

Safety

## Judges' Private Custody Meetings Raise Questions

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By Alison Bowen  
WeNews correspondent

*A fraught custody case ended last fall when the father was murdered in his daughter's playground. Onlookers say that a custody decision that excluded the mother set the stage. Latest story in our "Dangerous Trends, Innovative Responses" series.*



NEW YORK (WOMENSENEWS)--At 4 years old, Michelle Malakov is a veteran of the New York family court system.

Her father was murdered in October at a playground while dropping her off for a visit with her mother. In November a relative of her mother's was arrested as a suspect.

Before then, her life was spent shuttling between her mother and father, who separated soon after she was born in 2003.

Mo Therese Hannah

Michelle, raven-haired and grinning in October photos, will stay in a foster home until next summer. She will receive family visits and grief counseling.

A Queens family court judge agreed with Michelle's court-appointed lawyer that she should remain in foster care until the case gets sorted out.

The sensational murder case is still wide open, but at least one element--the girl's custody transfer from mother to father, the result of an "ex parte" decision that did not include all parties in the case--is a matter of general concern for Susan Lob, president for Voices of Women, a Brooklyn-based initiative of the Battered Women's Resource Center.

Ex-parte decisions are often made to issue a restraining order against a violent parent but are questionable when they might otherwise impair neutrality, such as when one side is able to present their arguments to a judge in the absence of the other.

Lob says ex-parte meetings that leave mothers out--whether they take place between judges and court-appointed lawyers for the child or fathers' lawyers--are a big problem

for women who turn to her organization for help.

"It's a really huge issue that the law guardian seems to be very buddy buddy," with the fathers, Lob says, referring to the court-appointed lawyers who represent the child's custody interests.

#### **'Alarming' Trend in Courts**

Mo Therese Hannah, professor of psychology at Siena College in Loudonville, N.Y., and chair of the annual Battered Mother's Custody Conference taking place Jan. 11 through 13 in Albany, N.Y., says the number of custody transfers without the mother present is alarming.

"We're not talking about a handful; we're not talking about dozens," Hannah says. "We're probably talking about thousands of cases."

Hannah says the most common case she hears of is a father filing an emergency ex-parte motion for an immediate transfer of custody due to "parental alienation syndrome," a term used to describe one parent attempting to turn children against another. Advocacy groups like Voices of Women and the Washington-based National Organization for Women say the phrase usually arises when a mother tries to protect her children from an abusive husband, who then claims she is trying to alienate him from the children.

"What they might do, for example, is in an emergency hearing, they transfer temporary custody to the father," Hannah says. "Then what you've got is a mother that then has to reverse that and get custody returned to her," a task she describes as "often impossible."

Lob says many women complain of court-appointed attorneys for the children talking more, or only, with the father, and the mother's lawyer attending meetings and agreeing to things without the mother present.

Hannah echoes this concern, saying it can lead a woman to feel an entire courtroom is against her.

"It's atrocious for an attorney to represent a client in that way," Hannah says.

#### **Custody Switch Just Before Murder**

In Michelle's case, the judge made an ex-parte decision weeks before the murder to temporarily transfer custody of the little girl from her mother, who the judge ruled was not following visitation orders.

Little information is available about the role of Michelle's court-appointed lawyer in making the custody decision under these circumstances.

Dale R. Koch is a circuit court judge in Oregon's Multnomah County and immediate past president of the National Council of Juvenile and Family Court Judges, a group of judges dedicated to improving courts and systems that affect families based in Reno, Nev.

"We make every effort to make sure any communication that occurs with judges occurs with both parties present, so they both have a chance to say their piece," he says, adding that one-sided conversations are unfair and do not allow the two sides in every

story to be heard.

While Koch frowns on most ex-parte communications, he says they are sometimes acceptable.

One instance would be routine tasks such as changing a court date.

Another would be to intervene against a dangerous or unfit parent who is on the brink of taking custody. If, for instance, a child temporarily living with a father is about to be returned to a mother who gets arrested for drug possession, an ex-parte hearing might be held to temporarily bar the child's return to the arrested mother.

"That might be the kind of circumstance where there might be sufficient basis to think the child might be in harm's way," Koch says.

### **Press for Family Court Reforms**

Insufficient neutrality in custody cases is enough of a problem to have caught the attention of legal reformers of the nation's family court systems.

The New York State Matrimonial Commission was formed in January 2004 to examine the divorce and custody process. In February 2006 it produced a report packed with recommendations to reduce the system's financial and personal toll on families, especially children.

One of the first changes was the enactment in October of the report's recommendation to change the name for the child's court-appointed lawyer from "law guardian" to "attorney for the child."

Advocates believed that the term "law guardian" left too much room for basic ethical rules--such as not participating in one-sided communications with judges--to be broken.

"Attorney for the child," in contrast, is expected to provide a clear reminder that children's representatives are attorneys held to the same ethical and legal guidelines as parents' attorneys.

Michael Runner, director of legal programs at the Family Violence Prevention Fund San Francisco, provides training to judges who might preside over domestic violence cases.

The issue of ex-parte communication is particularly sensitive in cases with domestic violence, he says, because many court-appointed attorneys for children aren't trained to spot and react to abuse.

An untrained law guardian, for instance, might be overly suspicious of abuse allegations and then issue an ex-parte recommendation to the judge suggesting children be transferred to an abusive parent.

"They might not have had training on domestic violence," Runner says, "and know that if there's domestic violence in the case, it changes the entire dynamics in the case."

*Alison Bowen is a New York City-based reporter who covers the 2008 presidential campaign. Her work also appears in the New York Daily News.*

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