

# Family Law Education Reform Project

## CHILDREN AND DIVORCE

### OVERVIEW

This is part of a series of teaching materials prepared by the American Academy of Matrimonial Lawyers Best Practices Committee.

### EXPLANATION AND COMMENTS

This unit focusing on how attorneys can assist clients with custody issues includes a lesson plan with suggestions for video tapes that can be utilized, an outline containing information on the effects of divorce on children, a set of PowerPoint slides and scenarios for simulated exercises.

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The **American Academy of Matrimonial Lawyers**, founded in 1962, is an association of 1600 highly regarded domestic relations attorneys hailing from all 50 states, dedicated "to providing leadership that promotes the highest degree of professionalism and excellence in the practice of family law." The on-line materials were developed by the Academy's Best Practices Committee comprised of 5 senior Academy members from geographically diverse parts of the United States.

## **Children and Divorce**

### **Lesson Guide**

Marlene Eskind Moses

#### **Objectives**

At the end of this training module, the participants will be able to:

- Recognize the effects that divorce can have on children of divorcing parents;
- Instruct the client about how best to approach the divorce when children are involved;
- Develop strategies in their own law practice that will protect the clients' interest in divorce without involving the children any more than is necessary;
- Evaluate their current practices/ideas about the best way to approach divorce cases involving children.

#### **Assessment**

The trainer will know the participants have met these objectives because the participants will:

- Discuss the best ways to tell a child about a pending divorce
- Discuss ways to repair a relationship between a child and a non-custodial parent
- Articulate the effects that divorce can have on children
- Demonstrate through effective counseling skills regarding children and divorce

#### **Materials**

PowerPoint

Discussion Questions

- Questions designed to help participants identify the problems that divorce can cause for children of divorce.
- Questions designed to help participants recognize the ways in which parents can complicate the divorce for children

Role Playing Situations

- Role playing situations between, parents, children, and attorneys designed to help attorneys determine the best ways to approach situations in divorce that are complicated by children.

Written Reflection

- Paper, pencils, and prompt for reflection

## Annotated Bibliography

Articles, books, websites

## Outline

### **Methods**

- Lecture incorporating Powerpoint and discussion questions (1 Hour)
- Role playing (25-30 minutes)
- Reflection (10-15 minutes)
- Opportunity for questions/further discussion (5-10 minutes)
- Summary/Wrap up (5-10 minutes)

A videotape (recommended ones listed below) can also be used with a follow up discussion.

American Academy of Matrimonial Lawyers, *The Voices of Children* available for purchase at [www.aaml.org/library/publications](http://www.aaml.org/library/publications). \$10.00

Texas Young Lawyers Association, *Kids in the Crossfire*, free download available at [kidsinthecrossfire.org/register.cfm?CFID=220681&CFTOKEN=85094849](http://kidsinthecrossfire.org/register.cfm?CFID=220681&CFTOKEN=85094849)

Public Broadcasting Service, *Kids and Divorce: For Better or Worse*, available for purchase at: [www.shoppingpbs.org/products](http://www.shoppingpbs.org/products)

## **Children's Issues**

Marlene Eskind Moses

1. Divorcing Parents' Communication with Children
  - a. Telling the child about the divorce
    - i. Dishonesty and withholding information about the divorce from children may cause communication problems between parents and children and lower children's self esteem, even several years into the future.<sup>1</sup>
    - ii. "Generally, children experience trusting relationships with adult family members. When beliefs in their ability to trust adults are betrayed, there may be significant negative consequences."<sup>2</sup>
    - iii. Despite attempts to protect the child, the respondents' self esteem is lower when they perceive communications as deceptive.<sup>3</sup>
    - iv. In one study, when telling children about the divorce:<sup>4</sup>
      1. 56% of parents gave an excuse about why they were getting divorced.
      2. 22% of parents tried to justify their actions to their children.
      3. 18% told their children about the divorce, then promised they would make it up to them.
      4. 12% of parents said that they told their children, but made it sound as though it wasn't a big deal.
    - v. When telling your child about the divorce, they need to understand that some things will not change.<sup>5</sup>
      1. Both parents will still love the child.
      2. Someone will always be there to take care of the child.
    - vi. Children should not be left with false hope that the parents will get back together.<sup>6</sup>
    - vii. When children are told about a divorce, both parents should tell them together.<sup>7</sup>
  - b. After a divorce, communications between parents and children may need to be repaired.

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<sup>1</sup> Thomas, Candice E., Melanie Booth-Butterfield, and Steve Booth-Butterfield. "Perceptions of Deception, Divorce Disclosures, and Communication Satisfaction With Parents." Western Journal of Communications. 59 (1995): 228-245.

<sup>2</sup> Thomas, Booth-Butterfield, and Booth-Butterfield 231.

<sup>3</sup> Thomas, Booth-Butterfield, and Booth-Butterfield 240.

<sup>4</sup> Cushman, Donald P., and Dudley P. Cahn. "A Study of Communicative Realignment Between Parents and Children Following the Parents' Decision to Seek a Divorce." Communication Research Reports. 3(1986): 80-85.

<sup>5</sup> Leon, Kim, and Kelly Cole. "Helping Children Understand Divorce." University of Missouri Extension. 2004. University of Missouri. 2 Feb. 2009.  
<http://extension.missouri.edu/explore/hesguide/humanrel/gh6600.htm>.

<sup>6</sup> Leon, Kim and Kelly Cole <http://extension.missouri.edu/explore/hesguide/humanrel/gh6600.htm>.

<sup>7</sup> American Academy of Matrimonial Lawyers. Stepping Back from Anger: Protecting Your Children During Divorce. Chicago: American Academy of Matrimonial Lawyers.

- i. 44% of children feel they have been “used by their parents” in the divorce process.<sup>8</sup>
    - ii. There is often less talk and self disclosure.<sup>9</sup>
  - c. It is possible to repair communication satisfaction between parent and child.
    - i. In order to repair the relationship between parent and child, they will need access and interaction time.<sup>10</sup>
    - ii. Repairing the relationship between parent and child will probably be easier to the custodial parent than the non-custodial parent, who has significantly less interaction with the child.<sup>11</sup>
  - d. Reaching adulthood does not cure a strained relationship between parent and child.<sup>12</sup>

## 2. Effects of Divorce on Children

- a. Developmental and behavioral differences between children from divorced families and intact families are actually smaller than originally believed.<sup>13</sup>
  - i. Children vary in how they handle divorce.<sup>14</sup>
    - 1. For some, it is a severe stressor.
    - 2. For others, it is fairly inconsequential.
    - 3. For some, particularly those from violent homes, the child may show improvements.
- b. Children’s long term reactions to divorce varies, depending on<sup>15</sup>
  - i. The amount of parental conflict the children are exposed to;
  - ii. The quality of parenting they receive.
- c. There are several problems typical of children from divorced families.<sup>16</sup>
  - i. Lower academic achievement
  - ii. More behavioral problems
  - iii. Poorer psychological adjustment
  - iv. More negative self concepts
  - v. More social difficulties
  - vi. More problematic relationships with both mothers and fathers
- d. Initial reactions to divorce vary by age group<sup>17</sup>
  - i. Preschool age children
    - 1. Confusion

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<sup>8</sup> Thomas, Booth-Butterfield, and Booth-Butterfield 226.

<sup>9</sup> Thomas, Booth-Butterfield, and Booth-Butterfield 226.

<sup>10</sup> Thomas, Booth-Butterfield, and Booth-Butterfield 232.

<sup>11</sup> Thomas, Booth-Butterfield, and Booth-Butterfield 232.

<sup>12</sup> Amato, Paul R. “A Prospective Study of Divorce and Parent-Child Relationships,” Journal of Marriage and the Family. 58.2 (1996): 356.

<sup>13</sup> Amato, Paul R. “Life Span Adjustment of Children to Their Parents’ Divorce.” The Future of Children: Children and Divorce. 4.1 (Spring 1994): 143-164.

<sup>14</sup> Amato 146.

<sup>15</sup> Teyber, Edward. Helping Children Cope With Divorce. San Francisco: Jossey-Bass, 2001.

<sup>16</sup> Amato 145.

<sup>17</sup> Amato 148.

2. Self blame
  3. Expect the other parent to abandon them
  4. Frequently regress to earlier stages of behavior
  5. "Wallerstein and Kelly found that preschool children were the most distressed in the period following parental separation. However, 10 years later, the children of preschool age appeared to have adjusted better than children who were older at the time of family disruption."
  - ii. Primary School Aged Children
    1. Grieve over the breakup
    2. Feel a "loss of family"
    3. Sadness
    4. Depression
    5. Usually feel anger toward one or both parents
  - iii. Adolescents
    1. Angry toward parents
    2. Question their own ability to maintain a long term relationship
- e. Problems with children from divorced families typically stem from five major stressors.<sup>18</sup>
- i. Parental absence
  - ii. Custodial parent adjustments and parenting skills
  - iii. Economic hardships
  - iv. Conflict between parents
  - v. Life stresses
    1. Moving
    2. Remarriage
    3. Changing schools
- f. In one study, parents who eventually divorce reported an elevated number of child problems as early as 8-12 years prior to divorce.<sup>19</sup>
- g. Many behavioral problems with children during a divorce are due to fear of abandonment.<sup>20</sup>
3. How divorcing parents treat children when experiencing divorce
- a. Divorce interferes with the custodial parents' psychological health and ability to parent effectively. Parents often:<sup>21</sup>
    - i. Are less affectionate
    - ii. Make fewer maturity demands
    - iii. Supervise children less

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<sup>18</sup> Amato 152.

<sup>19</sup> Amato, Paul R. and Alan Booth. "A Prospective Study of Divorce and Parent-Child Relationships." Journal of Marriage and the Family. 58.2 (1996): 356-365.

<sup>20</sup> Wolchik, Sharlene A., Jenn-Yun Tein, Irwin N. Sandler, and Kathryn W. Doyle. "Fear of Abandonment as a Mediator of the Relations Between Divorce Stressors and Mother-Child Relationship Quality and Children's Adjustment Problems." Journal of Abnormal Child Psychology. 30.4(2002): 401-418.

<sup>21</sup> Amato 150.

- iv. Are more punitive
    - v. Are less consistent in dispensing discipline
  - b. Frequent contact between child and the non-custodial parent can often do more harm than good when there is constant conflict between the parents.<sup>22</sup>
  - c. When contemplating divorce, some parents may wish they didn't have to live with their children.<sup>23</sup>
- 4. The Impact of Marital Violence on Children's Emotional Experiences<sup>24</sup>
  - a. "Children learn scripts from parents; a script that reinforces the use of aggression to obtain what one wants and exerts a "disinhibitory" impact that gives the child permission to be aggressive in solving interpersonal conflicts."<sup>25</sup>
  - b. Children may feel as though they have caused or escalated fights between parents.
  - c. Many children will try to intervene in fights between parents. Others will find distracting activities to participate in such as eating or watching television.
  - d. Many children feel torn between love for their father and condemnation of their violent behavior.
  - e. It is very rare for children in violent homes to seek support from others when the parents live together, but when parents are separated, they are more likely to seek support.
  - f. Parents from unstable marriages are more likely to be abusive to their children.<sup>26</sup>
- 5. Relocation
  - a. Relocating a child at a young age can be detrimental to the relationship between the child and the non-custodial parent.<sup>27</sup>
    - i. Infants have very primitive memories. Parents quickly become strangers to their children if regular contact is not possible.
    - ii. Moves may erode relationships between 2- to 3-year-olds and their nonmoving parents unless there is broad and meaningful interaction at least once every month.

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<sup>22</sup> Amato 150.

<sup>23</sup> Amato, Paul R. and Alan Booth. "A Prospective Study of Divorce and Parent-Child Relationships." Journal of Marriage and the Family. 58.2 (1996): 356-365.

<sup>24</sup> Lee, Mo-Yee. "Marital Violence: Impact on Children's Emotional Experiences, Emotional Regulation and Behaviors in a Post-Divorce/Separation Situation." Child and Adolescent Social Work Journal. 18.2(2001): 137-163.

<sup>25</sup> Lee 138.

<sup>26</sup> Amato, Paul R. and Alan Booth. "A Prospective Study of Divorce and Parent-Child Relationships." Journal of Marriage and the Family. 58.2 (1996): 356-365.

<sup>27</sup> Kelly, Joan B., and Michael E. Lamb. "Developmental Issues in Relocation Cases Involving Young Children: When, Whether, and How?" Journal of Family Psychology. 17.2 (2003): 193-205.

- b. Parenting plans should minimize the length of time between long-distance visits and maximize opportunities for normal parenting activities when reunions occur so that nonmoving parents do not become distant relatives.
  - c. Visits between non-custodial parents and children should be as frequent as possible with children sometimes visiting the parent and the parent visiting the children at other times.
  - d. Active parenting by both parents enhances the children's wellbeing in the long term.
6. What can be done to help children cope with divorce?
- a. Studies show that peer group therapy can be beneficial for children as young as 5 and 6 years old whose parents are divorcing.<sup>28</sup>
    - i. "By the end of the program, children had a better understanding of the reason for divorce (e.g. "divorce is a grown-up problem and not children's fault"), were better able to deal with and talk about their feelings, get along better with peers, and more effectively solve personal problems."
  - b. Be honest with your children about the divorce.<sup>29</sup>
  - c. Don't argue or fight with the other parent in front of the children if possible.<sup>30</sup>
  - d. Reassure the child that you will not abandon him/her.<sup>31</sup>
  - e. Don't use the child as an informational tool.<sup>32</sup>
  - f. Establish a consistent and predictable routine.<sup>33</sup>
7. Suggestions specific to Age Group<sup>34</sup>
- a. Toddlers (Birth -2 ½ years)
    - i. Gradually increase the duration of parenting time.
    - ii. Interact with the child where the child feels secure and comfortable.
  - b. Preschoolers (2 ½ -5 years)
    - i. Avoid criticism about the other parent in the home.
    - ii. Send along personal objects, such as blankets, stuffed animals, and photos of the parent.
  - c. Elementary School (5-12 years)
    - i. Inform teachers of any stress the child is experience. Get help for school related problems.
    - ii. Encourage the child to communicate with the other parent.

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<sup>28</sup> Pedro-Carroll, JoAnne L., and Linda J. Alpert Gillis. "Preventive Intervention for Children of Divorce: A Developmental Model for 5 and 6 Year Old Children." The Journal of Primary Prevention. 18.1 (1997): 5-23.

<sup>29</sup> Pedro-Carroll 5-23.

<sup>30</sup> Pedro-Carroll 5-23.

<sup>31</sup> Pedro-Carroll 5-23.

<sup>32</sup> Pedro-Carroll 5-23.

<sup>33</sup> Minnesota Supreme Court Advisory Task force on Visitation and Child Support Enforcement. A Parental Guide to Making Child-Focused Parenting Time Decisions. St. Paul, State of Minnesota, 2001.

- iii. Encourage the child to socialize outside the home.
- d. Adolescents (12-18 years)
  - i. Consistently apply family rules and expectations
  - ii. Avoid the assumption that a child's moods swings or behavioral acting out is caused by the other parent.
- 8. Dealing with children's issues as an attorney.<sup>35</sup>
  - a. An attorney representing a parent should consider the welfare of the child(ren).
    - i. Sometimes the client's wishes directly conflict with the best interest of the child.
    - ii. Attorneys should counsel clients to examine their wants/needs in light of the needs of the child(ren).
    - iii. Parents must sometimes subordinate their own interests to those of their children.
    - iv. Consider sending parties to a neutral mental health professional if parents disagree about custody and other parenting issues.
    - v. Discourage the client from participating in multiple evaluations of the child to find an expert who will testify in his/her favor.
  - b. Don't permit a client to use custody as a tool to get more money or be vindictive.
  - c. When dealing with issues affecting the welfare of a child, an attorney should not conduct inappropriate communications with the child.
    - i. Do not advise the child about what to say in testimony.
    - ii. Only ask for information under circumstances that will protect the child's best interest.
  - d. Don't bring a child to court or ask them to testify as a witness except where it is in the best interest of the child.
    - i. Many children do not want to be forced to choose between two loving parents.
    - ii. If the information from child is not related to custody issues, try to get the same information from somewhere else and avoid bringing the child into the court room.
  - e. If there is a substantial risk of child abuse, physically or sexually, the attorney is required to protect the child.

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<sup>35</sup> American Academy of Matrimonial Lawyers. Bounds of Advocacy: Goals for Family Lawyers. Chicago: American Academy of Matrimonial Lawyers.

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as a Mediator of the Relations Between Divorce Stressors and Mother-Child  
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# **Children of Divorce**

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## **Effect of Divorce on Children:**<sup>[1]</sup>

- Greater % of children of divorce have significant risks of undesirable outcomes in the areas of school performance, delinquency, emotional turmoil, insecurity and depression; more teen childbirth and an increased likelihood of getting divorced themselves.

## **Problems typical of children from divorced families:**<sup>[2]</sup>

- Lower academic achievement
- More behavioral problems
- More negative self concepts
- More social difficulties
- More problematic relationships with both mothers and fathers

# Initial Stress <sup>[3]</sup>

- Most children have little preparation for the separation and their initial reaction is usually one marked by distress, anxiety, anger, shock or disbelief
- Majority of parents fail to communicate with their children about the separation
- One study: 23% - no one talked to them  
45% - abrupt one line responses  
5% - fully informed

# Breaking the News <sup>[4]</sup>

In one study, when telling their children about the divorce:

- 56% of parents gave an excuse about why they were getting divorced.
- 22% tried to justify their actions.
- 18% told their children about the divorce, then promised the children they would make it up to them.
- 12% said they told their children, but made it sound as though it wasn't a big deal.

# Question for Discussion

What are some ways that parents might choose to tell their children about a divorce?

(List the good AND bad)

# Major Stressors for Children [5]

Problems with children from divorced families typically stem from five major stressors:

- Parental Absence
- Custodial parent adjustments and parenting skills
- Economic hardships
- Conflict between parents
- Life stresses
  - Moving
  - Remarriage
  - Changing Schools

## However... [6], [7]

- Over the long term, developmental and behavioral differences between children from divorced families and intact families are actually smaller than originally believed.
- Resilience, not risk is the normative outcome.

## Protective Factors [8]

- Good parent-child relationship
- Child's personality resources
- Active involvement of non-residential parent
- End of conflict between parents
- Economic stability
- Interventions that reduce parent conflict

## **If You Are the Attorney . . .** [9]

- Consider the welfare of the children
- Don't permit a client to use custody as a tool to get more money or be vindictive
- Don't conduct inappropriate communications with the child
- Don't ask the child to testify as a witness unless it is in the child's best interest
- You are required to protect the child in cases involving the physical or sexual abuse of the child

**Special Issues:**  
**Repairing Relationships With Children**

In order to repair relationships with their children, parents will need:

- Access
- Interaction time

# Questions for Discussion

- What can a non-custodial parent do to strengthen his or her relationship with the children during and after divorce?
- What can you do as an attorney to encourage your client to allow the child to have access to and interaction with both of their parents?

# Dos and Don'ts for Parents

## *Do:*

- Get counseling for a child struggling with the divorce.
- Be honest with your children about the divorce.
- Reassure the child that you will not abandon him/her.
- Establish a consistent and predictable routine.

## *Don't:*

- Use the child as an informational tool
- Argue or fight with the other parent in front of the children if possible.

# Questions for Discussion

- What should a divorcing parent do to help a child who has witnessed/been a victim of domestic violence?
- What should you do as an attorney to help protect the child? Should you try to eliminate all contact between the child and the violent parent or should you look for an alternative? Why?

# Helpful Resources <sup>[10]</sup>

- AAML Booklet: “What Should We Tell the Children?...A Parents’ Guide for Talking About Separation and Divorce”
- AAML Booklet: “Protecting Your Children During Divorce, a Model Parenting Plan and Guidelines”
- AAML VHS Video: “The Voices of the Children of Divorce”

# Works Cited

- [1], [3], [7], [8] Kisthardt, Mary Kay. “Psychological Effects of Divorce on Children.”
- [2], [5], [6] Amato, Paul R. “Life Span Adjustment of Children to Their Parents’ Divorce.” The Future of Children: Children and Divorce. 4.1 (Spring 1994): 143-164.
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**Children of Divorce**  
Role Playing  
Marlene Eskind Moses

**Instructions:**

In a small group setting (10-15 people)—divide the participants into pairs. Have each pair role play one or more of these scenarios for the other participants. After each pair finishes, discuss the way they handled the situation as a group. What was good about the way the attorney handled it? What was bad? What would the other group members do differently?

For larger groups—You may not have time to allow everyone to role play. Instead choose several volunteers to act out each scene, then discuss as a group.

**Scenario 1:**

When Mr. and Mrs. Smith separated, their teenage daughter, Amanda, chose to stay in the marital home with Mrs. Smith, but frequently goes to visit Mr. Smith at his new apartment on weekends. Mrs. Smith has not worked since the parties' marriage more than twenty years ago and is a prime candidate for alimony. Mr. Smith has a high income from a variety of sources and Mrs. Smith knows that he has recently found a new source of income that will not appear on his tax returns. Mr. Smith is attempting to hide his true income in order to avoid making large child support and alimony payments and Mrs. Smith knows it. He has removed all of his financial documents from the marital residence, omitted information about his income during discovery, and even told the Judge in open court that no other source of income exists. Mrs. Smith knows that Mr. Smith should be making much higher child support payments than he is offering to make, but has no way to prove it without financial documents to back it up. It is certainly in Amanda's best interest that Mrs. Smith receive the appropriate amount of child support. Mrs. Smith wants to ask Amanda to take the financial documents from her father's home in order to prove that his income is higher. What do you recommend to your client?

**Question for discussion:**

If Mrs. Smith does ask Amanda to remove the financial document from Mr. Smith's house, what effect might this have on Amanda? Please discuss.

**Scenario 2:**

Mr. and Mrs. Jones are in the middle of a very hostile divorce. Mr. Jones is convinced his Wife is having an affair with their ten-year-old son, Matthew's, teacher, but has no way to prove it. Mr. and Mrs. Jones have agreed that Mr. Jones will pick Matthew up from school every Tuesday and Thursday. Like clockwork, Mr. Jones calls your office every Tuesday and Thursday afternoon to give you a report. He asks Matthew to give

every detail of Mrs. Jones's interaction with his teacher while he relays the conversation to you. After several weeks of this, Matthew's grades start to drop and he is sent to the principal's office for yelling at his teacher in the middle of class. Mr. Jones is pleased that Matthew is standing up to his teacher—the man Mr. Jones believes destroyed his marriage. After the incident where Matthew yells at his teacher, Mrs. Jones asks the Court for a restraining order that will prevent Mr. Jones from discussing Matthew's teacher with Matthew in any way. Mr. Jones insists that, as a parent, he has a right to discuss all aspects of Matthew's "education" with him. How do you handle this situation?

### **Scenario 3:**

You are representing Mr. Allen in a divorce proceeding involving two minor children—Christopher, age six, and Rachel, age four. Mr. Allen has been arrested in the past for domestic violence and his wife now claims that Mr. Allen has also been abusive toward the children. You suspect that Mrs. Allen is telling the truth, but Mr. Allen insists that his anger management and counseling have helped him deal with his anger issues. He claims that he has never harmed the children and assures you that he never will. Your instincts tell you that he is lying, but he is your client and he wants to push for joint custody of the children. How do you handle this?

### **Scenario 4:**

You represent Mrs. Wright in the divorce. Mrs. Wright has a demanding job that leaves little time for her twelve-year-old twin boys at the end of the day. Mr. Wright also works full time, but his job is less demanding and he has considerably more time to spend with the children. Mr. Wright has a very strong relationship with the children and wants to have primary custody. Mrs. Wright can not stand the idea of her husband being the primary residential parent of the children. She believes that as the child's mother, she should be the one to take care of them, but she is unwilling to cut back her hours at work to do so. Rather than making time for her children and pursuing custody of the children in an adult manner, Mrs. Wright instead begins making snide remarks to the children about Mr. Wright. She also tells the children that their father only wants them so he won't have to pay child support and that he doesn't really care about them at all. She uses every word Mr. Wright says in an attempt to turn the children against him. After a while, it seems to be working as the boys begin arguing more and more frequently with their father. As the hearing draws nearer, Mrs. Wright requests that the children be put on the stand to testify about with whom they would prefer to live. You know that the children would be better off with their father, but Mrs. Wright is your client. How do you handle this situation? If you decide to try and talk her out of it, what do you do if she chooses not to listen?