

Comment,  
INTERVIEWING CHILDREN IN CHILD  
CUSTODY CASES

## I. Introduction

Historically, courts paid little attention to the child's wishes in deciding which parent should have custody upon divorce. Today, statutes in many states mandate judges to consider the child's preference, as one among several factors that guide decision-making.<sup>1</sup> In a few states, the court, except in unusual circumstances, must honor the older child's choice as to custodial parent.<sup>2</sup>

When minor children are involved in dissolution of marriage actions, the court's main priority is the best interest of those children.<sup>3</sup> Nonetheless, children suffer greatly in dissolution of marriage proceedings no matter how diligent the parents, attorneys and the courts are in minimizing the impact of divorce on the children of the marriage. The goal in all dissolution actions involving children should be to shield the child from as many harmful effects of the process as possible. One way to accomplish this is to move carefully when considering, requesting and conducting interviews of children in chambers by the presiding judge.

The purpose of this article is to serve as a guide to attorneys and courts when confronted with the issue of the child's preference in a contested custody dispute. This article includes recommended procedures for judges when the child is to be interviewed, as well as a general discussion of the development and framing of questions to present to the child.

---

<sup>1</sup> Elizabeth S. Scott, N. Dickon Reppucci and Mark Aber, *Parents, Children, and the Courts: Children's Preference In Adjudicated Custody Decisions*, 22 GA. L. REV. 1035 (1988).

<sup>2</sup> Harbin v. Harbin, 230 S.E.2d 889 (1976).

<sup>3</sup> In re C.D.G., 2002 WL 31453076 (Mo.App. W.D. 2002); Hilgers v. Hilgers, 2002 WL 31458117 (N.D.2002); Sellers v. Sellers, 638 So.2d 481, 485 (Miss. 1994); Chandler v. Bishop, 142 N.H. 404, 412.

## II. Regarding the Child's Preference

In divorce proceedings, the "best interest" of a child is a proper and feasible criterion for making a decision as to which of the two parents will be accorded custody of the child.<sup>4</sup> The Uniform Marriage and Divorce Act provides that the court must determine child custody in accordance with the "best interest" of the child.<sup>5</sup> In making this determination, the court must consider all relevant factors, including but not limited to: the wishes of the child's parents,<sup>6</sup> the wishes of the child,<sup>7</sup> the interaction and interrelationship of the child with his parents, siblings, and other persons who may significantly affect the child's best interests,<sup>8</sup> and the child's adjustment to his home, school, and community.<sup>9</sup>

Thirty-nine states, the District of Columbia and Puerto Rico consider the preference of a child of sufficient age and maturity when trying to determine the child's best interest.<sup>10</sup> The ultimate issue in a custody contest between parents is that of whether the best interests of the child lie in granting custody to one parent or the other. While the child's choice or preference is taken into account, one must remember, the child's expressed preference is subordinate to the general consideration of the child's best interests and welfare.<sup>11</sup> The table<sup>12</sup> below illustrates which states use

---

<sup>4</sup> Catherine D. v. Dennis B., 220 Cal. App. 3d 922, (1st Dist. 1990); Carbonell v. Carbonell, 414 So. 2d 625 (Fla. Dist. Ct. App. 3d Dist. 1982); Yrala v. Yrala, 181 A.D.2d 972, (3d Dep't 1992); Gagliardo v. Gagliardo, 151 A.D.2d 718, (2d Dep't 1989); Duplessis v. Duplessis, 131 A.D.2d 673, (2d Dep't 1987); Hughes v. Gentry, 443 S.E.2d 448 (1994).

<sup>5</sup> Uniform Marriage and Divorce Act § 402 (ULA)(1998).

<sup>6</sup> Uniform Marriage and Divorce Act § 402(1) (ULA)(1998).

<sup>7</sup> Uniform Marriage and Divorce Act § 402(2) (ULA)(1998).

<sup>8</sup> Uniform Marriage and Divorce Act § 402(3)(ULA)(1998).

<sup>9</sup> Uniform Marriage and Divorce Act § 402(4)(ULA)(1998).

<sup>10</sup> Child Custody Prac and Proc § 4:11, p.22 (1996).

<sup>11</sup> *Id.*

<sup>12</sup> Alabama: § 30-3-132, Alaska: AK ST § 25.20.090(1) & AK ST § 25.24.150(c)(3), Arizona: AZ ST § 25-403(a)(2), Arkansas\*, California: § 3042, Colorado: CO ST § 14-10-124, Connecticut: § 46b-57, Delaware: DE ST TI 13 § 722, District of Columbia\*, Florida: FL ST § 61.13, Georgia: GA ST § 19-9-3, Hawaii: HI ST § 571-46, Idaho: ID ST § 32-717, Illinois: IL ST CH 750 § 5/602, Indiana: IN ST 31-14-13-2, Iowa: IA ST § 598.41, Kansas: KS ST § 60-1610, Kentucky: KY ST § 403.270, Louisiana: Art. 134, Maine: ME ST 722.23, Maryland\*, Massachusetts\*, Michigan: MI ST 722.23, Minnesota: MN ST § 257.025, Mississippi: Miss. Code Ann. § 93-23-13, Missouri: MO. REV. STAT. 452.385, Montana: MT ST 40-

the child's wishes as a factor; whether or not this is proscribed by statute; and whether or not a guardian ad litem ("GAL") is appointed for the child. In many states a court may choose whether or not to appoint a GAL. In Missouri for instance, if there are allegations of abuse and or neglect then the court is required to appoint a GAL.<sup>13</sup>

	Statutory Guidelines	Children's Wishes	Attorney or GAL for Child
Alabama	X		
Alaska	X	X	X
Arizona	X	X	X
Arkansas			
California	X	X	X
Colorado	X	X	X
Connecticut		X	X
Delaware	X	X	X
D.C.	X	X	X
Florida	X	X	X
Georgia	X	X	X
Hawaii	X	X	X
Idaho	X	X	
Illinois	X	X	X
Indiana	X	X	X
Iowa	X	X	X
Kansas	X	X	
Kentucky	X	X	X
Louisiana	X	X	
Maine	X	X	X
Maryland			X
Massachusetts			X
Michigan	X	X	X
Minnesota	X	X	X
Mississippi	X		
Missouri	X	X	X
Montana	X	X	X
Nebraska	X	X	X
Nevada	X	X	X
New Hampshire	X	X	X
New Jersey	X	X	X

4-212, Nebraska: NE ST § 42-364, Nevada: NV ST 125, New Hampshire: NH ST § 458:17, New Jersey: N.J.S.A. 9:2-4c, New Mexico: NM ST § 40-4-9, New York\*, North Carolina\*, Oklahoma\*, Oregon\*, Pennsylvania\*, Rhode Island, South Carolina, South Dakota, Tennessee: TN ST § 36-6-106, Texas\*, Utah: UT LEGIS 269 (2003), Vermont: VT ST T. 15 § 665, Virginia: Virginia Code 20-124.3., Washington: WA ST 26.09.190, West Virginia\*, Wisconsin: WI ST 767.24, Wyoming. \* denotes states without statutory provisions.

<sup>13</sup> Mo. Rev. Stat. 452.385.

### III. Ascertaining the Child's Preference

#### A. *The Interview*

The purpose of an *in camera* interview is to lessen the emotional trauma for the child and protect the child from openly having to choose sides.<sup>14</sup> The Uniform Marriage and Divorce Act provides that a judge may interview a child *in camera* to determine the child's wishes as to her custodian and as to visitation.<sup>15</sup> It is in the court's discretion whether or not to hold an *in camera* interview.<sup>16</sup> In some states the court may conduct an *in camera* interview of a child without the consent of the parties, this is especially true with regard to the child's preference as to a custodial parent.<sup>17</sup>

It is recommended that the court release a record of the interview to the parties, since the parties to the custody proceeding are entitled to know what evidence is relied on by the trial court, and also have the right to present rebutting evidence or to cross-examine the evidence.<sup>18</sup> In Michigan, a special panel was convened to resolve the conflict between two Michigan cases on this topic.<sup>19</sup> The panel concluded that the purpose and questioning of an *in camera* interview is limited to a reasonable inquiry to determine the child's parental preference and that any record of the interview must be made available to the parties if the interview affects an additional child custody factor and that information makes a difference in the outcome of the case.<sup>20</sup>

Some jurisdictions do not permit a judge to conduct a private *in camera* interview of a child in a custody proceeding though a party may consent or waive objections to the interview. In such a case, the judge may not only interview the child, but the

---

<sup>14</sup> Molloy v. Molloy, 628 N.W. 2d 587 (Mich. App. 2001).

<sup>15</sup> Uniform Marriage and Divorce Act § 404(a)(ULA)(1998).

<sup>16</sup> 24A Am. Jur. 2d *Divorce and Separation* § 965 (2002).

<sup>17</sup> S. Bernstein, Annot., *Proprietary of Court Conducting Private Interview with Child In Determining Custody*, 99 A.L.R. 2d 954, §3 (1965).

<sup>18</sup> *Id.*

<sup>19</sup> Molloy v. Molloy, 637 N.W. 2d 803 (Mich. App. 2001), *aff'd in part, vacated in part*, 643 N.W. 2d 574 (Mich. 2002). The Michigan Supreme Court vacated only that portion of the appellate court opinion that holds "that all future *in camera* interviews with children in custody cases 'shall be recorded.'" *Id.*, 643 N.W. 2d 574.

<sup>20</sup> *Id.*

judge may use the evidence obtained in the interview as a basis for his or her order.<sup>21</sup>

### B. Interview Considerations

#### 1. Who should or can be present?

The Uniform Marriage and Divorce Act provides that the court may permit counsel to be present at the interview, but a record of the interview must be made and the record must be made part of the record of the case.<sup>22</sup> In some states the GAL must be present during the interview. For example, in *Rexford v. Rexford* the trial court was found to have improperly interviewed a child who was the subject of a custody proceeding outside the presence of the child's Law Guardian. This was done in an attempt to obtain information the Law Guardian had been directed to obtain but had not obtained; the Court held that the proper course would have been to appoint another Law Guardian.<sup>23</sup>

Some jurisdictions require that counsel be permitted to be present for the interview or to question the children during the interview while others allow counsel to be excluded.<sup>24</sup>

#### 2. Where and when should the interview take place?

The interview should take place in a safe environment where the child will feel comfortable and safe to talk openly.<sup>25</sup> While it is proper for a judge to interview a child in chambers, the judge should make every effort to make the environment as un-intimidating as possible.<sup>26</sup> The judge should also be open to the idea of interviewing the child in other locations such as a lounge or a waiting room.<sup>27</sup>

---

<sup>21</sup> Uniform Marriage and Divorce Act, *supra* note 14.

<sup>22</sup> *Id.*

<sup>23</sup> *Rexford v. Rexford*, 704 N.Y.S.2d 767 (App. Div. 4th Dep't 2001).

<sup>24</sup> Uniform Marriage and Divorce Act, *supra* note 14.

<sup>25</sup> Section "E" Guidelines for Conducting Interviews With Children, [http://www.saskjustice.gov.sk.ca/overview/provincial\\_child\\_abuse\\_protocol—interviewing\\_children\\_section\\_E.pdf](http://www.saskjustice.gov.sk.ca/overview/provincial_child_abuse_protocol—interviewing_children_section_E.pdf) (last visited May 14, 2003)[hereinafter "Section E Guidelines"].

<sup>26</sup> Cathy J. Jones, *Judicial Questioning of Children in Custody and Visitation Proceedings*, 18 FAM. L.Q. 43 (1984).

<sup>27</sup> *Id.*

The formality of the judge's chambers is the primary disadvantage to that location for the interview. If the interview is to be in the judge's chambers there are a few things he or she could do to lessen the formality. The judge should not wear his or her robe during the interview nor should he or she sit behind the desk. Instead, the child might be allowed to sit in the judge's chair.<sup>28</sup>

If the child has been waiting in a room during the open court proceedings the judge might be well advised to meet the child there. This is recommended due to the fact that the child has most likely grown comfortable with the surroundings. Further, the child might have a sense of being met on his or her own terms rather than terms of an adult authority figure.<sup>29</sup>

If a record is to be made of the interview the equipment used to make such record should be as unobtrusive as possible. However, if used it should be shown to the child and he or she should be informed that a record is being made.<sup>30</sup>

Because the court in determining whether or not to interview the child can better weigh the pros and cons of the interviewing process at the conclusion of the hearing, a post-hearing interview is often the best choice.<sup>31</sup> In conducting a post-hearing interview, the judge not only will better know whether or not an interview is even necessary; he or she will also have a better basis upon which to interview the child after hearing the testimony of the parents and their witnesses.<sup>32</sup>

### 3. *What if there is more than one child?*

Many times there is more than one child subject to a custody proceeding. In this instance, the judge is faced with the question of whether to interview the children together or separately. In any case concerning two or more children the judge should first speak to the children together and then speak alone with the children who wish to talk further with the judge.<sup>33</sup>

There are at least two main advantages to interviewing the children together. First, the children can benefit from the support

---

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Uniform Marriage and Divorce Act, *supra* note 14.

<sup>31</sup> Jones, *supra* note 26, at 75.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 77.

of each other and might be more comfortable and willing to speak to the judge when they are united with the other siblings.<sup>34</sup> Second, the judge may well benefit from having the opportunity to observe the interaction between the siblings and see the dynamics of their relationships.<sup>35</sup>

There are however benefits of interviewing the children separately as well.<sup>36</sup> If a child does not trust his or her siblings, or feels that one is a favorite, the child might be hesitant to speak candidly in front of the other siblings for fear that one might report the child's statements back to the parent.<sup>37</sup> It is also possible that separate interviews will make each child feel freer to tell his or her own thoughts on the situation.<sup>38</sup>

#### 4. *Should the judge ask the questions?*

While the judge should ask the questions,<sup>39</sup> it is important for the judge to have some basic knowledge of child development principles in order to make the interview effective.<sup>40</sup> If the judge does not have the necessary skills to interview a young child he or she may wish to delegate the task to someone such as a child-care worker and should design a procedure to minimize communications difficulties between the judge and the specialist.<sup>41</sup> Although not as appealing, a disinterested third party or a representative of the child could conduct the interview, but allowing the parties' attorneys to question the child is not an acceptable alternative.<sup>42</sup>

The obvious reason for assigning the interview to the judge is that the judge knows what information is necessary in rendering a decision.<sup>43</sup> Still the judge should have a general background in the area of child development in order for the questioning to be effective. The judge must know what questions to ask; how to ask them; and how to interpret the child's answers.

---

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 78.

<sup>36</sup> *Id.* at 77.

<sup>37</sup> Jones, *supra* note 26, at 77.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 72.

<sup>41</sup> *Id.*

<sup>42</sup> Jones, *supra* note 26, at 72.

<sup>43</sup> *Id.*

It is important for the judge to consider whether or not he has the necessary skills and the ability to comfortably communicate with a child; if not he or she should seriously consider delegating the responsibility of interviewing the child to someone else.<sup>44</sup>

5. *What information should the judge give the child before and during the interview?*

When a judge is about to begin an interview with a child there are several things the judge must tell the child. Many judges will tell a child that whatever the child says in the interview will be strictly confidential and that the parents will never learn what the child says.<sup>45</sup> It is risky to tell the child this unless the court can be one hundred percent certain that this is a true statement and the promise will be kept.<sup>46</sup> This is especially true in cases where there is a record made of the interview and that record is provided to the parties. It is recommended that a judge proceed without such promises and hope that the child will communicate openly with the court.<sup>47</sup>

The judge should first ask the child if he or she understands the purpose of the interview. If told "yes," the judge should follow up and find out who told the child about the purpose of the interview and what was said that made the child think he understands the purpose of the interview.<sup>48</sup>

The judge should then inform the child in clear and concise language the nature of the proceedings and the purpose of the interview.<sup>49</sup> The judge must be willing to answer all the child's questions regarding the interview and make the child aware that he or she is not required to take part in the interview.<sup>50</sup>

---

<sup>44</sup> *Id.* at 73.

<sup>45</sup> Richard A. Gardner, M.D., *Judges Interviewing Children in Custody/Visitation Litigation*, *New Jersey Family Lawyer*, Vol. VII, No. 2, August/Sept 1987, p 26ff., available at <http://fact.on.ca/Info/pas/gardnr87.htm> (Feb. 24, 2003).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Barbara Ellen Handschu, *Questioning Children In Camera Interviews* (Jan. 2002) at <http://www.aaml.org/Articles/2002-3/Handschu-Questioning%20Children.htm> (Feb. 24, 2003).

<sup>49</sup> Jones, *supra* note 26, at 84.

<sup>50</sup> *Id.*

At this point in the process the judge should correct any inaccurate information the child has about the proceeding. The judge should also supplement the child's understanding with information the judge thinks the child should know.<sup>51</sup> The child should be made fully aware that the judge is the one to make the final decision as to the custody of the child and the entire burden or responsibility is born by the judge and not the child.<sup>52</sup>

Prior to the substantive portion of the interview, the judge should outline for the child why the interview is being conducted and what the judge wants to know from the child.<sup>53</sup> At this point the judge should introduce the child to any other persons present for the interview.

The judge should open the interview with easy questions the child can answer honestly and with out fear or anxiety.<sup>54</sup> Questions such as the child's name, age, address and so on. The judge is well advised to ease into the questioning.<sup>55</sup>

#### 6. *How should the judge interview the child?*

First, the judge should ask only age appropriate questions.<sup>56</sup> Legal terminology for the most part is to be avoided.<sup>57</sup> It is important for the judge to remember that children differ from adults in thought processes, vocabulary, memory, and attention and moral values.<sup>58</sup> The same is true with regard to long, convoluted or compound questions.<sup>59</sup> The key is to keep it simple so that the child can fully understand the questions presented to the child.

Judges should only use questions that are short, simple in structure and easily understood.<sup>60</sup> Also questions that suggest a

---

<sup>51</sup> *Id.* at 85.

<sup>52</sup> Jones, *supra* note 26, at 85.

<sup>53</sup> *Id.*

<sup>54</sup> Handschu, *supra* note 48.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Jones, *supra* note 26.

<sup>59</sup> Handschu, *supra* note 48.

<sup>60</sup> Jones, *supra* note 26.

304 *Journal of the American Academy of Matrimonial Lawyers*

desired answer are to be avoided.<sup>61</sup> The judge should provide and seek clarification when necessary.<sup>62</sup>

While it seems obvious, the judge should listen carefully and follow up on the answers the child provides.<sup>63</sup> It is recommended that the judge incorporate the “looping” practice in follow up questions. That is, the judge should use the child’s terminology and phrases in forming the next question.<sup>64</sup> When a child gives broad or vague answers to questions proffered by the judge, he should ask the child to give an example.<sup>65</sup>

The issue of what questions the judge should ask the child during the interview is the most difficult to answer.<sup>66</sup> Because each case is different and the interview process is so dynamic there is not a model set of questions that a judge can carry into the interview.<sup>67</sup> It has been noted that there are certain principles that may guide the judge in formulating questions in particular cases.<sup>68</sup>

The judge would be well advised to be cognizant of the fact that people outside the judge’s chambers could color the child’s responses to the questions during the interview.<sup>69</sup> This principle holds true in *in camera* interviews, as the child may be likely to support the parent who is close by.<sup>70</sup> The parent who brings the child to the interview, as well as the parent who is going to take the child home after the interview, may have substantial influence over the child.<sup>71</sup> For example, a father who brings the child to a Monday interview after a long fun filled weekend might be favored by the child; and, by the same token a mother who brings the child to the interview after a stressful night of fighting over homework might not be as favored by the child.<sup>72</sup>

---

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Handschu, *supra* note 48.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Jones, *supra* note 26.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Gardner, *supra* note 45.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

The judge should remember the child development principles in framing the questions that are going to be asked of the child.<sup>73</sup> Many words have different meanings to children and judges should try and use only words with one meaning when asking questions.<sup>74</sup> The structure of the sentences should also be as simple as possible to promote understanding by the child.<sup>75</sup>

Just as a child might not understand a judge's question the judge might not understand the child's answer. If the judge is unsure what the child means he might repeat the question in simpler terms or repeat what the judge understood the child to say.<sup>76</sup>

The judge should also keep in mind the child's limited memory. Because a child often has a difficult time recalling past events the judge should be aware of this and asking questions concerning prior events might lead to inaccurate or totally meaningless answers.<sup>77</sup> Another issue that comes up with regard to the child's memory is the length and structure of questions. The child's short term memory mandates that the questions be short and concise as the child must remember the beginning and the middle of the question by the time the judge gets to the end of the question.<sup>78</sup> Long questions with complicated facts or components could result in the child not understanding the question.<sup>79</sup>

One more important fact to remember is that the child should not be asked to directly express his or her preference as to which parent he or she would like to have custody even though the child might volunteer such information.<sup>80</sup> Through careful formulation and presentation of the questions and thoughtful consideration of the child's answers, the judge should be able to determine the parent with whom the child would choose to live.<sup>81</sup> Directly asking the child for his or her preference appears to shift the decision from the judge to the child and can cause trauma to the child.<sup>82</sup>

---

<sup>73</sup> Jones, *supra* note 26.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Jones, *supra* note 26.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Jones, *supra* note 26.

<sup>82</sup> *Id.*

#### 7. *How should the interview conclude?*

When the interview is coming to an end the judge should ask the child if there is anything else the child would like to talk about or tell the judge. This will give the child the opportunity to bring up any issues the judge might have over looked. The child should also be given the opportunity to ask any questions he or she might have.<sup>83</sup> The judge should thank the child for participating in the interview and explain the next step in the process to the child.<sup>84</sup>

### **IV. Tips On Eliciting Information From Children**

Remember that each case and each child is different and might require various approaches.<sup>85</sup> If the child finds it difficult to talk about a certain topic or events, the judge should consider that the child simply lacks memory of that event or topic.<sup>86</sup> Because of this, questions should be phrased in a way that that an inability to recall or to answer the question is acceptable.<sup>87</sup>

Follow up on what may appear to be inconsistencies in the child's responses to questions.<sup>88</sup> The judge should remember to use open-ended, non-leading questions. These are the who, what, when, where and why sort of questions.<sup>89</sup>

Following the phase of the interview where the process is outlined for the child, the judge should move into questions about the child. The questions could be general in nature, such as what the child likes to do, if he or she plays sports, if the child has a particular subject they excel at in school and so on. This puts the child at ease and also lets the child know that the judge is interested in him or her and not only about the child's parents.<sup>90</sup>

When asking the child questions about his or her relationship with and feelings toward his or her parents the judge is well advised to keep in mind that the purpose of the interview is to determine what the child's preference is as well as what is in the

---

<sup>83</sup> *Id.*

<sup>84</sup> Section "E" Guidelines, *supra* note 25.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Handschu, *supra* note 48.

<sup>90</sup> Jones, *supra* note 26.

best interest of the child and should frame the questions accordingly.<sup>91</sup>

The judge should be aware of the fact that the child's answers can be incomplete or misunderstood when not taken in context with the entire facts. For example, when asked "what do you do with your father or mother?" the child might reply, "My father and me do lots of fun stuff together, but my mom never does anything with me."<sup>92</sup> Not only can this response be incomplete it could mislead the judge when taken out of context. Maybe the child's father only has the child a few days each month and over compensates by engaging the child in fulfilling activities while the mother works full time as well as raising the child and thus has little time for extra-curricular activities.<sup>93</sup>

Open-ended, non-value-laden questions such as, 'what do you like about your father?' or 'what do you like about your mother?' may be appropriate.<sup>94</sup> While question such as 'who do you trust more, your mother or father?' or "is your mother or father more honest with you?" are inappropriate.<sup>95</sup> This is partly so because the child might have a different or immature understanding of trust or honest as well as a different moral judgment system.<sup>96</sup>

The judge should avoid asking yes or no questions.<sup>97</sup> This form of question can result in a response that is questionable with regard to validity. A quick yes or no may be an easy way for the child to get off the hook and might not result in a meaningful answer to the question.<sup>98</sup>

More effective questions would be ones such as, 'tell me about your mother,' or 'I would like for you to tell me the things you like and don't like about your mother.' It is important to give balance with regard to questions about each parent so as not to lead the child to guess what the interviewer wants to hear.<sup>99</sup>

---

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Jones, *supra* note 26.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Gardner, *supra* note 45.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

While the judge is attempting to get at the child's preference he or she must also be thinking of the child's best interest. One approach suggested is called the "grandma's criteria" in getting to the best interest of the child.<sup>100</sup> Under this approach, the interviewer would ask things that a grandma would likely be interested in knowing. The idea is that if grandma's ghost could roam the house and see all the activities in the home what would she pay attention to and then report to the court.<sup>101</sup> These items of inquiry could include who wakes the children in the morning, who prepares breakfast and gets them off to school, who has the most interaction with the children after work and school, is homework time a pleasant experience or is it one of trauma and fighting.<sup>102</sup>

## V. The Value of the Child's Preference

At this point it is assumed that the judge has determined that the child is of sufficient age and maturity to have his or her preference taken into consideration as to custody. Still the question looms, what information that the child has provided should be considered and what value to place on it when the judge faces the task of determining custody. The two key pieces of evidence to be gathered in the interview that are of particular importance are the child's demeanor and reasons for having the preference.

## VI. Conclusion

The process of interviewing a child is one that should be approached with caution. The child is going to enter the process already traumatized by the separation of his or her parents. While it is not always necessary to interview the child or children, when it is the person or persons conducting the interview should take time to prepare for such an interview. There are various sources available to judges, attorneys and parents, these should be sought out and relied on.

The key to remember is to protect the child and use the best approach that is going to aid in obtaining the information sought

---

<sup>100</sup> Gardner, *supra* note 45.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

*Vol. 18, 2002*

*Interviewing Children*

309

and necessary in ascertaining the child's preference and at the same time ensuring that the child's best interest is put first.

Larry Wright

