

Non Violent Action

Your right to family is a GREAT right

by John Murtari

Criminal Jury - the 'sine qua non' of Family Law Reform

Sorry for the Latin there, What does it mean? Literally: 'without which - not.' You want *equal parenting*? You want to keep Child Protective Services from taking your kids on a hunch - and 'temporary' orders that last for years?

We can talk about equal parenting, or better 'procedures' for social workers, and laws that say 'clear and convincing' evidence is required before a Judge intervenes in our family life - but are they the essential elements in real reform? Maybe not.

How about this simple concept: If a former spouse or a social worker wants to interfere in your relationship with your children and get "Family Court" to intervene, there is just *one* hurdle they have to overcome. They have to get a criminal prosecutor to indict you for a serious crime (with malintent being a 'demonstrated' serious threat to the safety of your kids). You get the protection of a jury of twelve and they need a unanimous verdict against you. How does that sound? Oh, and if the jury finds you guilty, you are going to jail for while (of course).

Now, you don't have to go through all this, You are free to negotiate, mediate, and arbitrate first with the other party (whether that be a former spouse or Child protective services). But both sides know what the standard of proof is, and that twelve people are going to hear the facts.

Good parents, average parents and poor parents - all *equal* parents.

A Jury: do you want that much protection?

Shouldn't there be more factors? Custody is so complicated - what about all the subtle forms of mental abuse? My spouse doesn't care about the kids - they just want to use the kids to control me. The kids don't want to be with my spouse - they want to be with me! We *know* the parents are abusing the kids, but we can't prove it - we need to get the kids out of house! I want to move away to get a better job and make more money for my children - what do you mean I can't take the kids with me unless my spouse is a criminal? Don't they have a right to something better?

What about all that?

A Jury: should nine out of ten murderers go free!?

Maybe we should feel uncomfortable about our present jury system. How could O. J. Simpson go free after committing murder? Probably many of you have heard of this old civic lesson. "Better to let nine guilty people go free than to convict one innocent!" Does that make sense? - we 'know' they did it. Why would you let a murderer or child abuser go free to commit more crimes?

I once had a 'junior' Senate Staffer for Sen. Clinton tell me that it was better to separate nine kids from parents, than let one live in an abusive environment! Do we understand that when you separate a kid from parents - that is awful abuse also? To save *one* abuse *nine*?

What about all that?

What does all this flow from. What is the underlying assumption? Your right to Family is a *great* right - the ability to raise and nurture and be present to your own children (and they to you). Just a valued as our freedom.

I have had the chance to spend a lot of time in jail holding cells, waiting to be arraigned. You know what, about 90% of those people were exactly *guilty* of what the police arrested them for. Why go through all the expense of procedure, protections and also run the risk of letting these people go? Just convict the whole bunch! To be more specific, what if 90% of Black men under 25 are guilty of the crime they were charged with - just convict the all?

We do not do that, because *freedom* is a *great* right. Please, let's not resort to scientific studies or the laws of averages for policy justification. I don't care if 90% of bald-bearded-men over 45 (like me) are *bad* parents - I walk into Court an *equal* parent to my child.

What about that?

A Jury: protector of our freedom

Maybe we need something better. Family law is so complicated, It is so hard to get enough evidence to get a jury conviction. There are so many personal factors involved. We need to build a lot of flexibility into the law, get some impartial experts involved to do evaluations, and of course make a recommendation based on the 'best interest of the child'. Does that sound good? It pretty much describes the system we have right now.

Your feedback is welcome.

John Murtari lives in Lyons, NY. Reach him by email at jmurtari@KidsRight.Org. You may subscribe to John's broadcast mailing list on NonViolent Action (from which this column is drawn) at www.AKidsRight.Org