanted to charge at her and hold her but I wanted to hold her. But I did nothing...I wonder what she thought. I can just imagine what she thought. The next day my bed was soaking soaking soaking wet. My duvet was so wet one could wring out the perspiration. When the first light came into the room I got up again and went outside. I stood there and then I saw the sun uhmm it was just on the horizon it was almost out.

That light when I went out and I saw the sun rising again the truth and the grace of God dawned on me ((eyes filled with tears)). It came again the grace (...) you are uhmm yes you are guilty but yes, you are still alive. Why? Uhmm (...) that I am still here is is (..) perhaps you still love me you know perhaps. And the sensation of still being here and of still being alive was again the first time that I decided that I still want to be alive (..) you know I did not want to die anymore, because I wanted to die before (.....) uhmm I experienced a few things in that period which were not nice and I wanted to be dead all the time and I tried but I never really got that far and all the time I saw my daughter's face next to my coffin that she was lying down and I felt that she was looking at me and she while she when she saw my face (...) uhm she knew that I knew that she was going to stand there even though I did not know it I still.....

12. Truth is something wonderful one cannot go far with truth not so? Cannot take truth far because the truth immediately holds one down (.....) but you can always go back to the exact point of departure with truth and start again uhmm with lies one can get very far in life one can get extremely far with lies uhmm (...) but you can never go back. You can never go back to where you started. **Researcher:** Well formulated **Carl:** So one has to (...) when one is committed it is good. Sorry we were talking about the power not so? Uhm (.....) the Lord had me (.....) uhmm
13. acting mayor
14. carry it through to the bathroom.
15. Oh I did not even know.
16. truck
17. that cured her
18. The evening prior to the crucifixion we have a quiet service where several people read some things and my daughter likes to read there, she has a good voice for reading.
19. socialising.
20. Do you see what you cause between your mother and father it's all your fault I told you it is your fault.
21. Your fault! And Lisa said: It is not. She said: I told you it is so. Lisa said it is not my fault.
22. she slapped him right and left.
23. state
24. Crèche
25. No it is not because she does not trust me any longer it is because she missed us last night.
26. So they can just mess so much.
27. I have just I manipulated a bit
28. Miems if I start developing breasts tell me so that I can stop.