

1994

# Marilyn L. Ahluwalia v. Haminder S. Ahluwalia : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jane Allen; Attorney for Appellee.

Richard N. Bigelow; Attorney for Appellant.

---

## Recommended Citation

Brief of Appellee, *Ahluwalia v. Ahluwalia*, No. 940052 (Utah Court of Appeals, 1994).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/5768](https://digitalcommons.law.byu.edu/byu_ca1/5768)

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

IN THE UTAH COURT OF APPEALS

940052CA

---

MARILYN L. AHLUWALIA, )  
Plaintiff and Appellant, ) Appeal no. 940052-CA  
vs. )  
HAMINDER S. AHLUWALIA, ) Oral Argument Priority 4  
Defendant and Appellee, )

---

APPELLEE'S BRIEF

---

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
HONORABLE J. DENNIS FREDERICK, DISTRICT JUDGE

Richard N. Bigelow (3991)  
Attorney for Appellant  
170 S. Main, Suite 900  
Salt Lake City, Utah 84101

(801) 575-5000

Jane Allen (45)  
Attorney for Appellee  
310 S. Main, Suite 1305  
Salt Lake City, Utah 84101

(801) 355-1300

**FILED**  
Utah Court of Appeals

**SEP 07 1994**

Marilyn M. Branch

MARILYN L. AHLUWALIA, )  
 Plaintiff and Appellant, ) Appeal no. 940052-CA  
**vs.** )  
 HAMINDER S. AHLUWALIA, ) Oral Argument Priority 4  
 Defendant and Appellee, )

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

HONORABLE J. DENNIS FREDERICK, DISTRICT JUDGE

(801) 355-1300

## TABLE OF CONTENTS

Table of Authorities . . . . .	i
List of Parties. . . . .	1
Jurisdictional Statement . . . . .	1
Determinative Provisions of Law. . . . .	1
Statement of Issues. . . . .	1
Statement of the Case. . . . .	1
Statement of Facts . . . . .	2
Summary of the Argument. . . . .	5
Argument . . . . .	6
Conclusion . . . . .	14
Certificate. . . . .	15

## Appendix:

Trial Exhibit #14 - Custody Evaluation performed by Elizabeth Hickey . . . . .	#1
Trial Exhibit #17-Income and Expenses of parties . . . . .	#2
Trial Exhibit Division of property . . . . .	#3
Findings of Fact . . . . .	#4
Cited pages of transcript. . . . .	#5
Rules of Judicial Administration, Rule 4-903 . . . . .	#6

## TABLE OF AUTHORITIES

### CASES:

Rosendahl v. Rosendahl, 240 Utah Adv. Rep. 25 (Utah App. 1994)

Schaumberg v. Schaumberg, 240 Utah Adv. Rep. 22 (Utah App. 1994)

### STATUTES:

Rules of Judicial Administration, Rule 4-903

#### LIST OF PARTIES

Marilyn Ahluwalia is the plaintiff and appellant.

Haminder Ahluwalia is the defendant and appellee.

#### JURISDICTIONAL STATEMENT

The jurisdiction of the Court in this matter is established by the provisions contained in Utah Code Annotated Section 78-2-2(3)(j). Unless the brief would not significantly aid oral arguments, priority of oral argument is priority 4.

#### DETERMINATIVE PROVISIONS OF LAW

There are no constitutional provisions, statutes, ordinances, or rules whose interpretation is believed to be solely determinative of the outcome of this case.

#### STATEMENT OF ISSUES

1. Did Judge Freckerick err in denying defendant's (hereinafter Marilyn's) request for custody, possession of the marital residence, and in consequently ordering child support?

2, Did Judge Frederick err in denying Marilyn's request for alimony?

#### STATEMENT OF THE CASE

This is an appeal from a final judgment in a divorce case entered by the Honorable J. Dennis Frederick in the Third Judicial District Court, Salt Lake County, State of Utah. The final judgment was entered on December 16, 1993. Marilyn filed her notice of appeal on January 14, 1994. There has been no cross-appeal filed in this action.

## STATEMENT OF FACTS

This matter was filed by plaintiff, Marilyn L. Ahluwalia as a complaint for divorce against defendant, Haminder S. Ahluwalia (hereinafter Haminder) on March 6, 1992. Marilyn initially requested joint physical custody of the children, with Haminder to have the children during the school year, and Marilyn to have the children during the summer. Marilyn moved from the marital residence and the issues of temporary possession of the marital residence, temporary custody of the children, and temporary alimony were argued as part of requests for temporary relief on the part of both parties, which was heard in May of 1992. Haminder was awarded temporary custody of the parties' children and given temporary possession of the marital residence. Marilyn was awarded \$700.00 per month as temporary alimony and not ordered to pay temporary child support.

The parties moved to Utah in 1985 and have lived in Utah since that time. When they arrived in Utah, Marilyn's teaching certificate was current, and she had one interview for a teaching position that year (T 14, L 1). Marilyn then did not work except for part-time retail work, and occasional substitute teaching, and did not keep her certificate current. She did renew her certificate and was employable by 1991 (T 15, L 13).

At the time of their separation, Marilyn was working part-time as a substitute teacher. Marilyn, who has a college degree and teaching certificate, applied for a full-time teaching position, but did not obtain one that fall (T 15, L 25). Marilyn

testified that the school districts indicated that the job market was very tight and that they were not hiring as many teachers as in the past (T 16, L 6). Despite this, Marilyn did not seek other education, classes, or training in the fall of 1992 or the fall of 1993 when she again did not obtain a teaching job (T 16, L 3; T 79, L 6-20). She did work part-time, on occasion, at All A Dollar, Shopko, Payless and Matrix (T 80, L 11). Marilyn has worked at optical stores in the past, but did not pursue any jobs in that field until 1993 (T 81, L 23). She put off an interview at Lenscrafters until after the divorce trial (T 82, L 1-4).

Haminder is an engineer, earning \$4730 per month gross, and \$3311 per month net after tax related deductions. His monthly expenses are \$3895 for him and the two children. Marilyn earns \$6.25 per hour, and testified she is a permanent substitute, (T 16 L 18) and works 8 hours per day Monday through Thursday, and six hours on Friday, for a 38 hour workweek (T 83, L 4-8). If Marilyn worked 38 hours per week she would earn \$1,026 per month. Her financial declaration form filled out by her showed \$1200 per month, which was amended at trial to be \$1021 per month. Marilyn's expenses are \$1598 per month. Marilyn received \$21,000 in savings distribution during the pendency of the action, all of her earnings, plus \$700 per month in temporary alimony plus approximately \$47,000 in cash, and \$52,525 in retirement funds (which were almost all of the parties' cash assets and half of the retirement accounts) from the division of assets after the divorce. Haminder argued that those funds would reasonably earn her \$230.00 per month in interest. Marilyn testified that she could earn \$2000



per month as a teacher (T 78, L 5). She also testified that she had no impediments to working full time, other than some bursitis and arthritis, which prevented heavy lifting (T 27, L 24-25; T28, L 1-2.)

During the marriage both parties worked, although Marilyn did quit work at times to care for the parties' children, and she did work part-time for a number of years. Both parties had all of their higher education completed before their marriage (T 86, L 16-18; T 91, L 18-20.) Both children have been in school all day since 1989. Haminder has cared for the children after work and been involved in family life, and has been involved in the childrens' activities and schoolwork especially as they have gotten older (T 87, L 1-2; T 116, L 14-17; T 121, L4-14).

Marilyn claimed she had been abused by Haminder at both the temporary hearing and the trial, but her claims are not supported by the custody evaluator, the children, nor other testimony. It did appear that an altercation occurred just before the parties separated, but Ms. Hickey, the custody evaluator, felt that the incident was not a serious problem since it did not appear to be a long-standing pattern (T 34, L 20-25). Marilyn's testimony would support the concept that there was no long-standing pattern of physical abuse. Marilyn did admit that she yelled at Haminder, and that she sometimes yelled obscenities at him (T 82, L 17). She also admitted threatening to hit him, and hitting him (T 88, L10).

The children wanted to stay with their father at the time of the temporary hearing, and their opinions did not change in the 19 months it took for this matter to come to trial.

The custody evaluation, court ordered and performed by Elizabeth Hickey, took into account the criteria required for a uniform custody evaluation as required in Rule 4-903 of the Utah Rules of Judicial Administration (Appendix 1.) No evidence, other than Marilyn's testimony, was presented to refute the opinion of Ms. Hickey, which opinion included the preference of the children, Ravi and Megan, who were ages 9 and 14 when this matter commenced and are now ages 10 and 15. (T 48, L 14-18) Megan has refused to "choose" between her parents, but clearly does not want to change her current circumstances (T 36, L11-16; Appendix 1, P.4, 9, 10.)

Although Marilyn was the primary caretaker when the children were small, the caretaking became more equal after they were in school all day. In the 19 months since the parties' separation, Haminder has successfully filled in the gaps created by Marilyn's absence. The children have adjusted well, are happy, and do not want to change their environment. They have become accustomed to a schedule which provides the necessary structure they need to perform and excel, which contributes to their sense of well being. (T 35-36, L13-16; T 46, L4-7; Appendix 1, p.10)

#### SUMMARY OF THE ARGUMENT

A. DID THE TRIAL COURT ERR IN DENYING MARILYN'S REQUEST FOR CUSTODY, POSSESSION OF THE MARITAL RESIDENCE, AND IN ORDERING CHILD SUPPORT?

The Trial Court is granted broad discretion in reviewing claims related to child custody, and it may use its first-hand proximity to resolve the delicate and highly personal problems presented in custody disputes. Roendahl v. Roendahl, 240 Utah Adv.

Rep 25, (Utah App. 1994), at p. 26.

In this matter, Marilyn must show that Judge Frederick abused his discretion in granting custody to Haminder, and that no credible evidence exists to support the Findings of Fact made by him, and the conclusions regarding the house and child support that logically followed the custody decision.

The trial court accepted the evidence of Elizabeth Hickey, the custody evaluator, that it would not be in the childrens' best interests to change the children's caretaker at this time. The findings of the Court indicate that the children want to stay where they are, that they have adjusted well, and that Haminder provides a stable, structured, and secure environment for the children. The children's school work has improved, along with their emotional stability, since the separation of the parties.

There is adequate evidence on the record to support the findings of the Trial Court regarding custody, the residence, and child support, and those findings should be upheld on appeal.

B. DID THE TRIAL COURT ERR IN DENYING MARILYN'S REQUEST FOR ALIMONY?

The trial court is required to make findings regarding Marilyn's ability to support herself, her need for alimony, and Haminder's ability to pay alimony. So long as these findings are made, the trial court's decision will not be overturned unless there has been an abuse of discretion, as set forth in Schaumberg v. Schaumberg, 240 Utah Adv. Rep 11, (Utah App, 1994), at page 12.

Substantial credible evidence exists to support the trial court's findings regarding alimony, and no abuse of discretion has

occurred.

#### APPELLEE'S ARGUMENTS

A. DID THE TRIAL COURT ERR IN DENYING MARILYN'S REQUEST FOR CUSTODY, POSSESSION OF THE MARITAL RESIDENCE, AND IN ORDERING CHILD SUPPORT?

The Trial Court is granted broad discretion in reviewing claims related to child custody, and it may use its first-hand proximity to resolve the delicate and highly personal problems presented in custody disputes. Roendahl v. Roendahl, 240 Utah Adv. Rep 25, (Utah App. 1994), p. 26.

The court in Roendahl and Sukin v. Sukin, 842 P.2d at 924, listed some factors to be considered when determining custody, which may be considered by the court, including:

1. The preference of the child: In this matter, the Court found the children prefer to stay with Haminder. (FF 7; Appendix 1, P. 4, 9, 10)

2. Keeping siblings together: The Court found the children should stay together, with Haminder. (FF 8; Appendix 1, P.6)

3. The relative strength of the child's bonds with one or both of the prospective custodians: The children are now strongly bonded to Haminder. (FF 9; Appendix 1, P.7)

4. And, in appropriate cases, the general interest in continuing previously determined custody arrangements where the children are happy and well adjusted: The children are definitely happy and well adjusted with Haminder. (Appendix 1, P 10; T 35, L 13-25; T 36, L 1-25; T 37, L 1-4.)

A list of factors is contained in Rule 4-903 of the Rules of

Judicial Administration regarding uniform custody evaluations, and the rule provides in Sec. (3)(E) factors relating to the prospective custodians' character or status, or their capacity or willingness to function as parents, including:

(i) Moral character and emotional stability: The parties were found to be equal in this case. (FF 12; Appendix 1, P.8)

(ii) Duration and depth of desire for custody: The parties were found to both desire custody equally. (FF 13; Appendix 1, P.8)

(iii) Significant impairment of ability to function as a parent through drug abuse, excessive drinking, or other causes: Neither party was found to be impaired here. (FF 7; Appendix 1, P.8)

(iv) Reasons for having relinquished custody in the past: This factor was not considered, as it is not applicable to his matter.

(v) Religious compatibility with the child: Haminder was found to have not fostered Marilyn's religious efforts, but no religious incompatibility was found. (FF 14; Appendix 1, P8)

(vi) Kinship, including in extraordinary circumstances stepparent status: The only kinship relationship found to be relevant was with the childrens' paternal grandfather, which relationship was found to be good. (FF 15; T 56, L1-5)

(viii) Financial condition: Haminder's financial condition is certainly adequate to care for the children. (FF 18; Appendix 1, P. 8)

Haminder was awarded temporary custody of the parties' children by court order after a contested hearing. It then took 19 months for the matter to reach a trial. A custody evaluation was

performed by Elizabeth Hickey, which was a court ordered evaluation and her selection was approved by both parties' counsel.

The evaluation considered all of the factors necessary for a Uniform Child Custody Evaluation as required in Rule 4-903, and Haminder was found to have more factors in his favor (Appendix 1, P. 10).

In this matter, the Trial Court found that Marilyn was the primary caretaker until May of 1992 (FF 6; Appendix 1, P. 3-4), that either party is capable of providing custodial care for the children, but the children have a stated preference for remaining with Haminder, that the children have adjusted remarkably well, and Haminder provides a stable, structured, secure environment for the children (FF 7; Appendix 1, P. 4-5, 7-10; T 35-36 L 13-16; T46 L4-7).

It was also found that the children should remain together (FF 8; Appendix 1, P.6) and that the children are now strongly bonded to Haminder (FF 9; Appendix 1, P. 7; T 35-36, L 25-16; T 47, L 20-25; T 48, L 1-4.) Based on the foregoing, the Trial Court found that the present custody arrangement should be continued (FF 10; Appendix 1, P. 10-11; T 36, L 11-16) and that it is not in the best interests to change the custody of the children (FF 11).

It was found that emotional and moral stability of the parties is not significantly different (FF 12) and that both parties have a strong desire for custody of the children (FF 13). Haminder has not supported Marilyn's religious efforts (FF 14). The children have few kinship relationships, but they do get along well with their grandfather, with whom they live (FF 15). The Trial Court

then found that physical custody is not workable due to the differences of the parties regarding child rearing, and that it is in the best interests of the children that Haminder be awarded custody of them, subject to Marilyn's liberal visitation rights.

The trial court accepted the evidence of Elizabeth Hickey, the custody evaluator, that it would not be in the childrens' best interests to change the children's caretaker at this time (T 46, L 4-7.) Marilyn argues that as primary caretaker in the past that she should be awarded custody of the children now. However, 19 months is long enough to change the primary caretaker. Also, the children are now 10 and 15 and their interests and needs are different from toddlers. They need structure and routine, and help in doing well in school, all of which is provided very well Haminder, and provided less well by Marilyn. (Appendix 1, P. 4-5, 7; T 35-36, L 13-16; T 46, L 8-23; T 51, L 21-25; T 52, L 1-25; T 66, L20-21.)

Marilyn's claim that Haminder will not allow visitation is unfounded, as visitation did occur during the pendency of the action with no additional court action, and Ms. Hickey did not find Haminder to be an impediment to visitation, so long as the terms were clear.(Appendix 1, p.10; T 51, L 1-8; T 50, L 1-8, L 16-20.) There is evidence that Marilyn would demand visitation without adequate notice, and that there were resulting disputes, all of which should dissipate now that the visitation has been set in detail (T 40, L9-20; T50, L16-20). Haminder testified that he would cooperate with visitation (T 125, L13-25; T 126, L 1-13).

The trial court reasonably gave Haminder possession of the

marital residence, since he was the custodial parent. Marilyn was properly ordered to pay child support as required by the uniform child support guidelines. Certainly a father in Marilyn's position, who had spent 19 months receiving \$700 per month in temporary alimony, his earnings, plus an additional \$21,000 as temporary division of the parties' savings during the pendency of the action, giving him adequate funds to seek further training if his skills were not suited to the market place, and who had made no significant efforts to find permanent employment at a higher rate than his present job, would be ordered to pay child support based on his present income. There is no reason for the result to be different just because Marilyn is the mother instead of the father.

Haminder is best able to meet the needs of the children now, given their ages. The evaluation correctly has taken into account a number of factors, primary caretaker and visitation being only part of the entire picture. The Trial Court did not abuse its discretion regarding the custody, support, and property division in this matter.

B. DID THE TRIAL COURT ERR IN DENYING MARILYN'S REQUEST FOR ALIMONY?

Judge Frederick considered Marilyn's need for alimony and concluded in Findings of Fact 25 and 27, and found that she did not show a persuasive need for continuing alimony. The court considered her ability to support herself in Finding of Fact 27, 28, 19, 20, and 21 and concluded that Marilyn has not made a reasonable effort to support herself, and even though her expenses exceed her income, that those expenses are somewhat inflated.



As to Haminder's ability to pay alimony, the Trial Court found that Haminder did not have the ability to pay alimony, given his income and expenses in caring for the parties' children (FF 26.)

As a result, Marilyn must show that Judge Frederick abused his discretion in not awarding alimony, and in showing that such an abuse occurred in this matter.

To show that an abuse of discretion has occurred, Marilyn must show that there is no credible evidence to support the findings of the Court. This test is set forth in Schaumberg v. Schaumberg, 240 Utah Adv. Rep. 11, (Utah App. 1994) at p. 12.

In this matter, the Court found in Finding of Fact 20 that Marilyn has worked part-time and is not impaired from working for any reason (T 80, L 11.) In Finding of Fact 21 the Court found that Marilyn is capable of full-time work and has failed to seek full time work, but that she does work 38 hours per week and earns \$1,023 per month gross (T 90, L 1-7.) In FF 22 the Court found that Marilyn's expenses are \$1,292 per month.

The court then found that Haminder earns \$4,198 per month gross and that his expenses were \$3,351, in Finding of Fact 23, all of which are set forth in detail in Appendix 2.

In Finding of Fact 27 the Court found that although Marilyn's expense exceed her income, the monthly expenses appear to be somewhat inflated, and that the real issue is Marilyn's lack of any serious effort at full-time employment (T 79, L 3-25.) The Court found that even though Marilyn might not find a teaching job, she can obtain other employment full time and continue to seek a teaching job (FF 27; T 88, L 1-3.)

Based upon these findings, the Court then found in Finding of Fact 25 that Marilyn has not shown a persuasive need for continuing alimony, and she has failed to demonstrate Haminder's ability to pay, and accordingly, the Court did not award further alimony, based upon Finding of Fact 26 that Haminder's gross income, less the expenses he has for raising the children, shows he does not have the ability to pay continuing alimony.

Marilyn argues that she left a "tenured" teaching job in Florida when she left to go with Haminder to Pennsylvania. However, the parties have lived in Utah since 1985 and Marilyn has failed to diligently pursue a permanent teaching position during the last nine years. Marilyn also asked for \$1,500 per month in alimony and had no explanation of why she would need this amount given the fact that her total expenses were approximately \$1,500 per month and she would be working full time and earning at least \$1021 per month (T 28, L 13-19; T 87, L 11-25; T 88, L 1-7.)

Marilyn does not seem to appreciate her duty to support her children and to make reasonable efforts to support herself. After 19 months with substantial help from Haminder, and adequate funds to obtain further training so that her job skills would be more marketable, Marilyn had made only feeble attempts to obtain permanent employment (T 79, L3-25; T 8, L 22-25; T 82, L 1-4.) Marilyn admitted that she has no impediments to full-time employment, and her testimony that she was, in fact, working 38 hours per week (T 84, L4.) She did become a regular substitute teacher, however, and it is that income the court imputed to her (T 83, L 6-8.)

The Court found that Marilyn's expenses of \$1,598 per month were inflated, as it showed consumer debt payments of \$242 per month, but also showed clothing and entertainment expenses for the same purposes, with a balance of \$8,000, all acquired after the separation of the parties (T 83, L 21-25.) Also, given the cash Marilyn received, presumably her consumer debt would be paid off after the divorce.

The Court also found that Marilyn could work 38 hours per week at her current rate of pay of \$6.25 per hour, which gave her an income close enough to her claimed expenses that alimony was not needed. It was clear that Marilyn had not maximized her ability to support herself by seeking further education or dilligently seeking permanent employment wherever available (T 79, L 6-20; FF 27). Also, Haminder does not have the ability to pay alimony, as his net income is \$3,379 and his expenses are \$3,895 per month. Given that his expenses are for three people, and Marilyn's are for one, it is not surprising that his expenses would be more than twice hers.


As a result, the trial Court did consider the requirements for awarding alimony in its findings of fact, and there is clear and credible evidence to support the findings of the Court. No abuse of discretion has occurred in this matter, and Marilyn has not marshalled evidence to prove that such an abuse did occur.

#### CONCLUSION

The findings of fact, conclusions of law, and decree of divorce entered in this matter were clearly based on credible evidence presented at trial. As a result, the decision of the

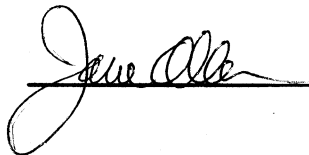
Trial Court should stand without modification.

DATED this   7   day of September, 1994.

  
\_\_\_\_\_  
Jane Allen  
Attorney for Appellee/Defendant

CERTIFICATE OF MAILING

I hereby certify that I mailed a four copies of the foregoing  
brief to Richard N. Bieglow, 170 S. Main, Suite 900, Salt Lake  
City, Utah 84101, postage prepaid this   7   day of Sept,  
1994.

  
\_\_\_\_\_

## APPENDIX #1: Custody evaluation performed by Elizabeth Hickey



THIS REPORT IS NOT MEANT TO BE RELEASED TO EITHER PARENT. THE PARENTS MAY HAVE A COPY OF THE "CONCLUSIONS AND RECOMENDATIONS".

CHILD CUSTODY EVALUATION

CONFIDENTIAL  
APRIL 20, 1993

THIRD DISTRICT COURT  
JUDGE J. DENNIS FREDERICK  
COMMISSIONER MIKE EVANS  
CIVIL # 924901964DA

EVALUATOR: Elizabeth Hickey, MSW  
Mediation and Divorce Center

PARTICIPANTS IN THIS EVALUATION:

Hammender Ahluwalia - Father  
Marilyn Ahluwalia - Mother  
Magan Ahluwalia - child (DOB: 2-16-79) Age 14  
Ravinder (Ravi) Ahluwalia child (DOB: 4-30-84) Age 8

PURPOSE OF THE EVALUATION:

On February 2, 1993, a child custody evaluation was begun on behalf of Hammender and Marilyn Ahluwalia's two minor children, Magan and Ravi. The purpose of the study is to make recommendations to the Court regarding the most suitable placement for Magan, age 14 and Ravi, age 8.

PROCEDURES:

Office visits were held with each parent individually to gain background information on this case. These visits were approximately two hours each. Following this, a home visit was made to each parents' home at a time when the children were present. Observations of the parent - child relationship were

made, as well as private individual interviews with each child during both home visits. Each parent concluded with another office visit to provide more information and follow up on their positions, and also to be given an opportunity to address the allegations which may have been made against them by the other parent. At least one reference was contacted on each side. In this case, references were a bit of a problem because neither party could provide specific references who knew both parties and could give concrete reference to the parenting abilities of both parents. The couple admitted that they hadn't been very social with their neighbors and usually did not have friends over to their home. Furthermore, the allegations made by each party in reference to the other, were usually acknowledged by both parties, and these situations were issues between the couple. There were occasions where the children were present or at least aware of the allegation, and they were questioned about what they saw. Generally speaking, most of the information gathered by the parties was consistent and therefore there was not much substantiating to do. As usual, the references contacted were spoke highly of the party whom they referred to.

#### BACKGROUND AND HISTORY:

Mr. and Mrs. Ahluwalia were married on December 27, 1976 in Atlanta Georgia. They met while he was a student at the University of Florida in May of 1974. They moved to Pennsylvania and lived there from 1978 until about 1985. Mr. Ahluwalia was transferred to Salt Lake and therefore the family moved to Utah. At the time of the move, Magan was about five years old and Ravi was still a baby. Mrs. Ahluwalia was not happy about moving to Utah and had a difficult time making the adjustment. She suffered from depression during this time, which resulted in her leaving for a time and returning to Florida where her family was. She left the children with their father for six weeks while she was gone. Mr. Ahluwalia states that she had a "mental breakdown" and Mrs. Ahluwalia states that she had her son premature in 1984 and suffered from "postpartum psychosis" due to the worrying she did about her underweight baby. She indicated that it took 6 months for him to achieve normal weight.

Both parties state similar reasons for the problems in the marriage. They had different ways of handling situations and managing money. Mr. Ahluwalia is much more structured and has a need for routine and predictability. He believes that both parents should be responsible for the family functioning. One of his complainus was that Mrs. Ahluwalia went on strike and did not fulfill her half of the responsibilities to the family. When she was working outside of the home, which was for brief episodes throughout the marriage (including four years of teaching in Florida in the early years of the marriage), he was looser on his

expectations. However, when she not working he felt that she should be more attentive to the home and children. They often fought about the laundry and grocery shopping. One particular fight which Magan and Ravi were aware of revolved around the laundry issue. Mr. Ahluwalia pushed Mrs. Ahluwalia with the laundry basket and ultimately ended up throwing the folded clothes outside, which was during the winter. This incident was unfortunate but they both admitted to it and recognized how it was inappropriate for the children to see them fighting.

Mrs. Ahluwalia claims that she was constantly under control from Mr. Ahluwalia and she could no longer live that way. She said that he kept her on a strict budget and gave her a small allowance for herself, which was \$20 per week. She said that she often saved up her own allowance and used it to buy things for the kids because she said it was difficult for her to get Mr. Ahluwalia to "OK" purchases she wanted to make. They often fought over this money issue. One big area of friction in their relationship centered around the grocery store and the manner in which groceries were purchased. Mr. Ahluwalia ultimately ended up being the person with this responsibility because he tried to teach Mrs. Ahluwalia how to shop but, according to him, she would come home with more staples such as toilet paper, paper towels, etc. than food. She states that she was very careful with her shopping, but acknowledges that when she finally got some money to go to the store she would try and stock up on things that she never had the chance to get.

Obviously, each party had a different attitude about money and ideas on how it should be managed. Mrs. Ahluwalia felt that Mr. Ahluwalia was a "total controller" and that she could not play his game any longer. She feels that she was emotionally abused by him with a "sprinkling of physical abuse" (about two episodes). She believes that he has an attitude about how women should be permissive to their husbands based on his upbringing in India. She stated that the men in India tell their wives what to do.

Also significant to this evaluation is the fact that Mr. Ahluwalia's father came over from India and has been living with the family since before the separation. Mrs. Ahluwalia contends that this is the straw that broke the camel's back in her opinion. She felt that she had to answer to two men instead of one. So this situation created conflicts in the home as well. Mr. Ahluwalia, Sr. does work outside the home at a fast food restaurant and appears to be quite independent for being in his seventies. The children have established a close bond to him as well.

#### PRIMARY CARETAKER:

As far as the children are concerned, Mrs. Ahluwalia was definitely the primary caretaker of the children throughout the marriage, mainly because she was home with them while Mr. Ahluwalia was



working outside the home. She worked outside the home on occasion but was mainly available for the children. Mrs. Ahluwalia was involved with the children's activities and helped them with their homework. She provided encouragement to the children in their pursuits. However, towards the end of the marriage and the strain of the conflict between the parents, it appears that there was less energy available for the children. Both parents had reached a point in their relationship where their individual needs were not being met and were therefore less emotionally available for the children. The children noticed the strain of their parents ongoing conflicts.

Due to the fact that the mother was the primary caretaker of the children the bond they feel with her is close. In the children's eyes, she is perceived as a nurturing, caring, somewhat over protective parent, and they love and miss her. They both expressed a desire to spend more time with her, particularly individual time. They feel that since the separation happened, they have not had the opportunity to be with her alone. However, they both felt that they didn't want anything else to change. They liked the way things had worked out, except for the fact that they needed more time with their mother.

#### CHILDREN'S ADJUSTMENT IN THEIR PRESENT SITUATION:

Since the separation occurred, the father has increased his involvement with the children, particularly in the area of doing homework with them and supporting them in their school activities. He is quite proud of the fact that both children have increased their grades in school and this in turn has increased their self esteem. Both children expressed pleasure in their success lately and they seem to be content with the arrangement as it is, with the exception of not having enough individual time with their mother.

Magan attends Union Middle School and is in the seventh grade. Her cumulative g.p.a. is 3.857 while taking more difficult subjects. She has a real strength in the area of math and has expressed an interest in this. She states that she enjoys her success in math and that whenever she has trouble understanding something, she just asks her father for help and he knows it because he is an engineer. While she acknowledged that her mother has always been supportive of their schoolwork, it seems that her mother's strengths are in the area of elementary education. Which concludes one to think that both parents have taken an active interest in the schooling of the children. During the years, this person was primarily the mother, but since the changes in the family, the father has taken up new commitments towards the children's successes. This new involvement can be felt by both children and they have expressed pleasure in his interest and participation. They will clearly feel the benefits of having both parents alternately being the supporter and encourager of their education at different times in their life.

Magan recently took the Stanford Achievement Tests which is a national test. She ranked in the 90% tile in many subjects. In science, reading comprehension, and total reading ability she ranked 99%. In many other subjects, she ranked 98% or close to it. In math, she achieved 96%. This clearly demonstrates Magan's outstanding abilities which need to be supported and encouraged. The benefit of having her father available to consult with on the math and science subjects is of value for Magan.

Ravi and Magan both showed improvement in their grades since the adjustment to the changes has taken place. Although their grades were good before the divorce, it is likely that the conflicts between the parent preoccupied their minds on occasion, causing them not to achieve to their fullest. Since the adjustment, both children have increased their performance in most subjects. This may be due to the more regular study habits they have now, and also due to the fact that things have "settled down at home" allowing them more emotionally availability to concentrate on their own activities. Ravi's teacher recently made the comment "Ravi has made great progress this past month. Ravi is very bright and has great potential. He is a good friend to others and fun for other children to be with."

#### CHILDREN'S PREFERENCE:

Magan in particular stated several times that she did not want to have to choose between her parents and that she loved both of them. She stated that she like how things were and that her main concern was to stay in the same school and continue the peer relationships and activities which she had built up. She is an articulate teenager with many positive things going for her. She definitely did not want to have to interrupt her school and friendships due to the divorce.

Ravi stated that he liked how things were and didn't want to change anything. When he realized that it was an option to spend more time with his mother, he became excited about this. This discussion developed because Magan needed a ride one day a week after school and it was arranged that Mrs. Ahluwalia would pick her up. As long as this was going to happen, it was decided that they would spend some time together and go out for a coke or something. This sounded very appealing to Magan and she looked forward to this. Although she was sensitive to ensure that Ravi's feelings would not be hurt, she stated that it would be nice to have some alone time with her mother so they could talk about other things without having Ravi there. She has a need for individual mother-daughter time and this should be supported.

After this was discussed, it appeared that Ravi felt a bit of jealousy. When questioned about whether or not he would like to have the same opportunity, his eyes quickly lit up and he enthusiastically said yes. This was discussed as a possibility between the children and their father. Mr. Ahluwalia was supportive of their desires and need for some individual time with their mother, but he wanted to be sure that their responsibilities would get taken care of while they were with their mother. He described a situation where the children had gone with their mother during the week and they come home and still had a lot of homework to do and they didn't have enough time to complete it.

Although Magan maintained that she did not want to choose between her parents, she felt a need to defend her father to her mother during the home visit with her mother. It was apparent that Magan felt irritated with her mother when she spoke in suspicious ways about their father. During the home visit at the mother's, Mrs. Ahluwalia raised her fears and suspicions that Mr. Ahluwalia might be planning to take the children to India and not return. This is a very real fear to Mrs. Ahluwalia because it was thrown out as a threat in some of the past arguments the couple had. Although Mr. Ahluwalia contends that he has never had intentions of doing such a thing, he said that he may have brought up some discussion about going to India (without the children) to see if Mrs. Ahluwalia was being motivated by finances.

At any rate, Mrs. Ahluwalia continues to carry her fears and anxiety about this matter into the future. The children are aware of these strong worries because she openly discusses in front of and with the children. They do not share the same fears and they think that in this area their mother is worrying for nothing. Mrs. Ahluwalia has heard horror stories about fathers who take their children to foreign countries where the man is viewed as the authority of the family, and the mother doesn't have a voice. She fears that if this happened she would not have any legal recourse to get her children back to the United States. Valid or not, these fears are very real to Mrs. Ahluwalia and whatever precautionary steps which can be taken to help alleviate her worries about this would ultimately help her and also help the children since they are exposed to her worries over this.

#### BENEFIT OF KEEPING THE SIBLINGS TOGETHER:

It is generally accepted that it is in the best interest of keeping the siblings together unless there is a good reason to do otherwise. In this case, the possibility of splitting the children did not even come up because there is no basis for even considering this. The children appear to be close to each other and enjoy the

benefits of a sibling relationship.

RELATIVE STRENGTH OF THE CHILDREN'S BOND WITH EACH PARENT:

Both children enjoy close relationships with each of their parents. The observations of the parent - child relationship showed that they felt relaxed and comfortable in the presence of both of their parents. The children are delightful and have warm and friendly personalities. It appears that the children have acquired the benefits of positive personalty traits from each parent.

Mrs. Ahluwalia appears to be easy going and notices the simple and wonderful things in life along the way. She will frequently point out these types of observations to the children which has helped them to consider the less noticeable things in life. She is also nurturing and warm in her approach to them. They enjoy the time with her and they greatly need and want the relationship with her to maintain and increase in frequency.

In the past year, the bond that the children have with their father appears to have been strengthened quite a bit due to the considerable amount of time they have spent together and also because the strain of the marriage is no longer present in the home. This situation afforded the father to focus more on the needs of the children and become a more active participant in their life. Even Mrs. Ahluwalia pointed this out. She said that one benefit of the divorce is that it created an opportunity for the children to get closer to their father. Now that the children have had time to adjust to this new lifestyle, and they are happy, it would be difficult to justify another major disruption. A gradual and smooth increase in time with their mother would provide them with more opportunities to maintain the close bond they have with her.

The children seem to perceive their father as a stable and secure person whom they can count on. This provides them with a sense of security and predictability. They seem their mother as more spontaneous in life which provides a refreshing outlook for them. She enjoys activities with them and they have engaged in many sports and games together. This evaluator feels that the children feel a friendship bond with the children as well as a parental bond. Through the course of the marriage, the father was the authority figure in the home, and consequently, at times it may have appeared to the children that their mother was under their father's rules just as they were. This factor may contribute to their sense of enjoyment they experience with their mother because in some ways they perceive her on a similar level because of how the family hierarchy was while they were growing up.

### PARENT FUNCTION RELATED CHARACTERISTICS:

Regarding the moral character and emotional stability of both parents it appears that there are no major obstacles which would prevent either parent from fulfilling their role as a parent. The stressors of ending a long marriage were evident in the final days of the marriage which resulted in several confrontations, but it seems that these stressors have subsided.

Both parents greatly desire to have custody of the children and have a very strong interest in being an active parent to both children.

Since the children have increased their bond with both of their parents in different ways, they seem to feel comfortable with the ability of each parent to provide personal as well as surrogate care. Since the separation, the children have had the chance to get to know each of their parents in separate settings away from the other. This has provided the situation for the children to see their parents fulfill certain roles which were generally accepted duties of one or the other during the marriage.

There were no problems with drug or alcohol abuse that were mentioned by either parent.

Mrs. Ahluwalia has strong Christian beliefs and speaks of her faith quite often. She discusses this with the children. She has through the years attended many different non-denominational churches and has taken the children with her. The children did not go to church on any type of regular basis, but they have gone with their mother sporadically. Mr. Ahluwalia had a guiding belief system in living right and doing the right thing. He teaches his children sound, honest approaches to living a fulfilling life. The children will gain the benefit of both approaches when they are with their respective parent.

Financially, Mr. Ahluwalia has an income of approximately \$4000 a month as a manager engineer. He has worked hard for his position in the company and the president of the company places high value on the contribution he makes. He has been with this company for approximately 14 years.

Mrs. Ahluwalia is seeking full time employment as a teacher but she has stated that it is very difficult to obtain a job right now. She said that there are so many teachers looking for employment. She is currently substitute teaching and working odd jobs in the evenings, such as "All A Dollar" discount store. She hopes that when she gains a teaching position, her work schedule will be similar to the schedule the children have so they can spend more time together.

THE FOLLOWING PORTION OF THE REPORT MAY BE GIVEN DIRECTLY TO THE PARENTS.

CONCLUSIONS AND RECOMMENDATIONS:

As outlined in detail throughout the report each parent makes a significant contribution to the well being of the children. Both parents have different attitudes and approaches toward life, based somewhat on their different cultural belief systems. The children have been exposed to the varying styles of each parent for the entire life, so they are accustomed to this.

Through the years of having their mother as their primary caretaker in their life, they developed a close bond with her, as well as a friendship with her. They appear to have fun together and enjoy the time they spend with each other. She reminds them to look at all aspects of the world and takes pride in the fact that she helps them to notice the wonder of the world. She feels that she adds a broader perspective to their world because of these touches. Without a doubt, the children have been enriched through their experiences with their mother. She has provided stimulating activities for them and often asks them thought provoking questions.

However, the children have come to know another aspect of their father since the separation. He has used the opportunity of being the primary parent to strengthen his relationship with the children and to interact with them in ways that he previously had not. He has taken a very active role in their education, activities, car pools, sports, etc. The children report that they are enjoying this new dimension of relating to their father. Magan has indicated that she feels that both parents are better parents now that they have stopped their daily battles. Consequently, the parent - child relationship has improved from what it was prior to the separation. This factor may be one reason why both children express contentment with the way things are, except for needing and wanting more individual time with their mother.

It is important that it was particularly important to Magan that she not be forced to choose between her parents. She wanted this fact to be known to both parents. She loves both of them, and did not want to say or do anything to hurt either of them. She was adamant about this, and rightly so. However, in exploring the situation with her in other ways, it became clear that she had made an adjustment to the way things were and that she was content with her world. As a typical 14 year old, who is excelling in her school and activities, she is putting a great deal of energy into her personal responsibilities and friendships. She does not want to interrupt the world she has created for herself. As stated

earlier, she would like more of a set time where she can count on "special time" with her mother. She would also like it if there were not arguments between her parents regarding the time she would spend with them. She clearly indicated to her father that she would like more time with her mother. He was supportive of this as long as the schedule respected the fact that Magan had time to do her homework. The same situation goes with Ravi. The fact that the children have become accustomed to a schedule which provides the necessary structure they need to perform and excel, contributes to their sense of well being. Both children appear to have good self esteem and enjoy positive relationships with their peers, and they take pride in their achievements.

One factor which was heavily weighted is the consideration given to the well being of the children in their present environment. They have gone through the transition and emotional adjustment of accepting a routine which has them living with their father as a primary residence. In many different ways, they expressed a reluctance to have to make another change. However, there was an openness and willingness to modifying the time sharing plan. More time with their mother would seem to meet their needs, without causing major changes and disruptions in their lifestyle.

All of the factors necessary for a Uniform Child Custody Evaluation as per Rule 4-903 were considered and weighted. Ultimately, the factors weighed more heavily in the father's favor for a primary residence.

However, it is preferable and recommended that the parents share joint legal custody of the children. Mrs. Ahluwalia has made a significant contribution to the children's lives and she should be provided with the opportunity to continue to be involved with decisions which affect their life.

Although there have been complications in the past regarding the time sharing schedule, it is believed that the parents can work this out if the expectations are written clearly and specifically.

Consideration should be given to using the Advisory Visitation Guidelines as outlined in House Bill #32 (effective May 1993). Specific recommendations for this family, based on the individual needs of these children, are as follows:

In addition, the time sharing schedule should include a provision for one afternoon/ evening per week for each child to be with their mother (alone) until 9:00 pm. During this time, it would be expected that the children would fulfill their responsibility of completing their homework so that this is done by the time they get home. Also, it would naturally be expected that the child would have dinner with their mother.

In addition to this, the children should have the benefit of every other Wednesday (or other designated weeknight) to be together with their mother from approximately 4:30 pm to 8:30 pm. The same expectations as outlined in the preceding paragraph would be in effect.

The children have been living with their mother every other weekend since the separation, and this should certainly be continued.

The children's summer schedule should include approximately 70% of their vacation time to be spent with their mother, since the father will have the primary residence during the school year. When the children are living with their mother during this time, it would be expected that they could have the same type of time sharing with their father as they had with their mother.

Since Mrs. Ahluwalia has expressed numerous fears about Mr. Ahluwalia leaving the country with the children and not returning, possibly the court could give consideration on how to build a provision into the final order which clearly protects against this. Mr. Ahluwalia firmly denies these allegations, but the fact that Mrs. Ahluwalia believes it to be a possibility, her fear on this matter has had an effect on the children and this in itself should be respected.

Lastly, the parents should make every effort to promote each child's relationship with the other parent. Mr. Ahluwalia should exercise more flexibility with the children's desire to spend time with their mother (in regards to spontaneous situations that do arise), and Mrs. Ahluwalia should make a greater effort to abide by the expectations set forth and try and set her schedule to work with these guidelines.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Elizabeth Hickey". The signature is fluid and elegant, with a large, stylized 'E' and 'H'.

Elizabeth Hickey, MSW





"I Still Have a  
Mom and a Dad."

Mediation and Divorce Center

### ADDENDUM TO CHILD CUSTODY EVALUATION

CIVIL #

Ahluwalia vs. Ahluwalia

Purpose of this addendum:

Within days of the child custody report being released, both parents spoke with me about the recommendation. In each independent conversation, both parents asked questions about the meaning of "joint custody" and the implications contained within this definition. Each parent used the word "control" that the other parent might have over them if the decision was to have joint custody.

Mr. Ahluwalia's concern and hesitation with joint custody was that it would give Mrs. Ahluwalia the opportunity to come around whenever she felt like it, and get involved in making decisions which would cause problems. The problems would arise due to the reality that they typically don't view the situation in the same manner (which was one of their main problems throughout the marriage). In addition, Mr. Ahluwalia felt that a joint custody situation would prevent him from accepting a company transfer if one were offered to him. He wanted to keep his options open without having to gain Mrs. Ahluwalia's approval on certain matters. Overall, he felt that the option of "joint custody" would give Mrs. Ahluwalia too much "control" over decisions that he could make.

On the other hand, Mrs. Ahluwalia expressed her concerns by asking "Does this mean that he can no longer have control over me?" She felt that Mr. Ahluwalia had exerted far too much influence and control over her throughout the marriage, and that she did not want to give him the freedom to continue to control her in the future by having sole custody of the children.

In addition, Mrs. Ahluwalia again voiced her main fear in all of this regarding her concern that Mr. Ahluwalia would take the children out of state, or out of the country, and that she would not be able to stop him from doing this. While Mr. Ahluwalia denies that he would permanently take the children out of the country, the possibility for a move to another state does exist.

In Summary, both parents have valid concerns for the implications of joint custody and what it could mean for the final outcome. This addendum will attempt to speak to these concerns and clarify the intention for recommending joint custody, with the father having the primary residence.

#### BASIS FOR JOINT CUSTODY RECOMMENDATION:

As stated in the custody evaluation, Mrs. Ahluwalia was the children's primary caretaker for years throughout the marriage. The children feel a close bond to her as a result of this. However, it is highly evident to this evaluator that the children have made remarkable adjustment to their current living situation with their father. They are content, happy children who continue to excel in their schoolwork and with their social activities. Their father provides a stimulating environment for them, and he has made significant effort, particularly in the last few years, to get more involved in their activities. The children have responded well to this and they enjoy a close relationship with their father.

Although it was evident that the parents have had a difficult time making joint decisions throughout the marriage, it was felt by this evaluator that joint custody would be appropriate since the mother had been such an active caretaker for the children. The provision for joint custody states as per the Utah Code 30-3-10.1, section 2 - "may include an award of exclusive authority by the court to one parent to make specific decisions" It was felt that with careful consideration to the fears each parent had for not using joint custody, this could be addressed. For example, Mr. Ahluwalia could be awarded the final decision making authority on educational matters.

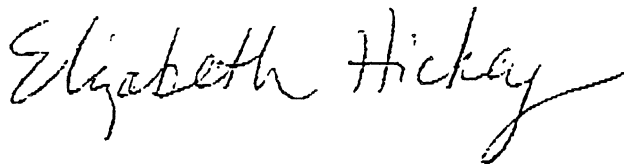
The larger issue which was raised as a concern for joint custody was in the area of whether Mr. Ahluwalia could move out of state or out of the country, with or without Mrs. Ahluwalia's consent. I do not believe that this evaluation can address the speculation of this possibility when there is no actual evidence that this may occur at this time. This factor in itself, is beyond the scope of this particular child custody evaluation. At this time, there is not information presented to make a final recommendation on this matter.

Of interest, the Legislatively appointed Divorce, Child-Custody and Visitation Task Force has heard many complaints on the matter of the custodial parent moving out of state with the children, and they have studied this issue, and continue to study it. This is a controversial matter and one that is best determined by the court as per the Utah Code, if such a situation should arise in the future.

RECOMMENDATIONS BASED ON THIS ADDENDUM:

1. Joint legal custody is preferable to maintain the active involvement of both parents. However, if this were to work, it would need to be carefully spelled out in detail so that an impasse in their discussions would not result in having to return to court for a decision.
2. An unwavering recommendation for the father to be the primary residence home. The time sharing plan outlined in the evaluation is also recommended. Although it appears that there are frequent changes in the schedules, it is felt that the individual time each child will have with their mother is very needed and desired by the children, and therefore in their best interest.
3. If it appears that "joint custody" can not be managed by the parents, due their inability to communicate, cooperate and compromise, and the court finds that this situation would not work, forcing a decision for sole custody, the recommendation for sole custody should be for the father. However, every effort should be made to work out a parenting plan which addresses the concerns of each parent. Mediation would be a positive alternative for these parents and it would also provide them with a model or "framework" for working out their problems in the future.
4. Therefore, a recommendation for entering into at least 2 sessions of mediation (with a skilled mediator) to work out the details of their "Parenting Plan", including rules for dropping children off and picking them up (a specific issue which has been debated in the past). Mediation would spell out in detail what the expectations were for the time sharing schedule so that arguments could be prevented (example: should the children be expected to have dinner and their homework completed prior to returning to their father's home, which was a real issue in this case).
5. That the parents make every effort to keep the children out of their conflicts with each other so that the children can have the most meaningful relationship possible with each of their parents.
6. That the court make final orders on the issue of the "potential move out of state" as a separate matter

Respectfully Submitted,



Elizabeth Hickey, MSW

May 20, 1993



440 West 800 South, P.O. Box 209, Salt Lake City, Utah 84110-0209  
801/359-8731 Toll Free: 800/453-9216 800/453-4874 Fax: 801/355-9303 Telex: 3789493

FAX # 801-355-9303

## TELECOPIER COVER LETTER

TO: JANE ALLEN FAX NUMBER: 532-6502

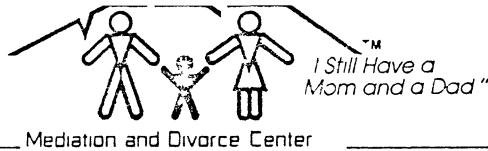
ATTENTION: \_\_\_\_\_

FROM: HAMINDER AHLUWALIA DATE: 5-20-93

RE: Addendum to Custody Report.

Number of pages including cover page: Four (4)

If you do not receive legible copies or all pages, please inform us.



## ADDENDUM TO CHILD CUSTODY EVALUATION

CIVIL #  
Ahluwalia vs. Ahluwalia

Purpose of this addendum:

Within days of the child custody report being released, both parents spoke with me about the recommendation. In each independent conversation, both parents asked questions about the meaning of "joint custody" and the implications contained within this definition. Each parent used the word "control" that the other parent might have over them if the decision was to have joint custody.

Mr. Ahluwalia's concern and hesitation with joint custody was that it would give Mrs. Ahluwalia the opportunity to come around whenever she felt like it, and get involved in making decisions which would cause problems. The problems would arise due to the reality that they typically don't view the situation in the same manner (which was one of their main problems throughout the marriage). In addition, Mr. Ahluwalia felt that a joint custody situation would prevent him from accepting a company transfer if one were offered to him. He wanted to keep his options open without having to gain Mrs. Ahluwalia's approval on certain matters. Overall, he felt that the option of "joint custody" would give Mrs. Ahluwalia too much "control" over decisions that he could make.

On the other hand, Mrs. Ahluwalia expressed her concerns by asking "Does this mean that he can no longer have control over me?" She felt that Mr. Ahluwalia had exerted far too much influence and control over her throughout the marriage, and that she did not want to give him the freedom to continue to control her in the future by having sole custody of the children.

In addition, Mrs. Ahluwalia again voiced her main fear in all of this regarding her concern that Mr. Ahluwalia would take the children out of state, or out of the country, and that she would not be able to stop him from doing this. While Mr. Ahluwalia denies that he would permanently take the children out of the country, the possibility for a move to another state does exist.

In Summary, both parents have valid concerns for the implications of joint custody and what it could mean for the final outcome. This addendum will attempt to speak to these concerns and clarify the intention for recommending joint custody, with the father having the primary residence.

#### BASIS FOR JOINT CUSTODY RECOMMENDATION:

As stated in the custody evaluation, Mrs. Ahluwalia was the children's primary caretaker for years throughout the marriage. The children feel a close bond to her as a result of this. However, it is highly evident to this evaluator that the children have made remarkable adjustment to their current living situation with their father. They are content, happy children who continue to excel in their schoolwork and with their social activities. Their father provides a stimulating environment for them, and he has made significant effort, particularly in the last few years, to get more involved in their activities. The children have responded well to this and they enjoy a close relationship with their father.

Although it was evident that the parents have had a difficult time making joint decisions throughout the marriage, it was felt by this evaluator that joint custody would be appropriate since the mother had been such an active caretaker for the children. The provision for joint custody states, as per the Utah Code 30-3-10.1, section 2 - "may include an award of exclusive authority by the court to one parent to make specific decisions". It was felt that with careful consideration to the fears each parent had for not using joint custody, this could be addressed. For example, Mr. Ahluwalia could be awarded the final decision making authority on educational matters.

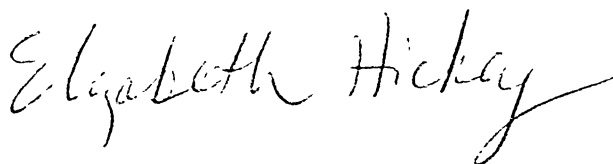
The larger issue which was raised as a concern for joint custody was in the area of whether Mr. Ahluwalia could move out of state or out of the country, with or without Mrs. Ahluwalia's consent. I do not believe that this evaluation can address the speculation of this possibility when there is no actual evidence that this may occur at this time. This factor in itself, is beyond the scope of this particular child custody evaluation. At this time, there is not information presented to make a final recommendation on this matter.

Of interest, the Legislatively appointed Divorce, Child-Custody and Visitation Task Force has heard many complaints on the matter of the custodial parent moving out of state with the children, and they have studied this issue, and continue to study it. This is a controversial matter and one that is best determined by the court as per the Utah Code, if such a situation should arise in the future.

RECOMMENDATIONS BASED ON THIS ADDENDUM:

1. Joint legal custody is preferable to maintain the active involvement of both parents. However, if this were to work, it would need to be carefully spelled out in detail so that an impasse in their discussions would not result in having to return to court for a decision.
2. An unwavering recommendation for the father to be the primary residence home. The time sharing plan outlined in the evaluation is also recommended. Although it appears that there are frequent changes in the schedules, it is felt that the individual time each child will have with their mother is very needed and desired by the children, and therefore in their best interest.
3. If it appears that "joint custody" can not be managed by the parents, due their inability to communicate, cooperate and compromise, and the court finds that this situation would not work, forcing a decision for sole custody, the recommendation for sole custody should be for the father. However, every effort should be made to work out a parenting plan which addresses the concerns of each parent. Mediation would be a positive alternative for these parents and it would also provide them with a model or "framework" for working out their problems in the future.
4. Therefore, a recommendation for entering into at least 2 sessions of mediation (with a skilled mediator) to work out the details of their "Parenting Plan", including rules for dropping children off and picking them up (a specific issue which has been debated in the past). Mediation would spell out in detail what the expectations were for the time sharing schedule so that arguments could be prevented (example: should the children be expected to have dinner and their homework completed prior to returning to their father's home, which was a real issue in this case).
5. That the parents make every effort to keep the children out of their conflicts with each other so that the children can have the most meaningful relationship possible with each of their parents.
6. That the court make final orders on the issue of the "potential move out of state" as a separate matter.

Respectfully Submitted,



Elizabeth Hickey, MSW

May 26, 1993

## APPENDIX #2: Exhibit of Income and Expenses of the Parties



AHLUWALIA VS. AHLUWALIA  
DEFENDANT'S EXHIBIT OF INCOME AND EXPENSES

DEFENDANT:

Gross monthly:\$4730  
Less taxes:\$1419.00

Net income:\$3311.00  
Interest: 68.00

Net income: \$3379.00

PLAINTIFF:

Gross monthly: \$1200.00 \*  
Less taxes: \$165.00

Net income: \$1035.00  
Interest: 230.00

Net income: 1265.00

EXPENSES as shown on each party's financial declaration form:

DEFENDANT:

House payment: \$641.00  
Maintenance: \$125.00  
Food and supplies: \$400.00  
Utilities: \$175.00  
Telephone: \$50.00  
Laundry and cleaning: \$50.00  
Clothing: \$300.00  
Medical ins: \$111.00  
  
Medical expenses: \$100.00  
Dental: \$30.00  
Insurance: \$0.00  
Child care: \$150.00 summer only  
School for children: \$60.00  
Entertainment:\$400.00  
Incidentals: \$100.00  
Transportation: \$0.00  
Auto expense:\$350.00  
Installment payments: \$480.00  
                                    \$400.00\*  
  
Total: \$3,895.00  
Income: \$3,379.00

Difference:

Plaintiff: -516

\*Defendant pays this amount  
on credit cards each month.

PLAINTIFF:

Rent: \$450.00\*\*  
Maintenance: \$50.00  
Food and supplies: \$200.00  
Utilities: \$50.00  
Telephone: \$20.00  
Laundry and cleaning: \$10.00  
Clothing: \$100.00  
Medical Ins: COBRA will be  
                    \$119.32 (not included below)  
Medical expenses: \$70.00  
Dental: \$10.00  
Insurance: \$0.00  
Child care: \$0.00  
School for children: \$10.00  
Entertainment: \$150.00  
Incidentals: \$30.00  
Transportation: \$6.00  
Auto expense:\$200.00  
Installment payments: \$242.00\*\*\*  
  
Total: \$1,598.00\*\*\*\*  
Income:\$1,165.00

Difference:

Defendant: -433

Defendant's income if she  
worked full time at \$8.00 per  
hour:\$1376 plus \$230.00 interest  
= \$1606 gross monthly income  
Child support \$231.00 low income  
Child support \$273.00 imputed  
income

\*Plaintiff's income at trial was determined to be \$1,021

\*\*Plaintiff's rent at trial was \$386 per month

\*\*\*Plaintiff's installment pmts. are for same expenses as ones  
shown for clothes, entertainment, etc.

\*\*\*\*Plaintiff's expenses at trial were found to be \$1,292.

### APPENDIX #3: Exhibit of the Division of Property

AHLUWALIA VS. AHLUWALIA

DEFENDANT'S PROPOSED DIVISION OF ASSETS:

Defendant:

House equity: \$28,500  
State of Wyoming bond: \$10,000  
Checking account: \$3,700\*  
Fidelity acct:\$4,050  
Baker stock: 115 shares

Total: \$42,550

Plaintiff:

State of Oregon Bond: \$10,000  
Credit Union: \$200.00  
Fidelity account:\$32,350  
Baker stock: 116 shares  
Thermodynamics stock: 300 shares

Total: \$42,500

\*Not included as plaintiff received \$4,000 in May and July, 92

RETIREMENTS:

Defendant's 401K:\$40,525  
Fidelity IRA: 12,000

Total: \$52,525

QDRO for 401K: \$40,525  
Fidelity IRA: \$3,500  
Plaintiff's IRA: 8,500

Total: \$52,525

CASH:

\$7,000 remaining to be divided equally

Tax Refund:  
\$275.00

\$275.00

## APPENDIX #4: Findings of Fact

Jane Allen, Bar #45  
Attorney for Defendant  
310 S. Main, Suite 1305  
Salt Lake City, Utah 84101  
(801) 355-1300

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

---

MARILYN L. AHLUWALIA,	)	FINDINGS OF FACT AND
plaintiff,	)	CONCLUSIONS OF LAW
vs.	)	
HAMINDER S. AHLUWALIA,	)	Civil No. 92490 1964
defendant.	)	Judge J. Dennis Frederick

---

This matter came on for hearing the 17th day of November, 1993. The plaintiff was present with her attorney, Richard Bigelow. The defendant was present with his attorney, Jane Allen. The parties presented evidence, exhibits, and argument, and based thereon and good cause appearing therefore, the Court now makes the following:

FINDINGS OF FACT

1. The plaintiff has been a resident of Salt Lake County for the three months immediately prior to the filing of this Complaint for Divorce.

2. The parties were married on December 26, 1976 and are now and have been since that time husband and wife.

3. The parties suffer from irreconcilable differences.

4. There have been two children born of this marriage, to wit: Megan, age 14 and Ravi, age 9.

5. Pursuant to an order of this Court a custody evaluation

was completed on April 20, 1993.

6. From the childrens' birth the plaintiff was the primary caretaker up until the time of the parties' separation on or about May 6th, 1992, as the defendant worked outside the home.

7. Either party is capable of providing custodial care for the children, but the children have a stated preference for remaining with the status quo, and the children have adjusted remarkably well, living with their father in the family home since the plaintiff left approximately a year and a half ago. The father provides a stable, structured, secure environment for the minor children.

8. It is not disputed that the children want to remain together, and that it is in their best interests to remain together.

9. Since the plaintiff left, the bond between the children and their father has significantly increased. The children have improved their school work, and their emotional stability in the home setting has improved.

10. As a result, the existing custodial arrangement in place since May of 1992, approximately 19 months, is reasonable and ought to be continued.

11. The children have adjusted to the loss of their mother due to the separation, and it is not in their best interests to again traumatize them with a change.

12. The moral and emotional stability of both parties is not significantly different.

13. Both parties have a strong desire for custody of the

children.

14. The defendant has not supported the plaintiff's religious efforts in terms of both herself and the children.

15. The children have little in the way of kinship relationships, but that they do have is with their grandfather with whom they seem to be adjusted and comfortable.

16. The parties disagree in the manner of rearing children, and in this Court's view, a custody arrangement of joint physical custody is not workable.

17. The best interests of the children will be served by awarding custody to the defendant, subject to plaintiff's reasonable and liberal visitation as follows:

A. Standard visitation in the Third District, plus one afternoon\evening per week for each child to be with his or her mother alone until 9:00 p.m. During this time it is expected that the children will complete their homework so that this is done by the time the child comes home, and that the child has dinner with his or her mother.

B. Both children should spend every other Wednesday, or night as agreed by the parties (this not in addition to the mid-week visitation in the Standard visitation schedule), with their mother from 4:30 p.m. until 8:30 p.m., with homework and dinner to be as set forth above.

C. Summer visitation should include approximately 70% of the childrens' summer vacation time, with the father to have the same type of visitation with the children as the mother has during the rest of the year.

D. The defendant is permanently restrained from taking the children outside the continental United States without first giving at least 30 days notice to plaintiff so that she can take whatever action she deems appropriate or necessary.

E. Both parties are encouraged to expand visitation as it is deemed appropriate and in accord with the desires of the children, as they are getting to the age when they will be able to voice their preferences with regard to visitation, which the parties should honor.

18. The defendant is more able to provide financially for the children and he has done so without assistance from the plaintiff since the time of the parties' separation.

19. The plaintiff has not worked full-time since approximately 1984. Plaintiff wants to be a teacher but cannot find a full time job. Plaintiff also has considerable experience in the contact lens manufacturing business, yet she has not seriously sought full-time employment in that field.

20. The plaintiff is 43 years old and has maintained several part-time jobs apparently without any medical complications, although she complains of bursitis and arthritis. Neither party's work ability is in any fashion impaired.

21. The plaintiff is capable of full-time work and has failed to seek full time work. Plaintiff presently works 38 hours per week at \$6.25 per hour, resulting in a monthly income of \$1,023 per month.

22. Plaintiff's monthly expenses are \$1,292 per month.

23. The defendant's earnings are \$4,798 per month gross and



his expenses for himself and the children are \$3,351, pursuant to Exhibit 17.

24. The plaintiff should pay child support in accordance with the uniform child support guidelines in the amount of 177.00 per month for the two children until said child reaches age 18 or graduates from high school with his or her class, whichever comes last.

25. The plaintiff has not shown a persuasive need for continuing alimony and she has failed to show the defendant's ability to pay, and accordingly is not awarded further alimony.

26. Defendant's gross income, less the expenses that he has in rearing the children, indicates that defendant does not have the ability to pay continuing alimony.

27. The plaintiff has shown that her monthly expenses exceed her income, but her monthly expenses appear to be somewhat inflated, and the real issue is plaintiff's lack of any serious effort at full-time employability. While it may not immediately be within the profession of her choice, she certainly can obtain other employment full time and continue to look for employment as a school teacher.

28. The plaintiff voluntarily did not follow up with an interview with Lenscrafters awaiting the result of this trial.

29. The defendant should be entitled to mandatory income withholding relief should the plaintiff become more than 30 days in arrears in her child support obligation.

30. The defendant presently provides health insurance for the parties' minor children and should continue to do so for so long as

said insurance is available through his employment. Any medical, dental, orthodontic and optical expenses not covered by said medical insurance should be divided equally by the parties.

31. The parties are purchasing the house and lot located at 1021 E. Buchnell, Sandy, Utah, which, should be awarded to defendant, subject to no claim by plaintiff, with plaintiff to be compensated for the house equity in the property division set forth below, and with the defendant to be solely responsible for all indebtedness thereon, holding the plaintiff harmless therefrom.

32. The other assets, to equalize the values thereof, should be divided as follows:

A. To Defendant: The state of Wyoming bond, the balance in the First Interstate checking account, \$4,050 of the Fidelity account, and 115 shares of Baker stock.

B. To Plaintiff: The State of Oregon bond, the credit union account, \$32,350 of the Fidelity account, 116 shares of Baker stock, and all Thermodynamics stock.

33. The plaintiff shall receive one-half of the defendant's 401 K plan with his employment which was acquired during the marriage in the approximate amount of \$40,525, and she is awarded a qualified domestic relations order which will segregate that account, with it to be payable to plaintiff at the earliest possible date under the requirements of the plan.

34. The plaintiff shall also receive the IRA in her name, and the sum of \$3,500 from defendant's Fidelity IRA. The defendant is awarded the remainder of the Fidelity IRA in the amount of \$12,000.

35. The personal property of the parties has been divided

equitably between the parties, with the defendant to pay plaintiff the sum of \$1,000 to equalize the value of the personal property as it is divided.

36. Each party shall receive the sum of \$3,500 from the cash in defendant's possession, and one-half of the 1982 tax refund in the amount of \$275.00 to each party.

37. All amounts that should be transferred from defendant to plaintiff as set forth above shall be completed within 30 days of the entry of the decree of divorce, and plaintiff should execute and give to defendant a quit-claim deed to the marital residence.

38. All marital debts have been paid except for the mortgage on the marital residence, which the defendant should pay. Each party should pay the debts in his or her name alone, incurred after the separation of the parties, holding the other party harmless therefrom.

39. Each party has the ability to pay his or her own attorneys fees and costs incurred herein.

Having made the foregoing findings of fact, the Court now makes the following:

#### CONCLUSIONS OF LAW

1. The plaintiff is entitled to a decree of divorce, the same to become final upon entry.

2. The decree of divorce shall be drafted in accordance with

the foregoing findings of fact.

DATED this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

BY THE COURT:

---

Hon. J. Dennis Frederick  
District Court Judge

Approved by:

---

Richard Bigelow  
Attorney for Plaintiff

## APPENDIX #5: Cited pages of Trial Transcript

1 are?

2 A The basic problem that my husband and I have is  
3 that he controls me and he is verbally abusive and he wants  
4 everything done his way.

5 Q Your husband is not a native of the United States;  
6 is that correct?

7 A That is correct.

8 Q Where is he from?

9 A He's from Bombay, India.

10 Q Do you know how old he was when he came to the  
11 United States?

12 A Well, I'd have to think about that one.

13 Q Approximately.

14 A Twenty -- he's one year younger than I am.

15 Q How old are you?

16 A Forty-three.

17 Q During the course of your marriage, did you have  
18 experiences with Mr. Ahluwalia where he was physically abu-  
19 sive to you?

20 A He has hit me three times during the course of our  
21 marriage.

22 Q Would you describe those times, please?

23 A Well, once in a tollbooth, I'm still wondering  
24 about that one, and another time which was very upsetting was  
25 we were selling our home. The home was spick-and-span clean

1 good for one year and I sought to be a teacher and I had one  
2 interview during the course of that time.

3 Q Did you do anything in the teaching field such as  
4 substituting or that type area?

5 A The entire time I was in Utah?

6 Q During the first year time period you just talked  
7 about.

8 A No.

9 Q Were you employed in any other capacity after mov-  
10 ing to Utah, during that first year?

11 A I got a job as Christmas help at Best, and then the  
12 following year I got a job as Christmas help as Sears, or  
13 vice-versa.

14 Q Do you recall what the rate of pay was for that  
15 type of work?

16 A About 5.50.

17 Q At some point did you make a decision once you were  
18 here in Utah that you did want to get back into teaching?

19 A Yes, I did.

20 Q When was that?

21 A In 1989.

22 Q And at that point were you in a position from a  
23 licensing point of view to be able to obtain employment as a  
24 teacher in Utah?

25 A I could not be a full employed teacher in Utah in

1 1989.

2 Q Why not?

3 A My certificate had expired.

4 Q And so you were required to do something to get

5 that certificate reinstated?

6 A That is correct.

7 Q What did you have to do?

8 A Approximately 1990 I went to take courses offered

9 by Jordan School District to reinstate myself as a teacher

10 which continued over a period of about two years.

11 Q And eventually you were successful in obtaining

12 that license?

13 A That is correct. I think it was 1991.

14 Q And so you were currently licensed so that you can

15 teach school?

16 A That is correct.

17 Q Have you sought employment in Utah as a school

18 teacher?

19 A Yes, I have.

20 Q Where?

21 A I have put in my applications in Farmington area,

22 Salt Lake County area, Jordan School District, Granite School

23 District, Murray School District.

24 Q Have you had any offers?

25 A Not one.



1           Q     How long have you had your application for employ-  
2     ment with those various districts?

3           A     Two years.

4           Q     Have you been informed what the cross-checks are  
5     for your employment as a teacher by any of those districts?

6           A     I have been told for instance in Granite School  
7     District that there is a tremendous influx of people and they  
8     are not hiring as many people as they have, maybe a tenth of  
9     what they usually hire. That is an approximation.

10          Q     Have you been substitute teaching for any of the  
11     school districts in the area?

12          A     Yes, I have.

13          Q     For what period of time have you been doing that?

14          A     1989 to 1993 I was employed by Jordan School  
15     District and I'm also employed now presently with Granite  
16     School District, 1992 to 1993 at present.

17          Q     And what is the nature of that employment?

18          A     I am now a permanent sub.

19          Q     Does that entitle you to a salary, a monthly sal-  
20     ary, or are you just paid hourly?

21          A     I am paid hourly at the end of each month or at the  
22     middle of each month, actually.

23          Q     Are you currently substituting for anyone else  
24     besides Granite School District?

25          A     No, I am not.

1           A     Well, from what I can gather, I would say the car  
2     is in very poor condition. It has constant problems with the  
3     front part of the car and I would say it would be worth about  
4     three to five hundred dollars.

5           Q     Are you continually having to incur repair expenses  
6     with the vehicle?

7           A     Yes, monthly.

8           Q     Is it your testimony that as to your automobile  
9     expense that you indicated on your financial declaration that  
10    that is something that will remain the same if you have the  
11    same vehicle? Do you have any idea?

12          A     I would say it would be incurring similar  
13    difficulties.

14          Q     Do you have some health problems that would impact  
15    your employment or employability?

16          A     As of last year I started having pain in my left  
17    arm, very severe pain, and I had to go in for therapy through  
18    FHP and I was diagnosed as having bursitis in my left arm.  
19    Also on several occasions I was x-rayed through my hand, my  
20    arms, my shoulders, my knees. I was x-rayed and I have  
21    what's called degenerative joint arthritis.

22          Q     And how does that impact your ability to be  
23    employed?

24          A     One of the problems I've run into is that I do want  
25    to do stock work or I do want to do waitressing where you

1 have to lift a lot of weight, but unfortunately, I cannot  
2 lift 40 pounds of a tray or something like this anymore.

3 Q Do you have any secretarial skills?

4 A No, I do not.

5 Q Any type of word processing skills?

6 A No, I do not.

7 Q You've never taken any training in those areas?

8 A No.

9 Q Other than your training in teaching school and the  
10 optometrics you've talked about, have you had any other kind  
11 of professional or job-related training?

12 A No, I've never been on computers, no.

13 Q Is it your belief that you're entitled to alimony  
14 in this case?

15 A Yes.

16 Q And in terms of an amount, what do you believe you  
17 need to have in order to be able to pay your monthly  
18 obligations?

19 A Fifteen hundred.

20 Q Is that a month?

21 A Yes.

22 THE COURT: It's correct, is it not, Counsel, that  
23 pursuant to a recommendation of the Commissioner, she's cur-  
24 rently receiving \$700 per month?

25 MR. BIGELOW: That is correct, your Honor.

1 things that concerned me, there really wasn't a large dispute  
2 over those issues. I mean, there was an example of a situa-  
3 tion that happened with a laundry fight over some laundry and  
4 a garage door opener, things like that. When I questioned  
5 each of the parents about it, they pretty much, you know,  
6 admitted and acknowledged the way it happened, and the chil-  
7 dren also confirmed some of those things, so there wasn't a  
8 lot of confirmation to be done in that regard, and as usual,  
9 the two references that were contacted spoke highly of each  
10 of the people they were representing.

11 Q Did there appear to have been some significant  
12 physical abuse in the marriage?

13 A No. In Mrs. Ahluwalia's words, she felt like she  
14 was emotionally abused throughout the marriage through con-  
15 trol issues over money matters and so forth and she quoted  
16 that there was a sprinkling of physical abuse, but it was  
17 mainly towards the end involving that laundry situation that  
18 I spoke of.

19 Q Did that concern you?

20 A Yeah. Any type of abuse that the children could  
21 possibly be exposed to is of concern. Given the nature of  
22 their relationship, especially towards the end when it was  
23 breaking up, it was very difficult for both parties, and as  
24 long as it wasn't a way of life or a pattern that was exhib-  
25 ited throughout their relationship where the children were

1 constantly exposed to that, it wasn't of great concern but,  
2 of course, it's of some concern.

3 Q I think the thing we're most concerned about is the  
4 evaluation indicates that the father is what the children in  
5 the home, that they like to be there, and there's concern  
6 been raised that if the mother was in the home that every-  
7 thing would be fine and that all the question really is the  
8 home and the neighborhood and not necessarily which parent.  
9 Is it your opinion that it would -- that your evaluation  
10 would be the same if the mother was in the home or that she  
11 could just move back in the home and things would work out?  
12 Which is a more accurate description?

13 A If the mother was in the home, I'm sure they would  
14 find a way to work things out and they would go through  
15 another adjustment period, but the reason, the greater reason  
16 why I recommended for the father to be the primary resident  
17 parent is more to do with a bottom line foundation of respon-  
18 sibility, creating an environment that is predictable for the  
19 children, structuring the importance of doing homework, and  
20 they have fallen into a routine since the parents have  
21 separated from each other and they have remained in their  
22 father's care, that is quite comfortable for them, it's  
23 predictable, and also what happened after the mother left the  
24 home in the very beginning is that they developed a new, a  
25 different type of a bond in relationship with their father, a

1 closer emotional bond that they were quite impressed with.  
2 They were really encouraged by that and really pleased with  
3 having a father pay so much interest in their world because  
4 prior to that, he was interested but, you know, having the  
5 mother in the home and having the fact that they have marital  
6 difficulties strained their capabilities for being emotion-  
7 ally available in the capacity that they both are now because  
8 they have alleviated the structures of their marriage, but  
9 getting back to the question, I think the reason why I recom-  
10 mended primary residence with the father is because even  
11 though Magan, the older child who is almost 15, indicated  
12 that she did not want to have to choose between her parents  
13 in other ways in kind of back-door questions, she was stating  
14 that she liked things the way they were except for the fact  
15 that she wanted to spend more time with her mother on an  
16 individual basis without her younger brother being present.

17 I also looked closely at their school records.  
18 Magan is extremely high in her national academic scores, in  
19 the 90 percentile in almost everything, particularly in  
20 science and math she's very high. She really was pleased  
21 with the fact that her father was able to be so interested  
22 and concerned in her homework and helped her, and she's in  
23 honors programs and she's really a gifted child. They both  
24 are very bright but she has been excelling, you know, at such  
25 a level that I felt like it was of significance that her

1 father was available to her to support those types of  
2 studies, and she takes a lot of pride in her accomplishments  
3 that way and so I think that's why it's important for her to  
4 have that daily support and encouragement to maintain that.

5 Q Is it your opinion that that overcomes the fact  
6 that the mother was the primary caretaker prior to the sepa-  
7 ration, or at least may have been?

8 A I think there's other ways to accommodate for the  
9 reality that she was the primary caretaker because she was in  
10 the home while Mr. Ahluwalia was working and I tried to, you  
11 know, state that in my recommendation by providing for joint  
12 legal custody so that psychologically she would feel that,  
13 you know, she still had, you know, quite a bit of influence  
14 and access to her children and their world and their records  
15 and so forth.

16 I expanded on the time sharing plan that they orig-  
17 inally had in the beginning quite a bit and I think that if  
18 she was able to move back into the neighborhood in some  
19 regard after all the financial matters are settled, it would  
20 even be another opportunity to further examine the schedule  
21 that is in place and provide for them to have more spontane-  
22 ity in going and visiting their mom if she was close by, and  
23 that type of thing.

24 Q And I guess one question that I think both parties  
25 have had is about visitation. I think Mr. Ahluwalia is

1           I think that the problem with the transition is  
2 more the parents' problem and not the children's problem, but  
3 the parents' problem trickles down into affecting the chil-  
4 dren when there are arguments over that transition.

5           I think if they had a firm schedule, the expecta-  
6 tion was that on Tuesday night it would be Magan's night with  
7 her mom from 4:30 to 9 o'clock or whatever, then they would  
8 have to work that out, and the same would be for Ravi, that  
9 would be his schedule. The expectation, problems around that  
10 surface as well if Mr. Ahluwalia allows that, they don't come  
11 back with their homework done and sometimes they haven't had  
12 dinner and they come back and they have to stay up until  
13 11:30 at night working on their homework, well, if the expec-  
14 tation was that homework be completed prior to coming home,  
15 you know, those kinds of problems could be alleviated, so I  
16 think there are ways to make that type of plan work, and I  
17 think it is in the best interests of the children to afford  
18 them those opportunities to maintain the bonds that they have  
19 with both parents and rely on the strengths that each parent  
20 can offer them.

21           Q     Would it also be your opinion, though, that that  
22 degree of visitation should happen only if the parents don't  
23 argue about it? I mean, so that the exchange happens  
24 peaceably?

25           A     I think, I would hope that the parents would see



1 the way they are, and my point throughout this would be that  
2 the children would still get the opportunity to have both  
3 influences in their life, but I think at this point in their  
4 life, you know, especially going through junior high and high  
5 school, they're going to benefit probably more from a more  
6 structured environment and one that provides them opportuni-  
7 ties for success and focus.

8 Q Are you relying on any scientific data that would  
9 tell you that that type of structured environment as you're  
10 describing is more apt to permit them to succeed than an  
11 environment that might be fostered by Mrs. Ahluwalia?

12 A No, but there are psychological theories that talk  
13 about the importance of providing routine and schedules  
14 because you have that in place, it provides a sense of pre-  
15 dictability to the children, and within that predictable  
16 framework they feel secure. When there are not as many  
17 parameters and rules put in place and things are very loose  
18 and I'm not saying that that's the case with Mrs. Ahluwalia,  
19 but on the other extreme, children do not feel secure, they  
20 feel like they're responsible for creating their sense of  
21 security which shouldn't be their responsibility, they should  
22 feel that within their environment, so that they can, you  
23 know, go on and achieve and focus on what they need to.

24 Q In your view, this is really a fairly close call,  
25 though, in terms of where custody goes? As I understand it,

1     you've said that the children, you think, are doing very  
2     well, correct?

3             A     They are, uh-huh (affirmative).

4             Q     And isn't it fair to say that the years that  
5     Mrs. Ahluwalia nurtured them as the primary caretaker would  
6     have a very major role in the children being in the condition  
7     they are today?

8             A     I'm sure that had a strong influence on it. I do  
9     know that the children both described being under stress when  
10    they saw their parents fighting and that was towards the end  
11    of the marriage where it kind of escalated. Then after they  
12    were not exposed to that as much, they felt a great sense of  
13    relief and then they also saw a new aspect of their father.  
14    They both have contributed in different ways and significant  
15    ways and my hope would be that they would find a balance on  
16    how to continue that and --

17            Q     Well, the relief they're feeling could just as  
18    easily be a result of, as you state, the hostilities, so to  
19    speak, ending, as their father's influence, couldn't it?

20            A     Sure, especially if it was a situation where every-  
21    thing maintained as status quo as it was prior, but what  
22    happened in this situation is that the father extended him-  
23    self a lot more and become a lot more involved. Even the  
24    mother noticed that one of the benefits of the divorce, if  
25    there was one, is that it caused them to get a lot closer to

1     their father and they, the children, stated that to me, the  
2     father stated that and the mother stated that, so they have,  
3     you know, if there is a positive side to this, that is one  
4     thing that they have developed that closer bond with him.

5           Q     But clearly the growth or the children feeling more  
6     calm could have just as easily occurred in this instance if  
7     Mr. Ahluwalia would have moved out of the home and if  
8     Mrs. Ahluwalia would have stayed there and there wouldn't  
9     have been any more fighting between them in the presence of  
10    the children, could it not?

11          A     It's possible, uh-huh (affirmative).

12          Q     And we don't have a way of knowing that because  
13    that's not what happened, right?

14          A     That's correct. However, if I can state that the  
15    children, like I said, were not wanting to give a preference  
16    over one of their parents, they both did in different ways  
17    indicate that they wanted things to stay as they were except  
18    for wanting to spend more time with their mom.

19          Q     And that would be a very critical item, wouldn't  
20    it, making sure that the children were provided that opportu-  
21    nity if your recommendation were to be followed?

22          A     Yes.

23                THE COURT: Well, ma'am, your recommendation's not  
24    couched in terms of expanding visitation, is it? You're  
25    making the recommendation with regard to the custody issue

1           My brief discussions with Mrs. Ahluwalia during the  
2 recess indicated that since my report, things have improved  
3 as far as some spontaneity and phone calling and that type of  
4 thing. I think it can be managed. I really do. I think  
5 both parties would have a little bit of difficulty given the  
6 extreme control issues that were present in their marriage  
7 and those tend to extend over into the visitation.

8           Q     Well, let me ask it this way. If Mrs. Ahluwalia  
9 had custody, is it your view that she would be liberal and  
10 generous in her permitting Mr. Ahluwalia to have any visita-  
11 tion he desired or chose?

12          A     I believe she would be supportive, yeah. I believe  
13 she would be supportive, but I think also it would take a  
14 schedule to make that work in the same way that I described.  
15 It would take a schedule to make the other situation work. A  
16 carefully -- they both contribute to the problems of visita-  
17 tion because of their dynamic with each other, their control  
18 dynamic, and so I think it would be present in either direc-  
19 tion and I think it can very definitely be worked with and  
20 solved and resolved.

21          Q     So do you have any opinion as to whether or not the  
22 reverse would be true of my situation with Mr. Ahluwalia  
23 then, do you think he would encourage and be liberal in his  
24 desire to have the children develop their relationship with  
25 their mother?

1           A     He is supportive of that, you know, he has verbally  
2     stated that in the presence of the children. He indicates  
3     that, but however, again, his need for a schedule and in the  
4     beginning some rigidity as far as this is the way it is, this  
5     is the rule and this is what we'll do without too much flexi-  
6     bility was evident. I think that's changed somewhat, you  
7     know, through time and even during the course of my evalua-  
8     tion that changed.

9           Q     It's important to the children, is it not, that  
10    they stay in the same physical location they are currently  
11    in?

12          A     It's important to the children, yes.

13          Q     And they did adjust to the change in only having  
14    their father present and not their mother and really have  
15    adjusted quite well; isn't that correct?

16          A     They have, uh-huh (affirmative).

17          Q     Is there anything in these children's makeup that  
18    you've determined would cause a problem with them having to  
19    adjust back to their mother being present and their father  
20    not being present in the home?

21          A     You know, as I was sitting in the courtroom going  
22    through my notes during this other part of the trial, I read  
23    a comment that Mrs. Ahluwalia had made which is kind of  
24    representative of their relationship. If you can understand  
25    the dynamic of the hierarchy of the home of which the

1 children lived in, it was more like Mrs. Ahluwalia in some  
2 ways was kind of like a child, too. I mean, she had rules  
3 and expectations and a lot of time she had difficulty comply-  
4 ing with some of those things and they created problems. She  
5 said that, and she is involved in elementary education. She  
6 said in her comment that I read that she's kind of like a kid  
7 herself and that was indicative of the friendship that she  
8 shares with her children. They enjoy a close friendship, a  
9 close bond. They enjoy, you know, activities and holidays  
10 and she told me today that she bought Halloween -- took them  
11 out for Halloween costumes and that type of thing.

12           There's room for both parents to participate in  
13 their life, but I think that might show the type of relation-  
14 ship, it's a friendship, but they don't see her in the same  
15 way that they see an authority figure, as a parent figure as  
16 they perceive their father. They see him more in that role.  
17 In Magan's words, "My father is responsible," you know, with-  
18 out saying anything about her mom, she said, "My father is  
19 responsible." I think they've been able to kind of make  
20 their own assessment and there's nothing wrong with them  
21 enjoying a wonderful friendship with their mother and that's  
22 the type of thing that they've experienced with her.

23           Q     What were these rules and expectations you referred  
24 to that Marilyn was subjected to in the home?

25           A     Mainly over money matters, grocery shopping was a

1 grandfather who lived in the home?

2 A It's difficult to say. They -- the grandfather was  
3 reserved and not openly expressive or anything like that.  
4 They seemed comfortable with him and they seemed like they  
5 have adjusted to his presence in the home.

6 MS. ALLEN: I have no further questions.

7 THE COURT: All right. Is there anything further,  
8 Mr. Bigelow?

9 MR. BIGELOW: No, your Honor, not for this witness.

10 THE COURT: All right, Ms. Hickey, you may step  
11 down. Thank you.

12 Do you want to proceed now with your client again?

13 MR. BIGELOW: Yes.

14 THE COURT: All right, Ms. Ahluwalia, you may take  
15 the stand again, please.

16 MARILYN LUCILLE AHLUWALIA,  
17 having been previously sworn, resumed the stand and continued  
18 to testify as follows:

19 DIRECT EXAMINATION RESUMED

20 BY MR. BIGELOW:

21 Q Mrs. Ahluwalia, when we took a break earlier, we  
22 were referring to your list of monthly expenditures, correct?  
23 Plaintiff's Exhibit 3, correct?

24 A Yes.

25 Q And I did want to indicate or ask of you on that

1 children went into various programs outside of the school.  
2 My daughter went to dance and gymnastics. Towards the end of  
3 our marriage, I took my boy to teeball and he was not really  
4 active in these activities at all. At a later point he did,  
5 of course.

6 Q When you say "he," you're referring to your  
7 husband?

8 A My husband.

9 Q When you would take your daughter to dance, did he  
10 ever participate in taking her to dance?

11 A Not on any regular basis, no.

12 Q Did he go to watch her dance in her performances?

13 A No.

14 Q You mentioned teeball for your son, correct?

15 A Yes.

16 Q And who took him to the teeball activities?

17 A I took him to teeball.

18 Q Now, your husband did begin getting involved with  
19 your son in basketball after you separated; is that correct?

20 A That's correct. He became very active with the  
21 children after the separation.

22 Q During the course of your marriage, how frequently  
23 would your husband take the family out to dinner?

24 A He took us out to dinner about twice a month.

25 Q At some point in time during your marriage, did you



1 up -- the attorney wrote that up at your direction?

2 A That's correct.

3 Q Okay. As far as your employment, if you got a  
4 teaching job, do you know what it would pay?

5 A I believe it's around 24, 25 thousand. That is  
6 just a guess.

7 Q Okay, and do you have a master's degree or anything  
8 or just a basic teaching certificate?

9 A A basic teaching certificate.

10 Q Now, last fall, not this September but the  
11 September before, is that when you were told that a lot of  
12 people had come into the state and it was very hard to get a  
13 teaching job?

14 A This has been going on for the last two years.

15 Q So you knew that even when you separated that it  
16 would be very hard to get a teaching job?

17 A I did not know directly when I first separated that  
18 -- if it was in May that we filed and then that September or  
19 before that and -- that summer when I inquired as to the job  
20 market, they said that it is tightening up.

21 Q Okay, and then by when was the deadline for hiring  
22 that year?

23 A There is not a specific deadline. I would say over  
24 the summer. It's a long story, but they have to take in  
25 people from out of state first and transfers and it's kind of

1 an ongoing thing throughout the summer. I believe it's sup-  
2 posed to peak around the end of July to August.

3 Q So by September if you didn't have a job, you  
4 pretty much knew you did not have a job for that school year?

5 A That's correct.

6 Q Did you look into taking classes at the community  
7 college to learn how to run a computer?

8 A No, I did not.

9 Q Did you look into any kind of master's degree pro-  
10 gram at the University of Utah?

11 A It is not economically feasible to be a master's  
12 when you teach school.

13 THE COURT: The question is, did you look into it,  
14 ma'am?

15 THE WITNESS: Oh, no.

16 Q (By Ms. Allen) Did you look into any other train-  
17 ing programs at the community college of any kind?

18 A Not at the community college, no.

19 Q Did you look into training programs anywhere?

20 A No.

21 Q So you went and gave your application to the local  
22 school districts; is that correct?

23 A One of the places I applied, Jordan and Granite.

24 Q Okay, and then in September when it appeared you  
25 were not going to get a job teaching, what did you do?

1           A     I was subbing.

2           Q     Okay, and how many days a week would you sub on  
3 average?

4           A     It varies from time to time.

5           Q     Now, you got a number of jobs at retail stores and  
6 I don't know which one was first. Can you tell me which of  
7 the retail stores you got the job first at?

8           A     Not offhand.

9           Q     So you had a job at All a Dollar, Shopko, Payless  
10 and Matrix?

11          A     Uh-huh (affirmative).

12          Q     And what did you do at All a Dollar?

13          A     At All a Dollar I was Christmas help. Again I had  
14 that while I was subbing. I worked there as Christmas help.

15          Q     And then what did you do at Shopko?

16          A     Shopko I was a cashier, pre-Christmas, heading into  
17 Christmas.

18          Q     And what did you earn?

19          A     Minimum wage.

20          Q     And what did you do at Payless?

21          A     Payless was a two- or three-week stint with setting  
22 up the store and that was terminated when the store was set  
23 up.

24          Q     And what about Matrix?

25          A     Matrix is a telemarketing company and I worked

1       there for a couple of months, two or three months.

2               Q       And did you quit that job or were you fired?

3               A       I was not fired. I quit that job based on ethical  
4 reasons.

5               THE COURT: Based on what?

6               THE WITNESS: Ethical reasons of the way they con-  
7 ducted their business.

8               Q       (By Ms. Allen) The other three jobs, were you  
9 fired or laid off or did you quit?

10              A       Okay. At Shopko I was laid off because I wasn't  
11 high enough speed as a cashier. All a Dollar was seasonal  
12 help -- and what was the other one?

13              Q       Payless.

14              A       Payless was a setting up the store.

15              Q       Did you apply at other retail stores?

16              A       I'm sure I did.

17              Q       And did they call you back and give you interviews  
18 or anything?

19              A       Well, I applied at a lot of places which I cannot  
20 account the names, but they said that they were like busy,  
21 they had hired, they didn't have an opening.

22              Q       Did you apply at any of the optical stores?

23              A       No. Oh, well, not until this year.

24              Q       And when did you apply at an optical store?

25              A       I applied this year at Lenscrafters and I kind of

1 dropped it due to the oncoming divorce proceedings. I don't  
2 know what I'm going to be doing in my future so it's very  
3 hard for me to tell them what I'm going to be doing in the  
4 future.

5 Q Did they show some interest in hiring you?

6 A Yes, they did.

7 Q And what would that have paid?

8 A We never reached that point in the conversation.

9 Q During your marriage isn't it true that on at least  
10 one occasion that you kicked Mr. Ahluwalia in the groin?

11 A That is incorrect.

12 Q You never did that?

13 A I have never kicked a man in the groin.

14 Q Did you on occasion yell at him?

15 A Yes, I did.

16 Q And did you sometimes yell obscenities at him?

17 A Yes, probably.

18 Q And were the children present when that happened?

19 A I do not recall.

20 Q Isn't it true that you did yours and the children's  
21 laundry but Mr. Ahluwalia did his own laundry?

22 A I did Mr. Ahluwalia's laundry for 15 years. At one  
23 time he decided, because he found some discoloration in the  
24 laundry, that he preferred to do it himself. He preferred to  
25 do his own laundry.

1 Q On the days that you don't sub, what do you do?

2 A Well, I'm a permanent sub so I do sub every day.

3 Q So now you sub every day?

4 A I'm a permanent sub. I sub every day.

5 Q And do they pay you \$50 a day?

6 A They pay me \$6 and whatever it is, 25 or 50 cents

7 an hour. On Monday through Thursday I get eight hours and on

8 Friday I get six hours because it's called a short day.

9 Q And since school started, have you reliably gotten

10 that?

11 A There have been some days where I've had to go to

12 the doctor, I was ill one day. There have been a couple of

13 days they had in-service training, and so there were several

14 days that I had not taught.

15 Q Have you made any efforts to look into maybe part-

16 time evening jobs or something to fill in the gap?

17 A Based on I had been doing that in the past with the

18 All a Dollar and some of the other jobs. I am waiting to see

19 the outcome of this trial because I want to be with my chil-

20 dren if I win custody, in the evening.

21 Q Okay. Now, you claim that you have credit card

22 debts that you show now of about \$8,000.

23 A I've never added them up.

24 Q When you separated, did you owe any debt to anyone?

25 A No, I did not. Well, I don't believe so.

1           Q     Okay. During the marriage, did you have a credit  
2 card that was in your control that you could use to buy  
3 clothes and other necessities?

4           A     The word "control" is the big thing here. No, I  
5 did not.

6           Q     Did you carry the credit card in your purse?

7           A     Yes, I carried it around.

8           Q     Is it true that on occasion, or maybe more than  
9 that, you forgot to write down checks you had written in your  
10 joint account and that's why Mr. Ahluwalia didn't want you to  
11 write checks on the joint account anymore?

12          A     There was one instance where I forgot to write down  
13 and from that instance he said he preferred that I do not  
14 have anything to do with the joint account.

15          Q     Okay. In this matter we asked for your check  
16 register which was not given to us. Do you have a check  
17 register? Do you write down the checks as you write them?

18          A     Yes, I do.

19          Q     And so you do have a check register?

20          A     Not for all the periods. They're put in the  
21 closets and everything. I do have check registers, though.

22          Q     You're claiming that you've got arthritis and  
23 bursitis and that you had some physical therapy for the  
24 bursitis?

25          A     That's correct.

1           A     Maybe it's not antioxidants. It's like a super  
2 Tylenol.

3           Q     Okay.

4           A     It doesn't have any codeine in it.

5           Q     Okay. Is the apartment complex that you're living  
6 in reasonably new?

7           A     I have no idea.

8           Q     Does it have a swimming pool?

9           A     Yes, it does.

10          Q     Does it have tennis courts?

11          A     Yes, it does.

12          Q     Does it have other recreational facilities there?

13          A     Yes.

14          Q     Does your apartment have a dishwasher?

15          A     Yes.

16          Q     Now, did you put Mr. Ahluwalia through school or  
17 had he graduated when you got married?

18          A     Oh, he had graduated.

19          Q     Is it true that on one occasion when you lived in  
20 Pennsylvania that he wanted to pursue a master's degree but  
21 you told him he couldn't be gone in the evenings because you  
22 wanted help in caring for the children?

23          A     I don't remember the reason I told him I wanted him  
24 home, but I know that I was strongly opposed to him spending  
25 any more time outside of the home.



1           Q     Did he feed the children, give them baths, change  
2 their diapers when they were little?

3           A     Yes, he did when they were infants.

4           Q     When you married, did you have a student loan that  
5 was outstanding?

6           A     Yes, I did.

7           Q     And was that paid off during the marriage?

8           A     I don't -- I mean, it was paid off during the first  
9 part of the marriage and since I was working as a teacher, I  
10 paid it off.

11          Q     In going through your expenses, I've totalled them  
12 up, that you show on your financial declaration form, and  
13 they come to \$1598 without the rent adjustment. I guess I'm  
14 wondering why you would need alimony of \$1500 a month if your  
15 total expenses are 1500 a month, or are you not planning to  
16 work after the divorce?

17          A     Yes, I am.

18          Q     So if you were to work and earn maybe 1500 a month  
19 and your expenses were 1500 a month, would you have a need  
20 for alimony?

21          A     I am not earning \$1500 a month.

22          Q     But don't you think -- are you not capable of  
23 earning that?

24          A     I am capable of being a teacher. However, getting  
25 a job is another factor.

1           Q     Okay, but none the less, if you can't get a teach-  
2     ing job, are you planning to not work at all?

3           A     No, I will work in some capacity at a lower rate.

4           Q     If Mr. Ahluwalia has the children and you're work-  
5     ing full-time, would you be willing to pay child support, or  
6     do you think he doesn't need child support?

7           A     Whatever is deemed by the Court.

8           Q     Have you ever got so angry at Mr. Ahluwalia that  
9     you either hit him or threatened to hit him?

10          A     I'm sure I have.

11          Q     On this incident with the laundry basket, as it  
12     possible that you came after him and he held your arm and  
13     that's where the bruises came from?

14          A     No, it is not.

15          Q     Then how did you get the bruises?

16          A     He threw me up against the steps as I was going up  
17     the steps with the two laundry baskets on my left arm.

18          Q     And did you fall on the steps?

19          A     I don't recall exactly, but he took the two baskets  
20     on my left side and smashed me a couple of times up against  
21     the staircase.

22          Q     Okay, because the bruise was on the back and I  
23     guess I was just trying to figure out --

24          A     I must have tried to defend myself. Obviously, if  
25     somebody's coming at you with two laundry baskets --

1 THE WITNESS: Four days at eight hours and one day  
2 at six hours.

3 THE COURT: Oh, four days at eight hours and one  
4 day at six hours, and the rate of pay being 6.25 for each of  
5 those hours?

6 THE WITNESS: Hours, correct.

7 THE COURT: All right. Thank you.

8 THE WITNESS: Thank you.

9 HAMINDER SINGH AHLUWALIA,  
10 called as a witness by and on behalf of the Plaintiff, having  
11 been first duly sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BIGELOW:

14 Q Please state your name.

15 A My name is Haminder Singh Ahluwalia.

16 Q Where do you reside?

17 A I reside at 1021 Buchnell Drive, Sandy, Utah 84094.

18 Q Where are you employed?

19 A I'm employed at Envirotech Pump Systems in Salt  
20 Lake City.

21 Q And in what capacity?

22 A I'm the manager of engineering.

23 Q How long have you been with this company?

24 A Close to 15 years.

25 Q Is there any reason that you're presently aware of

1       why your employment will not continue with this company?

2           A       I can't say whether my employment will continue or  
3       not, but I do have a very different boss.

4           Q       My question is, are you aware of anything at the  
5       present time that would indicate your employment is not going  
6       to continue?

7           A       Not specifically. We are going through very hard  
8       times right now.

9           Q       Describe briefly, if you would, your education,  
10       just from college to the present.

11          A       In college you mean?

12          Q       Yes.

13          A       I had a bachelor's degree in mechanical engineering  
14       in India and then I did my master's in business in Florida.

15          Q       And what institution did you attend in Florida for  
16       your master's?

17          A       It was University of Florida in Gainesville.

18          Q       At the time you married Marilyn she was employed as  
19       a school teacher, correct?

20          A       Yes.

21          Q       And when you moved from Florida to Pennsylvania,  
22       she terminated that employment, correct?

23          A       After a couple of years, yes. She moved up there  
24       but she was on hold, she could still go back if she wanted  
25       to, but she terminated two years afterwards, after we moved.

1           Q     So it's your testimony that you two made joint  
2 decisions in terms of where to put money in savings until you  
3 moved to Utah?

4           A     We had joint accounts.

5           Q     But is it your testimony that you made a joint  
6 decision on where to put those savings during the time prior  
7 from the time you were married until you moved to Utah?

8           A     To some degree, not a whole lot.

9           Q     Generally you made those decisions, didn't you?

10          A     Yes.

11          Q     During the course of the marriage until the separa-  
12 tion, did you participate in going to your children's activi-  
13 ties such as the Girl Scouts or the dance or the teeball?

14          A     Occasionally, yes.

15          Q     When you say occasionally, describe for me how  
16 frequently that was.

17          A     I'd say about every third time.

18          Q     This last summer there was a situation where you  
19 refused to permit Ravi to go with Marilyn during the day  
20 because you wanted him to be at day care instead, correct?

21          A     Yes.

22          Q     And why did you insist on that?

23          A     Because they had a lot of activities that he liked.  
24 Swimming was one of them, hiking was another, basketball was  
25 the third, and he had developed some friends there which he

1 little later.

2 Q Okay. Did you take care of the children prior to  
3 your separation?

4 A Yes, I had started their study program with the  
5 kids a year before the separation because I felt that it was  
6 coming to a point where they needed a little more structure  
7 rather than the last-minute, you know, everybody's running  
8 around trying to find out in the morning whether they did  
9 something or didn't do anything, so we would have an  
10 organized way of doing it. This way Magan also got a chance  
11 to ask questions if she had any. With the result that now,  
12 with the way we are doing it, we are able to get the things  
13 done on time and with the result, grades have improved and  
14 the understanding of the subject matter has gone up.

15 Q Okay. How often have you gone to India since you  
16 got married?

17 A Two times.

18 Q And do you plan to go in the future?

19 A Yes.

20 Q Would you agree to some kind of court order that  
21 you wouldn't take the children to India without  
22 Ms. Ahluwalia's notice that you were going and plan for you  
23 to come back, an itinerary and so on?

24 A I have no problem with that. That's fine.

25 Q Do you have any plans to move out of state?

1 turning, one more page.

2 A Okay, all right.

3 Q There's a place for medical and other insurance.  
4 That's a hundred and sixteen I think.

5 A Well, I showed a hundred and thirty, okay, and that  
6 is for co-payments. Whenever I go see the doctor, I have to  
7 pay five dollars, so I figured that I was paying \$111 there,  
8 so this is all of the expenses so, you know, I'm kind of  
9 taking this and putting it here and I'm saying it's a hundred  
10 and eleven, so about \$20, you know, if you go two or three  
11 visits a month or prescriptions, for that I figured about  
12 \$19.

13 Q If you were to get custody of the children, what  
14 kind of visitation plan do you think that you could agree to?

15 A I'm willing to go with an expanded visitation plan,  
16 within a certain reason where the children's life and educa-  
17 tion is not disrupted to any significant degree because  
18 that's concerned me, if the children start falling in their  
19 grades, and I think the same would apply from her end, she  
20 will be concerned as well.

21 At the same time, I strongly believe that children  
22 should have contact with their mother. There is the natural  
23 mother, you know, is the one the children are -- most can  
24 relate to in terms of motherhood, the same as a natural  
25 father, so that does not change. Just because we separated

1 doesn't mean that she stops becoming their mother.

2 Q Would you be willing to send -- I think the evalu-  
3 ator's recommendation was something on the line of one child  
4 goes like Monday, the other child goes Tuesday, they both go  
5 Wednesday, and then every other weekend they would also go.  
6 Would you be willing to go with such a plan if the other  
7 problems were resolved as far as disputes, when you pick them  
8 up and that sort of thing?

9 A I think to a good degree, you know, I think that  
10 might be a little bit more than, you know, where I feel that  
11 the kids would be bouncing back and forth, but if they can  
12 handle it, I don't see a problem. From my end it's not a  
13 problem.

14 Q Would you be willing to do that as long as their  
15 homework got done and they got fed dinner?

16 A Right. If they go to her, you know, then I will  
17 expect her to address the homework as well as the dinner, and  
18 that's fine with me.

19 Q I've prepared an exhibit of income and expenses and  
20 I don't know what number may have been assigned to it, if  
21 any.

22 I'd like you to look at that. Are those the  
23 expenses that you had listed on your financial declaration  
24 form?

25 A I will have to see.



## Appendix #6: Rules of Judicial Administration, Rule 4-903

within the time prescribed by the Rules of Civil Procedure.

(3) The moving party shall send a copy of the motion and affidavit to the opposing party and file with the Court a certificate of mailing.

(4) The clerk of the court shall schedule the motion for hearing and notify the parties of the hearing date.

## ARTICLE 9.

### DOMESTIC RELATIONS AND JUVENILE PRACTICE.

#### Rule 4-901. Notice requirements for cases pending in both district or circuit court and juvenile court.

##### Intent:

To establish the requirements for filing notice of cases which are pending in two or more courts simultaneously.

To facilitate coordination of proceedings in cases which are pending in two or more courts simultaneously.

##### Applicability:

*This rule shall apply to all attorneys who practice in district, circuit and juvenile courts.*

##### Statement of the Rule:

##### (1) District or circuit court filing.

(A) **Criminal actions.** The county attorney shall file with the court, at the time of arraignment, written notice of any related matter pending in the juvenile court. The notice shall include the juvenile court case caption, file number and name of the judge. A copy of the notice shall be filed at the same time with the juvenile court.

##### (B) Civil/domestic matters.

(i) In civil and domestic matters where the custody of child(ren) is at issue, the complaint or petition shall contain a brief recital alleging that "upon information and belief" the proceedings involving the custody of the child(ren) have or have not been filed in the juvenile court, and if so, the complaint or petition shall identify the juvenile court caption, file number, name of judge and status of such proceeding.

(ii) If the plaintiff's attorney is not aware of proceedings pending in the juvenile court and the defendant's or respondent's attorney is aware that proceedings involving the custody of the child(ren) are pending in the juvenile court, the defendant's or respondent's attorney shall file the necessary notice.

(C) **Subsequent juvenile court filing.** If a proceeding is commenced in the juvenile court subsequent to arraignment or filing of the complaint or petition, the written notice shall be filed in the circuit or district court upon first notice of the existence of the proceeding.

##### (2) Juvenile court filing.

(A) The county attorney shall file with the court, at the time of filing the petition, written notice of any related matter pending in the circuit or district court. The notice shall include the court caption, case number, name of judge and status of proceedings.

(B) If a proceeding is commenced in the circuit or district court subsequent to filing the petition, written notice shall be filed in the juvenile court upon first notice of the existence of the proceeding.

(C) If the county attorney is not aware of proceedings pending in the circuit or district court or fails to file appropriate notice, any other party or the attorney for any other party shall file the necessary notice.

#### Rule 4-902. Certification of district court cases to juvenile court.

##### Intent:

To establish a procedure for the district court to certify questions of support, custody or visitation to the juvenile court.

##### Applicability:

This rule shall apply to the district and juvenile courts.

##### Statement of the Rule:

(1) In district court cases where there is a question concerning the support, custody or visitation of a child and a petition concerning abuse, dependency, or neglect of the same child has been filed in juvenile court, the district court shall certify the question of support, custody or visitation to the juvenile court for determination.

(2) In other district court cases involving questions of support, custody or visitation, the district court, for good cause shown, upon its own motion or the motion of either party may certify the question of support, custody or visitation to the juvenile court for determination.

(3) A district court order certifying questions of support, custody or visitation of a child shall state whether the question is certified pursuant to Utah Code Ann. Section 78-3a-17(3)(b) or 78-3a-17(4). When a case is certified pursuant to Section 78-3a-17(4) the certification order shall state the reason or reasons for certification and the question or questions to be determined by the juvenile court.

(4) When the district court certifies questions of support, custody or visitation, the clerk of the district court shall transmit the entire case file to the clerk of the juvenile court who shall refer it to the presiding judge for assignment.

(5) When the question or questions certified to the juvenile court have been determined by the juvenile court and the appropriate order entered, the clerk of the juvenile court shall transmit the file to the clerk of the district court, who shall refer it back to the judge assigned to handle the matter.

#### Rule 4-903. Uniform custody evaluations

##### Intent:

To establish uniform guidelines for the preparation of custody evaluations.

##### Applicability:

This rule shall apply to the district and juvenile courts.

##### Statement of the Rule:

(1) Custody evaluations shall be performed by persons with the following minimum qualifications:

(A) Social Work Evaluations shall be performed by social workers licensed by the state in which they practice.

(B) Psychological Evaluations shall be performed by psychologists licensed by the state in which they practice.

(C) Psychiatric examinations shall be performed by a licensed physician with a specialty in psychiatry.

(2) In divorce cases, one evaluator shall perform the evaluation on both parties and shall submit a written report to the court, unless one of the prospective custodians resides outside of the jurisdiction of

the court. In those cases, two individual evaluators may be appointed. The evaluators must confer prior to the commencement of the evaluation to establish appropriate guidelines and criteria and shall submit only one joint report to the Court.

(3) Evaluators must consider and respond to each of the following factors:

- (A) the child's preference;
- (B) the benefit of keeping siblings together;
- (C) the relative strength of the child's bond with one or both of the prospective custodians;
- (D) the general interest in continuing previously determined custody arrangements where the child is happy and well adjusted;
- (E) factors relating to the prospective custodians' character or status or their capacity or willingness to function as parents, including:
  - (i) moral character and emotional stability;
  - (ii) duration and depth of desire for custody;
  - (iii) ability to provide personal rather than surrogate care;
  - (iv) significant impairment of ability to function as a parent through drug abuse, excessive drinking or other causes;
  - (v) reasons for having relinquished custody in the past;
  - (vi) religious compatibility with the child;
  - (vii) kinship, including in extraordinary circumstances stepparent status;
  - (viii) financial condition;
- (F) any other factors deemed important by the evaluator, the parties, or the court.

#### Rule 4-904. Child support guidelines.

##### Intent:

To improve the equity of child support awards by providing uniform and consistent standards.

To improve the efficiency of the adjudication process by facilitating voluntary settlements and reducing court or administrative agency time required to resolve contested cases.

To establish a procedure to periodically review and assess the guidelines.

To establish a process for providing recommendations on child support awards to the court based upon guidelines developed from empirical data and policy considerations after thorough study and review.

##### Applicability:

This rule shall apply to all courts of record. It is recommended that administrative agencies involved in setting child support amounts, which are not subject to existing court orders, follow the guidelines as adopted.

##### Statement of the Rule:

(1) **Adoption and publication of guidelines.** The Council shall establish and adopt guidelines for child support awards in judicial proceedings. The guidelines shall be published annually as an appendix to this Code.

##### (2) Application of guidelines.

(A) The guidelines are advisory to the court. Final orders in all cases shall be made at the discretion of the court based upon the facts of the individual case.

(B) Worksheets and a child support schedule are contained in the guidelines and published as an Appendix to this Code. The applicable worksheets must be completed in accordance with the instructions contained in the guidelines and submitted to the court with supporting fi-

nan-  
cial verification and an affidavit of compliance.

(C) The guidelines apply to all cases, not just those that are litigated, including divorce, separation and paternity. They apply regardless of the gender of the custodial parent.

##### (3) Update and revision.

##### (A) Establishment of standing committee.

A committee of the Board of District Judges is hereby established to review the implementation of the child support guidelines. The Board, in consultation with the Management Committee of the Council, shall appoint the members of the committee. The membership of the committee shall be as follows:

- (i) three District judges;
- (ii) one Domestic Relations Court Commissioner;
- (iii) one Court of Appeals judge;
- (iv) one attorney appointed by the State Bar Association specializing in domestic law;
- (v) one representative from the Office of Recovery Services;
- (vi) two non-lawyer citizen representatives: one representing the custodial parent's interests and one representing the non-custodial parent's interests.

(B) **Committee meetings.** The committee shall meet as often as deemed necessary for a period of one year, beginning in October, 1988. The committee shall monitor application of the guidelines and recommend to the Council, through the Board, modification of the guidelines or procedures implementing the guidelines. The committee shall study any issues related to child support when requested by the Board or the Council.

(C) **Reporting requirements.** The committee shall submit its recommendations and report to the Board of District Court Judges no later than September of 1989. The Board shall in turn submit the committee's report and the Board's recommendations to the Council no later than November of 1989.

## CHAPTER 5

### APPELLATE COURT OPERATIONS

[Reserved.]

## CHAPTER 6

### DISTRICT COURT OPERATIONS

#### ARTICLE 1.

##### GENERAL.

- RULE 6-101. The Board of District Court Judges.
- 6-102. Election of District Court judges to the Judicial Council.

#### ARTICLE 2.

##### CIVIL.

- 6-201. Distribution of trust funds.

#### ARTICLE 3.

##### CRIMINAL.

- 6-301. Presentence investigation reports.
- 6-302. Restitution.
- 6-303. Collection of fines and restitution.