

MEMORANDUM

Date: November 23, 1993

To: Senator Dole

From: Alec Vachon

Re: Kemp Matter Update

- * As you know, an article appeared in the KC Star (attached) on the Kemps' attempt to regain custody of their grandson, a matter I wrote you earlier. The Kemps have now embarked on a media campaign.
- * Apparently the KC Star reporter did not contact this office and the article contains serious inaccuracies. It alleges this office is supporting the Kemps, but our position with Kansas Child Services and others is we are simply available to provide any proper assistance. Although this are good reasons to be concerned for the boy, this is at present a court matter.
- * The Guardian Ad Litem, Philip Sedgwick, is quoted as saying he was contacted by this office and the article implied this office was "brazenly flashing [its] power." I spoke to Sedgwick this morning -- in fact, no one from this office had contacted him previously; that quote referred to the Kemps, not your office; that he was misquoted elsewhere in the article; and he will ask for a retraction. Kansas officials, incidentally, do not feel we have flashed any power, and indicated their appreciation for our balanced response.
- * Two phone calls on this matter have been received in Kansas -- both from other grandparents asking why this office has not helped them.
- * Incidentally, the Kemps' pediatrician independently contacted Sheila, and the Kemps have contacted multiple persons in Slattery's office (Slattery and John were law school classmates). I have strongly encouraged the Kemps to develop a consistent strategy, together with their lawyer, the child's pediatrician, and others they have involved.
- * The Kemps are now waiting the results of a motion to the Kansas Court of Appeals. I will keep you posted.

cc: Marcie Adler
Sheila Burke
Clarkson Hine
Dan Stanley

UC Star
11-21-93
A-1

Law favors mending family's broken bonds

By RICK MONTGOMERY
Staff Writer

But for a 4-year-old boy, reintegration meant being seized by a dozen police officers dispatched earlier this month to his grandparents' home.

As the lawyers, judges and social workers see it, a Kansas custody fight that has spread from the closed courtrooms of Wyandotte County to the power circles of Washington boils down to a fancy legal term.

Reintegration. But for the 4-year-old blond boy at the center of the battle, reintegration has meant being seized barefoot by a dozen police officers who were dispatched earlier this month to his grandparents' home in Washington.

"He tried to hide behind the coffee table. When they took him, he cried," Grandma, Grandma!" said the boy's grandmother, Sherry Marcy, who had cared for him the last 14 months.

Under orders of a Kansas judge, he now is back in the Kansas City area with his birth mother — the same person from whom the state took the boy away last year amid allegations of physical abuse. His mother had satisfied the Juvenile Court that she was prepared to take care of him, authorities said.

That's what reintegration is all about. The law in Kansas and other states encourages

courts and social-service agencies to restitch a family's broken bonds whenever doing so is a "viable alternative" to forever separating children from their birth parents.

In this case, however, the little boy's grandparents contend the court performed a horrendous injustice. Filing motions last week in the Kansas Court of Appeals, they're fighting to regain custody with a most unusual, high-powered campaign.

The question their effort raises: Did a struggling mother's parental rights trump the well-being of a child — one who clearly had been

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effited from the best care his grandparents could buy?

Grandmother Marcy is pitted against her own daughter, the boy's mother. But it's Marcy's husband, John D. Kemp, who has caused the Washington establishment to take notice.

A former Kansan, Kemp is the executive director of the United Cerebral Palsy Association. In 1991, he was presented the Horatio Alger Award alongside Gen. Colin Powell and baseball legend Stan Musial.

Said to be among the most admired couples in their community, the grandparents are credited in the letters of therapists and teachers for helping turn a frightened, withdrawn toddler into a well-adjusted child.

In addition to being supported by the child's birth father in Kansas City, their battle is aided by:

- The free services of one of the largest law firms on the East Coast.

- The office of Sen. Bob Dole.
- A public-relations firm that has faxed press releases about the case to several major newspapers.

- A national children's-rights advocacy group.

On the other side of the dispute are those in the Kansas child-protection system who decline to argue specifics of the case because of confidentiality laws pertaining to juvenile cases.

But they do stress that under the laws of Kansas, child placement isn't something as simple as deciding which of two households has the most resources to provide for needy youngsters.

"If that was the biggest criterion in determining the best interests of a child, the only people who'd have kids would be the people who made the most money," said Wyandotte County District Judge George A. Groneman, who ruled on the case.

Said Roberta Sue McKenna, youth-services attorney for the Kansas Department of Social and Rehabilitation Services: "The question we have to ask is, 'Is the (birth) parent able to minimally meet this child's needs?'"

"To know a particular child and see a parent bumbling along is painful and inexcusable, I agree. But public policy can't be dictated by that. Do we really want to toss the care and custody of children into an open marketplace?"

The boy's mother and her attorney, Barbara Weians, declined requests to be interviewed. Weians pointed to the confidential nature of custody matters and said only:

"The court has considered all the facts and investigated all the evidence and made a decision. And that's the way it is."

A question of influence

The case began in September 1992 after the boy's baby sitter in Lenexa alerted Kansas authorities to possible abuse.

Criminal charges never were filed against the mother, 24, but she relinquished custody and agreed to a court regimen of counseling courses on anger control

and parenting, according to appellate court documents that were filed last week on behalf of the grandparents.

The Juvenile Court granted temporary legal custody to the grandparents in Washington — a couple who would eventually spend more than \$14,000 on the boy's schooling, therapy, books, clothes and a brightly painted bedroom.

The boy was 3 at the time and prone to grunting instead of speaking.

The following 14 months were chronicled in a fat, color-coded notebook that the grandparents kept for the purposes of the juvenile court's review.

"We have witnessed a non-verbal child, incapable of appropriate social interaction, progress in all areas of development," Jan Wintrol, director of Washington's National Child Research Center, wrote in April. "It would be a great mistake to make a change in this child's life at this time."

But in time, according to court documents, the mother worked to regain custody by attending regular counseling sessions required that were under the state's reintegration plan.

The court also appointed the boy a guardian *ad litem* — a lawyer paid by the state to "make an independent investigation of the facts (and to) appear for and represent the child," as required by Kansas law.

But that lawyer, Philip Sedgwick, conceded in a recent interview that he never spoke with the boy during custody proceedings, nor did he interview teachers and therapists, nor did he appear at the final 10-hour hearing in which the mother regained custody. Another attorney appeared at the hearing because Sedgwick was tied up in a trial, he said.

"I can confidently say that I think the grandparents would've been a fine placement," Sedgwick said. "But I had no basis for saying reintegration wasn't viable."

Some involved in the proceedings bristled when the grandparents stepped up the pressure by asking for Sen. Dole's help. Friends of Marcy and Kemp went to *The Washington Post*, *Time* magazine and *The Associated Press*.

"You almost have people here

brazenly flashing their power," said Sedgwick, one of those who received a call from Dole's office.

Asked whether that influence may have caused some court authorities to resent the grandparents, Sedgwick said: "It's hard not to feel a little like that."

But Marcy insists influence has nothing to do with this case. The boy's well-being, which she contends was completely ignored by the Kansas court, has everything to do with it.

"This juvenile court system is the most heinous thing I've ever seen," said Marcy. "It's supposed to be there to protect children and instead it puts them at risk."

Said Lewis Pitts of the National Committee for the Rights of the Child, which last week filed a brief in support of the grandparents' appeal: "This child has a right to a home, and yet he was taken from the only decent home he's ever known."

While Pitts said he agreed that reintegration in many cases could best serve the interest of children, "it shouldn't be a wooden absolute."

Why should states even try to reintegrate?

For one reason, it pays.

States that do a good job of returning children to the custody of their natural parents are entitled to federal funds to support such programs.

But other experts says it just makes sense for the parent and the child.

"People are capable of changing," said Bart Ewing, a Johnson County therapist who counsels parents who face the loss of custody. "For those who realize the wrong they've done — how they

might have taken their own angers out on their children — it can be a catalyst to turn around their whole lives."

Ripples through the system

Within days of the grandparents filing motions Tuesday to the Kansas Court of Appeals, the case had begun to send ripples through the court system.

Rob Phelps, chief deputy clerk of the appellate court, said "inquiries by the media" spurred the court's staff to research confidentiality laws pertaining to juvenile matters. Before, he said, appeals of such cases were treated as records open for public inspection.

"It looks like we may start clos-

ing all our juvenile files," Phelps said Friday. "It just never was an issue before."

Also last week, the lawyer for the boy's mother asked the appellate court to issue a temporary injunction against the grandparents to prevent them from discussing the case with the media. That motion was denied.

The state was given until Monday to present counterarguments to the grandparents' motion that the appellate court stay or reverse the Wyandotte County custody order.

Social and Rehabilitation Services lawyer McKenna said the controversy spoke to the emotional intensity of custody matters.

"It's not unusual for grandparents to disapprove of the way their children are raising their grandchildren," McKenna said. "But we really don't want to set up a game plan whereby litigation is easy or encouraged."

Grandmother Marcy couldn't disagree more. No amount of public pressure and legal action is too much when it comes to the well-being of the rosy-cheeked grandson who was taken from her, she said.

The police "just grabbed (him) screaming from our home," Marcy is quoted in press releases dispatched by her supporters to some of the country's largest newspapers. "It was like Nazi-occupied Germany."

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NW Woman's Battle for Custody Of Grandson Is in National Arena

By Jay Mathews
Washington Post Staff Writer

Sherry Marcy remembers losing control in the Louisville airport. She had just heard that her grandson had been taken into court custody because of suspected abuse by his parents. She wept as she gripped the side of the airport pay phone and wondered if she could take the blond 3-year-old herself.

That was the fall of 1992—in her words “another lifetime ago”—when she became, like many other District grandmoth-

ers, a substitute parent for a grandchild in trouble.

child to his mother, Marcy's estranged daughter, leading to a bitter custody fight that has drawn attention from national child protection specialists and turned inside out Marcy's comfortable life in Northwest Washington.

Marcy's cross-country legal battle for her grandson has produced legal briefs asserting a national failure to protect children in court and angered Kansas City, Kan., officials, who believe they have been pressured by powerful Washingto-

nians friendly with Marcy and her politically connected husband.

For a year after the Kansas courts gave her custody of the boy, Marcy, 44, said she spent every day coping with a child who appeared so traumatized he barely could speak.

But this new life was disrupted in November when D.C. police, acting on the orders of the Kansas court, showed up unannounced at Marcy's Pennsylvania Avenue NW condominium to take the child and return him to his mother in Kansas.

Since then, Marcy said she has

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BY TOM ALLEN—THE WASHINGTON POST

Sherry Marcy, with her husband, John D. Kemp, wants to regain custody of her grandson, 4, who was returned to her daughter in Kansas City, Kan.

Grandmother's Custody Fight for Boy Caught in Family Preservation Debate

CUSTODY, From B1

spent every day trying to get him back, charging that the Kansas authorities did not adequately investigate the child's situation.

The Kansas courts, meanwhile, have questioned Marcy's methods and ordered that she undergo a psychological examination—which came out favorable to her—while insisting that her daughter, a 25-year-old nurse's aide, be given a chance to prove she can raise the child on her own.

The custody struggle is tied up in the debate over the family preservation movement, which contends that children are best served when they can live with their biological parents while the entire family is counseled and monitored. Federal law provides financial incentives to jurisdictions that help mothers and fathers safely resume custody of children who had been taken from them.

"There was a recommendation by professionals who deal with parents who [feel the mother is] capable of parenting the child again," said Philip Sedgwick, the Kansas City lawyer assigned by the juvenile court in Wyandotte

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—Philip Sedgwick

County as the child's legal representative. "Hindsight may say that was the wrong decision, but until we give the parent a chance to be around the child, we won't know."

Friends and neighbors of the boy and his mother in the Kansas City area say she has turned into a calm and kind caretaker of her son. Social service workers have reported no problems in the family.

Both the mother and her lawyer have declined to comment, saying they are bound by the juvenile court's privacy rules. The mother's and child's names are being withheld to protect the boy's privacy.

After the 4-year-old was returned to Kansas, Marcy began a series of vigorous protests. She sought publicity for the case, and her daughter's attorney unsuccessfully sought to have her cited for contempt.

Marcy is married to John D. Kemp, executive director of the United Cerebral Palsy Associations and a longtime friend and ally of Senate Minority Leader Robert J. Dole (R-Kan.).

Marcy divorced her first husband, the young child's grandfather, 19 years ago and worked as a restaurant manager in Kansas City before marrying Kemp, a lawyer also from Kansas. The couple moved first to Chicago and then to Washington.

Kansas officials have privately accused the couple of using their political connections to get the boy back. Calls from Dole's office were made to some Kansas officials to ask about the case, although one Kansas lawyer said a Dole aide assured him the senator was not taking

sides. Kansas judges were so disturbed by local publicity about the case that they sealed all juvenile case appellate records, Kansas officials said. One judge told Marcy to stop talking to reporters.

Marcy and her allies in the national children's rights movement have focused their attack on Sedgwick, the boy's representative. One issue is the lawyer's failure to attend a hearing on the boy's status. Sedgwick said that as a single practitioner with many clients, he had to have another lawyer attend the first hearing on the child's behalf, but he said the substitute was well-qualified. He admits that he did not interview the specialists brought in by Marcy who said the child should not be removed from her care.

It is a familiar scenario, some child protection specialists say. Lewis Pitts, a lawyer with the Legal Action Project of the National Committee for the Rights of the Child, has filed a legal brief on Marcy's behalf.

"The problem is this case is very common," Pitts said, "and what's common is the total lack of representation for the child. The parents get a full and vigorous representation and the child [does not]."

The child initially was taken by Kansas City area authorities when his babysitter, Brandy Closson, found bruises on his chest, back and neck, and puncture wounds on one leg. Although no criminal charges were brought against the mother or father, who have since divorced, social services officials obtained a court order removing the child from the home. His mother agreed to a program of parenting courses and counseling to control anger.

When the child was brought to Washington, "he was severely delayed in speech, language development and motor skills," said Kathryn Stafford, the head teacher at Washington's National Child Research Center's early intervention program, where Marcy enrolled the boy. "He displayed an abnormal distrust and terror of adults."

But after a custody hearing in October, the court rejected the arguments of Marcy's lawyer and the expert testimony he offered and ordered the child be returned to Kansas.

D.C. police took the child from Marcy's home without warning after she delayed his departure because his doctor said he should not travel with an ear infection. The boy was taken to a Washington hospital where he was examined and found fit for the trip.

Marcy's lawyer, Thomas F. Cullen, has appealed the order returning custody to the mother, who was remarried March 12, on the grounds that the child was not adequately represented by the court-appointed lawyer. "The Kansas statute has a fairly ambitious idea of what a guardian ad litem is supposed to do, and it did not happen here," Cullen said. The appeal is pending.

Meanwhile, Marcy and Kemp are permitted one-hour visits with the boy in Kansas City. The visits are monitored by a psychologist.

The daughter's new neighbors in a tidy suburb of well-kept duplexes southwest of Kansas City said she appears to be loving and friendly.

"She has always been very nice—and real calm," said Rachel Sprouse, a 23-year-old caterer who lives next door to the family and has two small sons. "I can only think of good things to say about them."