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**FILED**  
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By: E. James, Deputy

5 Attorney for Minor  
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7 SUPERIOR COURT OF CALIFORNIA  
 8 COUNTY OF SAN DIEGO  
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|                             |   |                              |
|-----------------------------|---|------------------------------|
| 10 In re                    | ) | CASE NO, D 472021            |
| 11                          | ) |                              |
| Petitioner; MICHELE LALLY   | ) | STATEMENT OF MINOR'S COUNSEL |
| 12                          | ) |                              |
| and                         | ) | Date: 12-16-08               |
| 13                          | ) | Time: 9:00 AM                |
| Respondent: CLIFFORD ROEPKE | ) | Dept: F1                     |
| 14 -----)                   |   |                              |

15 I am the Court-appointed attorney for Oliver Lally-Roepke (DOB 6/30/95). I was  
 16 appointed to represent Oliver on September 18, 2007 by the Honorable Lisa Foster. The  
 17 mother has filed a motion to modify the orders filed on November 29, 2007 that call for an  
 18 equal sharing of Oliver by the mother and the father. Since my appointment I have interviewed  
 19 Oliver on three occasions. My last interview with Oliver took place on October 30, 2008 when  
 20 I interviewed him in my office. I most recently interviewed the mother on November 18, 2008  
 21 and the father on October 27, 2008.

22 Oliver presents as a very bright 13-year-old young man. I found it very easy to  
 23 communicate with him. He was consistent in all three interviews. All three interviews took  
 24 place outside the presence of any third party. I explained the attorney-client privilege to Oliver  
 25 and he understands the privilege. He expressly authorized me to tell the Court his preferences.  
 26 In all three interviews Oliver could not have been clearer about how he feels. He "loves" his  
 27 mother and he "hates" the father. He would like the schedule to be changed. I offered Oliver  
 28

1 five options concerning continuing contact with the father: the schedule would remain as is;  
2 Oliver would visit the father on alternate weekends and one-half of the time during non-school  
3 time; Oliver would visit the father six times a year; Oliver would visit the father when he  
4 wanted to visit; and Oliver would never visit the father. Oliver selected that he would never  
5 visit the father. When I asked Oliver why he feels this way, he told me he does like being in the  
6 father's home, he is often afraid of the father; the father drinks beer and wine daily, and Oliver  
cannot have any friends come to visit him.

When I pressed Oliver about the father's drinking, he told me that the father drinks "one  
9 king size beer and two to four glasses of wine" daily. According to Oliver, after the father  
10 consumes the alcohol, his face gets red and he often "yells". Oliver told me that the father  
11 frequently disparages the mother but the mother never disparages the father. When I asked  
12 Oliver to tell me one positive thing about the father, he responded "nothing". I asked him if he  
13 loves the father and he responded "no". I asked him if he hates the father and he responded  
14 "yes". When I asked Oliver what could be done to fix his relationship with the father, his  
response was "nothing".

When I asked Oliver about the mother, his responses were the opposite of what he told  
17 me about the father. He expressed love toward the mother. He also stated, "I would not have  
18 enough time to list all good things she does for me." Oliver was clear that the mother helps him  
19 with homework, allows his friends to visit, is never angry at him or any other person, and is  
20 always supportive of him

The father brought Oliver to my office on October 27, 2008. The father and Oliver  
22 waited for me prior to the meeting in the waiting area of the office. After our meeting I walked  
23 Oliver back to the waiting area where the father was waiting. When I first greeted Oliver and  
24 when I walked him back to the father, Oliver appeared comfortable with the father. During our  
5 meeting was struck by Oliver's lack of emotion and/or passion when he discussed the mother  
26 and the father. His presentation was crisp, articulate, and businesslike. Oliver's demeanor  
27 during our office meeting was consistent with my interviews of Oliver in the mother's home

1 and the father's home.

2 The trigger for the mother's motion to modify the equal sharing schedule were the  
events of Thursday, October 2, 2008. There are many areas of disagreement between the  
4 mother and the father concerning what happened that evening. I think the parties would agree  
5 on the following: Oliver left the father's home during the father's parenting time. The father  
6 followed Oliver from the home, the mother picked Oliver up as the father was following him,  
and Oliver called the police from the mother's car alleging that he had been physically abused.  
8 The police interviewed Oliver and the father. The mother kept Oliver in her care on Thursday  
9 evening, October 2, 2008. Oliver stayed with the mother from October 3, 2008 until October  
10 10, 2008 (her scheduled week), from October 10, 2008 until October 17, 2008 (the father's  
11 scheduled week with Oliver), and from October 17, 2008 until October 24, 2008 (her scheduled  
week). On October 23, 2008, the father appeared ex parte and obtained an order that Oliver  
13 was to be returned to his care on October 24, 2008. On October 24, 2008, Oliver refused to  
14 return to the care of the father after school. I contacted the school and confirmed that the Court  
15 had ordered Oliver to be in the father's care starting after school on October 24, 2008. I told  
16 Ms. Lowell, the principal, that I expected Oliver to obey the Court's orders. After Oliver was  
17 informed of the order, he returned to the father's care.

18 The mother and the father disagree about the proper interpretation of each of the above  
19 events. For example, the father alleges that the mother wrongly withheld Oliver from him from  
20 October 10, 2008 until October 17, 2008. The mother denies the allegation and argues that the  
21 father never asked that Oliver be returned to his care nor did he pick up Oliver at school.  
22 Expressed another way, the father alleges that the mother willfully violated the Court order; the  
mother argues that the father waived the Court order and voluntarily allowed Oliver to remain  
24 in her care.

24 I spoke with social worker Ruff who conducted an investigation concerning Oliver's  
26 allegations that he was physically abused by the father. The social worker told me that he was  
27 closing the case as unfounded. He also indicated that he believed that the mother encouraged  
28

1 Oliver to leave the father's home. The police conducted an investigation and declined to arrest  
2 the father or refer the matter to the District Attorney.

3 It is obvious that the long marital jihad that is deep into its second decade continues.  
4 Any analysis of the case starts with a reading of Dr. Doyne's two comprehensive reports. Dr.  
5 Doyne's first report encompassed the period from May 19, 2004 to January 24, 2005. His  
6 second report covered the period from December 14, 2006 until June 4, 2007.

7 In part, Dr. Doyne found the following:

8 **Dates of Assessment: 5-19-04 to 1-24-05**

9 Oliver Lally-Roepke and his parents, Michelle Lally and Clifford Roepke, were referred to a  
10 psychological evaluation after the parties could not agree on a suitable custody  
arrangement for this youngster.

11 . . . [I]t was the father's position that he will never have a normal relationship with his  
12 son unless there is a change in custody to his care.

13 In contrast, it was Ms. Lally's belief that Oliver has not wanted to see his father due to  
Mr. Roepke's mistreatment of the child.

14 Michelle Lally and Clifford Roepke were married July 30, 1994, separated in December  
15 1996, and filed for divorce in 2002. The couple have one child from this union, Oliver  
Joseph Roepke (although Michelle says his last name is Lally-Roepke), born June 30,  
1995.

16 The mother has other concerns about Mr. Roepke. She claims Cliff does not understand  
17 what Oliver needs and does not know if he even checks Oliver's homework as the father  
will not talk to her. But when he has called her, Mr. Roepke can be "extremely nasty"  
according to Michelle.

18 Another aspect of Cliff's personality that is worrisome to Michelle is his tendency to be  
19 physically abusive.

20 Moreover [according to Michelle], his short fuse makes it difficult for Oliver to have  
21 any type of relationship with Mr. Roepke as the child has witnessed his explosive anger.

22 The father has a very different version of what is in Oliver's best interests.

23 Mr. Roepke believes Michelle is a disturbed woman who wants to keep his son away  
24 from him.... Moreover, he believes what Michelle really wants is him out of Oliver's  
25 life permanently and claims his views have been reinforced by Penny Angel-Levy, MFT  
who saw the couple in mediation in 2003. According to Cliff, "Penny made it clear that  
Michelle has a lot of anger going on when it became evident that the mother would  
distort the truth."

26 Mr. Roepke has been extremely frustrated with Court because the mother has been  
27 found in contempt but still obstructs his visitation.  
28

1 OLIVER ROEPKE

2 When questioned about his family, this child related that "Mom and Dad don't like  
3 each other." When this writer inquired how he might know that, he explained, "One  
4 day when my parents were together, my Mom told me about what they said - like- 'Your  
5 Dad did so and so.'"

6 As to other things that Michelle has told the child, Oliver explained, "Once, he (Mr.  
7 Roepke) threw a dresser at her," adding that his mother was hurt although he does not  
8 know why they were fighting. But when asked if his father says negative things about  
9 his mother, he responded. "No."

10 [T]he undersigned asked the child if he had three wishes, what he would request. For  
11 one of his wishes, he said that, "I would like Mom and Dad to stop fighting."

12 With regard to his visits with Mr. Roepke, this youngster initially told this writer, "I  
13 don't really like them - I only like to stay one or two days and then go home because he  
14 (his father) starts acting really weird doing creepy stuff." But Oliver could not elaborate  
15 to this writer exactly what kind of "weird" things the father would do.

16 "My Dad has bought an apartment down here, but I'm not really comfortable with him  
17 in San Diego." Then, he added, "I want him to move away even though he bought a  
18 house." The undersigned then asked the child as to whether he or his mother was upset  
19 about the father's move, and he responded, "We are both upset about it." "She, (Ms.  
20 Lally) doesn't like it because she knows the plan - she's going to be booted out of her  
21 home and I'll have to live with him and I don't want that." Oliver pleaded, "What is he  
22 (Mr. Roepke) trying to do - kill me?"

23 In contrast to his earlier statements, on his second interview, the child said, "He (Mr.  
24 Roepke) sometimes talks bad about my Mom, but she never talks bad about him."

25 "Mom is telling me he is going to do it ('boot Mom out') - she is saying 'Be  
26 Prepared'." Then the child explained, "My Dad acts nice around people, but he's mean  
27 - he's acting nice to disguise himself." But upon inquiry, the child did not know why  
the father might be trying to deceive others.

Regarding the father's alleged mistreatment, this evaluator asked the child how Mr.  
Roepke was mean to him and the youngster related, "He screams at me - once when he  
came to pick me up, he grabbed my neck and I hit the roof the car." Moreover, the  
child said, "He locks me in the closet and he'll scream and yell at me when I don't want  
to do something he says." Having painted a rather negative picture of the father, this  
evaluator asked the child if he ever does any "fun stuff" with his father; to which Oliver  
replied, "No." When pressed further as to whether Mr. Roepke had ever given him  
presents for birthdays or Christmas, the child responded, "No," then explained, "Once  
he left a really bad message on my Mom's phone - I heard it." When asked what the  
message was, he said that his father told his mother, "I was supposed to have Oliver for  
vacation," and explained that his father was yelling at Michelle.

When the child was seen with Mr. Roepke, Oliver appeared comfortable with his father,  
but not overly close.

When seen with his mother, the child also appeared comfortable, but somehow overly  
enmeshed with Michelle. During this conjoint interview, Oliver sat with his legs draped  
over his mother's lap and Michelle was stroking him with the child sitting crossways.

1 This continued throughout the entire session, and Oliver seemed to relish her physical attention that did not appear age appropriate for the child.

Regarding Mr. Roepke, the mother said in front of Oliver that the child complains of stomachaches before the visits and sometimes will make himself throw up prior to leaving. After returning, she claims that Oliver is clingy, but by the third day after visitation, he is doing much better, returning to "his old self."

5 MICHELLE LALLY

6 Ms. Lally is a 42-year-old artist and teacher which works at Oliver's school Stella Maris Academy, part-time. Michelle presented as above average in intelligence, by history although no formal cognitive testing was done. Throughout the assessment, the mother's mood remained anxious and tense. Outside of her interviews, she sporadically called this writer somewhat frantic in relating her concerns about her son. This also occurred prior to the father's visits where she insisted that the "child needed to be heard" regarding his resistance to seeing Mr. Roepke.

9 She attended Orange Coast College and, later, Long Beach State earning an art degree in 1984. Michelle also studied for a Master's at the Art Center in Pasadena graduating in 1989.

13 ... she noted early on that Mr. Roepke "had a bit of a temper" and also said alcohol is a problem for him.

The couple married in 1994 but then Cliff's temper re-emerged, according to the mother.

14 Michelle said there were incidents of violence where the father "threw me into a wall with the baby."

17 In 2001, Ms. Lally relocated to San Diego as her sister lives here. Although she told Cliff ahead of time, when the father began visiting Oliver, he again became violent. When her mother was here, throwing a dresser at her. Then, the father stormed out of the house. After this incident, Michelle filed for divorce....

19 As far as visitation, the mother believes that Mr. Roepke never spent the time to develop a relationship with the child. Moreover, she knows Oliver is afraid of him because of his temper because the child would get upset over the visits and not want to go, saying he was scared. Her son also told her that the father said he could "put his mother in jail if she did not cooperate,"

22 The father claims that Michelle relocated and did not tell him where she or the child were for some period of time. But the mother said, "I told his mother and left a note for Cliff that I was moving to San Diego."

The father denies that alcohol is a problem.

26 The father has requested full custody of Oliver because he cannot visit without interference, according to Mr. Roepke.

27 On her psychological testing.... Michelle showed an extensive amount of conscious defensiveness making at least her MMPI profile questionable in validity where, at minimum, she under-elevates the level of her distress.

1 Nonetheless, clinical testing data suggest that the mother has strong denying defenses  
2 and very limited insight and self-awareness of how her behavior affects others. Thus,  
3 Michelle can minimize her shortcomings and limitations often reacting self-righteously  
4 to behavior in others. Because of her defensiveness, the mother is quick to direct  
5 criticism and energy towards others, particularly Mr. Roepke, rather than looking at her  
6 own responsibilities for current problems. Nevertheless, her quite good ego-strength  
7 predicts organized and practical functioning in most day-to-day activities.

8  
9 When Ms. Lally experiences anxiety it comes in brief, agitated episodes rather than  
10 chronic worries. That is one explanation as to why she would occasionally call this  
11 writer in distress, worked up over some aspect of visitation or reacting to a comment  
12 that her son offered.

13  
14 When stressed or threatened, she can also pursue her self-interests in urgent or dramatic  
15 ways more strongly than the average child custody litigant sample.

16 Her personality testing also suggests that Ms. Lally has recurring problems in being able  
17 to forgive and forget, more so than the average child custody litigant. In this regard, she  
18 becomes focused on past occasions where she felt Cliff either hurt her or the child  
19 which interferes with her either letting go or allowing free flowing contact. This  
20 modeling can lead to judgmentalness or extreme vigilance by Oliver, particularly with  
21 the amount of information the child has been given by the mother. But her scores also  
22 indicate an above average risk for loss of control over her temper and she did admit on  
23 at least one occasion, to scratching the father's face despite her complaints that he was  
24 violent with her.

25 The depth of Michelle's parent to child bonding with Oliver appears adequate to  
26 reasonably good, but her son appears extremely enmeshed with her and may manipulate  
27 the mother for attention. Further, her scores indicate a mild tendency to see people as  
28 for her or against her. Thus, she could be sensitive to spontaneous comments by the  
child that favored Mr. Roepke as being against her. It is most likely that any alienation  
efforts on her part are derived from sincere perceptions - whether accurate or not - that  
Cliff's abusive behavior needs to be countered and Oliver needs to be protected.

### CLIFFORD ROEPKE

20 Cliff Roepke is the 41-year-old father of Oliver....

21 [T]he father presented as above average in intelligence, by history, although no form  
22 cognitive testing was done.

23 On the father's psychological testing, Mr. Roepke was generally open, but mildly self-  
24 critical on his inventories. Further, there are no indicates of any conscious attempt to  
fake good, so his testing results are viewed as generally reliable and dependable.

25 Clinical testing data suggests the father can have intense emotional reactions involving  
26 cumulative resentments that he may not be able to express in adaptive ways. As such, Cliff  
27 can overreact to threats to his security and easily can feel poorly treated or picked  
28 on, especially by his former wife. And when the father feels wronged, he is quite slow  
to forgive and forget and can harbor resentments.

The data also indicates a pervasive attitude for suspiciousness where he may  
misinterpret the intentions of others. In this case, what might be the mother's over-

1 protectiveness of the child, he sees as a direct, conscious effort to disrupt, interfere  
2 and/or end his relationship with his son. Despite his suspiciousness, the father's good  
3 ego-strengths predict organized and practical functioning in many day-to-day areas of  
4 his life.

5 Moreover, Cliff can be stubborn about doing things his way thinking he is always focused.  
6 But, he can also be irritable and demanding when stressed and is capable of sharp  
7 temper outbursts when pressed. In this regard, he tends to over-control his hostility for  
8 long periods of time, but can have infrequent, but strong emotional explosions. In this  
9 regard, the father tends to unevenly tolerate frustration despite his presentation that he  
10 rarely gets angry. And in terms of his emotional threshold, Mr. Roepke's emotions can  
11 easily surface and can be strongly expressed. That is, he has a lower than average  
12 threshold for emotional expression compared to normative child custody litigants.  
13 Moreover, when stressed, he can pursue his self-interests in urgent ways although his  
14 potential is only slightly greater than most parents seeking custody. But, like his ex-  
15 wife, Cliff has definite difficulties being able to forgive and forget and his self-righteous  
16 resentments could interfere with his ability to move on with his life.

17 The father has a strong need to make decisions and have veto rights over decisions that  
18 might affect or control him. That is one reason he is so extremely frustrated with  
19 Michelle whom he sees as constantly interfering with his time with Oliver, subtly or  
20 otherwise.

21 In terms of the quality of his bonding with Oliver, the depth of his parent to child  
22 bonding appears adequate to reasonably good.

### 23 COLLATERAL CONTACTS

24 William J. Dess, Ph.D., is a psychologist who has seen Oliver in psychotherapy over  
25 adjustment issues related to the divorce.

26 [T]he doctor remarked that Oliver has been resistant to visitation indicating that he has  
27 difficulty separating from his mother. In addition, Dr. Dess commented that the mother  
is somewhat over-protective, remarking, that he has seen the child clinging onto her leg  
at an exchange. On the other hand, the father does not have as much patience with the  
child as he could, viewing Oliver's resistance as due to the mother's manipulations....  
[T]he doctor believes that the child needs to be more independent from the mother and  
that both parents play a part in Oliver's adjustment problems.

28 Penny Angel-Levy, MFT, saw the couple for extended mediation and indicated the  
29 father did not always use the best judgment, but the mother would play up on everything  
30 in an enmeshed way with the child so as to keep the father from having a relationship.  
31 In this regard, she perceived Ms. Lally as very angry with Mr. Roepke, in part due to  
32 their off and on nature of their past relationship. However, she was not able to resolve  
33 visitation issues as the couple remained in conflict.

### 34 DISCUSSION

35 The crux of the present custody dispute revolves around the personalities of the parties.

36 Oliver is very anxious about the continued antagonism between his parents and feels  
37 protective of his mother whom he sees as troubled and frightened by Mr. Roepke. Yet,  
when the child was seen with his father, he did not appear fearful or anxious.

[T]he mother's behavior strongly contributes to the child's estrangement from Mr. Roepke.

On the other hand, there is consistent evidence, both from the testing, the father's clinical presentation, and collateral references such as Dr. Dess and Ms. Levy, to suggest that the father's lack of patience with the child has also created distress for Oliver. In this regard, Mr. Roepke may project some of his frustration and antagonism towards Ms. Lally directly on Oliver who has been intermittently resistant to visitation, although not so much lately. But this writer believes that separate from Ms. Lally, Oliver has residual anxiety about aspects of the father's behavior which, when reinforced by the mother's over-protectiveness, makes this child even more aligned with Ms. Lally.

...by history, Michelle has been the primary custodian and has consistently nurtured the child, encouraging his creative and artistic side, as well as consistently helping him in school, usually volunteering and assisting with his extra-curriculars such as coaching his soccer team. Despite her liabilities, she has been there for Oliver and the two are closely bonded, but perhaps too much so.

...the mother is over-protective of Oliver and also does not draw clear boundaries between her feelings towards Mr. Roepke and that of her son, embroiling the child in her own anger towards the father.

Also on the liabilities side, Michelle rationalizes her actions primarily as both protective and consistent with Oliver's wishes.... But she has limited insight as to how the child is affected by her over-protectiveness.

So, on balance, the evidence suggests that the child has experienced unneeded duress and had limited contact with his father because of Michelle's over-involving Oliver in her concerns. And the mother tends to project blame towards Cliff and, as opposed to addressing her part of the conflicts, she sees Mr. Roepke as a threat to Oliver. Rather than conscious alienation, Ms. Lally's efforts are from a protective stance but, nonetheless, create significant problems for Oliver.

As for the father, Mr. Roepke is a committed parent who can be very responsible in his care of Oliver. He has a good sense of what Oliver likes and so when they plan outings, the child appears to enjoy himself when he can be free of the mother's influence. On the liabilities side, clinical testing data suggest that Cliff has a short fuse and can become frustrated easily, and raise his voice or yell if pressed. Moreover, Mr. Roepke minimizes this aspect of his personality, but this writer has observed his lowered frustration tolerance as the evaluation progressed, as there clearly were times he seemed extremely agitated by the mother's actions. However, there is no persuasive evidence to suggest that he has abused the child although Oliver is much more sensitive to the father's anger due to being enmeshed with the mother. Nor is there any evidence that the father is alcohol dependent although he admits to drinking.

For this or any visitation to work Michelle will need to learn to draw clearer boundaries between her feelings and that of the child. In this regard, the mother has little insight into what she has done to enmesh Oliver in her own issues and, thus, therapy as well as a parenting course will be recommended for Ms. Lally to address these problems. Most significantly, with Oliver being so emotionally dependent on the mother, it is extremely important that Michelle understand how important it is for the child to become more independent from her.

1 ...[T]his -writer makes a strong admonition to the mother that should she not cooperate  
2 in facilitating the father's contact the undersigned would not hesitate to consider a  
3 change in custody to Mr. Roepke if she attempts to further undermine his time with the  
4 child. That is, should there be consistent evidence that the mother has restricted Mr.  
5 Roepke's access, upon review this writer would consider making the recommendation  
6 for a change in primary custody of the child. However; this is not the undersigned's  
7 first preference nor what Oliver would want. But Michelle will need to approach co-  
8 parenting with a far different attitude that the child needs his father as well as his  
9 mother.

10 **Dates of Assessment 12-14-06 to 6-4-07**

11 Michelle Lally contends that Oliver, age eleven, is fearful of harm by his father. In this  
12 regard, on December 4, 2006, the child presented a note to his teacher at Stella Maris  
13 Academy describing his "high level of fear and anxiety over his father having a large  
14 knife in his vehicle."

15 As for the current evaluation, the undersigned found that Ms. Lally has continued to  
16 have boundary problems by involving Oliver in her negative feelings about Mr. Roepke.  
17 To this end, the child can exaggerate the truth which has led to allegations of abuse by  
18 the father though they have not been supported by CPS. Nonetheless, Oliver is caught  
19 in the middle between his parents due to the mother's enmeshment and has experienced  
20 depression and anxiety as a result. Although he is a good student, there is no evidence  
21 to support the mother's concerns that Mr. Roepke has been abusive to the child. Rather,  
22 his mother continues to draw the child in her issues, crossing boundaries with her  
23 concerns.

24 In this writer's previous assessment, this evaluator recommended that the mother be in  
25 treatment for this issue although there is no evidence that she has complied. On the  
26 other hand, the father has not been in individual therapy as was also recommended....  
27 [T]his writer believes it is in Oliver's best interests to have expanded time to a week-on,  
28 week-off arrangement. In the alternative, should the mother continue to attempt to  
alienate the father, this writer believes the Court should consider a change in primary  
custody to the father.

[T]his writer has many doubts as to whether the mother will allow Oliver to have a  
wholesome relationship with Mr. Roepke.

The catalyst for the current assessment was Ms. Lally's contention that Mr. Roepke has  
continued to be abusive to Oliver.

[T]he-father was concerned about Michelle's incessant telephone calls to Oliver on  
designated times stating that the mother will call six to seven times a day, greatly  
distressing the child.

In this writer's 2005 evaluation of this family, many of the disputed issues were similar  
with Ms. Lally alleging abuse of Oliver on the father's part and Mr. Roepke claiming  
that the mother was trying to alienate their son from him. But after conducting a full  
assessment, this writer found no abuse by the father of Oliver. Rather, this evaluator  
concluded that the mother was distressing Oliver in that she does not draw clear  
boundaries between her feelings for Mr. Roepke and that of her son, embroiling him in  
her issues with the father. Moreover, the undersigned determined that Oliver was  
aligned with his mother as this boy articulated a number of statements Ms. Lally herself  
had made which were negative about Mr. Roepke. While Michelle has many positive

1 qualities as a parent and generally has provided responsible care, this psychologist felt  
2 that she enmeshed Oliver to his detriment.

3 On the other side of the coin, this evaluator found Mr. Roepke to be a committed parent,  
4 although Cliff can become frustrated easily and raise his voice which, if reported by the  
child to the mother, could trigger her fears of mistreatment. However, this writer found  
no persuasive evidence to suggest the father had abused Oliver, but rather the child is  
much more sensitive to the father's anger due to him being aligned with the mother.

5 When seen jointly, in contrast to what he had previously told this writer, this youngster  
6 seemed very comfortable with his father, snuggling with Mr. Roepke on the sofa during  
7 this joint interview. So this writer inquired of Oliver "You told me you were afraid of  
8 your Dad," and he backpedaled, stating "I guess I was stressed out - I was scared. Now,  
I am not afraid of him."

9 Unfortunately, Oliver will do most anything not to upset his mother which includes  
10 making statements that are quite different from his experiences with Mr. Roepke.  
However, this youngster sees no way out of these conflicts because to say to his mother  
that he enjoys his time with his father - which he does - would upset Michelle.

#### 11 MICHELLE LALLY

12 On the mother's psychological... her credibility is a significant issue.

13 Clinical test data suggests the mother has patterns of emotional outbursts that are brief,  
usually followed by denial and repression. However, most of the time Michelle presents  
14 as a conventional person who is talkative, energetic and outgoing. But the mother has  
limited self-awareness of how her behavior affects Oliver dramatically. Put simply, her  
15 anxiety about Mr. Roepke spills over onto the child. And when threatened, she becomes  
overwrought and concerned about the father's bad conduct reading into his behavior  
16 malevolent motivations which Oliver absorbs.

17 When crossed or frustrated. Ms. Lally can become irritable and demanding. But her  
unusually good ego strength suggests efficiency and organized functioning in most day-  
to-day activities.

18 On the other hand, when she feels threatened; Ms. Lally can respond in occasionally  
19 urgent and dramatic ways such as calling the police or her ex-husband. But Michelle  
has a tendency to externalize blame and sees most problems as outside of herself,  
20 particularly the result of Mr. Roepke's actions. So her focus is always on Cliff, not  
what she has contributed to the situation.

21 While her risk for antisocial behavior appears about average, Michelle does have a  
22 mildly above average risk for loss of her temper compared to other child custody  
litigants. Nonetheless, her ability to bond is adequate to reasonably good but the mother  
23 lacks clear boundaries and has pulled Oliver into her emotional issues with her former  
husband.

24 The mother also has a strong need to have control over decisions that affect her son and  
25 is likely to act unilaterally.

## CLIFFORD ROEPKE

Mr. Roepke is extremely frustrated with the mother's continued allegations.

On the father's psychological testing, Mr. Roepke took the assessment in a moderately self-favorable way, tending to minimize weaknesses. However, he did not show any significant amount of conscious defensiveness.

Clinical testing data suggest Cliff's an over-controlled man who tends to cover his shortcomings. However, Mr. Roepke comes across to others as socially correct if not over-precise but has many ways of gaining approval from others, Due to his good ego strength, his day-to-day functioning is really quite good.

Nonetheless, at times the father may have a dissociative lack of self-awareness of what he is doing and consequences for his behavior. In this regard, Cliff may have a low tolerance for frustration that could lead to angry outbursts, although there is no evidence whatsoever he has been abusive to his son as has been suggested by Ms. Lally. And like his ex-wife, He tends to externalize problems away from himself, blaming Michelle for most of his current difficulties.

Mr. Roepke's potential for antisocial conduct appears about average for the normative sample of child custody litigants taking an MMPI-2. However, he is mildly above average for loss of control of his temper, which is only slightly above most child custody litigants. Generally, his temper should be reasonable well-controlled and does not present a serious risk for this child.

The depth of Cliff's bonding with Oliver appears mostly adequate but can be uneven at times. And he has a mild tendency to see people as either for him or against him.

## COLLATERAL CONTACTS

Kelly Monge, MSW, from Child Protective Services indicated that she had the impression that the mother had manipulated the child regarding a complaint about a hunting knife.

Adrienne Sierra, MSW, a supervisor at Child Protective Services, indicated there had been two referrals on Oliver. The first referral was made December 14, 2006 regarding emotional abuse by Mr. Roepke and was closed in March, 2007 as unfounded. This related to the earlier allegation by the mother that the father had a knife in his car, but Oliver gave no reason why he would be hurt. According to Mr. Sierra, CPS investigated an earlier referral on November 29, 2006 for emotional abuse by the father where the child was allegedly afraid to go with the father. But the social worker indicated that these were issues that the mother exacerbated. Therefore, they "evaluated out" his referral and said it did not require investigation.

## DISCUSSION

From this writer's perspective, Oliver is a bright, personable eleven-year-old youngster who continues to be caught in the middle between his parents' conflicts. And unfortunately, the dynamics have changed little since this writer first saw the child where Oliver can be swayed due to the mother's anger, frustration and fear of the father. As a result, Oliver experiences anxiety and depression as he is so caught up in Michelle's issues, at times, that he will not tell the truth. As his teacher aptly stated, "He changes his mind according to who he is with."

1 The dynamics between Mr. Lally and Oliver go beyond alienation or estrangement  
2 issues to emotional dependency where the child is too close to the mother. [T]here is no  
evidence of physical and emotional abuse by the father, although Micelle continues to  
assert that.

5 In this writer's opinion, Ms. Lally's need to keep [Oliver] emotionally dependent will  
eventually collide with his drive for independence in adolescence. On the other hand,  
6 Mr. Roepke presents a healthy alternative, although the father is not without his  
liabilities.

This writer's 2005 evaluation found, that [the mother] had limited insight into how her  
behavior affects Oliver. Unfortunately, that is still the case today.

According to the evidence before this writer; neither of the parents followed the  
recommendation regarding therapy to work on the issues outlined in the 2005 evaluation  
or taking the parenting course.

10 [T]he undersigned previously wrote in 2005 on page 30, second paragraph:

11 "This writer makes a strong admonition to the mother that should she not cooperate in  
facilitating the father's contact the undersigned would not hesitate to consider a change  
in custody to Mr. Roepke if she attempts to further undermine his time with the child.  
That is, should there be consistent evidence that the mother has restricted Mr. Roepke's  
access, upon review this writer would consider making the recommendation for a  
change in primary custody of the child... Michelle will need to approach co-  
parenting with a far different attitude that the child needs his father as well as his  
mother."

15 Why not change primary custody to the father? This writer believes such a change at  
this juncture would be extremely difficult for Oliver because, emotionally, he is  
essentially too close to his mother. Moreover, he is not alienated to the extent that he  
does not enjoy his time with Cliff – rather, he complains that he doesn't for his mother's  
sake.

19 ...if the false allegations continue, this evaluator sees no other choice than the father  
having primary custody.

20 At the end of his first report Dr. Doyme stated: "[T]his writer makes a strong

21 admonition to the mother that should she not cooperate in facilitating the father's contact, the

22 undersigned would not hesitate to consider a change in custody to Mr. Roepke if she attempts to

23 further undermine his time with the child. That is, should there be consistent evidence that the

24 mother has restricted Mr. Roepke's access, upon review this writer would consider making the

25 recommendation for a change in primary custody of the child. However, this is not the

26 undersigned first preference nor what Oliver would want. But Michelle will need to approach

27 co-parenting with a far different attitude that the child needs his father as well as his mother."

1  
2 About two years later Dr. Doyne stated: "If the false allegations continue, this evaluator sees no  
3 other choice than the father having primary custody. It is impossible to read Or. Doyne's  
4 reports and not conclude that the mother was primarily responsible for Oliver's poor  
5 relationship with the father. We are entering the 13th year of the war. I suppose the good news  
6 is that, given that Oliver is 13.5 years of age, this war can only last another 4.5 years. The  
7 question that needs to be asked is: What should be done? In a broad sense there are four  
8 options to consider.

9 The first option is to leave the schedule as is it. This is the option that Ms. Lynn  
10 Waldman, LCSW, of Family Court Services ("FCS") selected in her report dated November 14,  
11 2008. The option has a lot to offer. It recognizes that Oliver's allegations of October 2, 2008  
12 serious or credible. It avoids an analysis of who was at fault for the father missing a  
13 week of parenting time. But I worry that this recommendation kicks the root cause of the  
14 conflict down the field to another day. This recommendation also does nothing to protect  
15 Oliver's relationship with the father. Time is not a friend for Oliver's relationship with the  
16 Father. My assessment is that time is quickly running out to salvage the relationship between  
17 Oliver and the father. Oliver's attitude toward the father is not better today than it was two or  
18 five years ago; arguably it is worse. The status quo is not going to lead to a reconciliation  
19 between Oliver and the father; the status quo will lead to the end of the relationship.

20 The second option is to give Oliver what he says he wants. Oliver is 13.5 years old, he  
21 is intelligent, and he is doing well in school. Oliver was consistent in his three interviews with  
22 me. He does not want to have contact with the father. Oliver points to all of the father's  
23 alleged shortcomings. The father is allegedly drunk, mean, violent, indifferent, and selfish.  
24 Oliver is allegedly terrified of being in the same home as the father. If Oliver's allegations were  
25 true or, for that matter, partially true, I would support Oliver's stated preference. The problem  
26 is that Dr. Doyne and multiple CPS social workers spread over many years have not found  
27 Oliver's allegations credible. While it is clear from Doyne's findings that the father is not  
clear of fault, the parental standard for having a relationship with one's son is not perfection, it is

1 reasonable conduct. There is no credible evidence that the father has abused or neglected  
2 Oliver. There is substantial evidence that false allegations have been made by the mother  
3 and/or Oliver. If the allegations have come from Oliver's lips, given the history outline in Dr.  
4 Doyne's evaluations, it is reasonable to infer that Oliver has made the allegations because he  
5 wants to please the mother and/or the mother has encouraged him to make the allegations. I'm  
6 not inclined to support Oliver's preference of "never" seeing the father.

7 I believe it takes a heroic suspension of disbelief to accept the mother's argument that  
8 the father waived his visitation with Oliver during the week of October 10, 2008 to October 17,  
9 2008. At a minimum, the mother does not appear to have made any effort to return Oliver to  
10 the father during that week. By any standard this is a gross violation of the letter and spirit of  
11 the equal sharing orders, The fact that the father had to appear ex parte on October 23, 2008 to  
12 obtain an order to have Oliver returned to his care on October 24, 2008 speaks for itself. This  
13 prologue brings us to the third option which is that the mother's pathology identified by Dr.  
14 Doyne in both of his reports remains present. Dr. Doyne was very clear in his reports that if  
15 the mother's conduct of impeding Oliver's relationship with the father continued, the Court  
16 would consider changing custody. The warning shots were fired across the bow years ago. It  
17 is impossible to conclude anything other than she has elected to ignore those warning shots.

18 It is for the Court to decide whether the mother wrongfully and willfully withheld Oliver  
19 from the father. If the Court were to decide that the mother did in fact behave in the egregious  
20 manner that I am suggesting, then the Court would have to decide what, if any, consequence  
21 should flow from its findings. If there were no consequence to the mother, I am confident that  
22 the next crisis would be just around the corner. Each crisis moves us closer to the end of  
23 Oliver's relationship with the father. I regret to say that I believe the mother will learn to  
24 be supportive of Oliver's relationship with the father only if the consequence is serious. The  
25 consequence that I suggest is: that the mother's contact should initially be suspended and then  
26 will become supervised. Under my plan there would be no contact for about 30 days and then the  
27 mother's visitation would be professionally supervised for at least 90 days. After these periods  
28

have run, the mother's contact would become unsupervised starting with four hour visits and over a six month period increased to weekend visits. During this period it would be critical for Oliver to be in therapy with a mental health professional. The purpose of this plan would be to wean Oliver from his enmeshed relationship with the mother and to provide him with a fair opportunity to develop a normal relationship with the father.

There are at least two serious deficiencies in option three. The fundamental problem that the mother's continuing conduct has all the hallmarks of a mental health issue. Obviously I am not qualified to make mental health assessments. The second deficiency is that Oliver is going to suffer emotional trauma by being separated from the mother for an extended time. I believe that Oliver is suffering emotional trauma now because of the relentless conflict that I think is kept alive by the mother. So it is a balancing analysis. Do we stop one set of stressors only to create another set of stressors? What price would Oliver pay in order to have a relationship with the father? What price should Oliver pay in order to stop the mother's behavior that is destroying Oliver's relationship with the father?

The fourth and, in my view, the best option is to seek the input of Dr. Doyne before taking any action. Dr. Doyne is the best qualified person to address the mental health issues that have been identified above. He is familiar with the family. It will not take him very long to prepare a report for the Court with recommendations concerning what, if any, action should be taken.

The underlying order mandated that the parties pay me a retainer of \$2,000 if my involvement in the case became necessary. The father was ordered to pay \$1,500 of the retainer and the mother was ordered to pay \$500. Both parties have paid the retainer, Attached as Exhibit "A" is an accounting for my time. I request that the Court enter an order for the payment of my fees.

Recommendations:

Findings:

1. California is the home state for Oliver Lally-Roepke (DOB 6/30/95).

2. The parties were present in court on December 16, 2008 and participated in the hearing.

3. The parties have been advised that violation of the Court's orders may be punished by civil and/or criminal penalties.

4. The USA is the country of habitual residence for Oliver.

Orders

5. The mother, the father, and Oliver are ordered to return to Dr. Doyne for an assessment. The purpose of the assessment shall be to ascertain what, if any, action needs to be implemented in order to develop, nurture, and protect Oliver's relationship with the father. The mother and the father shall contact Dr. Doyne to schedule their first meeting with him not later than 5:00 PM on December 18, 2008. Dr. Doyne shall complete his written report not later than March 1, 2009. The parties shall pay Dr. Doyne's retainer in full not later than December 31, 2008. The Court shall make an order concerning the percentage of Dr. Doyne's fee each party shall pay. If the retainer is not paid as ordered by December 31, 2008, minor's counsel shall bring the matter back before the Court on an ex parte basis in the first week of January, 2009.

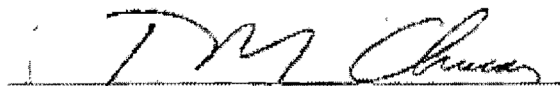
6. All existing orders shall remain in place pending the completion of Dr. Doyne's report.

7. a. The father is ordered to pay to minor's counsel the sum of \$2,418.75.

b. The mother is ordered to pay to minor's counsel the sum of \$806.25.

8. The matter shall be continued 90 days for the completion of Dr. Doyne's report.

Dated: 12-4-08

  
TERENCE M. CHUCAS  
Attorney for Minor

Reader:

The following pages are the original fax copy pages received from Minor's Counsel. The document is legible but also difficult to read with sporadic light/dark areas. To make possible an easier document for people to read, I uploaded the original faxed pages into Adobe Online and had the document put through Optical Character Recognition (OCR), then converted into a Word document.

After processing the OCR document, I went through the OCR document word-by-word and matched any misspelled or mis-allocated characters to match the original fax document. The following pages are the original fax pages for reference to verify the accuracy of the OCR procedure against the original.

Feel free to review the forthcoming for accuracy. You will find the two documents to match each other.

Terence M. Chucas (SBN 74255)  
 1762 Columbia Street  
 San Diego, CA 92101  
 Tel: 619 234-2266  
 Attorney for Minors

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN DIEGO  
 1555 Sixth, San Diego, CA 92101

Petitioner: MICHELE LALLY

Respondent: CLIFFORD ROEPKE

Defendant:

**PROOF OF SERVICE BY MAIL**

CASE NO. D 472021

I am over the age of 18 and not a party to this action. I am a resident of and employed in the County where the mailing took place. My business address is 1762 Columbia Street, San Diego, CA 92101.

I served a copy of the following document(s): STATEMENT OF MINOR'S COUNSEL enclosing the document(s) in an envelope and placing the envelope for collection and mailing on 12-5-08 at San Diego, California, following our ordinary business practices with which I am readily familiar. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid. The envelope was addressed as follows:

F. Pouliot  
 125 Camino del Rio South  
 Suite 300  
 San Diego, CA 92108

FAX: 619 568-3149

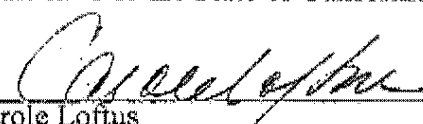
Michele Lally  
 PO Box 95  
 La Jolla CA 92038

Stephen Doyne  
 Scripps Memorial Hospital  
 Medical Office Building  
 9834 Genesee Ave., Suite 321  
 La Jolla CA 92037

I also transmitted the document via facsimile this date to Mr. Pouliot.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 12-5-08

  
 Carole Loftus

1 TERENCE M. CHUCAS  
 2 State Bar No. 74255  
 3 1762 Columbia Street  
 4 San Diego, CA 92101  
 5 Tel: 619 234-2266  
 6 Fax: 619 234-2645

**FILED**  
 Clerk of the Superior Court

DEC 4 2008

By: E. James, Deputy

Attorney for Minor

8 SUPERIOR COURT OF CALIFORNIA  
 9 COUNTY OF SAN DIEGO

|                                |   |                              |
|--------------------------------|---|------------------------------|
| 10 In re                       | ) | CASE NO. D 472021            |
| 11 Petitioner: MICHELE LALLY   | ) | STATEMENT OF MINOR'S COUNSEL |
| 12 and                         | ) | Date: 12-16-08               |
| 13 Respondent: CLIFFORD ROEPKE | ) | Time: 9:00 AM                |
| 14                             | ) | Dept: 1                      |

15 I am the Court-appointed attorney for Oliver Lally-Roepke (DOB 6/30/95). I was  
 16 appointed to represent Oliver on September 18, 2007 by the Honorable Lisa Foster. The  
 17 mother has filed a motion to modify the orders filed on November 29, 2007 that call for an  
 18 equal sharing of Oliver by the mother and the father. Since my appointment I have interviewed  
 19 Oliver on three occasions. My last interview with Oliver took place on October 30, 2008 when  
 20 I interviewed him in my office. I most recently interviewed the mother on November 18, 2008  
 21 and the father on October 27, 2008.

22 Oliver presents as a very bright 13-year-old young man. I found it very easy to  
 23 communicate with him. He was consistent in all three interviews. All three interviews took  
 24 place outside the presence of any third party. I explained the attorney-client privilege to Oliver  
 25 and he understands the privilege. He expressly authorized me to tell the Court his preferences.  
 26 In all three interviews Oliver could not have been clearer about how he feels. He "loves" the  
 27 mother and he "hates" the father. He would like the schedule to be changed. I offered Oliver  
 28

1 five options concerning continuing contact with the father: the schedule would remain as is;  
2 Oliver would visit the father on alternate weekends and one-half of the time during non-school  
3 time; Oliver would visit the father six times a year; Oliver would visit the father when he  
4 wanted to visit; and Oliver would never visit the father. Oliver selected that he would never  
5 visit the father. When I asked Oliver why he feels this way, he told me he does like being in the  
6 father's home, he is often afraid of the father, the father drinks beer and wine daily, and Oliver  
7 cannot have any friends come to visit him.

8 When I pressed Oliver about the father's drinking, he told me that the father drinks "one  
9 king size beer and two to four glasses of wine" daily. According to Oliver, after the father  
10 assumes the alcohol, his face gets red and he often "yells". Oliver told me that the father  
11 frequently disparages the mother but the mother never disparages the father. When I asked  
12 Oliver to tell me one positive thing about the father, he responded "nothing". I asked him if he  
13 loves the father and he responded "no". I asked him if he hates the father and he responded  
14 "no". When I asked Oliver what could be done to fix his relationship with the father, his  
15 response was "nothing".

16 When I asked Oliver about the mother, his responses were the opposite of what he told  
17 me about the father. He expressed love toward the mother. He also stated, "I would not have  
18 enough time to list all good things she does for me." Oliver was clear that the mother helps him  
19 with homework, allows his friends to visit, is never angry at him or any other person, and is  
20 always supportive of him.

21 The father brought Oliver to my office on October 27, 2008. The father and Oliver  
22 waited for me prior to the meeting in the waiting area of the office. After our meeting I walked  
23 Oliver back to the waiting area where the father was waiting. When I first greeted Oliver and  
24 when I walked him back to the father, Oliver appeared comfortable with the father. During our  
25 meeting I was struck by Oliver's lack of emotion and/or passion when he discussed the mother  
26 and the father. His presentation was crisp, articulate, and businesslike. Oliver's demeanor  
27 during our office meeting was consistent with my interviews of Oliver in the mother's home.

1 and the father's home.

2 The trigger for the mother's motion to modify the equal sharing schedule were the  
3 events of Thursday, October 2, 2008. There are many areas of disagreement between the  
4 mother and the father concerning what happened that evening. I think the parties would agree  
5 on the following: Oliver left the father's home during the father's parenting time. The father  
6 followed Oliver from the home, the mother picked Oliver up as the father was following him,  
7 and Oliver called the police from the mother's car alleging that he had been physical abused.  
8 The police interviewed Oliver and the father. The mother kept Oliver in her care on Thursday  
9 evening, October 2, 2008. Oliver stayed with the mother from October 3, 2008 until October  
10 10, 2008 (her scheduled week), from October 10, 2008 until October 17, 2008 (the father's  
11 scheduled week with Oliver), and from October 17, 2008 until October 24, 2008 (her scheduled  
12 week). On October 23, 2008, the father appeared ex parte and obtained an order that Oliver  
13 was to be returned to his care on October 24, 2008. On October 24, 2008, Oliver refused to  
14 return to the care of the father after school. I contacted the school and confirmed that the Court  
15 had ordered Oliver to be in the father's care starting after school on October 24, 2008. I told  
16 Ms. Lowen, the principal, that I expected Oliver to obey the Court's orders. After Oliver was  
17 informed of the order, he returned to the father's care.

18 The mother and the father disagree about the proper interpretation of each of the above  
19 events. For example, the father alleges that the mother wrongly withheld Oliver from him from  
20 October 10, 2008 until October 17, 2008. The mother denies the allegation and argues that the  
21 father never asked that Oliver be returned to his care nor did he pick up Oliver at school.  
22 Expressed another way, the father alleges that the mother willfully violated the Court order; the  
23 mother argues that the father waived the Court order and voluntarily allowed Oliver to remain  
24 in her care.

25 I spoke with social worker Ruff who conducted an investigation concerning Oliver's  
26 allegations that he was physically abused by the father. The social worker told me that he was  
27 closing the case as unfounded. He also indicated that he believed that the mother encouraged  
28

Oliver to leave the father's home. The police conducted an investigation and declined to arrest the father or refer the matter to the District Attorney.

It is obvious that the long marital jihad that is deep into its second decade continues. Any analysis of the case starts with a reading of Dr. Doyne's two comprehensive reports. Dr. Doyne's first report encompassed the period from May 19, 2004 to January 24, 2005. His second report covered the period from December 14, 2006 until June 4, 2007.

In part, Dr. Doyne found the following:

**Dates of Assessment: 5-19-04 to 1-24-05**

Oliver Lally-Roepke and his parents, Michelle Lally and Clifford Roepke, were referred to a psychological evaluation after the parties could not agree on a suitable custody arrangement for this youngster.

... [I]t was the father's position that he will never have a normal relationship with his son unless there is a change in custody to his care.

In contrast, it was Ms. Lally's belief that Oliver has not wanted to see his father due to Mr. Roepke's mistreatment of the child.

Michelle Lally and Clifford Roepke were married July 30, 1994, separated in December 1996, and filed for divorce in 2002. The couple have one child from this union, Oliver Joseph Roepke (although Michelle says his last name is Lally-Roepke), born June 20, 1995.

The mother has other concerns about Mr. Roepke. She claims Cliff does not understand what Oliver needs and does not know if he even checks Oliver's homework as the father will not talk to her. But when he has called her, Mr. Roepke can be "extremely nasty" according to Michelle.

Another aspect of Cliff's personality that is worrisome to Michelle is his tendency to be physically abusive.

Moreover [according to Michelle], his short fuse makes it difficult for Oliver to have any type of relationship with Mr. Roepke as the child has witnessed his explosive anger.

The father has a very different version of what is in Oliver's best interests.

Mr. Roepke believes Michelle is a disturbed woman who wants to keep his son away from him. ... Moreover, he believes what Michelle really wants is him out of Oliver's life permanently and claims his views have been reinforced by Penny Angel-Levy, MFT who saw the couple in mediation in 2003. According to Cliff, "Penny made it clear that Michelle has a lot of anger going on when it became evident that the mother would distort the truth."

Mr. Roepke has been extremely frustrated with Court because the mother has been found in contempt but still obstructs his visitation.

OLIVER ROEPKE

When questioned about his family, this child related that, "Mom and Dad don't like each other." When this writer inquired how he might know that, he explained, "One day when my parents were together, my Mom told me about what they said - like 'Your Dad did so and so.'"

As to other things that Michelle has told the child, Oliver explained, "Once, he (Mr. Roepke) threw a dresser at her," adding that his mother was hurt although he does not know why they were fighting. But when asked if his father says negative things about his mother, he responded, "No."

[T]he undersigned asked the child if he had three wishes, what he would request. For one of his wishes, he said that, "I would like Mom and Dad to stop fighting."

With regard to his visits with Mr. Roepke, this youngster initially told this writer, "I don't really like them - I only like to stay one or two days and then go home because he (his father) starts acting really weird doing creepy stuff." But Oliver could not elaborate to this writer exactly what kind of "weird" things the father would do.

"My Dad has bought an apartment down here, but I'm not really comfortable with him in San Diego." Then, he added, "I want him to move away even though he bought a house." The undersigned then asked the child as to whether he or his mother was upset about the father's move, and he responded, "We are both upset about it." "She (Ms. Lally) doesn't like it because she knows the plan - she's going to be booted out of her home and I'll have to live with him and I don't want that." Oliver pleaded, "What is he (Mr. Roepke) trying to do - kill me?"

In contrast to his earlier statements, on his second interview, the child said, "He (Mr. Roepke) sometimes talks bad about my Mom, but she never talks bad about him."

"Mom is telling me he is going to do it ('boot Mom out') - she is saying 'Be Prepared'." Then the child explained, "My Dad acts nice around people, but he's mean - he's acting nice to disguise himself." But upon inquiry, the child did not know why the father might be trying to deceive others.

Regarding the father's alleged mistreatment, this evaluator asked the child how Mr. Roepke was mean to him and the youngster related, "He screams at me - once when he came to pick me up, he grabbed my neck and I hit the roof of the car." Moreover, the child said, "He locks me in the closet and he'll scream and yell at me when I don't want to do something he says." Having painted a rather negative picture of the father, this evaluator asked the child if he ever does any "fun stuff" with his father, to which Oliver replied, "No." When pressed further as to whether Mr. Roepke had ever given him presents for birthdays or Christmas, the child responded, "No," then explained, "Once he left a really bad message on my Mom's phone - I heard it." When asked what the message was, he said that his father told his mother, "I was supposed to have Oliver vacation," and explained that his father was yelling at Michelle.

When the child was seen with Mr. Roepke, Oliver appeared comfortable with his father, but not overly close.

When seen with his mother, the child also appeared comfortable, but somewhat overly enmeshed with Michelle. During this conjoint interview, Oliver sat with his legs draped over his mother's lap and Michelle was stroking him with the child sitting crossways.

1 This continued throughout the entire session, and Oliver seemed to relish her physical  
2 attention that did not appear age appropriate for the child.

3 Regarding Mr. Roepke, the mother said in front of Oliver that the child complains of  
4 stomachaches before the visits and sometimes will make himself throw up prior to  
5 leaving. After returning, she claims that Oliver is clingy, but by the third day after  
6 visitation, he is doing much better, returning to "his old self."

7 MICHELLE LALLY

8 Ms. Lally is a 42-year-old artist and teacher who works at Oliver's school Stella Maris  
9 Academy, part-time. Michelle presented as above average in intelligence, by history  
10 although no formal cognitive testing was done. Throughout the assessment, the  
11 mother's mood remained anxious and tense. Outside of her interviews, she sporadically  
12 called this writer somewhat frantic in relating her concerns about her son. This also  
13 occurred prior to the father's visits where she insisted that the "child needed to be  
14 heard" regarding his resistance to seeing Mr. Roepke.

15 She attended Orange Coast college and, later, Long Beach State earning an art degree in  
16 1984. Michelle also studied for a Master's at the Art Center in Pasadena graduating in  
17 1989.

18 ... she noted early on that Mr. Roepke "had a bit of a temper" and also said alcohol is a  
19 problem for him.

20 The couple married in 1994 but then Cliff's temper re-emerged, according to the  
21 mother.

22 Michelle said there were incidents of violence where the father "threw me into a wall  
23 with the baby."

24 In 2001, Ms. Lally relocated to San Diego as her sister lives here. Although she told  
25 Cliff ahead of time, when the father began visiting Oliver, he again became violent  
26 when her mother was here, throwing a dresser at her. Then, the father stormed out of  
27 the house. After this incident, Michelle filed for divorce. ...

28 As far as visitation, the mother believes that Mr. Roepke never spent the time to develop  
a relationship with the child. Moreover, she knows Oliver is afraid of him because of  
his temper because the child would get upset over the visits and not want to go, saying  
he was scared. Her son also told her that the father said he could "put his mother in jail  
if she did not cooperate."

The father claims that Michelle relocated and did not tell him where she or the child  
were for some period of time. But the mother said, "I told his mother and left a note for  
Cliff that I was moving to San Diego."

The father denies that alcohol is a problem.

The father has requested full custody of Oliver because he cannot visit without  
interference, according to Mr. Roepke.

On her psychological testing, ... Michelle showed an extensive amount of conscious  
defensiveness making at least her MMPI profile questionable in validity where, at  
minimum, she under-elevates the level of her distress.

1 Nonetheless, clinical testing data suggest that the mother has strong denying defenses  
2 and very limited insight and self-awareness of how her behavior affects others. Thus,  
3 Michelle can minimize her shortcomings and limitations often reacting self-righteously  
4 to behavior in others. Because of her defensiveness, the mother is quick to direct  
criticism and energy towards others, particularly Mr. Roepke, rather than looking at her  
own responsibilities for current problems. Nevertheless, her quite good ego-strength  
predicts organized and practical functioning in most day-to-day activities.

5 When Ms. Lally experiences anxiety it comes in brief, agitated episodes rather than  
6 chronic worries. That is one explanation as to why she would occasionally call this  
7 writer in distress, worked up over some aspect of visitation or reacting to a comment  
that her son offered.

8 When stressed or threatened, she can also pursue her self-interests in urgent or dramatic  
9 ways more strongly than the average child custody litigant sample.

10 Her personality testing also suggests that Ms. Lally has recurring problems in being able  
11 to forgive and forget, more so than the average child custody litigant. In this regard, she  
12 becomes focused on past occasions where she felt Cliff either hurt her or the child  
13 which interferes with her either letting go or allowing free flowing contact. This  
14 modeling can lead to judgmentalness or extreme vigilance by Oliver, particularly with  
the amount of information the child has been given by the mother. But her scores also  
indicate an above average risk for loss of control over her temper and she did admit, on  
at least one occasion, to scratching the father's face despite her complaints that he was  
violent with her.

15 The depth of Michelle's parent to child bonding with Oliver appears adequate to  
16 reasonably good, but her son appears extremely enmeshed with her and may manipulate  
17 the mother for attention. Further, her scores indicate a mild tendency to see people  
18 for her or against her. Thus, she could be sensitive to spontaneous comments by the  
child that favored Mr. Roepke as being against her. It is most likely that any alienation  
efforts on her part are derived from sincere perceptions - whether accurate or not - that  
Cliff's abusive behavior needs to be countered and Oliver needs to be protected.

#### 19 CLIFFORD ROEPKE

20 Cliff Roepke is the 41-year-old father of Oliver. . . .

21 [T]he father presented as above average in intelligence, by history, although no formal  
cognitive testing was done.

22 On the father's psychological testing, Mr. Roepke was generally open, but mildly self-  
23 critical on his inventories. Further, there are no indicates of any conscious attempt to  
fake good, so his testing results are viewed as generally reliable and dependable.

24 Clinical testing data suggests the father can have intense emotional reactions involving  
25 cumulative resentments that he may not be able to express in adaptive ways. As such,  
26 Cliff can overreact to threats to his security and easily can feel poorly treated or picked  
on, especially by his former wife. And when the father feels wronged, he is quite slow  
to forgive and forget and can harbor resentments.

27 The data also indicates a pervasive attitude for suspiciousness where he may  
28 misinterpret the intentions of others. In this case, what might be the mother's over-

protectiveness of the child, he sees as a direct, conscious effort to disrupt, interfere, and/or end his relationship with his son. Despite his suspiciousness, the father's good ego-strengths predict organized and practical functioning in many day-to-day areas of his life.

Moreover, Cliff can be stubborn about doing things his way thinking he is always right. But, he can also be irritable and demanding when stressed and is capable of sharp temper outbursts when pressed. In this regard, he tends to over-control his hostility for long periods of time, but can have infrequent, but strong emotional explosions. In this regard, the father tends to unevenly tolerate frustration despite his presentation that he rarely gets angry. And, in terms of his emotional threshold, Mr. Roepke's emotions can easily surface and can be strongly expressed. That is, he has a lower than average threshold for emotional expression compared to normative child custody litigants. Moreover, when stressed, he can pursue his self-interests in urgent ways although his potential is only slightly greater than most parents seeking custody. But, like his ex-wife, Cliff has definite difficulties being able to forgive and forget and his self-righteous resentments could interfere with his ability to move on with his life.

The father has a strong need to make decisions and have veto rights over decisions that might affect or control him. That is one reason he is so extremely frustrated with Michelle whom he sees as constantly interfering with his time with Oliver, subtly or otherwise.

In terms of the quality of his bonding with Oliver, the depth of his parent to child bonding appears adequate to reasonably good.

#### COLLATERAL CONTACTS

William J. Dess, Ph.D., is a psychologist who has seen Oliver in psychotherapy over adjustment issues related to the divorce.

[T]he doctor remarked that Oliver has been resistant to visitation indicating that he has difficulty separating from his mother. In addition, Dr. Dess commented that the mother is somewhat over-protective, remarking that he has seen the child clinging onto her leg at an exchange. On the other hand, the father does not have as much patience with the child as he could, viewing Oliver's resistance as due to the mother's manipulations. . . . [T]he doctor believes that the child needs to be more independent from the mother and that both parents play a part in Oliver's adjustment problems.

Penny Angel-Levy, MFT, saw the couple for extended mediation and indicated the father did not always use the best judgment, but the mother would play up on everything in an enmeshed way with the child so as to keep the father from having a relationship. In this regard, she perceived Ms. Lally as very angry with Mr. Roepke, in part due to their off and on nature of their past relationship. However, she was not able to resolve visitation issues as the couple remained in conflict.

#### DISCUSSION

The crux of the present custody dispute revolves around the personalities of the parents.

Oliver is very anxious about the continued antagonism between his parents and feels protective of his mother whom he sees as troubled and frightened by Mr. Roepke. Yet, when the child was seen with his father, he did not appear fearful or anxious.

1 [T]he mother's behavior strongly contributes to the child's estrangement from Mr  
2 Roepke.

3 On the other hand, there is consistent evidence, both from the testing, the father's  
4 clinical presentation, and collateral references such as Dr. Dess and Ms. Levy, to  
5 suggest that the father's lack of patience with the child has also created distress for  
6 Oliver. In this regard, Mr. Roepke may project some of his frustration and antagonism  
7 towards Ms. Lally directly on Oliver who has been intermittently resistant to visitation,  
8 although not so much lately. But this writer believes that separate from Mr. Lally,  
9 Oliver has residual anxiety about aspects of the father's behavior which, when  
10 reinforced by the mother's over-protectiveness, makes this child even more aligned with  
11 Ms. Lally.

12 . . . by history, Michelle has been the primary custodian and has consistently nurtured  
13 the child, encouraging his creative and artistic side, as well as consistently helping him  
14 in school, usually volunteering and assisting with his extra-curriculars such as coaching  
15 his soccer team. Despite her liabilities, she has been there for Oliver and the two are  
16 closely bonded, but perhaps too much so.

17 . . . the mother is over-protective of Oliver and also does not draw clear boundaries  
18 between her feelings towards Mr. Roepke and that of her son, embroiling the child in  
19 her own anger towards the father.

20 Also on the liabilities side, Michelle rationalizes her actions primarily as both protective  
21 and consistent with Oliver's wishes. . . . But she has limited insight as to how the child  
22 is affected by her over-protectiveness.

23 So, on balance, the evidence suggests that the child has experienced unneeded distress  
24 and had limited contact with his father because of Michelle's over-involving Oliver in  
25 her concerns. And the mother tends to project blame towards Cliff and, as opposed to  
26 addressing her part of the conflicts, she sees Mr. Roepke as a threat to Oliver. Rather  
27 than conscious alienation, Ms. Lally's efforts are from a protective stance but,  
28 nonetheless, create significant problems for Oliver.

29 As for the father, Mr. Roepke is a committed parent who can be very responsible in his  
30 care of Oliver. He has a good sense of what Oliver likes and so when they plan outings,  
31 the child appears to enjoy himself when he can be free of the mother's influence. On the  
32 liabilities side, clinical testing data suggest that Cliff has a short fuse and can become  
33 frustrated easily, and raise his voice or yell if pressed. Moreover, Mr. Roepke  
34 minimizes this aspect of his personality, but this writer has observed his lowered  
35 frustration tolerance as the evaluation progressed, as there clearly were times he seemed  
36 extremely agitated by the mother's actions. However, there is no persuasive evidence to  
37 suggest that he has abused the child although Oliver is much more sensitive to the  
38 father's anger due to being enmeshed with the mother. Nor is there any evidence that  
39 the father is alcohol dependent although he admits to drinking.

40 For this or any visitation to work Michelle will need to learn to draw clearer boundaries  
41 between her feelings and that of the child. In this regard, the mother has little insight  
42 into what she has done to enmesh Oliver in her own issues and, thus, therapy as well as  
43 a parenting course will be recommended for Mr. Lally to address these problems. Most  
44 significantly, with Oliver being so emotionally dependent on the mother, it is extremely  
45 important that Michelle understand how important it is for the child to become more  
46 independent from her.

[T]his writer makes a strong admonition to the mother that should she not cooperate in facilitating the father's contact, the undersigned would not hesitate to consider a change in custody to Mr. Roepke if she attempts to further undermine his time with the child. That is, should there be consistent evidence that the mother has restricted Mr. Roepke's access, upon review this writer would consider making the recommendation for a change in primary custody of the child. However, this is not the undersigned's first preference nor what Oliver would want. But Michelle will need to approach co-parenting with a far different attitude that the child needs his father as well as his mother.

**Dates of Assessment 12-14-06 to 6-4-07**

Michelle Lally contends that Oliver, age eleven, is fearful of harm by his father. In this regard, on December 4, 2006, the child presented a note to his teacher at Stella Maris Academy describing his "high level of fear and anxiety over his father having a large knife in his vehicle."

As for the current evaluation, the undersigned found that Ms. Lally has continued to have boundary problems by involving Oliver in her negative feelings about Mr. Roepke. To this end, the child can exaggerate the truth which has led to allegations of abuse by the father though they have not been supported by CPS. Nonetheless, Oliver is caught in the middle between his parents due to the mother's enmeshment and has experienced depression and anxiety as a result. Although he is a good student, there is no evidence to support the mother's concerns that Mr. Roepke has been abusive to the child. Rather his mother continues to draw the child in her issues, crossing boundaries with her concerns.

In this writer's previous assessment, this evaluator recommended that the mother be in treatment for this issue although there is no evidence that she has complied. On the other hand, the father has not been in individual therapy as was also recommended.... [T]his writer believes it is in Oliver's best interests to have expanded time to a week-on, week-off arrangement. In the alternative, should the mother continue to attempt to alienate the father, this write believes the Court should consider a change in primary custody to the father.

[T]his writer has many doubts as to whether the mother will allow Oliver to have a wholesome relationship with Mr. Roepke.

The catalyst for the current assessment was Ms. Lally's contention that Mr. Roepke has continued to be abusive to Oliver.

[T]he father was concerned about Michelle's incessant telephone calls to Oliver on designated times stating that the mother will call six to seven times a day, greatly distressing the child.

In this writer's 2005 evaluation of this family, many of the disputed issues were similar with Mr. Lally alleging abuse of Oliver on the father's part and Mr. Roepke claiming that the mother was trying to alienate their son from him. But after conducting a full assessment, this writer found no abuse by the father of Oliver. Rather, this evaluator concluded that the mother was distressing Oliver in that she does not draw clear boundaries between her feelings for Mr. Roepke and that of her son, embroiling him in her issues with the father. Moreover, the undersigned determined that Oliver was aligned with his mother as this boy articulated a number of statements Ms. Lally herself had made which were negative about Mr. Roepke. While Michelle has many positive

1 qualities as a parent and generally has provided responsible care. this psychologist felt  
2 that she enmeshed Oliver to his detriment.

3 On the other side of the coin, this evaluator found Mr. Roepke to be a committed parent,  
4 although Cliff can become frustrated easily and raise his voice which, if reported by the  
5 child to the mother, could trigger her fears of mistreatment. However, this writer found  
6 no persuasive evidence to suggest the father had abused Oliver, but rather the child is  
7 much more sensitive to the father's anger due to him being aligned with the mother

8 When seen jointly, in contrast to what he had previously told his writer, this youngster  
9 seemed very comfortable with his father, snuggling with Mr. Roepke on the sofa during  
10 this joint interview. So this writer inquired of Oliver "You told me you were afraid of  
11 your Dad," and he backpedaled, stating "I guess I was stressed out - I was scared. Now,  
12 I am not afraid of him."

13 Unfortunately, Oliver will do most anything not to upset his mother which includes  
14 making statements that are quite different from his experiences with Mr. Roepke.  
15 However, this youngster sees no way out of these conflicts because to say to his mother  
16 that he enjoys his time with his father - which he does - would upset Michelle.

### 17 MICHELLE LALLY

18 On the mother's psychological... her credibility is a significant issues.

19 Clinical test data suggests the mother has patterns of emotional outbursts that are brief,  
20 usually followed by denial and repression. However, most of the time Michelle presents  
21 as a conventional person who is talkative, energetic and outgoing. But the mother has  
22 limited self-awareness of how her behavior affects Oliver dramatically. Put simply, her  
23 anxiety about Mr. Roepke spills over onto the child. And when threatened, she becomes  
24 overwrought and concerned about the father's bad conduct reading into his behavior  
25 malevolent motivations which Oliver absorbs.

26 When crossed or frustrated, Ms. Lally can become irritable and demanding. But her  
27 unusually good ego strength suggests efficiency and organized functioning in most day-  
28 to-day activities.

On the other hand, when she feels threatened, Ms. Lally can respond in occasionally  
urgent and dramatic ways such as calling the police or her ex-husband. But Michelle  
has a tendency to externalize blame and sees most problems as outside of herself,  
particularly the result of Mr. Roepke's actions. So her focus is always on Cliff, not  
what she has contributed to the situation.

While her risk for antisocial behavior appears about average, Michelle does have a  
mildly above average risk for loss of her temper compared to other child custody  
litigants. Nonetheless, her ability to bond is adequate to reasonably good but the mother  
lacks clear boundaries and has pulled Oliver into her emotional issues with her former  
husband.

The mother also has a strong need to have control over decisions that affect her son and  
is likely to act unilaterally.

//

CLIFFORD ROEPKE

Mr. Roepke is extremely frustrated with the mother's continued allegations.

On the father's psychological testing, Mr. Roepke took the assessment in a moderately self-favorable way, tending to minimize weaknesses. However, he did not show any significant amount of conscious defensiveness.

Clinical testing data suggest Cliff is an over-controlled man who tends to cover his shortcomings. However, Mr. Roepke comes across to others as socially correct if not over-precise but has many ways of gaining approval from others. Due to his good ego strength, his day-to-day functioning is really quite good.

Nonetheless, at times the father may have a dissociative lack of self-awareness of what he is doing and consequences for his behavior. In this regard, Cliff may have a low tolerance for frustration that could lead to angry outbursts, although there is no evidence whatsoever he has been abusive to his son as has been suggested by Mr. Lally. And like his ex-wife, he tends to externalize problems away from himself, blaming Michelle for most of his current difficulties.

Mr. Roepke's potential for antisocial conduct appears about average for the normative sample of child custody litigants taking an MMPI-2. However, he is mildly above average for loss of control of his temper, which is only slightly above most child custody litigants. Generally, his temper should be reasonable well-controlled and does not present a serious risk for this child.

The depth of Cliff's bonding with Oliver appears mostly adequate but can be uneven at times. And he has a mild tendency to see people as either for him or against him.

COLLATERAL CONTACTS

Kelly Monge, MSW, from Child Protective Services indicated that she had the impression that the mother had manipulated the child regarding a complaint about a hunting knife.

Adrienne Sierra, MSW, a supervisor at Child Protective Services, indicated there had been two referrals on Oliver. The first referral was made December 14, 2006 regarding emotional abuse by Mr. Roepke and was closed in March, 2007 as unfounded. This related to the earlier allegation by the mother that the father had a knife in his car but Oliver gave no reason why he would be hurt. According to Mr. Sierra, CPS investigated an earlier referral on November 29, 2006 for emotional abuse by the father where the child was allegedly afraid to go with the father. But the social worker indicated that these were issues that the mother exacerbated. Therefore, they "evaluated out" his referral and said it did not require investigation.

DISCUSSION

From this writer's perspective, Oliver is a bright, personable eleven-year-old youngster who continues to be caught in the middle between his parents' conflicts. And unfortunately, the dynamics have changed little since this writer first saw the child where Oliver can be swayed due to the mother's anger, frustration and fear of the father. As a result, Oliver experiences anxiety and depression as he is so caught up in Michelle's issues, at times, that he will not tell the truth. As his teacher aptly stated, "He changes his mind according to who he is with."

1 The dynamics between Mr. Lally and Oliver go beyond alienation or estrangement  
2 issues to emotional dependency where the child is too close to the mother. [T]here is no  
evidence of physical and emotional abuse by the father, although Michelle continues to  
assert that.

3 In this writer's opinion, Ms. Lally's need to keep [Oliver] emotionally dependent will  
4 eventually collide with his drive for independence in adolescence. On the other hand,  
5 Mr. Roepke presents a healthy alternative, although the father is not without his  
liabilities.

6 This writer's 2005 evaluation found that [the mother] had limited insight into how her  
behavior affects Oliver. Unfortunately, that is still the case today.

7 According to the evidence before this writer, neither of the parents followed the  
8 recommendation regarding therapy to work on the issues outlined in the 2005 evaluation  
9 or taking the parenting course.

10 [T]he undersigned previously wrote in 2005 on page 30, second paragraph:

11 "This writer makes a strong admonition to the mother that should she not cooperate in  
12 facilitating the father's contact, the undersigned would not hesitate to consider a change  
13 in custody to Mr. Roepke if she attempts to further undermine his time with the child.  
14 That is, should there be consistent evidence that the mother has restricted Mr. Roepke's  
access, upon review this writer would consider making the recommendation for a  
change in primary custody of the child. . . . Michelle will need to approach co-  
parenting with a far different attitude that the child needs his father as well as his  
mother."

15 Why not change primary custody to the father? This writer believes such a change at  
16 this juncture would be extremely difficult for Oliver because, emotionally, he is  
17 essentially too close to his mother. Moreover, he is not alienated to the extent that he  
18 does not enjoy his time with Cliff - rather, he complains that he doesn't for his mother's  
19 sake.

20 . . . if the false allegations continue, this evaluator sees no other choice than the father  
21 having primary custody.

22 At the end of his first report Dr. Doyne stated: "[T]his writer makes a strong  
23 admonition to the mother that should she not cooperate in facilitating the father's contact, the  
24 undersigned would not hesitate to consider a change in custody to Mr. Roepke if she attempts to  
25 further undermine his time with the child. That is, should there be consistent evidence that the  
26 mother has restricted Mr. Roepke's access, upon review this writer would consider making the  
27 recommendation for a change in primary custody of the child. However, this is not the  
28 undersigned's first preference nor what Oliver would want. But Michelle will need to approach  
co-parenting with a far different attitude that the child needs his father as well as his mother."

1 about two years later Dr. Doyne stated: "If the false allegations continue, this evaluator sees no  
2 other choice than the father having primary custody." It is impossible to read Dr. Doyne's  
3 reports and not conclude that the mother was primarily responsible for Oliver's poor  
4 relationship with the father. We are entering the 13th year of the war. I suppose the good news  
5 is that, given that Oliver is 13.5 years of age, this war can only last another 4.5 years. The  
6 question that needs to be asked is: What should be done? In a broad sense there are four  
options to consider.

8 The first option is to leave the schedule as is it. This is the option that Ms. Lynn  
9 W. [redacted], LCSW, of Family Court Services ("FCS") selected in her report dated November 14,  
10 2008. The option has a lot to offer. It recognizes that Oliver's allegations of October 2, 2008  
were not serious or credible. It avoids an analysis of who was at fault for the father missing a  
12 week of his parenting time. But I worry that this recommendation kicks the root cause of the  
13 conflict down the field to another day. This recommendation also does nothing to protect  
14 Oliver's relationship with the father. Time is not a friend for Oliver's relationship with the  
15 father. My assessment is that time is quickly running out to salvage the relationship between  
16 Oliver and the father. Oliver's attitude toward the father is not better today than it was two or  
17 five years ago; arguably it is worse. The status quo is not going to lead to a reconciliation  
18 between Oliver and the father; the status quo will lead to the end of the relationship.

19 The second option is to give Oliver what he says he wants. Oliver is 13.5 years old, he  
is intelligent, and he is doing well in school. Oliver was consistent in his three interviews with  
me. He does not want to have contact with the father. Oliver points to all of the father's  
22 all of his shortcomings. The father is allegedly a drunk, mean, violent, indifferent, and selfish.  
23 Oliver is allegedly terrified of being in the same home as the father. If Oliver's allegations were  
true or, for that matter, partially true, I would support Oliver's stated preference. The problem  
is that the Dr. Doyne and multiple CPS social workers spread over many years have not found  
26 Oliver's allegations credible. While it is clear from Dr. Doyne's findings that the father is not  
27 not of fault, the parental standard for having a relationship with one's son is not perfection, it is  
28

1 reasonable conduct. There is no credible evidence that the father has abused or neglected  
2 Oliver. There is substantial evidence that false allegations have been made by the mother  
3 and/or Oliver. If the allegations have come from Oliver's lips, given the history outlined in Dr.  
4 Doyne's evaluations, it is reasonable to infer that Oliver has made the allegations because he  
5 wants to please the mother and/or the mother has encouraged him to make the allegations. I am  
6 not inclined to support Oliver's preference of "never" seeing the father.

7 I believe it takes a heroic suspension of disbelief to accept the mother's argument that  
8 the father waived his visitation with Oliver during the week of October 10, 2008 to October 17,  
9 2008. At a minimum, the mother does not appear to have made any effort to return Oliver to  
10 the father during that week. By any standard this is a gross violation of the letter and spirit of  
11 the equal sharing orders. The fact that the father had to appear ex parte on October 23, 2008 to  
12 obtain an order to have Oliver returned to his care on October 24, 2008 speaks for itself. This  
13 prologue brings us to the third option which is that the mother's pathology identified by Dr.  
14 Doyne in both of his reports remains present. Dr. Doyne was very clear in his reports that  
15 the mother's conduct of impeding Oliver's relationship with the father continued, the Court  
16 should consider changing custody. The warning shots were fired across the bow years ago. It  
17 is impossible to conclude anything other than she has elected to ignore those warning shots.

18 It is for the Court to decide whether the mother wrongfully and willfully withheld Oliver  
19 from the father. If the Court were to decide that the mother did in fact behave in the egregious  
20 manner that I am suggesting, then the Court would have to decide what, if any, consequence  
21 should flow from its findings. If there were no consequence to the mother, I am confident that  
22 the next crisis would be just around the corner. Each crisis moves us closer to the end of  
23 Oliver's relationship with the father. I regret to say that I believe the mother will learn to  
24 supportive of Oliver's relationship with the father only if the consequence is serious. The  
25 consequence that I suggest is that the mother's contact should initially be suspended and then  
26 become supervised. Under my plan there would be no contact for about 30 days and then the  
27 mother's visitation would be professionally supervised for at least 90 days. After these periods  
28

1 have run, the mother's contact would become unsupervised starting with four hour visits and  
2 over a six month period increased to weekend visits. During this period it would be critical for  
3 Oliver to be in therapy with a mental health professional. The purpose of this plan would be to  
4 remove Oliver from his enmeshed relationship with the mother and to provide him with a fair  
5 opportunity to develop a normal relationship with the father.

6 There are at least two serious deficiencies in option three. The fundamental problem  
7 is that the mother's continuing conduct has all the hallmarks of a mental health issue. Obviously I  
8 am not qualified to make mental health assessments. The second deficiency is that Oliver is  
9 going to suffer emotional trauma by being separated from the mother for an extended time. I  
10 believe that Oliver is suffering emotional trauma now because of the relentless conflict that I  
11 think is kept alive by the mother. So it is a balancing analysis. Do we stop one set of stressors  
12 only to create another set of stressors? What price should Oliver pay in order to have a  
13 relationship with the father? What price should Oliver pay in order to stop the mother's  
14 behavior that is destroying Oliver's relationship with the father?

15 The fourth and, in my view, the best option is to seek the input of Dr. Doyne before  
16 taking any action. Dr. Doyne is the best qualified person to address the mental health issues  
17 that have been identified above. He is familiar with the family. It will not take him very long  
18 to prepare a report for the Court with recommendations concerning what, if any, action should  
19 be taken.

20 The underlying order mandated that the parties pay me a retainer of \$2,000 if my  
21 involvement in the case became necessary. The father was ordered to pay \$1,500 of the retainer  
22 and the mother was ordered to pay \$500. Both parties have paid the retainer. Attached as  
23 Exhibit "A" is an accounting for my time. I request that the Court enter an order for the  
24 payment of my fees.

25 Recommendations:

26 Findings:

- 2 1. California is the home state for Oliver Lally- Roepke (DOB 6/30/95).

2. The parties were present in court on December 16, 2008 and participated in the hearing.

3. The parties have been advised that violation of the Court's orders may be punished by civil and/or criminal penalties.

4. The USA is the country of habitual residence for Oliver.

Orders:

5. The mother, the father, and Oliver are ordered to return to Dr. Doyne for an assessment. The purpose of the assessment shall be to ascertain what, if any, action needs to be implemented in order to develop, nurture, and protect Oliver's relationship with the father. The mother and the father shall contact Dr. Doyne to schedule their first meeting with him not later than 5:00 PM on December 18, 2008. Dr. Doyne shall complete his written report not later than March 1, 2009. The parties shall pay Dr. Doyne's retainer in full not later than December 31, 2008. The Court shall make an order concerning the percentage of Dr. Doyne's fee each party shall pay. If the retainer is not paid as ordered by December 31, 2008, minor's counsel shall bring the matter back before the Court on an ex parte basis in the first week of January 2009.

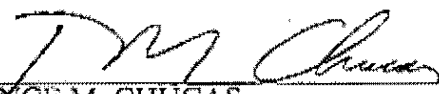
6. All existing orders shall remain in place pending the completion of Dr. Doyne's report.

7. a. The father is ordered to pay to minor's counsel the sum of \$2,418.75.

b. The mother is ordered to pay to minor's counsel the sum of \$806.25.

8. The matter shall be continued 90 days for the completion of Dr. Doyne's report.

Dated: 12-4-08

  
TERENCE M. CHUCAS  
Attorney for Minor

ROEPKE

|       |                          |              |
|-------|--------------------------|--------------|
| 3-15  | TELECOM/DR. MILLER       | .4           |
| 3-16  | TELECOM/DR. MILLER       | .6           |
| 4-17  | TELECOM/DR. MILLER       | .1           |
| 4-22  | TELECOM/DR. MILLER       | .1           |
| 4-24  | TELECOM/DR. MILLER       | .3           |
| 4-28  | TELECOM/DR. MILLER       | .2           |
| 5-8   | REVIEW LETTER/DR. MILLER | .2           |
| 10-6  | TELECOM/MOTHER           | .1           |
| 10-10 | TELECOM/FATHER           | .2           |
| 10-15 | LETTER/PARTIES           | .4           |
| 10-17 | TELECOM/MOTHER           | .1           |
| 10-21 | TELECOM/FATHER           | .2           |
| 10-21 | TELECOM/MOTHER           | .1           |
| 10-21 | LETTER/PARTIES, COUNSEL  | .3           |
| 10-21 | TELECOM/DOYNE            | .4           |
| 10-23 | TELECOM/MOTHER           | .2           |
| 10-23 | TELECOM/FATHER           | .2           |
| 10-23 | LETTER/COUNSEL, PARTIES  | .4           |
| 10-24 | TELECOM/SCHOOL PRINCIPAL | .4           |
| 10-24 | TELECOM/FATHER           | .3           |
| 10-26 | FAX/SCHOOL               | .1           |
| 10-27 | CONFERENCE/FATHER        | 1.7          |
| 10-27 | LETTER/SOCIAL WORKER     | .2           |
| 10-27 | LETTER/MOTHER            | .2           |
| 10-30 | CONFERENCE\CLIENT        | .8           |
| 11-3  | TELECOM/SOCIAL WORKER    | .5           |
| 11-3  | FAX/SOCIAL WORKER        | .2           |
| 11-15 | TELECOM/MOTHER           | .1           |
| 11-18 | CONFERENCE/MOTHER        | 1.4          |
| 11-19 | REVIEW FCS REPORT        | .3           |
| 11-24 | TELECOM/PRINCIPAL        | .1           |
| 11-24 | TELECOM/MAITE VILDOSOLA  | .3           |
| 11-24 | TELECOM/CYNTHIA HASAN    | .1           |
| 11-25 | TELECOM/DOYNE            | .4           |
| 11-25 | REVIEW PLEADINGS/FATHER  | .2           |
| 11-25 | TELECOM/PRINCIPAL        | .1           |
| 11-26 | DRAFT REPORT             | 2.0          |
| 11-28 | DRAFT REPORT             | 2.0          |
| 11-29 | DRAFT REPORT             | 1.4          |
| 12-3  | REDRAFT REPORT           | .7           |
| 12-4  | TELECOM/PRINCIPAL        | .1           |
| 12-4  | FILE REPORT              | .4           |
| 12-   | SERVE REPORT             | .4           |
| 12-16 | HEARING                  | 2.0 ESTIMATE |

2.9 HOURS AT \$250/HOUR = \$ 5,225.00  
 Payment from mother (500.00)  
 Payment from father (1,500.00)  
 Balance \$ 3,225.00

Amount due from mother \$ 806.25 (25%)  
 Amount due from father \$ 2,418.75 (75%)