

**FINDINGS ON JUDGE MICHAEL DUFFICY,
COMMISSIONER SYLVIA SHAPIRO, & COURT-APPOINTEES IN
MARIN COUNTY'S SUPERIOR COURT IN CALIFORNIA**

**written by Karen Winner
February 28, 2000**

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A note from the author:

The following report was commissioned by a group of families and concerned citizens as an important step towards understanding the problems that exist in Marin County Superior Court in family law cases. This author, Karen Winner, investigated the conduct of Judge Dufficy, Commissioner Shapiro and some of their appointees, and found evidence of serious wrongdoing.

To the best of my knowledge, I have not written anything that invades anyone's privacy, or that is libelous, and it is not my intent to harm any individual mentioned in these pages. Everything written in these pages is in the public's interest.

This report is published by The Justice Seekers, Inc., a nonprofit, nonpartisan, research organization. The Justice Seekers Inc. was founded by Karen Winner in 1997, and has the following stated goals:

- * To encourage public awareness of the ethics, practices, and decision-making policies in the state civil courts that affect families.
- * To provide information and research to help consumers, families, and litigants guard their interests and protect their rights in family law cases.
- * To create a better informed citizenry who will then be in a position to demand more accountability from the judiciary branch of government.
- * To protect children from potential harm due to unprofessional conduct, and questionable or unscrupulous practices in the courts.

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Introduction

In 1997, Marin County's Civil Grand Jury took a 19-member vote to investigate alleged improprieties in the family law court division of Superior Court. According to witnesses who were interviewed, the cases involved rulings by Judge Michael Dufficy, who now presides over Superior Court, and Commissioner Sylvia Shapiro. The investigation was cut short after the Grand Jury received word from County Counsel, saying they did not have the proper jurisdiction to investigate a judge. However, the controversy has not ended.

In the "Findings on Judge Michael Dufficy, Commissioner Sylvia Shapiro and Court-Appointees in Marin County's Superior Court in California," it is shown that the judge and commissioner put power, profit, and self-interest over the welfare and safety of children and litigants.

This report, which quotes several lawyers and examines public documents, raises several disturbing questions about the pattern of conduct by Judge Dufficy and Commissioner Shapiro, and reveals a wide range of probable illegalities and breaches of ethics.

Among the report's findings:

- * Judge Dufficy and Commissioner Shapiro routed court-ordered child and family support payments to favored lawyers and court-appointees for their fees, so that children didn't receive full child support payments.

- * Judge Dufficy maintained hidden financial ties to several local law firms. Some of these financial ties are startling because Judge Dufficy has not properly disclosed them to litigants or to state authorities, as required under the judicial ethics code and the law. Keeping his financial dealings with lawyers secret is an ethics breach. The appearance of improprieties is staggering. For example, public documents show that Judge Dufficy's wife was working as a law secretary for the popular family law firm Adams and Dornan at the same time that Verna Adams (now a judge) was appearing before Judge Dufficy in cases, without the knowledge or consent of the litigant in at least one of those cases examined in the report. Judge Dufficy was collecting income from his wife's work at these firms, according to public documents. Yet, Judge Dufficy did not remove himself from presiding over this case, as he ethically should have, when the lawyers from the law firm paying his wife were appearing before him.

- * In some custody cases, the Judge and Commissioner repeatedly relied on questionable experts who received lucrative sums from the parent with the most money, and then provided "biased" "tainted" reports to create a false record against the parent with less money. These false findings were admitted into evidence and used by the judge and commissioner to grant custody to the "favored" parent, which was not in the best interest of the children.

One egregious example involved Commissioner Sylvia Shapiro who failed to address reports of child abuse when the accused was

prominent civil rights attorney Marshall Krause. He had been a colleague of Sylvia Shapiro's father, Carl Shapiro. They both worked at branches of the American Civil Liberties Union in California. Commissioner Shapiro refused to address the reports of abuse, and subsequently Krause's then-13-year-old daughter became so afraid of her father that she fled his home and traveled on her own to Los Angeles. She was taken in by The Los Angeles Juvenile Court. After its own investigation, the L.A. Juvenile Court found that the Marin County custody evaluation on which Commissioner Shapiro had relied to base her decisions, was "tainted" and "unreliable." The L.A. Juvenile Court also found credible evidence of repeated abuse, and removed Krause as the custodial parent. (Official documents are attached to the report.)

In another case, this same expert, Dr. Oklan, was used by Judge Dufficy to evaluate a family. Dr. Oklan was paid \$25,000 by the father -- local car parts dealer John Irish -- and Dr. Oklan then produced a report highly unfavorable to the mother, Deborah Irish Planet, who subsequently lost custody of her 1-and-a-half year-old child. Planet hired another expert who found Dr. Oklan's work to be unscientific, and Dr. Oklan was forced to remove himself from the case.

* The Judge and Commissioner ignored the procedures and laws in several cases.

One case detailed later in this report involved the potential safety of two young children whose father requested that Judge Dufficy grant him permission to take the children boating on an 11-foot dinghy on rough waters of Raccoon Strait on San Francisco Bay, over the mother's objections. Judge Dufficy took it upon himself to announce his decision in a written letter to a boating magazine, saying he sided with the father. His letter appeared *before* Judge Dufficy filed his written decision in court.

In another case, when one lawyer brought her client to what she thought was a settlement conference with the woman's ex-husband, Judge Dufficy took it upon himself to order the woman to undergo mental testing because she wanted to relocate to the east coast with her children, which she had a legal right to do. Her lawyer objected, stating: "What happened to the rules of procedure, your Honor?" Judge Dufficy's response was: "There aren't any," according to the transcript of the proceeding. This case will be examined in depth later.

* A small coterie of people obtain much lucrative business through their appointments and referrals through Judge Dufficy and Commissioner Shapiro. This same small network of people are used over and over. They include Mauna Berkov, Margaret Lee, Ph.D., Frederica Conrad, Ph.D., and Edward Oklan, M.D.. This report raises several disturbing questions about their conduct. Often these appointees and experts charged litigants excessive fees — for work that was later refuted by experts as “biased” and/or “tainted.”

The American public expects integrity and professionalism from the judges and commissioners who preside over cases in our nation’s state courts. But this author’s interviews reveal that numerous lawyers, citizens and civic leaders have resigned themselves to expecting far less in family law cases involving Judge Michael Dufficy and Commissioner Sylvia Shapiro.

As the presiding judge of Marin County Superior Court, Judge Dufficy oversees the handling of civil, criminal, and probate cases, as well as family law matters. Judge Dufficy’s conduct specifically in family law matters is the primary focus of this report.

Sylvia Shapiro is one of the commissioners who has worked directly under Judge Dufficy. Commissioner Shapiro’s questionable conduct and judicial temperament are also examined in these pages. Commissioners, who are lawyers, have quasi-authority of judges: they are able to make judicial rulings that carry the weight of law.

Based on cases in a period ranging from the mid-1990s through the present, the findings show that Judge Dufficy and Commissioner Shapiro engaged in a range of probable misconduct including:

- * Diverting child support and maintenance (alimony) payments from children and needy spouses to cronies
- * Showing gross favoritism toward certain litigants and lawyers
- * Ignoring litigants’ rights and procedures under the law
- * Accepting tainted, skewed psychological evaluations into evidence that results in the wrong parent being awarded custody of the child
- * Violating the Judicial Code of Ethics
- * Approving fee-gouging by experts and court-appointees
- * Keeping financial and business dealings with lawyers hidden (Judge Dufficy)
- * Showing disrespect for litigants; lacking proper judicial demeanor (Commissioner Shapiro)

Numerous lawyers who were interviewed for this report perceive an insiders' network at the courthouse. "For somebody who practices in many counties, I found Marin County cliquish, and I believe there is favoritism," said Jayne Kelly de Lopez, who has wide experience throughout California, having practiced in 10 to 12 counties throughout the state. She is based in Grass Valley California, northeast of San Francisco.

In the view of attorney Jan Hinkle: "I got the impression it was sort of the old boys' order there." Hinkle said that she mainly practiced in Santa Clara County and was therefore an outsider who did not have a chance in Judge Dufficy's courtroom — even though she was convinced that the law and facts were on her side. Hinkle came away with the impression that Judge Dufficy ruled on behalf of those lawyers he knew and favored — "If you're one of the old boys," she said.

The perception of an "old boys network" at the Marin Civic Center Courthouse, where only certain favored lawyers win, has also reached San Francisco. Richard Bryan, an attorney who practices in San Francisco pointed out: "A lot of San Francisco lawyers feel that the judges in Marin County tend to favor Marin lawyers." Several lawyers in San Francisco have told him that they believe that a few lawyers in Marin County have a high degree of influence with the judges and there tends to be bias against others. Bryan continued: "I've had two experiences involving rulings that have made me wonder whether what I heard was true. In these two cases, I felt there was really something wrong," he said. "I've never personally experienced any problems other than those two cases, and other cases have been resolved fairly, generally speaking."

The lack of confidence in Judge Dufficy's ability to rule fairly has gotten to the point where Robert Cleek, of the firm Cleek and Elin in Novato, California, said that when one of his cases comes before Judge Dufficy, Cleek automatically requests a new judge as a pre-emptory measure. "I just don't go before him if I can help it. At some point I'm going to feel that he is not following the rules," said Cleek.

When contacted, Judge Dufficy and Commissioner Shapiro each declined to respond to requests for telephone interviews with this author.

In the course of research for this report, it has been learned that there might be some form of shake-up occurring in the wake of findings of a recent Marin County Bar Association — discussed later in this section — that surveyed lawyers about the performance of judges and commissioners, including Judge Dufficy and Commissioner Shapiro. Sylvia Shapiro is reportedly being transferred to Municipal Court because of the high number of unfavorable ratings she received in the survey, according to one lawyer familiar with the events.

In all, this author conducted 40 separate interviews and reviewed more than 3,000 pages in court documents, legal papers and public records. This study contains recommendations, and urges the Chief Judge of California to appoint an independent prosecutor to review the cases cited in these pages. Marin County should also adopt emergency measures to prevent the worst kinds of injustices and mistreatment of families in the courtrooms of Judge Dufficy and Commissioner Shapiro.

II. Background: Responses to the Conduct of Judge Michael Dufficy and Commissioner Sylvia Shapiro

A few prominent members of the Marin County community have made several attempts over the past few years to notify local authorities about the perceived abuses and injustices occurring in the courtrooms of Judge Dufficy and Commissioner Shapiro. Officials have not been responsive to these complaints, according to several people who were interviewed. However, a Civil Grand Jury inquiry in 1997 and a recent bar association survey, discussed below, have increased the general awareness of the problems for families who appear before Judge Dufficy and Commissioner Shapiro.

The Civil Grand Jury Responds to Complaints

In 1997, the Marin County Civil Grand Jury in California voted to conduct an investigation into allegations of improprieties in the family law court. The Civil Grand Jury has nineteen members and is authorized to investigate government corruption, among other things. It is separate from the Criminal Grand Jury, and prosecutor's office.

The decision to investigate was prompted after a number of citizens wrote letters to the Grand Jury, complaining that Judge Dufficy was intentionally flouting the laws and manipulating case outcomes by showing gross favoritism to certain lawyers such as Mauna Berkov, Terrence Colyer and Verna Adams, now a judge. Colyer and Adams, along with Mary Halbert, co-own a law office, according to public records.

In response to the 19-member vote, the Grand Jury's Law and Justice Committee began interviewing litigants and witnesses, according to Martin Silverman, the former assistant foreman of the Grand Jury.

As part of the initial inquiry, Martin Silverman interviewed Judge Dufficy (before he was appointed as the presiding judge.) Martin Silverman recalled that Judge Dufficy did not seem troubled by the allegations and dismissed the complaints as coming from a few disgruntled litigants who had lost their cases.

Grand Jury members also interviewed Jill Kramer, a reporter for the *Pacific Sun*, a free weekly covering Marin County. She related to Mr. Silverman and other members the information she had gathered for a story concerning favoritism toward certain lawyers and court-approved people in Judge Dufficy's court, according to Jill Kramer. In an interview for this report, Ms. Kramer said she had interviewed a total of 20 people for her story, about 10 of whom were lawyers, most of whom refused to be publicly identified for fear of retaliation by Judge Dufficy, she recalled. She explained that these lawyers have to go before Judge Dufficy on other divorce and custody cases, and told her that if they went public, "it would be worse than ever," she recalled.

Ms. Kramer told the Law and Justice Committee members that her story had been written and was ready to be published when the *Pacific Sun* received a letter from Terry Colyer, who was cited

unfavorably in her story.

Colyer threatened, possibly through an intermediary, to sue the newspaper if a certain statement about him were published, according to Kramer. She added that since so many of the attorneys she interviewed refused to be publicly identified, the story could appear weak. In response to both concerns, the paper's lawyer and publisher withheld the entire story from publication, she said.

The Grand Jury interviews continued for several weeks, according to then-assistant foreman Martin Silverman. But before proceeding with a full-scale investigation, the Committee sought the advice of County Counsel -- the lawyers who represent Marin County -- for a ruling as to whether the Grand Jury had the proper authority to investigate judges, Silverman said.

In response, County Counsel did not grant the Grand Jury authority, citing a local rule. The County Counsel who formed that opinion apparently retired and could not be reached, so there is no independent confirmation on what exact rule was used to form this conclusion. Yevrah Ornstein, a litigant in Marin County who complained to the Civil Grand Jury, said he had spoken with the County Counsel in 1997, and believes it was Penal Code Section 925 of Attorney General Opinions.

Whether the Marin County Civil Grand Jury, which is empowered to investigate misconduct by public officials, had the authority to investigate Judge Dufficy is doubtful, according to one lawyer, who is a former investigator with the California Commission on Judicial Performance. The former investigator, who wanted to remain anonymous, said that civil grand juries do not have the authority to investigate a judge. He said that if a judge commits a crime, the District Attorney will have the proper authority to investigate and indict the judge, and a Grand Jury for a criminal case could be called. But if the judge's conduct is in question, and there has been no allegation of a crime, then the authority to investigate rests solely on the California Commission on Judicial Performance, the agency that oversees the discipline of judges.

After the Marin County Civil Grand Jury aborted its investigation of Judge Dufficy, more complainants came forward, alleging that they too were mistreated in the Dufficy courtroom, according to witnesses familiar with those complaints. When the members' terms expired, the new Grand Jury members continued receiving complaints, Martin Silverman said.

Following his tenure as a member of the Grand Jury, Martin Silverman said that he has continued to monitor the events in the courtrooms of Judge Dufficy and Commissioner Shapiro, and that he is very troubled by some of the decisions of the family law court.¹ In Silverman's opinion: "The

¹ It should be pointed out that Mr. Silverman has had no personal involvement with the court system whatsoever. He has been married for 36 years, has two grown children, and has never been involved personally in any kind of litigation, he said. However, his Grand Jury involvement with the family law court issue resulted in his being subpoenaed twice by private attorney Terry Colyer, according to Deborah Planet, (pronounced Pla-nay) who said she had complained about Colyer's ethics to the Grand Jury. Silverman wouldn't discuss the first subpoena, because the information is privileged. Silverman said that after his tenure ended on the Grand Jury, Terry Colyer personally subpoenaed him, and questioned him for a couple of hours. Silverman characterized Colyer as very aggressive, with questions that seemed designed to intimidate through innuendo. Silverman said he was not intimidated but it helped him to understand better how some litigants might have been mistreated through unsavory

best interest of many children is frequently not being considered. Additionally I am struck by the seeming lack of fairness to some of the less affluent litigants — those who are not represented by certain attorneys.

Sometime in 1999, several litigants took their complaints about Judge Dufficy to the Federal Bureau of Investigation in San Francisco. FBI agents have been conducting interviews, according to several people who said they were interviewed. Martin Silverman was among those who said he was interviewed by two FBI agents this past fall.

Results of a Judicial Performance Survey By the Marin County Bar

In December of 1999, The Marin County Bar Association released their findings of a judicial survey that are significant for the purposes of this report. Of 13 different judges and commissioners whose performances in Superior Court were surveyed by lawyers, Judge Dufficy and Commissioner Shapiro scored the most poorly in two areas.²

Judge Dufficy scored the least favorable rating — “needs improvement.” in the area of preparation. The findings show that every fourth lawyer who appears before Judge Dufficy believes that he is not prepared when he hears cases — that he does not read the lawyers’ court papers before he conducts the hearings. (There were four possible categories to choose from: “Excellent” “Good” “Adequate” and “Needs Improvement.”)

Commissioner Shapiro received the worst score in the group on “judicial temperament.” According to the findings, every third lawyer who appears before her believes she “needs improvement” in the way she conducts herself on the bench.

On the issue of “Treats all parties, attorneys and law firms fairly and equally,” Probate Commissioner Mary Grove drew the heaviest criticism — 49 out of 115 lawyers who responded believes she doesn’t treat everyone fairly. Family Law Commissioner Shapiro ranked second place in the worst category in this area while Judge Dufficy and Criminal Judge Stephen Graham were a virtual tie in third place.³

The findings of this survey lend some credence to the litigants claims that Judge Dufficy and Commissioner Shapiro do not treat all litigants fairly, and have deprived unfavored litigants of their rights. There is evidence to show that the judge and commissioner *increase* the inequality of litigants through legal maneuvering, seeming to position the favored lawyers into winning positions, and

lawyer tactics.

² One hearing officer’s results were excluded because the survey only garnered three responses.

³ There were 26 lawyers — nearly one-fourth — who checked “needs improvement” on Judge Dufficy’s scorecard, while 31 lawyers out of 120 who responded to Commissioner Shapiro, gave her the thumbs down on this question.

seeming to weaken those who they don't like. There will be more about the survey results later, in context to the findings of this report.

While this report deals mainly with how laws were broken and ethics were violated by Judge Dufficy and Commissioner Shapiro, it's important to remember that their conduct has taken enormous financial and personal tolls on the families whose fate rested in their judicial hands. Besides not receiving fair hearings, many of these families were also financially exploited by the Judge and Commissioners' appointees and referrals. A sense of helplessness was described by one community activist who has tried to help.

"There's just a terrible feeling of what's going on here," said Jean Taylor, a retired school teacher with a masters degree in psychology. Taylor said she learned about the problems with Judge Dufficy and Commissioner Shapiro when she was Chair of the Marin County Commission on Homelessness. She said she had been assisting women who were facing poverty and at risk of homelessness, who were going through divorce. She began advocating for the women, she said, as they went through their divorce proceedings. She became concerned when she could not find a lawyer for one of the women because no attorney wanted to go against Terry Colyer, she said. "When the other attorneys found out who the opposing attorney was, they wouldn't take the case," said Taylor: "I've talked to at least a dozen attorneys and it's common knowledge that certain attorneys who go before the judge are generally granted what they are seeking and the opposing attorney doesn't have a chance," Taylor said.

Jean Taylor reported the problems to Martin Silverman (former assistant foreman of the Civil Grand Jury) and to a county supervisor. "But nothing happened," she said. "It just hit a dead end." Taylor said she also told a former Marin County Bar Association President who in turn reportedly told Judge Dufficy, and asked him if he would create a judicial review for complaints. "Absolutely not," was the response, according to Taylor. "The Bar President couldn't get anywhere."

III. Inside Workings of Superior Court in Divorce and Custody Proceedings

The divorce process is crowded with therapists, appointees, evaluators, and referrals in Judge Dufficy's and Commissioner Shapiro's courtrooms. A handful of people have received a tremendous amount of lucrative business from appointments by the judge and commissioner. These appointments have become suspect over the past several years; there have been numerous allegations that a small network of lawyers and court-appointees manipulate case outcomes. In 1997, about ten litigants complained to the Marin County Civil Grand Jury that Judge Dufficy and Commissioner Shapiro command the families to pay huge out-of-pocket expenses for these appointees, who then appear to steer the cases to one side.

The findings of this report show that these appointees and referrals are often aligned with a small coterie of lawyers; altogether they appear to exert much influence on case outcomes in the Dufficy court, outcomes that appear to be unrelated to the evidence presented. Some of these attorneys do indeed have outside connections to Judge Dufficy, through his wife, Penelope, who has worked as a legal secretary for numerous law firms in Marin County. The Judge and Commissioner seem to throw impartiality to the wind, allowing favored lawyers or experts to control the outcome of the cases.

In a recent judicial survey issued by the local bar, of thirteen different judges and commissioners, Judge Dufficy scored the worst on the question: "preparation: (reviews written materials prior to hearing)." The lawyers' response is significant because it supports what some families have been suggesting for years — that Judge Dufficy doesn't do the necessary preparatory work on the cases because he doesn't have to. Instead of reading the papers and making his own independent decisions, he allows his favorite lawyers and experts to control the outcome of cases.

One lawyer, who did not want to be identified, put it this way about Judge Dufficy: "He seems unconstrained by the law, especially in the smaller cases where he knows there won't be an appeal." (Smaller cases aren't appealed because litigants usually can't afford it. Paperwork alone for an appeal can run upwards of \$8,000 or higher.)

Whether Judge Dufficy is just "lazy" as some lawyers have suggested, and merely rubber-stamps decisions for the sake of personal convenience, or if there is some quid pro quo — an exchange of sorts — has not yet been determined. One other possible explanation is psychological, that he merely enjoys playing favorites in his powerful position.

Who Benefits in Judge Dufficy's Court?

As a private lawyer and psychologist, Mauna Berkov often goes before Judge Dufficy, but Judge Dufficy also often appoints her to other roles, such as the lawyer for children, or she is approved as a special master (psychologists who have the legal authority to write court orders, like judges.) Berkov allegedly wields much power through influencing case outcomes. Moreover, she

doesn't even have to be accountable financially: she does not provide itemized billing statements to have her legal fees approved by the court. (See the section on Fee-Gouging for an illustration.) It is unknown whether an appointee's practice of not providing itemized bills on request of the litigants is isolated to Berkov and a few others, or whether this is a system-wide problem.

Three mental health professionals identified as Dr. Edward Oklan, M.D., Frederica Conrad, Ph.D., and Margaret Lee, Ph.D., wield enormous power in the Judge Dufficy and Shapiro courts. Lawyer Richard Bryan said that it is highly unusual for a court to heavily rely on just three evaluators, and that in his experience, other counties usually rely on anywhere from five to fifteen evaluators. However, this was not the case in Santa Clara County where only a few evaluators with questionable competency and ethics, were being assigned by one judge, until community groups and families started picketing the court, and additionally commissioned this author in 1997 to investigate. In January 2000, the presiding judge in Santa Clara County issued sweeping new rules that eliminated the potential for cronyism by psychologists in divorce court, which is addressed in the recommendation section of this report. ⁴

These mental health evaluators receive tremendous financial benefits through their appointments. A psychological evaluation of a family can typically cost anywhere from \$3,000 on the low end, to \$12,000 and much higher. In fact, there is wide disparity between the costs of evaluations by the same evaluator. For example, Dr. Oklan, a psychiatrist, reportedly charged \$12,000 for the evaluation of one family, but charged \$25,000 for the evaluation of another family, even though the cases were similar — in each case, two parents and one child were being evaluated. Several litigants complained of billing irregularities in Dr. Oklan's bills.

The parents are each responsible for paying these evaluation fees, and parents are court-ordered by the judge to pay the fees. Even though judges order parents to pay for the evaluation, it is debatable whether California law actually requires it when the parent's mental or physical fitness has not been made an issue in the custody proceeding. However, most lawyers and many California judges including Judge Dufficy do not tell litigants their rights on this issue or that they can challenge the judge's ruling under current laws. ⁵ When a parent decides to move out of state with his or her

⁴ In Santa Clara County, Judge James Stewart had been relying on the opinions of two highly questionable evaluators, both of whom received much business from Stewart's court. Stewart ignored numerous complaints by lawyers and litigants that these two psychologists were acting unethically. In a 1997 report by this author, it was found that these two evaluators often skewed their tests in favor of the abusers who would then use the skewed results to obtain custody of their children, to the detriment of the children. One of the evaluators, Terry Johnston, had falsified her resume. She had also used a company to score her tests that was legally forbidden from scoring tests because of its near 100 percent inaccuracy rating. The other evaluator, Michael Jones, was the subject of numerous complaints by several lawyers who had notified the licensing board about his unethical practices. This author found that he had been unethically engaging in triple roles, serving as evaluator, therapist, and special master all in one case, among other unethical behaviors. Subsequent to complaints about these evaluators, who also reaped many financial benefits from their court appointments, Jones was removed from the judge's appointee list.

children following the divorce, Judge Dufficy typically orders psychological evaluations. The parent might not have any history of mental problems or physical disabilities, yet the orders for evaluations triggered by a move out of state seem to be routine, according to one lawyer who was interviewed. (This is not believed to be a typical practice in other courts.) California courts generally allow a parent with physical custody of his or her children to move out of state with his or her children, following California's high court decision known as the Burgess ruling. Nowhere in this ruling does it say that mental testing of the parent is a prerequisite for obtaining permission from the court to relocate.⁶

In these cases, a special master also charges his or her fees to the parents. Special masters are psychologists who have the power of judges to make court orders. These Special Masters have to be approved by the judge. If the parents can't pay the fees, the special master can sue them in court. Additionally, a private lawyer might be appointed by the judge as a lawyer for the child, and this lawyer also charges the parents a fee, which is also ordered by the judge to be paid.

Business can multiply quickly for the favored court-appointees. For instance, they sometimes switch their roles from case to case thereby generating more income. Mauna Berkov is not only a lawyer in court, but Judge Dufficy also approves her as a special master and as a lawyer for the child. These same people who are heavily used by Judge Dufficy and Commissioner Shapiro, sometimes cross-pollinate each other financially through making referrals in divorce proceedings. For example, in one case (FL10799) private attorney Mauna Berkov, who was representing the father, recommended to Judge Dufficy and to the mother that they should hire Margaret Lee, Ph.D. as the psychological evaluator, to do mental testing of the family, after the mother said she wanted to relocate from Marin County to Sonoma, California. The mother consented to Berkov's recommendation, not knowing that Berkov (the father's attorney) and Dr. Lee (the supposedly neutral expert) have an outside professional working relationship and that they teach seminars together. Dr. Lee subsequently gave unfavorable testimony about the mother, and this was weighted heavily against her — she lost custody of her child. There was a big reversal in this case after Lee's psychological evaluation was submitted for review to a qualified expert outside of the Marin County system who said her findings were inaccurate. The mother then regained custody of both of her children. This case is discussed further in the chapter on "The Use of Questionable Experts."

grant a motion for a physical or mental examination for 'good cause shown' . " Yeamans and co-author Ed Sherman write: "Most judges think that the mere fact that there is a divorce with a custody issue is good cause for ordering a psychological evaluation. This is highly debatable. . ." Judges have no training, other than what they voluntarily get on their own, in how to make custody decisions.

⁶ The question of custody and "move away" was extensively addressed (in a partially published decision) in the California Court of Appeals decision, Stephen Lloyd Respondent v. Donia Kate Green, Appellant, cited as 97 Daily Journal D.A.R. 6525. Citing the California Supreme Court case, Marriage of Burgess, the appellate judges wrote : "A parent with physical custody has a presumptive right to change the residence of the minor children, as long as the move would not be prejudicial to their rights or welfare."

Hidden Ties Between Judge Dufficy And Numerous Lawyers

In 1986, when he was a lawyer, Judge Dufficy formed a general partnership called "The Debtors' Club," along with three other men identified as George S. Peterson, Herbert G. Hawkins and Harvey N. Black, Jr. (Ex 1A)

According to public records, The Debtors' Club owned a two-story office building located at 1748 Lincoln Avenue in San Rafael, about a mile from the courthouse. Deeds filed after his appointment to the bench in 1990, show that Judge Dufficy maintained his partnership interest in this building until 1994. On January 28, 1994, his wife, Penelope Dufficy transferred⁷ her share of the interest to the Debtors Club. On the same day, Judge Dufficy then transferred his interest to Harvey Black Jr., Herbert Hawkins and his wife, Jeannette. (Ex 1B) Since there was no transfer tax reported on the deed, Judge Dufficy apparently wasn't paid for his share of the sale. (The reason can only be speculated — perhaps he owed a debt to Black, which would possibly explain the name of the business, The Debtors' Club.) Still that same day, the Hawkins couple and Black sold the property to a husband and wife for \$927, 272. Judge Dufficy's business interest seems legitimate, but the problem is this: Judge Dufficy did not report this partnership to the state authorities as he is required to do. This information is missing from his Statement of Economic Interests forms. He has reported other real estate interests and assets, such as stock owned in a wine company and partnership interest in a duck hunting club. Yet in those years that he co-owned the aforementioned building — 1991, 1992, 1993, and 1994 — nothing referring to it is listed on the Statement of Economic Interest forms. He omitted any mention of The Debtors' Club or his financial share of the real estate the Debtors' Club owned. (Ex 2 A B C D E) Why would he keep this a secret?

The Debtors' Club owned the building; lawyers rented offices in this building. Why Judge Dufficy might not have reported his involvement in this building's business is that if any of these lawyers appeared before Judge Dufficy in cases, it would appear to be a conflict of interest. The judicial ethics code does not permit judges to serve on cases when they have a business that is benefitting from the lawyers who appear before them. He would have had to withdraw from these cases, according to former appeals judge Michael McDonald, of Kentucky, who was interviewed. "Naturally that should have been disclosed," said Judge McDonald. "I think he would have to recuse himself if a lawyer who rents from that business would be involved in a case before him."

Since he didn't provide this information on his Statement of Economic Interest forms, there is no way of knowing if Judge Dufficy did withdraw from any cases where lawyers who were occupying space in the building were appearing before him.

Canon 4 of the Judicial Code states in part:

⁷ (One way of transferring ownership in real estate is called "quit-claim"; Penelope Dufficy quit-claimed her interest in the property, according to public records.)

“A judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification. As soon as reasonably possible, a judge shall divest himself or herself of investments and other financial interests that would require frequent disqualification.”

Political Ties

A review of Judge Dufficy's nomination papers for re-election to the bench in 1998, shows that Verna A. Adams is one of several lawyers and judges who signed her name to nominate him for re-election, according to a copy of the documents, provided by the Marin County Board of Elections/County Clerk's office. Among other people who nominated Judge Dufficy for re-election were the following:

Jack Covi, assistant County Counsel
Peter Flaxman, listed as the President of the Marin County Bar Association in 1998
Judge Lynn Duryee
Judge Lynn O'Malley Taylor

Penelope A. Dufficy's Work For Lawyers

Judge Dufficy's wife, Penelope A. Dufficy, has worked as a law secretary for numerous law firms in Marin County, Judge Dufficy reported, in several Statements of Economic Interests, a public document that lists assets and other sources of his income. In Judge Dufficy's Statements, he lists annual income of over \$10,000 that he derived from his wife's work as a legal secretary. Judge Dufficy identified the following firms where his wife has worked between the years of 1991 and 1996. They include:

Adams & Dornan
Diamond, Bennington & Simborg
Krause, Baskin, & Ballentine
Baskin & Ballentine
Lawrence A. Baskin
Michael Cogen
Riede & McCall
Richard Barry
Sharon Mah
Ragghiatni & Thomas
Pahmer, Jones, Hawkins and Strong
Pahmer, Jones et al
Fish & Snell
Rodney N. Johnson
Jerry Ackeret
Freitas Law Firm

Richard A. Hirsch
Elliott, Berryman & Ward
R. Oak Dowling
Craig Dykman (Ex 2 A B C D E)

Starting on the 1996-1997 Statements, Judge Dufficy did not identify the individual law firms, but instead states "various Marin County law firms." (Ex 3 A B C D). It is interesting that when this author tried to retrieve his Statement of Economic Interests from Marin County, she was told by the office clerk that she could not obtain any forms prior to 1996-1997 because they were "lost." The Statements prior to 1996-1997 had to be retrieved from the Fair Political Practices Commission in Sacramento, — the Statements that list the individual firms prior to 1996-1997.

Verna Adams was recently sworn in as a Superior Court judge on November 23, 1999. Before she became a judge, Verna Adams was considered a very successful family law lawyer in the San Francisco suburb of Marin County, with probably the bulk of her divorce cases filed in Marin County Superior Court, and many before Judge Dufficy. In the mid 1990s, her law firm, Adams and Dornan, was employing Judge Dufficy's wife as a law secretary during the same time that Verna Adams was representing clients and appearing before Judge Dufficy in family law cases. Judge Dufficy was deriving income from his wife's work at this firm, according to public documents. "To hear that a wife is working for the opposing lawyer is really distressing," said Richard Bryan, a lawyer in San Francisco. "I would be very uncomfortable knowing that the judge's spouse was working on the other side," he said. "One third of my clients would probably want to hire Verna Adams if they knew the judge's wife worked there," he said.

Judge Dufficy might have violated California state statute by allowing this arrangement to continue between his wife and law firms dealing primarily in family law such as Adams and Dornan. The Code of Civil Procedure, Section 170, (2) (3) (4) (5) (6) says among other things that a judge is deemed to have a financial interest in a proceeding if the judge's spouse is associated with a lawyer appearing before the judge.

As a private attorney, Verna Adams was said by some lawyers and litigants to hold great influence over outcomes in Judge Dufficy's court.⁸

In one case documented later in this section, neither Verna Adams, as a private attorney, nor Judge Dufficy disclosed his wife's relationship to the Adam's law firm, and this seemed in effect, to be a collusive relationship: it was outside the knowledge and consent of the unsuspecting litigant.

At the very least, Judge Dufficy should have disclosed that his wife was working for the firm,

⁸ Terence F. Colyer co- owns an office with Verna Adams, and Mary V. Halbert, which is called "633 Law Offices," which is the location of their law office in San Rafael. The file number of the business is 182121.

whose lawyers were appearing before him. This would have given the litigants the opportunity to disqualify him from the case. According to the California Code of Judicial Ethics, Canon 4, Sec. D., (1) (a) and (b): "a judge shall not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position or involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves."

The Advisory Committee Commentary continues: "A judge shall discourage members of the judge's family from engaging in dealing that would reasonably appear to exploit the judge's judicial position or that involve family members in frequent transactions or continuing business relationships with persons to appear before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification."

Some lawyers believe Judge Dufficy compromised himself by allowing his wife to continue to work for local Marin family law firms, over the course of his tenure as judge for the past ten years. One issue they raised concerns fees for those lawyers. They explained that judges are in the position of ordering litigants to pay legal fees of the lawyers. In divorce cases legal fee awards are typical. Under the law, the "needy" spouse, (usually the wife, who does not control the family assets) can ask her lawyer to request an order from the judge, called a "fee award." The judge commands her spouse (usually the husband — who controls the family assets) to pay for the needy's spouse's lawyer fees. When Verna Adams would request a fee award from Judge Dufficy, that money would go into the revenue of Verna Adams' law firm — to pay Judge Dufficy's wife. Judge Dufficy stated that he himself was deriving income from his wife's work at Verna Adam's law firm, according to his financial documents filed in Sacramento. Did Judge Dufficy award large fees to assure a healthy revenue stream at Adams and Dornan? Or did he put pressure on himself to award small fees, thinking that he did not want to appear biased because his wife worked for the firm? These are the kinds of questions that investigators will want to answer, because the judge's ability to remain impartial could have been compromised by his wife's employment at the Adams and Dornan firm.

Another problem, according to lawyers, is that the Adams and Dornan firm was relatively small, and Mrs. Dufficy would have had access to files, and communication with others who had knowledge of the cases appearing before her husband. One lawyer said, "This wasn't a large Wall Street firm with 300 employees. It was a small, suburban office. It's common in a small office for the secretaries and employees to talk about the cases and personalities of the judges and lawyers involved." Would Mrs. Dufficy have been able to keep confidences about the cases from her husband?

Another lawyer, who did not want to be identified and was not on the list above, said Penny Dufficy worked for his office three years ago. He admitted, "Technically it's not proper for a judge's wife to be employed by the other side." He said Penelope Dufficy always used her maiden name, "Thorp" to sign everything. The lawyer didn't think her work for him affected Judge Dufficy's rulings, but when asked to consider the implications, he went on to say: "Let's face it. Husbands and wives talk. I don't know that she doesn't talk with her husband."

Judge Dufficy should have removed himself from hearing cases when he and his wife were

financially benefitting from the firms whose lawyers appeared before him on cases, according to Michael McDonald, Kentucky Court of Appeals Judge (Ret). But Judge Dufficy did not remove himself in at least one case, cited earlier. Judge Michael McDonald said that Judge Dufficy had an obligation to withdraw from the case, regardless if he told the litigants. The reason is to avoid the appearance of a conflict of interest. "That would definitely be something that would require recusal," Judge McDonald said. "That [his not recusing himself] would set aside a conviction in a criminal case," Judge McDonald said.

Allegations of Behind-The-Scenes Maneuvering

In 1997, Judith George, a former resident of Marin County in a divorce proceeding (FL 5644), presented her story to the Civil Grand Jury. She told the assistant foreman, Martin Silverman, and some of the other Grand Jury members that she and her children suffered devastating financial loss and trauma in Judge Dufficy's court, and she didn't believe she could get a fair hearing in Marin County. Judith George, a former nurse who became a commercial photographer, was married to a local personal injury lawyer, Frank George⁹. The couple had three children in a joint custody arrangement, with two of the children residing with Judith George. In this case, Judge Dufficy drastically cut the family support awards, leaving Judith George financially desperate along with the two of her children who resided with her. She declared bankruptcy in 1999. That same year, Judge Dufficy issued a written ruling allocating some child support (in the form of family support) to Judith George and then four months later, completely reversed himself in another written ruling under a near-identical caption that did away with her child support arrears. She told this author that she is currently awaiting an explanation for Judge Dufficy's latest financial calculations that he used to arrive at his decision.

Since she made her complaint in 1997, Judith George has remained convinced that her husband and his lawyers influenced Judge Dufficy behind the scenes, pre-planning for her to lose. In researching this case, startling information has surfaced showing that her husband's law firm, Adams and Dornan, and the law firm representing her at one crucial point, Diamond, Bennington and Simborg, were both employing Judge Dufficy's wife as a law secretary at their respective law offices while crucial decisions were being made on the George case in the mid 1990s. As the husband's private attorney, Verna Adams appeared before Judge Dufficy on a regular basis in this case while Judge Dufficy himself was earning income from his wife's earnings at Adams and Dornan law firm during this same period, according to the public report he filed that he filed.

While the Grand Jury proceedings are secret and all material is confidential, she relayed a summary of what she told them. Her story, (substantiated by correspondence she provided) and a summary of subsequent events confirmed by court documents, follows:

The couple divorced in 1993 and had agreed to terms in a marital settlement agreement which were incorporated into their official divorce. According to the Marital Settlement Agreement, Mr.

⁹ His actual name is John Francis George III

George's family support payments could not drop below \$3,000, and if issues needed to be resolved, they would first try to mediate any dispute out of court. (Ex 4A) In 1995, two years after the judge issued the divorce decree, the division of some community property, such as the couple's belongings including fine art and furniture, still had not been addressed. Judith George said she wanted to mediate without a court battle: to resolve these issues with her former husband through a neutral third party, who would facilitate negotiations. But Judith George said that when she went to a court hearing expecting to be assigned to a referee who could facilitate discussions between she and her former husband, her husband's attorney, Verna Adams, inflamed litigation by allegedly making misstatements about Judith George, that she was being uncooperative. Judge Dufficy accepted Adams's misstatements at face value because, "My own lawyer would not object," George contended. In correspondence from Judith George to her lawyers dated November 13, 1995, she expressed concern and exasperation about these events, such as her instructions to mediate, and Verna Adams's alleged misstatements about her in court. (Ex 4B)

From that point on in 1995, the litigation escalated against her and she believed this litigation was preplanned to impoverish her, she said, recollecting what she told the Grand Jury members. One of the crucial turning points came when Judge Dufficy issued a series of rulings over the course of ten months, that drastically reduced the amount of family support her husband had to pay, first from \$9,000 to \$7,000 then later to \$1,400 a month, Judith George said.

According to the original marital agreement, the amount for family support was never supposed to drop below \$3,000, but there was a catch — the agreement could be modified if Judith George were ever to cohabit with another man. (Ex 4A) In this event, she would ostensibly be less financially dependent on her ex-husband. The triggering mechanism turned out not to be actual cohabitation, however, but something far different, according to George. She said that her fiancé stayed with her at her residence for a duration of only two-and-a-half weeks while he was seeking work in Marin County. Judge Dufficy in his ruling, said that although there was a dispute over how long this "cohabitation" actually took place, due to her "cohabitation," the terms of the original marital settlement agreement were no longer in effect. Judge Dufficy ruled that the "cohabitation" was the "trigger" enabling Frank George to modify the level of financial support again at any point in the future. (Ex 4C) This meant that the \$3,000 a month threshold for support payments for Judith George and the kids would no longer be guaranteed. To observers, this ruling seemed more like an artful maneuver to side-step the provisions of the Georges' marital settlement agreement than any decision based on facts and law. The consequences were disastrous for Judith George. She and her children became financially desperate.

George said she was further financially squeezed when Judge Dufficy refused to accept evidence showing that \$22,000 in checks she received were for reimbursement for her expenses in commercial photography, not net income as her husband's attorney had claimed. But when she presented documentation of her expenses at court, she recalled that Judge Dufficy completely ignored her evidence. "He refused to look at them. We had them in court and he waved his hand and refused to look at them. He didn't say anything — he just waved his hand and shook his head, indicating no," she said. The expenses — counted as her personal income — were used to further lower her support, she said.

Things only got worse for Judith George in court. When her fiancé, Philip Aide, could not find work in Marin County, the couple decided to relocate to Arizona. Prompted by her decision to move to Arizona, Judge Dufficy then decided to require George to undergo mental testing. Previously, there had never been any issue over George's fitness as a mother to her children. (This fact was substantiated in the Marital Settlement Agreement listed as **Ex. 4 A**)

Private attorney, Mauna Berkov, was appointed by Judge Dufficy as lawyer for the children. Frederica Conrad, Ph.D., was approved as the therapist, and Dr. Edward Oklan was appointed to conduct the psychological evaluation. Judith George was ordered to pay their fees, something she could not afford to do, she said.

It goes beyond the scope of this report to analyze all the legal complexities that took place in this case. But later developments raise even more questions about what might have transpired behind the scenes. According to Richard Bryan, a lawyer from San Francisco, who later represented Judith George, Judge Dufficy wrote a decision, "Intended Decision" dated May 24, 1999, which benefitted both the husband and wife, and seemed somewhat fair. (**Ex. 5 A**) Then approximately four months later, for reasons that are unexplainable to Bryan, Judge Dufficy reversed himself, and issued a second, lopsided decision — with a nearly identical caption "Supplemental Intended Decision" dated September 22, 1999. This ruling cut Judith George's child support arrears to virtually nothing. Bryan is convinced that Judge Dufficy's second ruling is inconsistent with child support guidelines for the arrearage period. The first Intended Decision stated, "Respondent will be ordered to pay child support to Petitioner effective June 1, 1998." The second, Supplemental Intended Decision stated: "The Court will not exercise its jurisdiction to make child support retroactive to June 1, 1998." (**Ex. 5 B**)

Judith George expressed surprise upon learning of Penelope Dufficy's involvement with her law firm and her husband's law firm. But these revelations fit together with what she believed — that behind-the-scenes maneuvering was taking place between the lawyers and the judge. In all these years she could not understand why her own attorney, from the firm of diamond, Bennington, & Simborg, would not object every time the opposing attorney, Verna Adams, allegedly made a misstatement about her in court, she said.

The precipitous drop in family support, the reversed ruling (**Ex 5 B**) and her pleas to her earlier lawyers, cited in correspondence, to resolve outstanding issues without litigation, point to questions that can't be readily explained. All the more puzzling is why Judge Dufficy kept his wife's role as a law secretary for Adams and Dornan, and Diamond, Bennington and Simborg, hidden when he was presiding over this case. He did not disqualify himself from the case, according to court records. Judge Dufficy should have removed himself from hearing this case, according to Michael McDonald, the retired Kentucky Court of Appeals judge. Why didn't he?

IV. In the Best Interest of The Children?

Judges are supposed to make decisions about child custody and visitation based on the legal standard of what is in the best interest of the child. But in light of four cases described below, Judge Dufficy's and Commissioner Shapiro's decisions show that they don't always use that standard. In the first, Judge Dufficy's own interest in boating or simply his negligence in doing preparatory research, might have put two young children at unnecessary risk. When he made a public comment on the case while it was pending, his action prompted the mother's lawyer to ask him to disqualify himself for violating the judicial ethics code. In a second, highly publicized criminal case, Paula Oldham went to prison for keeping her child from visits with the father. But when the father subsequently kept the child from visits with the mother, Judge Dufficy allowed it, according to court records.

In another case, Judge Dufficy jeopardized the financial stability of a child, after depriving the child of full child support payments. Judge Dufficy apparently broke the law, in favor of the experts he appointed whose fees were awarded out of child support payments that had been solely designated for the child. Commissioner Shapiro's decisions involving a child who was physically abused by her prominent father/attorney are also examined in depth.

The Freeman Case

Was Judge Dufficy thinking of the safety of two young children or of his own personal interest in a recent judicial ruling? That ruling gave the father permission over the mother's objections, to take their son and daughter, ages six and nine, boating in an 11-foot inflatable dinghy in waters known to have rough winds and strong currents, about a mile from the Golden Gate Bridge.

The case (FL 10484) came to public light after the father paid a visit to the editorial offices of the boating magazine, *Latitude 38*, and asked the magazine editor to write a letter to the court on his behalf. The father's side of the story appeared in the September issue entitled: "Are We Crazy: You Be The Judge." (Ex 6 A) Before Judge Dufficy issued his written decision in court, he wrote a letter to the editor saying the editors would be pleased to know that he ruled in favor of the father. His letter was published in October 1999 issue and can still be viewed on the *Latitude 38* website (<http://www.latitude38.com/letters/199910.htm>). (Ex 6 B)

Judge Dufficy's public comment was improper to be sure. At the time, the case was pending; the court order had not yet been filed in the court. Moreover, Judge Dufficy had not yet given the mother the opportunity to be heard, according to the mother's lawyer, Bob Cleek. Judge Dufficy's action violates California's Judicial Code of Conduct, which will be discussed later. But what were the risks to the children? While one of the areas in question, Richardson Bay, is said to be safe with shallow waters, the other area, Raccoon Strait, is known to become rough quickly with strong currents, changeable winds, and potentially high surf, according to the U.S. Coast Guard's Eleventh District that covers the San Francisco Bay area. Two of the Coast Guard officers also said that if the motor on the

small rubber boat were to go out on Raccoon Strait, it could be dangerous; depending on the tide, the dinghy could get swept into the Golden Gate Bridge, which sees a lot of heavy marine traffic including tankers. An expert for the mother had testified in court that to operate a boat that size with children, in that area, in San Francisco Bay, was not prudent or safe.

What did the Coast Guard think? "Raccoon Strait gets pretty choppy and really changeable," said Coast Guard officer Bill James from Operations. "They could be swept directly into the Golden Gate Bridge." When given the dimensions of the 11-foot boat, a member of Coast Guard's Search and Rescue, said "It's a pretty small boat." The third Coast Guard officer, from Sausalito, said the children would be perfectly safe — unless the motor were to give out. "That can happen on any boat," he said.

In addition to the issue of Judge Dufficy's judgment, by his making a public comment on a case that was still pending, Judge Dufficy violated Judicial Conduct Canon 3 Subsection B., Subsection 9, (which has the heading: "A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently." It prohibits a judge from making any "public comment about a pending or impending proceeding in any court." The Advisory Committee Commentary for this Canon stresses that "the requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition."¹⁰ There is no debate that Judge Dufficy's court order on behalf of the father was filed on November 4, 1999, after his letter appeared.

As a result of Judge Dufficy's letter to the editor, the mother's attorney, Robert Cleek, wrote a motion asking the judge to disqualify himself from the case due to violating the judicial ethics code, and to also rescind his ruling. (Ex. 6 C) In response, Judge Dufficy voluntarily removed himself from the case, but refused to reconsider his decision. "Petitioner has stated no valid reason as to why the Findings and Order After Hearing filed on November 4, 1999 and based upon the ruling made at the August 24, 1999 hearing, should be set aside."

The Matter of Krause and Krause Smith

In 1997, a 13-year-old girl in Marin County fled from her father, prominent civil rights attorney Marshall Krause. In 1994, Commissioner Sylvia Shapiro had awarded Mr. Krause sole custody of the child when the girl was 9. Since then, Mr. Krause had physically abused her, according to findings of a court report filed by the Department of Children Services in the Los Angeles Juvenile Court, a division of Superior Court. According to the findings of the report filed with the L.A. Court, Mr. Krause had also had his daughter locked up against her will at a facility in Utah for six months,¹¹ even though his daughter was not a juvenile delinquent or a problem child. Authorities noted her to be extremely bright and articulate. As the violence escalated, the child's mother, Lauren Krause Smith, tried to get Commissioner Shapiro to address the reports of abuse. But Shapiro, the court-appointed on the case,

¹⁰ Disqualification Motion filed by attorney Robert Cleek, December 8, 1999.

¹¹ Superior Court of the State of California for the County of Los Angeles, Juvenile Court, Disposition Report on Initial Petition and Initial Case Plan, Court Number CK31716.

and Child Protective Services did not investigate the allegations. Later Krause Smith tried unsuccessfully to get Commissioner Sylvia Shapiro removed from the case, citing political and social ties between the Commissioner and Mr. Krause.

Like Mr. Krause, Sylvia Shapiro's father, Carl Shapiro, is also a prominent civil rights attorney. Carl Shapiro served on the Board of Directors of the Marin County branch of the American Civil Liberties Union (ACLU). Mr. Krause had been staff counsel for the Northern California ACLU and had been associated with many high-profile cases. They were both renowned lawyers known for activist causes. Mrs. Lauren Smith recalls attending a ceremony where the Marin County branch of the ACLU honored Marshall Krause for more than 30 years of service. Moreover, Commissioner Shapiro and Marshall Krause had both attended many of the same bar functions and fundraisers. In the 1970s, they had played cards, and volleyball games together at the College of Marin, according to Commissioner Shapiro in court papers.¹²

Mr. Krause became increasingly violent to his daughter after the divorce, according to the Initial Court Report filed by the Department of Children Services in their official report filed with the L.A. Juvenile Court. The report documented several accounts of abuse, including one incident in 1994 that was so serious that the child required medical attention. In another incident, documented by the L.A. authorities, on March 2, 1995, Mr. Krause physically attacked his daughter in the gym at her middle school. Mr. Krause had reportedly taken offense to a poem the child had written about loving her mother, and "he took her into the gym and slammed her head against the wall," according to one person interviewed by authorities. The school reported the incident to Child Protective Services.¹³ In fact, Child Protective Services in Marin County had been called nine times in separate incidents after allegations of abuse were reported but there was no substantive follow-up to the reported incidents.¹⁴

Until this point, reports of the child's abuse had been covered up by the Marin County court. Mrs. Smith had reported the abuse to Commissioner Shapiro, and also to the court-appointees on the case, Sandra Acevedo, the lawyer for the child,¹⁵ and Dr. Edward Oklan, the evaluator. They ignored the reports of abuse. Mrs. Smith had submitted documentation of the abuse in a contempt motion she brought in March of 1994 against Marshall Krause which was filed in court. It contained the child's testimony and supporting medical records showing injuries the child received. Instead, Mrs. Krause Smith was made to look like the problem. She was given an extremely negative evaluation by Dr. Edward Oklan, who had been appointed to do the psychological evaluation of the family. Dr. Oklan termed her an "alienating parent" — that she had turned the child against her father. This label discredited Lauren Krause Smith, making it appear as if the abuse allegations against the father were

¹² Answer of Sylvia K. Shapiro to the Petition for Disqualification, October 6, 1997, pages 3 and 4.

¹³ Superior Court of the State of California for the County of Los Angeles, Juvenile Court, Disposition Report on Initial Petition and Initial Case Plan, Court Number CK31716. 3C

¹⁴ Ibid. 2C

¹⁵ Sandra Acevedo was listed as one of the directors in 1999 of the Marin County Bar Association

not genuine. The facts are that Mrs. Smith suffered serious depression triggered by the separation and divorce; she received treatment and recovered in 1993.^{16 17} During the proceedings, Dr. Oklan, in his evaluation, did not address the father's mistreatment of the child; nor did he address the fact that the mother had successfully recovered.

On September 3, 1997, the events in this case took a dramatic turn when the then 13-year-old child fled her father's home and traveled somehow on her own to Los Angeles where she virtually begged to be made a dependent of the L.A. Juvenile Court. She was fearful because Mr. Krause had told her he was going to lock her up again against her will at the facility in Utah. Later on, the Los Angeles Department of Children's Services wrote in its official findings, "The Department is disturbed that it discovered the father had made arrangements with the Island View Residential Treatment Center to have the minor [name redacted] admitted on the day of this hearing." The report continued: "The Department has some grave concerns about the ethics of this facility and locking up children without their knowledge and/or consent; and with little input from other reliable sources."

Fortunately for the child, the L.A. Juvenile Court intervened, investigated, and the truth came out. L.A. Court looked at the same court documents that Commissioner Shapiro had rejected, according to Lauren Krause, and the L.A. Juvenile Court decided to detain the child in the care of social services, according to court records. They opened an impartial investigation and conducted an evaluation of both parents and the child. When he was faced with a full evidentiary hearing, Mr. Krause pled "no contest" on January 12, 1998 to four counts including "inappropriate discipline." (Ex 7 A B) The L.A. Juvenile Court gave Mr. Krause the opportunity to plead to "inappropriate discipline" as a compromise — similar to a plea bargain in criminal cases; if the person concedes their guilt, then charges are reduced to a lesser crime in order to avoid a trial. Still, the Department of Children's Services in the Los Angeles Juvenile Court, a division of Superior Court had found enough evidence to substantiate the reports of abuse — abuse that Commissioner Shapiro and the court-appointedees in Marin County, had all ignored. The Department of Children's Services report accepted by the L.A. Juvenile Court stated in part: "The Department believes that the minor did suffer from physical abuse by her father on several occasions and this was substantiated from several sources. The Department believes the Marin County Child Protective Services was remiss in not responding to many of the referrals and simply dismissing them as 'custody dispute' issues."

"Said events placed minor at risk of harm," stated the Department of Children's Services (DCS) report that was filed in L.A. Juvenile Court. Based on the findings presented by the Department of Children's Services to the L. A. Juvenile Court, the court removed Mr. Krause as the custodial parent. The child became a dependent of Juvenile Court, under California law that gives the state the authority over the child's custody when a parent is considered to be dangerous to that child's immediate welfare. Also among the official findings filed in the L.A. Juvenile Court: Dr. Oklan's psychological evaluation of the family that had negatively portrayed the mother was deemed to be tainted and unreliable due to the overly weighted influence of Mr. Krause's then-girlfriend, a therapist, who had

¹⁶ Ibid. 5C

¹⁷ In 1997, Mrs. Lauren Krause Smith re-married and moved 400 miles away to another town.

inserted herself into the case in Marin County. (Ex 8) (This aspect of the case is discussed later.)

Due to the child's bravery, and the intervention of the L.A. Juvenile Court, the child is now safely back with her mother and doing much better. The L. A. Juvenile Court awarded sole custody to Lauren Krause Smith in August of 1999. Elements of this case will be presented in several parts of this report along with portions of the L.A. Court's findings which are documented in later pages.

While it is beyond the scope of this report to examine the entire case at length, the documented evidence suggests the possibility of a criminal conspiracy between Commissioner Shapiro, Dr. Edward Oklan, Sandra Acevedo, and Child Protective Services in Marin County which resulted in a cover-up of the child abuse. The child abuse was fully documented by the L.A. Juvenile Court authorities, and in their official findings they severely criticized Dr. Oklan and CPS in Marin County for their actions in this case. In the recommendations section of this report, this author urges federal authorities to examine the possibility of criminal prosecution for criminal conspiracy. The relevant law is Title 18 of The U.S. Code, Sec. 1512, Obstruction of Justice, which is explained in following footnote.¹⁸ Also, since

¹⁸ Under federal law, Title 18 of the U.S. Code, "Obstruction of Justice," states in part:

- (b) Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to -
- (1) influence, delay, or prevent the testimony of any person in an official proceeding;
 - (2) cause or induce any person to -
 - (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
 - (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;
 - (C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
- (c) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from -
- (1) attending or testifying in an official proceeding; . . .
- (d) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.
- (e) For the purposes of this section -
- (1) an official proceeding need not be pending or about to be instituted at the time of the offense; and
 - (2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.
- (f) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance -
- (1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or
 - (2) that the judge is a judge of the United States or that the

Marin County Child Protective Services receives federal funding, the U.S. Department of Health and Human Services should conduct an investigation to see whether funding of the Marin County CPS should be halted, pending an investigation into their actions in this case.

Here we will examine a critical date — a court hearing on September 24, 1997 — that reveals the way that Commissioner Shapiro responded to Mrs. Smith's pleas to get her daughter off the streets and into protective care.

Ms. Smith: Your Honor, we have a crisis situation, where Mr. Krause's daughter has been away from him.

Commissioner Shapiro: Yes, I understand that.

Ms. Smith: And this child has contacted him --

Commissioner Shapiro: Um-hm. (Affirmative)

Ms. Smith: [She] does not wish to be returned to her father, and she will not allow herself to be found.

Commissioner Shapiro: All right.

law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(g) There is extraterritorial Federal jurisdiction over an offense under this section.

(h) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(i) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

Ms. Smith: Mr. Krause has told friends and family, and people that he will immediately — he told me that he'll beat her up, and lock her up.

Commissioner Shapiro: Okay. . . .¹⁹

What was Commissioner Shapiro's response to Ms. Smith's pleas to protect her daughter and place her in temporary custody where she would be safe?

Commissioner Shapiro: . . .I am certainly not willing to do what you are requesting that I do, which appears to be to grant custody to someone other than Mr. Krause, who, after a very long, involved contested hearing, was granted custody.²⁰

Ms. Smith: He has not had her --

Commissioner Shapiro: So, I do not intend to grant that request.

Then Commissioner Shapiro instructed Mr. Krause to seek an arrest warrant for his daughter through Child Protective Services — to ensure her forced return to him. Instead of providing safe harbor for the child, Commissioner Shapiro aided and abetted the abuser.

Commissioner Shapiro: In the meantime, I would suggest that you [Mr. Krause] call Child Protective Services. They can file a petition. They can request from the appropriate judicial officer, who, at this point, isn't me, that an arrest warrant be issued for [the child], and we can take it from there.

Mr. Krause: Yeah. I've done that, and the process is underway now.

Commissioner Shapiro: Um-hm. (Affirmative).²¹

According to the transcript, Commissioner Shapiro indicated that she, herself, could not issue an arrest warrant for the youngster, hence her advice to Marshall Krause to obtain the warrant through CPS. However, it is Lauren Krause Smith's firm belief that at the end of this hearing, Commissioner Shapiro went ahead on her own anyway, and ordered the arrest warrant. Smith accounts for the fact that this event is not in the transcript because the court recorder had already stopped transcribing the minutes at this hearing, Smith said. The date of the warrant could not be confirmed, and this incident wasn't transcribed. But the L.A. Juvenile Court would have documentation of any arrest warrants in its files.

¹⁹ Ibid, Pages 6, 7

²⁰ Ibid, Page 11

²¹ Ibid, page 24

The Marriage of Irish

Deborah Irish Planet, a former fashion model and advertising executive, and John Irish, a former police officer turned car dealer, were married for two years and nine months when they separated in May of 1995. He had children from a previous marriage; this was her first child. The couple adopted a son shortly after the child's birth. Deborah was a stay-at-home mother. In May of 1995, John Irish filed for divorce and launched a custody law suit against Planet. John Irish was represented by private attorney Terry Colyer, who was reported to have used extremely questionable tactics, such as accusing the mother of wrongdoing that were never proven in court, according to neutral observers who have been monitoring this case. There was never any issue over her fitness as a mother during the marriage, Planet said. Eventually, Judge Dufficy ordered the baby who was then 1-year-and-nine-months-old to live with his father, and Deborah's visitation rights were drastically reduced.

According to two former lawyers who represented her, Deborah Planet has been badly stigmatized mainly as a result of perpetual litigation tactics by the opposing side that have been used against her. One example of these tactics is contained in a letter written by Martin Blinder, M.D., a psychiatrist who evaluated Deborah Planet. On May 20, 1998, Dr. Blinder wrote to Judge Lynn Duryee, who took over the case from Judge Dufficy : "Along the way, Mr. Irish's counsel, Terence Colyer, distorts my testimony. . . .As you know from my comprehensive report, I recommended treatment for both Mr. and Mrs. Irish."

As part of a well-financed legal suit against his wife, there were many questionable events that happened along the way. For instance, John Irish paid Dr. Edward Oklan \$25,000 to psychiatrically evaluate the family. (Ex 9) Dr. Oklan produced findings that were highly unfavorable to Deborah Planet. But Dr. Oklan later removed himself from the case after the validity of his findings were cast into serious doubt by an independent expert who reviewed Dr. Oklan's findings at Deborah Planet's request. (This aspect of the case is covered in a later section on Questionable Experts.)

Yet, correspondence from the father's attorney, Terry Colyer, clearly indicates that Deborah Planet had been the primary caretaker of their baby. At the time custody was granted to him, John Irish literally did not know when their baby slept or what he ate, according to the letter from his attorney, Terry Colyer, dated May 24, 1995, which stated in part:

"On Saturdays and Sundays, Deborah should give John a note at the time of the exchange indicating when she expects [the child] will be ready for his next feedings and sleep time (based upon his morning schedule that day.) I also suggest that she supply at the time of the exchange the food which she feels would be appropriate for [the child's] meal with John. John would gladly supply the child food, but it will obviously be different than what Deborah would provide. Until the transitions have worked for a period of time, I suggest that the menu be temporarily selected by Deborah." (Ex 10)

Mauna Berkov was also involved in this case, after Judge Dufficy appointed her as a special master. A lawyer, Berkov had also obtained a masters degree in psychology. Planet has disputed whether Berkov received all the prerequisite training required to take on this role, and Berkov did later remove herself from the case at Planet's request. By then a lot of the damage was done.

At one point, Mauna Berkov accused Deborah Planet of turning the child against her former husband. Berkov claimed the child said "bad daddy" in the presence of Mauna Berkov and John Irish, according to Deborah Planet's court documents.²² (Ex 11) Mauna Berkov then recommended that Deborah Planet could only visit her child on the condition that someone supervise the visits, according to Planet. Supervised visitation is usually reserved when the parent is not fit; violent felons, drug dealers, and abusers need supervision, and Deborah Planet does not have any criminal record or history of psychotic behavior, according to her psychiatric evaluations.

Mauna Berkov's influence on the litigation process was also apparent to Claudia Gibson, the person designated by the court to transfer the child between parents. "Deborah's time kept getting cut back further and further. It seemed to me after Mauna Berkov entered the case, Deborah's time seemed to be significantly reduced," Gibson said. It was Gibson's perception that Ms. Berkov came to the case with a high degree of bias.

In 1997, Deborah Planet's case came to the attention of the Civil Grand Jury. Since then, several witnesses have come to believe a terrible miscarriage of justice has occurred in this case. Many witnesses have come to believe the child belongs with his mother because of the following: 1) the father's documented violent tendencies; 2) witnesses who have heard the father state that he wanted to remove the child from his mother's life; 3) testimony from John Irish's son from a previous marriage, who discussed serious problems in John Irish's parenting skills.

There were statements at court by a medical doctor who treated Deborah Planet after she had allegedly had been abused at the hands of her husband. Some of the strongest testimony came from Claudia Gibson.²³ In an interview with this author, Gibson said that John Irish told her on more than one occasion that "I intend to remove Deborah Irish from this child's life." Gibson reported these statements to Judge Dufficy, in various court documents, she said.

During the course of litigation, the father's attorney Terry Colyer, made accusations against Deborah Planet's ability to parent, but Gibson said she never saw the mother do anything to the child that the other side accused her of. Gibson, who used to work for Terry Colyer, said she had observed Terry Colyer's aggressive legal tactics during the three years she worked at the Camera and Colyer law

²² Statement of Disqualification of Judge, Deborah Planet Irish, in Propria Persona, December 1, 1997, page 2.

²³ Beverly James and Claudia Gibson co-wrote "Supervising Visits Between Parent and Child" guidelines and standards for visitation. "Family and Conciliation Courts Review" in Vol. 29, No. 1 January 1991, 73-84 (Sage Publications Inc.)

firm. Gibson characterized Terry Colyer as a “brilliant” and “highly aggressive,” “who uses the law like a rapier.” She said he would also use the tactic of “papering people to death.” This refers to the strategic legal tactic of escalating litigation to deplete the opposing side’s financial resources, thus forcing him or her to lose through attrition.

Gibson said she became convinced that John Irish was not the better parent after he allegedly assaulted Gibson during a transfer of the child in a parking lot in Larkspur Landing. Gibson recalled the incident: “He wielded around — real up close, nose to nose, right in my face, almost knocking me over. My head snapped back. And he started screaming. My job is to take the child to the other parent. I was very shook up,” she said. She related that she was still terrified when she dropped the child off with Deborah Planet at her apartment. “What’s the matter,” she recalled Deborah Planet asking. “She [Deborah] said ‘You’re white as a sheet. He came at you didn’t he?’ She was able to detail how he behaved without my having said one word.”

Gibson said that when she notified the court of the alleged assault, Terry Colyer threatened to sue her. She recalled that Colyer called her in for a deposition. “He just went right at me,” she recalled. “He was being aggressive and attacking — it was all tactics,” Gibson said. She was familiar with his style. “Sammy Mason, [an attorney] who represented Deborah at the time and was present at the deposition, stated for the record during the deposition that Mr. Colyer was being threatening and intimidating,” she said. Gibson emphasizes that she has the highest regard for Mr. Colyer. “You have to understand that I love this man — he and Mr. Camera hired me fresh from a divorce and gave me work. But he gets going in the law, and he uses the law with a razor-sharp edge.”

Deborah Planet still has severely limited contact with her child, despite an August 27, 1999 ruling by Judge Lynn Duryee in which the judge stated the child should see his mother more frequently. On September 5, 1999, Duryee effectively reversed herself, by adopting a visitation schedule that is inconsistent with the intention announced in the court order that she had earlier written. “The prior order expressed the view that the child should have significantly more time with the mother,” said Richard Bryan, who is Deborah Planet’s attorney of record. Although her ruling called for almost equal parenting, the visitation schedule itself gives the child even less time than she had before. “I used to have him every other weekend and Sunday, and now I don’t even have that,” Planet said. Richard Bryan said he was initially encouraged by Judge Duryee’s ruling, until he saw the visitation schedule.

Why did Judge Duryee order a schedule that apparently contradicts the intent of her own ruling? Could it be due to hidden pressure from Judge Dufficy? Many neutral observers believe this case should be independently reviewed, and transferred to a venue outside Marin County, to ensure a fair hearing for everyone involved.

The Paula Oldham Case

In 1992, Paula Oldham, formerly of Kentfield, California, wrote a letter to the Department of

Justice, from a secret hiding place in Europe.²⁴ The letter was entitled: "Protecting the Innocent." The former San Francisco bank executive and divorced mother had fled the country with her then three-year-old child, after becoming convinced that the child was being sexually abused by the child's father, Martin Ogawa, a Mill Valley resident. Oldham's letter stated in part:

Over the past year-and-a-half, I have been exploring every legal option available to me to protect my daughter. My efforts were exhaustive including, spending over \$40,000 in legal fees, and working with every agency I could find. In spite of my efforts and the evidence of the abuse (positive medical evidence, numerous suspected child abuse reports, 5 witnesses that saw her disclose sexual abuse, and three vaginal infections between the age of two and three), no action was taken to protect her. I never dreamed that anything like this could ever happen in this country.

About a year after she contacted The U.S. Department of Justice, Paula Oldham and her daughter were tracked down by a detective for the father, and captured. Her daughter was immediately turned over to Ogawa, the suspected abuser. Child Protective Services, the police and the courts subsequently gave full custody of the girl to Ogawa. Oldham was brought back to Marin County and indicted for child concealment and convicted after a criminal trial in Marin County.

The Marin County DA charged that Oldham violated the visitation order, on the grounds that Oldham did not provide her daughter for visits with the child's father. At the criminal trial, Paula Oldham's defense was that she was forced to go into hiding in Spain with her then three-year-old child, after not being able to obtain protection for her daughter from the California courts. According to the facts in this case, about a dozen reports were made by professionals to city agencies, that the child's father, Oldham's former husband, had been sexually abusing the child during visits with him. (Ex 12 A B) However, these reports were ignored. Additionally, the father had a documented history of harassing and threatening to sue anyone who challenged him. He was reportedly never investigated by CPS to find out if the allegations were true.²⁵ Whether or not all of this information came out at the trial is not known because Judge Lynn O'Malley Taylor barred the press from attending.

The child had repeatedly disclosed to independent, neutral people, that she was being sexually abused. "She was describing ejaculation to the baby sitter," said Alan Rosenfeld, who represented the

²⁴ Confirmation that the Department of Justice received the letter is verified by the control number: 920007814.

²⁵ The way that Marin County handled the abuse charges is highly questionable in this case. For example, one of Oldham's private attorneys brought the child abuse reports to Child Protective Services, which is legally required to investigate allegations of sexual abuse. But the agency failed to do its own investigation and instead turned the files over to the police officer who had been working to help the father to track down the child when she was in hiding with her mother, according to quotes in a published report by *Pacific Sun* journalist Jill Kramer. CPS relied on the same police officer for his opinion on whether the child had been abused, according to the published account.

mother in the criminal and civil case in Marin County. "I believed my client's interests merged with protecting the child," he added.

Paula Oldham was convicted of "child concealment," meaning she was found guilty of depriving Ogawa of court-ordered visits. Her punishment? She served a two-year prison sentence in a California prison.

This sad case drew national attention from columnist Anna Quindlen, who wrote a story about Paula Oldham in *The New York Times* and from U.S. Senator Diane Feinstein among others, who felt a terrible miscarriage of justice had been committed in Marin County. (Ex 12 C) But this case is significant for purposes of this report, because Dr. Edward Oklan, Mauna Berkov, and Judge Dufficy were the main players in the civil proceeding following the criminal trial.

After Paula Oldham was convicted, Mauna Berkov was appointed as the lawyer for the child. Since 1992, the child had made numerous allegations of being molested by her father, but after the criminal trial, when Paula Oldham's attorney, Alan Rosenfeld, tried to find out if the child was still making statements about being abused, Mauna Berkov legally blocked him from finding out. In her role, she prevented the mother's lawyer from learning if the child was safe, according to Rosenfeld, who was interviewed for this report.

Mauna Berkov's role was strictly to represent the interests of the young child, but instead she seemed to align herself with a therapist, Janet Johnston, and did not seem to be representing the child's interest, according to Alan Rosenfeld, who represented Paula Oldham at the criminal trial and in family court. "She seemed to be an advocate for the [child's] therapist and not the child," Rosenfeld said in an interview with this author.

After the mother's conviction, Mauna Berkov obtained the authority, through Judge Dufficy, to prevent attorney Alan Rosenfeld from obtaining information from Johnston, the child's therapist, to determine whether the child was making any new allegations that she was being sexually abused by her father. "I wanted to take the deposition of the therapist and Mauna Berkov argued in court that the therapy should be privileged," Rosenfeld said.

But Rosenfeld said he never did find out if the child was reporting any new allegations of abuse, because Berkov got her way in court and legally prevented his finding out.

Rosenfeld said that Berkov's actions did not seem justified. "If Mauna Berkov had made an independent decision that Ogawa had not sexually abused his daughter and that Paula had somehow harmed her by taking her into hiding, it might have been reasonable on the child's behalf to object to letting me see the records," he said. "The problem of course is that I do not believe from the record that Mauna Berkov could have reasonably reached that conclusion." Alan Rosenfeld is not a local lawyer, but was brought into this case because of his legal expertise in child sexual abuse matters. "My hunch was that Berkov was neither making an independent assessment of the child's needs nor following the child's instructions, and instead only doing what the therapist wanted for some other reason, but it remains my hunch," he said.

Court documents obtained in this case show that Martin Ogawa was violating Judge Dufficy's order, and depriving the child of visits with her mother, during the civil part of the proceeding after the criminal trial. (Ex 13) Yet, no action was taken against him. As the appointed lawyer for the child, Mauna Berkov was supposed to be representing the interests of the child at this time. It was not in the interest of the child to forcibly deprive her of visits with her mother. Unlike his former wife, when Ogawa violated the court order, he was not charged with any crime, a point Senator Diane Feinstein made in her testimony. (See Ex 12 C)

Alan Rosenfeld raised another aspect of the Oldham case that will be highlighted later in this report because it fits the same pattern seen in many other cases, involving the use of a questionable expert, Dr. Oklan, who is to this day used by Judge Dufficy and Commissioner Shapiro.

Depriving Children of Full Child Support Payments

In several cases, Judge Dufficy and Commissioner Shapiro routed court-ordered child support and family support payments to favored lawyers and/or experts. Instead of the parent getting monthly alimony and child support payments that had been court-ordered, those funds designated for the child or the parent would be funneled to the opposing attorney for that attorney's fees, or to the judge's appointees on the case. This practice typically takes place over the objections of the parent who has been counting on the child support payments. This practice has put custodial parents in a desperate position, leaving them without needed financial support for their children.

In at least one case cited below, Judge Dufficy ignored the law that protects the right of children to receive full child support payments. Instead, the payments were ordered to be paid to appointees he assigned to the case, to cover their fees. There is no debate over the intricacies of the law — it is very strict and clear-cut on this issue. The judge cannot deprive a child of full child support payments to pay appointees : this is illegal.

The Matter of Ross and Reich

Court documents show that Judge Dufficy diverted child support payments to lawyers and experts in the Cindy Ross case (FL13481). Mary Halbert, the lawyer for the child, along with psychologist Nancy Olesen, Ph.D., had both been appointed by Judge Dufficy in this case and they respectively were awarded \$1,373 and \$560.25 from child support payments that were supposed to go to support the four-year-old child of Cindy Ross and Brian Reich.

Since October 1999, partial child support payments for the four-year-old son have been ordered to pay for appointee- lawyer Halbert and psychologist Olesen, over the objections of the boy's mother, Cindy Ross. It should be noted that Cindy Ross did not sign any written waiver indicating that she agreed to this illegal arrangement. However, Cindy Ross believes that a sarcastic comment she made in correspondence to her attorney, precisely because she disapproved of the child support payments being used to pay off experts, might have been used against her in court, and misconstrued as her approval. The correspondence in question stated in part:

As the money in question is allegedly for [the child's attorney] and in [the child's] interest, I believe the court should take [the child's] money directly. Therefore, from this point forward, I will sign over all of the support checks to Judge Dufficy, who may then distribute the funds to whomever he sees fit. It may even serve to save the Court's and the attorney's time to have Mr. Reich pay his attorneys directly and remove me and [the child] from the loop altogether.

The facts show that Cindy Ross's former husband, Brian Reich, had his wages deducted at the rate of \$703 per month to pay for child support, according to one of Judge Dufficy's court orders in this case. But after a hearing on October 25, 1999, this court order was modified, to divert child support as fees to Halbert and Olesen.

Robert Walker, the attorney for Brian Reich, confirmed this illegal arrangement to deduct expert fees from child support. He wrote a letter dated October 26, 1999 to Judy Freeman, Administrator for Congregation Beth-El, where Mr. Reich apparently was employed. This letter from Reich's lawyer authorized the administrator at the temple to deduct the fees from child support for the appointees on the case. (Ex 14)

Two days later on October 28, 1999, Walker sent another letter to the administrator of the temple, referring this time to an unsigned court order that was apparently written by Mary Halbert, herself. "Enclosed find a copy of an order which has not yet been signed by the Judge. However, it does accurately state what the court ordered. . . . Please comply with this order by making the appropriate deductions from Mr. Reich's paychecks," Walker wrote. (Ex 15 A and 15 B) That Halbert wrote the new court order granting fees for herself and for the psychologist, Nancy Olesen, and stating that the fees are to come out of the child support payments, is ascertained from the caption material on the top of the court order. It has Halbert's name and office address on top. It is a common though extremely questionable practice nationwide for attorneys on either side of a case to ghost-write the judges' court orders and then have them approved by the judge. The first copy of this order cited above is not dated. The same court order was later stamped on 12-9-99, signed by the husband's attorney, Robert L. Walker, and rubber-stamped by "Michael Dufficy." (Ex 15 C)

A close look at the second page of the court order (Ex 15 C) shows that Judge Dufficy's signature does not appear on it, just a rubber-stamp of his name. Still, it has to be assumed that Judge Dufficy authorized this court order, which is in stark violation of California statute. Using child support payments to pay for legal and expert fees is completely illegal, according to the California statute governing wage and earnings assignment orders, which states in part:

The support may be child, spousal, or family support. This order has top priority over any other orders such as garnishments or earnings withholding orders. Earnings should not be withheld for any other order until all amounts necessary to satisfy this order have been withheld in full. When this order is for child support, it has top priority over a similar order for spousal support. (Ex 16)

Judge Dufficy, a presiding judge, who supervises other judges and commissioners, has experience and knowledge of the law, and therefore this can't be assumed to be mere error or ignorance on his part. Not only has he presided over divorce and custody cases for several years, but prior to his ascension to the bench, he handled some divorce cases as a lawyer. Beyond the fee issues, there were many questionable rulings in this case that merit attention by authorities.²⁶

In an interview with this author, Cindy Ross said she was appalled by the deduction of expert fees from payments that were supposed to be made to clothe and feed her young son. She said she has complained to authorities, to no avail. Cindy Ross stated:

The legal action has nothing to do with fairness, nor justice, nor anything to do with my child's interests. It has not mattered that I have written numerous letters of protest. Ms. Halbert has refused to provide an accounting of what it is she is doing, why, or what this has to do with my child or any other 'legal' matter. The lawyers have managed to take away my child support. I have paid nearly \$80,000 [in legal and expert fees] and there does not seem to be an end in sight.

Commissioner Sylvia Shapiro also used family support to pay for expert fees in the Krause case, cited earlier. In an order dated October 12, 1994, Shapiro ordered that the father /petitioner, Marshall Krause, use \$1,000 a month to pay for the court psychologist, and the \$1,000 would be drawn from the court-ordered spousal support (alimony) from the mother/respondent Lauren Krause. (Ex 18) In this case, the psychiatrist Dr. Edward Oklan, was paid out of Lauren Krause's alimony. Oklan's evaluation was highly unfavorable to Lauren Krause Smith and a critical factor in Shapiro's ruling to deprive her of custody of her child. Later on, this same evaluation of the Krause family by Dr. Oklan was deemed "tainted and unreliable" by judicial authorities outside of Marin County.

Judge Dufficy has also shown a pattern of using family support (a combination of child support and spousal support) to pay the appointees he assigns to cases. There is a legal debate over whether using family support is technically allowable, according to some lawyers. Whether legal or not, this pattern of siphoning family support to pay favored- appointees puts the parent who is left without the support in a weakened position, without enough money to pay expenses. That parent is then hard-pressed to keep litigating and spending resources in court. Whether the diversion of child support and family support to cronies is some kind of pay-back for steering the case in a certain direction is unclear.

In the case of Deborah Irish Planet, whose husband was represented by lawyer Terry Colyer, perceived by some as a favored Dufficy lawyer, a portion of Deborah Planet's family support payments from her husband was diverted to therapists and evaluators. (Ex 19)

²⁶ Moreover, under the law, Cindy Ross should probably not have had to pay for any psychological evaluation, according to Robert Cleek, a Novato attorney, whose letter-to-the-editor on this general issue appeared in *California Lawyer* (August, 1998). (Ex 17)

V. The Judge and Commissioner Ignore Procedures and Laws Intended to Protect Litigants' Rights

The results of the Bar's survey show that a significant minority of attorneys do not believe that Judge Dufficy and Commissioner Shapiro treat all litigants fairly and equally. This statement raises the question: what practices actually constitute unfair treatment? The answer: when the judge or commissioner flout existing law and statutes, thereby depriving the individual of his or her legal rights. Judge Dufficy's insouciance toward rules, procedures and the law is quite blatant at times, illustrated by the following case:

The Matter of O'Neal and Laugen (FL 10503)

In California, divorcing couples are encouraged settle their differences through mediation, rather than heightening the conflict through litigation and trials. For this reason, judges preside over these "Mediation Settlement Conferences" and they are supposed to facilitate the negotiations between the parents. This is a scheduled mediation, not a hearing where any issues are being litigated. On June 10, 1998 at a couple's settlement conference, instead of helping the couple to negotiate a friendly resolution, Judge Dufficy took it upon himself to order a psychological evaluation of the parents. The reason? The mother planned to move out of state with the children. As mentioned earlier, there is nothing in the law books in California that suggests when a parent moves out of state with their children that they should automatically be subjected to forced psychological testing. The testing is also very costly. When the mother's lawyer, Ms. Farley, objected that Judge Dufficy was not following the rules, he told her there are no rules, according to the transcript. It states in part:

Judge Dufficy: Let's be practical about this. It's going to evaluation for an update of their entire situation, so we can get to the bottom of this hopefully expeditiously, and we can address whether or not Dr. O' Neal will take the children to Connecticut.

Ms. Farley: What happened to the rules of procedure, your Honor?

Judge Dufficy: There aren't any.

Ms. Farley: Should I ignore the rules of procedure then?

Judge Dufficy: There are none in custody cases. We do what's best for the kids. That's all we can do.

Ms. Farley: I understand but

Judge Dufficy: This is a settlement conference. I'm not making any orders today.

Ms. Farley: I know, but we're walking out of court here today with an order that there be an evaluation.

Judge Dufficy: An evaluation, right. . . .

Ms. Farley: Well, if it were not on the agenda, and if it's not before the court, I don't know that you have jurisdiction to do that. . . .

Judge Dufficy: All right. In any event the sooner you contact the evaluator, Ms. Farley, and get started on the evaluation, the better.

(Ex 20)

In the following case, Judge Dufficy ignored the laws that were intended to protect the person's rights during the division of assets in a divorce. Commissioner Shapiro and a judge pro tem (a lawyer who sits in as a judge) Sarah Friesendorf were also involved in this case .

The Sandra Eben King Case

Sandra Eben King (FL11135) was separated from her husband after a six-year marriage. She had been ill for a period of two years with breast cancer. Sandra King and her husband both worked as insurance brokers, but she had been out of work for two years during her illness and had to rely on the court to make sure her financial rights under the law were upheld, given her precarious medical condition. Both spouses' commissions (future compensation from past work) were at issue, because the commissions were the only other asset in the marriage besides the couple's residence, according to court papers.

This case was governed by California law, which is a community property state; the law assumes joint ownership of all income and property acquired during the marriage. In this case, because there were assets to divide, the husband and wife were both legally entitled to collect information on earnings and finances from each other in order to find out what is in the total marital estate. Only then could the assets be properly and fairly divided. In this case, Sandra King willingly handed over her earnings statements from commissions, but her husband, Thomas King, refused to disclose his own. At the subsequent court conference, he proved her income without disclosing his.

Why would Sandra King agree to terms of a settlement without the knowledge of what she was entitled to? The facts of this case show Sandra King didn't agree at all to the terms. It appears as if she were coerced into accepting an agreement that was not voluntary on her part. What can be proven is this: While Sandra was present at court for the settlement conference, her attorney and her then-husband's attorney, first met with Commissioner Sandra Shapiro behind closed doors in the Commissioner's chambers. After the two opposing lawyers emerged from the meeting with Commissioner Shapiro, they went into another room to negotiate the settlement, but the lawyers forcibly locked Sandra out of the room, keeping her from attending her own settlement discussions.

However, her husband was invited, and he participated in the discussions. The following events then occurred.

- * Sandra was then told to accept lopsided settlement terms, over her objections.
- * According to these severely inequitable terms, her husband would receive 100 percent of his earnings from commissions and 50 percent of hers.
- * The transcript shows that Judge Pro Tem Sarah Friesendorf deprived Sandra King of her right to know what were her husband's earnings; she actually suggested that Sandra willingly waive her right to the information. The transcript shows that Friesendorf didn't obtain any verbal agreement at all from Sandra or her attorney for the waiver. According to the transcript of the proceeding, Friesendorf did all the talking.
- * After Sarah Friesendorf pushed the agreement through, Sandra refused to sign it. The matter was taken up in Judge Dufficy's court. But Judge Dufficy processed the *unsigned* agreement as a legal judgment, turning it into the final divorce decree.

The background of this case follows:

On November 1, 1996, Sandra's husband's attorney, C. Clay Greene, wrote a letter to Sandra King. She was representing herself at the time. In that letter, he stated that he was aware that both his client, her husband, and Sandra both had earned commissions during the marriage. These commissions were to be paid to them at a later time, according to an appellate brief filed by Sandra's later attorney. "Greene told her that if she would show them her commission statements, he would show her his client's and they could begin to work on settling the case," the brief stated in part.

At the request of her then-husband's attorney, C. Clay Greene, Sandra King willingly turned over her own earnings statements and commission statements. But when she later requested the same financial information from her husband, C. Clay Greene refused to turn over his client's earnings and commissions statements, saying the pre-trial phase to gather information (known as discovery) was over, and that Mr. King was not going to produce the commission statements.

As a result, Sandra King did not know what her husband's earnings from commissions were, while he now had knowledge of her earnings from commissions to prove to the court that he was entitled to a portion of them.

A conference at court with Commissioner Shapiro was set for August 11, 1997, to see if Sandra and her husband could arrive at a settlement. Sandra had hired an attorney, who had represented her in the past. But he apparently did not come prepared, because the crucial financial information from Sandra's husband was still missing.

According to Sandra King, when she arrived at court, the two lawyers met in chambers with Commissioner Shapiro by themselves. There is no record of what was said. But after the private

meeting with the Commissioner, the lawyers next proceeded into another room for the settlement discussions. Sandra thought she was going to be included, but the two lawyers invited her husband in with them, and literally locked Sandra King out of the room. The settlement discussions took place secretly behind closed doors. Sandra said she banged on the door to get into the room to participate in the discussions, but that her lawyer barred her from entering, she recalled. She said he told her she would only confuse the issue. "I'm trying to settle the case," she recalled him saying.

"I was barred. I was left in the hallway and locked out for a total of two hours, two consecutive times while my ex-husband was allowed to go behind the locked door and broker deals with the two attorneys. I knocked on the door and asked them if I could participate in the settlement conference," she stated, according to a court transcript.²⁷ "I was left to sit outside in the hallway like a child," she continued. "And by the time we got to the actual recording at the bench bar settlement hearing, they had made all the deals."

At a later court hearing, C. Clay Greene, Thomas King's attorney, acknowledged the two-hour discussion that excluded her, but he had a different explanation for what happened: "Finally her own lawyer got so fed up with her, because she's so difficult that, yes, we did meet for about 30 minutes — about two hours without her to go over a lengthy accounting is all that it was. It was not anything mysterious."²⁸

After the two lawyers and husband emerged with a so-called agreement, they took it to Commissioner Shapiro for approval. Sandra said she confronted the attorneys in the hallway, where they had left her. "They screamed at me in the hallway. . . . My attorney screamed at me: 'You have to settle. You can't go to trial. You can't afford \$20,000 [his legal fee] .'" She recalled C. Clay Greene's words to her: "Tell her she'll lose."

In the "agreement" the lawyers decided that Sandra's husband would get a portion of income from her commissions, but she would get nothing from his, since he would not provide the information. Under this agreement, she would pay him \$18,180 and \$16,875 from two different commissions, for which she had not yet received actual payment. (Ex 21) But there was more. According to the terms, Thomas King would receive 45 percent of whatever commissions his ex-wife received from one client, forever in the future. Later Sandra King would come to believe that her husband had earnings, assets, or accumulations totaling at least \$57,000 that he did not disclose to her, according to her appellate brief.

Commissioner Shapiro had left the courthouse: the two lawyers then took the "agreement" to two judge pro tems (lawyers who sit in as judges for the recording of the agreement) to obtain their approval. Sandra said in court papers that she felt like she was going to a slaughter. "By the time I got into the bench bar settlement hearing and they were doing the recording I was in hysterics. I was

²⁷ Reporters Transcript of Proceedings, Tuesday, September 16, 1997, page 9

²⁸ Reporters Transcript of Proceedings, Tuesday, September 16, 1997, page 12

crying and it was a mockery. And I just said yes to everything.”²⁹

The agreement was read aloud, while the court stenographer transcribed it. During this time, Sandra’s lawyer brought up the fact that he had not obtained all the financial information (called financial disclosure) from her husband. It was Sara Friesendorf who suggested a quick remedy that would make the one-sided agreement stick in court. Friesendorf suggested that Sandra willingly waive her right to obtain her husband’s financial information. A partial transcript of the bench/bar conference on pages 7-10, reveals the following dialogue:

Mr. Ruben (the wife’s attorney): I was going to put out one other thing. I don’t know if financial disclosure was made by the parties.

Judge Pro Tem Friesendorf: The parties want to stipulate?

Mr. Greene (husband’s attorney): Stipulate preliminary to final and we waive. . .

Judge Pro Tem Friesendorf: Both parties waive further financial disclosure? Okay. Mr. King, you heard the terms recited by Your Counsel, Mr. Greene, in this matter?

As the transcript cited in the appellate brief shows, Judge Pro Tem Friesendorf did all the talking, and she made no attempt to elicit a response from each spouse.

To make the so-called “agreement” legally binding, both spouses had to sign it. When Sandra King was asked to sign the agreement, she refused, and never did sign it. Instead, she challenged the agreement in court, at first representing herself. The case went before Judge Dufficy, who could have rescinded the agreement, if he had considered the laws. But instead, Judge Dufficy upheld the unsigned agreement, formally processing the agreement as a final judgment.

Sandra King next hired another attorney, Jan Hinkle, to get the judgment set aside, on the basis that it was obtained under duress and that laws were violated. The case went before Judge Dufficy again. In his April 14, 1998 ruling, Judge Dufficy said that Hinkle’s request was “frivolous.” Judge Dufficy further punished Sandra, ordering financial sanctions against her. He commanded Sandra to pay C. Clay Greene \$2,500 in attorney’s fees.

In an interview, Hinkle said she was stunned by Judge Dufficy’s ruling: “It [the agreement] should have been set aside. If I didn’t think it could be set aside I wouldn’t have taken her money and taken the case.” Hinkle added that she no longer practices law in part because of the lack of fairness she perceived in this and other cases where she felt justice was not possible given the judges involved. An appeal to the higher court is pending in this case.

²⁹ Reporters Transcript of Proceedings, Tuesday, September 16, 1997, page 9

The law, cited in Sandra King's appellate brief, is very clear about how a waiver is to be handled: California community property laws, Section 2105 (c) states that if parties sign a waiver to agree to give up the right to information, "the waiver is knowingly, intelligently, and voluntarily entered into by each of the parties."

Couples have the same fiduciary relationship to each other as do non-marital business partners. Married couples in divorce are subject to the same rights, according to Family Code 721(b) which states: "[I]n transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. . . ." Duties include: "Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying."³⁰

The state's public policy regarding the right to financial disclosure in divorce is also very clear. Family Code section 2120, by the California Legislature, declared that: "(a) The State of California has a strong policy of ensuring the division of community and quasi-community property in the dissolution of a marriage. . . . these policy goals can only be implemented with full disclosure of community, quasi-community, and separate assets, liabilities, income and expenses, as provided in Chapter 9 (commencing with Section 2100), and decisions freely and knowingly made."

The Matter of Krause and Krause Smith

In the previous section, we looked at one aspect of the hearing with Commissioner Shapiro, after Marshall Krause's daughter ran away from him and the Marin family court. (FL 4889) Another aspect is relevant here: did Commissioner Shapiro ignore procedures to protect Mrs. Smith's rights when she told Commissioner Shapiro that she was not officially notified of the hearing (a violation of California civil code)?

Mr. Krause believed his former wife knew where the child was after she disappeared. So he asked Commissioner Sylvia Shapiro to order Mrs. Krause to appear in court so he could question her. Shapiro did order her to court, with a warrant for her immediate arrest if she didn't show up. Of course, Mrs. Krause Smith would have to be notified of the hearing in order to know to attend it. But Commissioner Sylvia Shapiro left the notification process entirely up to Mr. Krause, who did not notify her, according to her testimony in court. During the court hearing on September 24, 1997, Mrs. Krause Smith raised this issue with Commissioner Shapiro, stating that she could have been arrested had it not been for some friends who were present at court the day the order was issued, and who had told her about the upcoming hearing. Did Commissioner Shapiro do anything about the alleged lack of notification that could have caused Mrs. Smith's arrest? Did she attempt to uphold Mrs. Smith's rights? The following testimony reveals her response:

³⁰ Cited in the forthcoming book, *How To Do Your Own Contested Divorce*, Nolo Press

Mrs. Smith: A body attachment, or bench warrant for \$1,000, and my possible arrest, I'm not notified of? And you gave it to Mr. Krause to notify me? Which he did not.

Commissioner Shapiro: Um-hm. . . .

Mrs. Smith: Really, I received no service of papers. No nothing.

Commissioner Shapiro: All right.

Ms. Smith: And only because I had friends sitting in here was I even told that this was going on and then I called Detective Fry.

Commissioner Shapiro: Right.

Mrs. Smith: So, I mean, I could have been --

Commissioner Shapiro: Well, you're here, and it's recalled [the arrest warrant] so you don't need to worry about that part.³¹

³¹ Reporter's Partial Transcript of Proceedings, Court Hearing re: Temporary Emergency Custody; Change of Venue; Psychological Evaluation; OST, Wednesday, September 24, 1997, Pages 21, 22

VI. The Judge's and Commissioner's Use of Questionable Experts

Judge Dufficy's power gives him the opportunity to make rulings that are extremely lucrative to the people he appoints and approves as expert witnesses. When he orders a family to obtain mental tests, a mental health-appointee can charge a family anywhere from \$3,000 to \$12,000 or higher.

Both Judge Dufficy and Commissioner Shapiro overly rely on a few psychologists and a psychiatrist they regularly appoint, who not only bill huge amounts, but in some cases, seem to skew their findings to favor one side over the other. In several cases examined, the reports of Dr. Oklan and Dr. Lee were found to be extremely questionable.

The trouble for parents is that once these biased/tainted reports are admitted into evidence, they in effect create a false record that ruins the credibility of the parent, who is then seen as unfit for custody. The fact is that this judge and commissioner have based several custody decisions on tainted or biased mental tests that were then refuted by other experts. In these cases, the parents had to hire independent experts to review the original findings at additional cost. The reviewers found that the original tests were not valid interpretations of the data. Unfortunately, if a person can't afford to hire a qualified psychologist to review questionable tests, then the parent can't challenge the original findings, and is stigmatized by a false label and literally left to pay for the insult. In three cases discussed below, Dr. Oklan's tests were found to be biased, tainted and unreliable. The fourth case cited below involves a highly questionable evaluation by Margaret Lee Ph.D.

Dr. Margaret Lee's Evaluation

Judge Dufficy ordered psychological tests for a family because the mother, Cynthia Jarvis, needed to relocate to Sonoma County with her children. (FL10799) Mauna Berkov, who was the private lawyer for the father, referred the family to Dr. Margaret Lee.³² Cynthia Jarvis agreed to the referral. At the time that Jarvis agreed to the referral, Mauna Berkov had not disclosed to Jarvis that Berkov had an ongoing outside relationship with psychologist Lee, Jarvis stated in letters to the court. The two gave seminars together. Once approved by Judge Dufficy as the evaluator in this case, Dr. Lee would be in a very powerful position: her testimony would be used to decide which parent should get custody. The fact that Mauna Berkov did not openly disclose her relationship with Dr. Lee in the first place, raises serious questions about her ethics.

Whether this psychologist, Dr. Margaret Lee, remained neutral, after she had received this referral from Berkov (the father's advocate), and even though she has an outside business arrangement with Berkov, seems doubtful considering the outcome of the case. (Ex 22)

When she got on the witness stand, Margaret Lee testified in favor of the father, and against

³² It should be noted that the mother in this case, Ms. Cynthia Jarvis, would not consent to be interviewed. The following information was drawn entirely from court documents.

the mother. Cynthia Jarvis stated in court documents: "I was shocked at Dr. Lee's portrayal of me on the witness stand and of the inaccuracies and distortion of her reporting and conclusions. As a result of her initial work, I almost lost all parental rights."

Cynthia Jarvis subsequently lost custody of her daughters, even though she had been the primary caregiver to the children for five years preceding the divorce. After she had Dr. Lee's work reviewed by another psychologist who taught diagnostics, she fought back legally and challenged Dr. Lee's findings. In a court document called a "Declaration" that was written under oath, Cynthia Jarvis related what happened:

The Doctor testified in Court that not only was there no basis for Dr. Lee's assessment of me, but also that Dr. Lee had misused psychological data and she had tampered with the evidence. . . . As a result of my ability to confront Dr. Lee's biases against me in the courtroom, I was able to demonstrate that she had in fact misreported and misinterpreted test and other data.

At subsequent court hearings in 1997 after the review Dr. Lee's report was presented, the judge agreed that the children belonged with their mother. At that hearing, Cynthia Jarvis regained custody of both her children.

Dr. Oklan's Evaluations

One of the most dramatic examples of Dr. Oklan's skewed evaluations can be found in the Krause and Krause Smith case (FL4889) cited earlier. The father, Marshall Krause, a well-known civil rights attorney in Marin County, obtained sole custody of his then- nine-year-old daughter, as a result of a ruling by Commissioner Sylvia Shapiro. She had relied on an evaluation by Dr. Oklan as the basis of her ruling, after he recommended sole custody of the child to her father.

Before and after receiving custody of his daughter, Marshall Krause repeatedly physically abused her, according to findings in the Initial Court Report by the County of Los Angeles, Department of Children Services. This report was filed with L.A. Juvenile Court. Even though the child's mother, Lauren Krause Smith, notified Commissioner Shapiro and the court's appointees in Marin County, stating that her daughter was unsafe living with her father, Shapiro and the people appointed on the case including Dr. Edward Oklan, ignored Smith's legal papers. The child became so afraid of her father that she subsequently ran away, ending up in Los Angeles, where she reached out to juvenile authorities. The L.A. Juvenile Court decided to conduct its own investigation and found that the Marin County custody evaluation conducted by Dr. Oklan, was "biased" and "not credible" due to the influence of Marshall Krause's then-girlfriend, a counselor, Lana Clark, Ph.D. She had apparently interjected herself into the Marin County legal proceedings on behalf of Marshall Krause. She had spoken extensively to Dr. Oklan, who had relied on her for his own findings, according to the County of Los Angeles, Department of Children's Services, in the report they issued dated January 6, 1998. The L.A. County report stated in part:

Although a lot of information has been submitted to the

Department with recommendations from the Marin County area, the Department is inclined not to believe a great portion of that material. The Department believes that the assertions of this Lana Clark, Ph.D. is biased information due to the seemingly intimate relationship which existed between Mr. Krause and Dr. Clark. The Court is respectfully referred to the enclosed documents by Dr. Clark, particularly the ones signed 'fondly' and the ones with little hearts, etc. In addition, Dr. Clark is the individual who provided Dr. Oklan with a majority of his information regarding [the child] and Mr. Krause. Considering that her relations was of an intimate nature, the degree of information fed to Dr. Oklan was therefore biased and likely not credible.

In another case, Dr. Oklan was also appointed as the psychiatrist-evaluator in the custody evaluation of Deborah Irish Planet and her former husband, John Irish, cited earlier. Dr. Oklan diagnosed her with a "histrionic" personality. After learning of Dr. Oklan's findings, Deborah Planet obtained a second expert to review the results of his testing. That expert, Dr. Albert Kastl, who is Yale-trained and has performed more than 5,000 evaluations according to his statement under oath, found serious flaws with Dr. Oklan's methods of testing, and interpretation of the tests. For example, Dr. Oklan was not following proper scientific procedure when he gave Deborah and her former husband, John, an elaborate personality test for each to complete at their respective homes, Dr. Kastl stated. This test is called the Minnesota Multiphasic Personality Inventory II, (MMPI-II).³³ Dr. Kastl stated in court documents: "The test manual for the MMPI-II clearly emphasizes the importance of monitoring individuals while they are taking this standardized test. Nowhere in the MMPI-II manual or in other MMPI-II literature does it state that it is permissible for individuals to take test materials home with them." He cited the reason: "By allowing individuals to take tests home with them, all types of influences can be brought to bear which alter subjects' responses. . . . The validity of such tests is compromised by such deviation from standardized procedures. . . ." ³⁴

It was, however, fortunate for Deborah Irish Planet that she was able to take home the 567-question test because she was able to make a photocopy of the answers she submitted to Dr. Oklan. She took the copy to Dr. Kastl who had the answers re-scored, and her profile came back within normal limits, not histrionic, as Dr. Oklan had claimed. Dr. Kastl stated the results that he obtained: "This profile is within normal limits and no clinical diagnosis is provided."

Dr. Kastl then administered the same test to Deborah Irish Planet, and her scores also came back within normal limits. "The computerized interpretation makes no mention whatsoever of

³³ MMPI-2 is a test with 567 true and false questions that are supposed to assess a wide variety of personality and behavioral characteristics.

³⁴ Dr. Albert J. Kastl, Ph.D., gave these and the following quotes in a Declaration dated February 4, 1997.

'histrionic personality disorder' ," Dr. Kastl wrote in a statement under oath. "Rather, the concluding statement is 'the profile is within normal limits and no clinical diagnosis is provided.' "

Dr. Kastl concluded: "The fact that this computerized interpretation indicates that there is no clinical diagnosis is directly contrary to the interpretations made by Dr. Isaacs and later by Dr. Oklan. In light of the aforementioned deviation from the standardized procedure and the obvious contradiction in interpretation, I have grave concerns about the conclusions which have been derived in Dr. Oklan's report."

After Deborah Planet let it be known that Dr. Oklan's methodology and interpretation was flawed, another evaluator, Frederica Conrad, Ph.D., was called in by the court to do yet more testing on Deborah Planet. This evaluator, Dr. Frederica Conrad confirmed that even though Dr. Oklan did give Planet and Irish the tests to take home, the mistake was not that bad because Dr. Oklan told Conrad that he didn't solely rely on the MMPI on which to base his conclusions. "After discussing this issue with Dr. Oklan, it is clear that his diagnostic comments were not based solely on the MMPI-II test results," she wrote in his defense.³⁵

According to a court transcript containing statements by the father's attorney, Terry Colyer, Dr. Oklan received \$25,000 for his "work" on his case, an amount that seems highly excessive compared to fees for other evaluations.³⁶ (See Ex 10) The father, John Irish, paid Dr. Oklan. Given the hefty financial benefits to the evaluator, his apparently skewed findings on Deborah Planet in this case, along with other highly questionable court actions cited earlier which seemed orchestrated against Deborah Irish Planet, the possibility of collusion or a criminal conspiracy certainly seems plausible.

Paula Oldham's Case

During her trial, Paula Oldham was referred to as a "hysterical" and "obsessive," person, as reported by columnist Anna Quindlen, who wrote about the case in *The New York Times*. Dr. Edward Oklan was court-appointed to evaluate Oldham, and his report damaged her credibility in court, according to Alan Rosenfeld, a former lawyer for Paula Oldham. Since then, Dr. Oklan's own credibility has come into serious doubt, considering the findings of the L.A. Juvenile Court in the Krause case, and others cited earlier.

Alan Rosenfeld recalled that Dr. Oklan's evaluation was "sloppy in information gathering and generally incompetent — not based on science." "I don't think he's a real expert," said Rosenfeld. "I didn't get the sense he really knew what the research was. He seemed to be controlled by absolutely

³⁵ Family Custody Evaluation by Frederica L. Conrad, Ph.D., September 29, 1997, page 16

³⁶ The amount John Irish paid Dr. Oklan was referred to by John Irish's attorney, Terence Colyer, in a hearing on February 19, 1997. In the transcript of the hearing, captioned, "Ex Parte Application," Terence Colyer, stated: "... This would have been a brief updated psychiatric evaluation to be done by Dr. Oklan who, of course, has much history in the case — twenty-five thousand dollars or more worth of history— but now we have to change, apparently, to another evaluator to do an updated evaluation."

illogical and anti-child bias." The report has been sealed by court order, so the public will never be able to learn if Dr. Oklan's methodology and opinions were fact-based and scientific in the Oldham case.

Despite the questions raised about his competency and ethics in the Krause and Planet cases, Dr. Oklan continues to be approved by Judge Dufficy and Commissioner Shapiro.

VII. Commissioner Shapiro's Lack of Judicial Temperament

In the Marin County Bar Association's survey on Judicial Performance, Commissioner Shapiro was given the worst possible rating on "judicial demeanor" and "courtesy toward counsel, parties and witnesses." Out of 120 responses, there were 42 lawyers — more than one third — who gave her the least favorable rating possible on the former question and 36 gave her the least favorable rating on the latter.

In interviews for this report, some litigants and lawyers discussed their experiences with Commissioner Shapiro. They said they had been embarrassed, humiliated and upset by the way Commissioner Shapiro spoke to them from the bench.

"She's unreasonably nasty," said Frederica Greene, a family law specialist, who recalled an incident when she went before Shapiro in a divorce proceeding a few years ago. Greene said she made a mistake on some arithmetic calculations that she presented to Shapiro, who then repeatedly berated her for the mistake in front of several onlookers in the courtroom. "She just wouldn't stop," said Greene. "I realized I made a mistake but she wouldn't let go. She kept laying into me. At a break people were coming up to me to see if I was okay. I was sort of embarrassed."

Another lawyer who no longer practices due to illness, Barbara Campbell, from San Rafael, was herself getting a divorce, and also had her case (**FL 3783**) before Commissioner Shapiro. After several court hearings took place, Campbell asked in court documents for Shapiro to disqualify herself from the case, in part because of the disrespectful way Shapiro treated her, she said.

In the Statement for Disqualification, dated November 27, 1996, Campbell wrote: "Commissioner Shapiro has berated me for breaking down and crying at a hearing. . . . I had lost my job, was experiencing serious medical problems, could not meet my expenses and feared for my life [from an allegedly abusive husband]. . . . On other occasions, Commissioner Shapiro has shouted at me and addressed me with sarcasm. . . ."

Campbell went on to state that she believed Commissioner Shapiro violated Judicial Canon 2. A. which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; and Canon 3.B. (4) which requires a judge to be patient, dignified and courteous to litigants and others with whom the judge deals in an official capacity. (Even though Commissioners are not judges, the canons apply to them too, according to the California Judicial Performance Board.) Although Commissioner Shapiro denied the allegations, on

December 9, 1996 she removed herself from the case.³⁷

In December 1999, a father, Peter Dougherty, recalled a scene he described as a Mexican stand-off when he openly challenged Commissioner Shapiro in front of spectators at the court. Dougherty was being provocative, in the sense that he told her to her face that no record existed of her ever taking a loyalty oath for office. Dougherty produced two official documents called "Certification of No Record of Loyalty Oath" signed respectively by J.[Joyce] Whitney of the Office of Marin County Clerk, and Bill Jones, Secretary of State. When a lawyer is elevated to the position of commissioner or judge, that person must take an oath of loyalty, stating under oath that he or she will uphold the California and U.S. Constitutions. Loyalty Oaths are public documents and are supposed to be filed with the County Clerk.

What was Commissioner Shapiro's response to Dougherty? She screamed, "Shut-up" in piercing, ear-shattering volume, according to Dougherty. She then immediately had him arrested on the spot and sent to jail, according to witnesses. Whether Commissioner Shapiro had a reason for jailing him besides her being angry at him, is not known. Granted, Dougherty is a provocateur: for instance, he said he has been previously jailed for upholding his principles in traffic court. But was Shapiro in control of her reactions?

The documents Dougherty produced were verified by this author as authentic. But there was an explanation, according to the Marin County Clerk's office. This author interviewed Joyce Whitney, the Deputy Clerk, who had signed the document that stated Shapiro had not taken a Loyalty Oath. She said that for some reason Shapiro's Loyalty Oath had been misplaced. After the incident at court with Peter Dougherty, people in her office located it in a different room and gave it to her, Whitney said. Commissioner Shapiro's Loyalty Oath was signed by her in 1987, Whitney added, citing the document.

In other cases, a local lawyer named Jayne Kelly de Lopez also said she has had a particularly rough time going before Commissioner Sylvia Shapiro, she said, because of what Lopez described as seemingly erratic mood shifts. "You [as a lawyer] should be focusing on the law and facts — not gauging your performance on the judge's temperament depending on what mood she's in."

³⁷ Answer of Sylvia Shapiro to Petitioner's Statement of Disqualification of Court Commissioner, December 9, 1996.

VIII. Fee-Gouging by Experts and Lawyers

There is widespread opportunity for the fee-abuse of parents under Judge Dufficy and Commissioner Shapiro. They have approved many questionable fees for the small network of lawyers and experts who dominate the family law arena at Superior Court in Marin County. Among numerous examples, a few are cited here.

In the Ornstein and Brennan case (FL1969), Yevrah Ornstein tried to obtain a copy of the billing statement from his former wife's attorney, Mauna Berkov. Yevrah Ornstein, through his then- attorney Renee Marcelle, requested a copy of Berkov's billing statement, but Berkov refused to supply one. "I have no recollection whatsoever of having agreed to provide you with a copy of my billing as you suggest in your correspondence," Berkov wrote. (Ex 23) The court later court-ordered Yevrah Ornstein to pay her fees, even though he did not know what he was paying for, since Berkov would not provide the bill. After this court order, Yevrah Ornstein again asked for a copy of the billing statement to see the individual charges, but again Mauna Berkov refused, according to a letter she wrote to Renee Marcelle. In the letter, dated February 4, 1997, Mauna Berkov stated in part:

As I have stated in my earlier correspondence to you on this issue, there is an order that Mr. Ornstein pay \$4,323 of Ms. Brennan's fees. I will not provide you with copies of my billings to Ms. Brennan. That was not a condition of Mr. Ornstein's payment of the fees; he was simply ordered to pay it. (Ex 24)

The bill of Scott Leuders, who was appointed as the lawyer for the Ornstein child is a good illustration of fee-abuse. Between the dates of July 27, 1993 and June 20, 1994, roughly 13 months, Leuders charged Ornstein a total of \$9,965. (Ex 25) Leuders' billing record shows that he met with the child — his client — only once during this entire time. So what was Leuders billing for?

A Sacramento attorney, Donald Buchman, who represented Ornstein at one point in the litigation, wrote to Ornstein's new lawyer, alerting him to Leuders's excessive charges. "I have reviewed the most recent billing of Scott Leuders in this matter. I don't think, in some instances, that his charges are accurate or fair," the attorney wrote. In this correspondence, Buchman cited an example: a court hearing that he himself was present for that lasted an hour, he said. But Leuders charged for more than two hours. "I know Leuders was there that morning on other matters, because at one point we had to wait a substantial time while he dealt with a client of his," Buchman stated in the letter. (Ex 26)

IX. Recommendations

1. Immediately suspend Judge Michael Dufficy and Commissioner Shapiro from all judicial duties pending further investigation into their practices.
2. Federal authorities need to investigate for the possibility of criminal conspiracy in the cases of Krause, George, Irish, and others where: 1) experts produced unreliable, tainted findings that the court accepted; 2) legal fees were awarded by Judge Dufficy to those firms where Mrs. Dufficy was working; 3) child support fees were diverted to appointees on the cases.
3. Adopt the new rules recently issued by Presiding Judge Jack Komar of the Superior Court in Santa Clara County. On January 14, 2000, Judge Komar issued "A Protocol for Change" for Family Court, designed to help eliminate the potential for corrupt practices in family law cases. These rules: 1) expand the families' choice in the selection of psychologists who do mental testing of families in custody cases; and 2) discourage the use of special masters, who have been known to steer cases, according to the findings of a report issued by this author in 1997. Additionally, Presiding Judge Komar also put two judges in charge of hearing "long-cause" custody cases, those that require more than one day in the court, and has ordered an outside financial audit of Family Services.³⁸ (Ex 27)
4. The Judicial Administration should establish a telephone hotline number for victims to come forward and report problems confidentially. A hotline should include information for lawyers who want to come forward but are afraid of retaliation by Judge Dufficy and his associates. Every call should be documented and the cases checked. Some parents are not very verbal, and particularly after being subjected to court trauma they cannot verbally explain what was wrong with their case, but if they are upset enough to phone, if their case involved Judge Dufficy, Commissioner Shapiro, or any person listed herein as often being appointed by them, the case should be checked.
5. Each and every case in which supervised visitation or no contact has been ordered where Dr. Oklan, Dr. Margaret Lee, Dr. Frederica Conrad, or Mauna Berkov played a role at all should be reviewed by two Ph.D. psychologists outside of Marin County. These psychologists should determine whether the cases in question were handled competently and ethically. If cases were handled improperly or unethically, then these cases should be re-opened and retried.

³⁸ The National Coalition For Family Justice, Santa Clara County Chapter, a grassroots group of families, was instrumental in obtaining these reforms, even though the Komar Commission has not credited them, according to Coalition co-founder Kathy Justi. Coalition members spent two years of continual, daily picketing in front of the Superior Court in Santa Clara County, distributing leaflets on the questionable conduct of certain favored evaluators, special masters in the courtroom of Superior Court Judge James Stewart. This author was commissioned in 1997 to investigate, and her resulting report, "Findings on Judge James Stewart and Court-Referred Personnel at the Family Law Division of Superior Court in Santa Clara County," was submitted in part to the Komar Commission for review.

6. Establish a mechanism for providing ongoing independent oversight of family law cases in Superior Court, and a mechanism for providing checks on judicial discretion in family law cases.

About the Author

Karen Winner is a book author, investigative reporter, consultant and founder of The Justice Seekers, Inc.. While a policy analyst for the New York City of Department of Consumer Affairs, Winner researched and wrote the 1992 report, "Women in Divorce: Lawyers, Ethics, Fees and Fairness" that documented abusive financial practices by divorce lawyers toward their own clients. Winner's report prompted sweeping statewide reforms in 1993. She also authored the original New York State's "Statement of Client Rights and Responsibilities," that became court rule in 1993 and requires all New York lawyers representing divorce clients to hand out this statement to their clients before the retainer agreement is signed.

In 1996, Karen Winner wrote *Divorced From Justice* (Regan Books/Harper Collins) which exposed unethical practices found in courtrooms across the nation. U.S. Congressman Jerrold Nadler said: "Karen Winner's groundbreaking expose of the flagrant denials of due process and judicial abuses . . . is a clarion call for legislative action."

In 1997, Karen Winner founded The Justice Seekers, Inc., a national, nonprofit organization that investigates abuses in divorce and custody proceedings. She has appeared on numerous national shows including *CNN's Burden of Proof*, *Court TV*, *National Public Radio*, and *Inside Edition*. The Justice Seekers has been cited in *Forbes Magazine*. Ms. Winner has been qualified as an expert witness at the federal and state levels and has taught a matrimonial ethics seminar for paralegal students at Long Island University. She has a certificate as an A.B.A.-approved paralegal.

EXHIBIT LIST

- 1A California Fictitious Business Names showing The Debtors' Club
- 1B January 28, 1994 Grant Deed showing transfer of property from The Debtors' Club to Herbert Hawkins, Jeannette Hawkins, and Harvey N. Black Jr.
- 1B (a) List of property -transfer information for The Debtors' Club
- 2A Judge Dufficy's Statement of Economic Interests dated February 14, 1992
- 2B Judge Dufficy's Statement of Economic Interests dated February 18, 1993
- 2C Judge Dufficy's Statement of Economic Interests dated February 18, 1994
- 2D Judge Dufficy's Statement of Economic Interests dated February 24, 1995
- 2E Judge Dufficy's Statement of Economic Interests dated February 20, 1996
- 3A Judge Dufficy's Statement of Economic Interests dated January 17, 1997
- 3B Judge Dufficy's Statement of Economic Interests dated January 19, 1998
- 3C Judge Dufficy's Statement of Economic Interests dated January 29, 1999
- 4A April 23, 1993 Marital Settlement Agreement for Frank and Judith George showing \$3,000 monthly threshold for nonmodifiable support, and provisions regarding mediation to settle unresolved issues
- 4B November 13, 1995 letter from Judith George to Pauline Egdeomon and Madeline Simborg, showing Judith George's desire to mediate and
- 4C Judge Dufficy's "Intended Decision" re Georges: dated February 5, 1996, on "cohabitation" trigger for modifying the Marital Settlement Agreement, thereby invalidating its nonmodifiable provision
- 5A May 24, 1999 Intended Decision showing child support arrears owed by Mr. George
- 5B September 22, 1999 Supplemental Intended Decision showing elimination of child support arrears
- 6A September 1999 article "Are We Crazy: You Be the Judge," published by *Latitude 38*, about the Freeman case pending in Judge Dufficy's court
- 6B Judge Dufficy's published letter appearing in the October 1999 issue of *Latitude 38*, in which he states he ruled in favor of the father
- 6C Robert Cleek's disqualification motion filed December 8, 1999 to have Judge Dufficy disqualified for making a published comment on a case while it is pending
- 7A Mediation Agreement in L.A. Juvenile Court, showing Marshall Krause pleading to Count 1A, "Inappropriate Physical Discipline" and Count VI, having child locked up against her will
- 7B Superior Court of California of Los Angeles Juvenile Court Minute Order dated January 12, 1998, showing Marshall Krause pled "no contest," Mediated Agreement received and filed, Marshall Krause temporarily loses custody and the child is detained, and placed in home of maternal relative.
- 8 County of Los Angeles Department of Children Services Initial Court Report filed January 6, 1998, showing that Dr. Edward Oklan's report of the Krause family is "biased" and "not credible"
- 9 Transcript of Ex Parte Application in Irish marriage, dated February 19, 1997, with statement by Terry Colyer that Dr. Oklan was paid \$25,000
- 10 Letter dated May 24, 1995 from lawyer Terry Colyer to lawyer Mary Catherine Farley, asking that Deborah Irish Planet provide John Irish with instructions on what to feed the baby
- 11 December 1, 1997 Statement of Disqualification of Judge Dufficy from Deborah Irish Planet
- 12A Letter dated in 1992 from Paula Oldham's therapist, Pier Bacigalupa, LCBW to Detective Bernal of the Mill Valley Police Dept. noting multiple reports of child sexual abuse, and urging that visitation be suspended
- 12B Police report date December 12, 1992, filed by Pier Bacigalupa, LCBW, against Marin Ogawa for "sexual assault" of his child
- 12C Testimony of Senator Diane Feinstein dated September 13, 1995
- 13 Declaration of Attorney Alan Rosenfeld, stating that Martin Ogawa did not deliver child for supervised visits with the child's mother, Paula Oldham, despite the court order from Judge Dufficy
- 14A October 26, 1999 letter from attorney Robert Walker to Judy Freeman telling Freeman to deduct fees for Dr. Nancy Olesen and Mary Halbert, from his client's wage assignment for child support
- 15A October 28, 1999 letter from attorney Robert Walker to Judy Freeman on same issue
- 15B Unsigned court order, "Order After Ex Parte Hearing Re Payment of Fees,"

EXHIBIT LIST CONTINUED

- 15C written by attorney Mary Halbert, granting herself fees in Ross case
Rubber-stamped "Order After Ex Parte Hearing Re Payment of Fees," dated December 9, 1999 and
written by attorney Mary Halbert, granting herself fees, and rubber-stamped by Judge Dufficy
- 16 Wage and Assignment Order with information on how child support orders having top priority over other
orders
- 18 Marriage of Krause, Marshall and Lauren, "Attachment to Findings and Order After Hearing,";
commissioner Shapiro's court order awarding Edward Oklan, M.D.,s fees to be deducted from Lauren
Krause's spousal support
- 19 February 27, 1997 letter from special master Mauna Berkov to evaluator Frederica Conrad, Ph.D.,stating
that Judge Dufficy ordered John Irish to "advance Deborah's one-half [fees for Conrad] from support."
- 20 Transcript of Mediation Settlement Conference of O'Neal and Laugen dated June 10, 1998, in which
Judge Dufficy states there are no rules.
- 21 January 28, 2000, letter from husband's attorney to Sandra Eben King's attorney, stating amounts due,
from Sandra King's commissions, as a result of the Bench/Bar Settlement
- 22 Cynthia Jarvis's Declaration dated December 18, 1997 in the Paula Ruisi case, describing how an
independent reviewer found inaccuracies and distortions in Dr. Lee's evaluation
- 23 Letter dated October 17, 1996 from attorney Mauna Berkov to attorney Renee Marcelle, stating that
Berkov does not remember agreeing to give a copy of her billing statement to Marcelle's client, Yevrah
Ornstein, who was ordered to pay Berkov's bill
- 24 February 4, 1997 from lawyer Mauna Berkov to lawyer Renee Marcelle, refusing to provide Yevrah
Ornstein with Berkov's billing statements
- 25 Billing statement of Scott Leuders dated June 20, 1994, and showing he only met with his client, the
Ornstein child, once
- 26 Letter dated July 18, 1994, from attorney, Donald Buchman to attorney Joel Shawn, describing
overcharges in Scott Leuders' billing statement to Yevrah Ornstein
- 27 "Santa Clara County Family court: A Protocol for Change" dated January 31, 2000