

---

***Women will become the victims if unrestricted no-fault divorce laws are enacted, this attorney argues.***

---

**T**HE campaign to enact no-fault divorce laws is being marketed under false colors. In most states divorces are presently granted on a generally "easy" ground such as "gross neglect." In the urban divorce courts, where substantial numbers of divorces are processed daily, the proof of "gross neglect" or some other standard ground runs from testimony that the complainant's spouse was cool and indifferent, to a claim that he or she left the home announcing an intention not to return, to a variety of similar relatively innocuous types of complaint.

With this basis, consider the usual argument for enacting no-fault divorce statutes. The argument, incidentally, seems to come most frequently from those who have no direct knowledge of the practices in the domestic relations court or from those who, having been involved in a contested divorce case, were the recipients of rulings they consider unfavorable to themselves. The argument contends that present divorce proceedings produce unnecessary acrimony and that they encourage perjury. This is no more true for divorce cases than it is for any type of litigation. When people are sufficiently antagonistic or hostile to engage in a trial type controversy of any kind, there is a tendency toward acrimony and there is an opportunity for perjury.

The great majority of divorces are disposed of quietly and quickly under the present laws which, along with many of our institutions now under attack, have been established over about 200 years of study and trial and error.

Even though the acrimony and perjury arguments are not valid, the supposed difficulty can be easily cured by adding to the present laws an additional ground for divorce using the language of the no-fault pro-

ponents, but with a condition designed to protect the women who become the victims in the unrestricted no-fault divorce situations. The additional ground is very simple—it is "Irreconcilable differences when there is no contest." This means that if both sides want a divorce and can agree on child custody and finances, the divorce will be granted upon a mere statement that the parties do not get along. It is submitted that this is more than enough concession to the new view that traditional institutions are presumptively bad, or at least subject to easy dissolution.

Before examining the method in which no-fault divorce statutes actually work, one may observe that by going further than permitting an easy divorce when there is no contest, the legislatures are really creating the opportunity for a great waste of time, effort, and money—it would be far less expensive for them to direct their efforts toward eliminating marriage as a formal state. This would save the bother and expense connected with getting married in the first place and eliminate the expenses and formality of a perfunctory court proceeding (and perhaps of haggling over money and incidental children) when times get a little tough and the first family squabble erupts.

**ROBERT R. LAVERCOMBE\***

The cynical notion that eliminating formalized marriage is an alternative to "no-fault" should at least suggest the erosion of the family institution that is the next step after no-fault divorce.

### **Typical Case**

Here is the way the no-fault divorce frequently is used (that is, the real pernicious use) which would not be available in non-no-fault jurisdictions. The plaintiff is typically the husband and is in his forties or fifties. He has achieved some degree of success and probably a real or apparent measure of sophistication acquired at a greater rate than his wife of 20 to 25 years. After all, she has been at home raising the children and keeping house; while he has been in the office mingling with more exciting people and situations which have given him an apparent erudition and, along the way, have stimulated his interests in other areas. This typical husband is usually physically vigorous, quite active, and is just reaching a substantial earning capacity with the prospects for continuing future raises and the opportunity to acquire substantial property.

The typical wife in these situations,

meanwhile, is some 15 or more years past the peak of her physical attractiveness. She is tired, the age is beginning to show, and the children keep her and her energies fairly closely corralled.

The husband either has found someone younger and more vigorous or is actively thinking about it. Under the no-fault divorce law he can go to court, get the judge to split the property, make some basic award for the wife's support, and emerge with his freedom. Under the traditional divorce laws, society frowns on divorce and will grant it only when a party proves he or she is entitled to a divorce by reason of the spouse's having done something to justify termination of the marriage relationship. At the beginning of this article it was pointed out that if there is no contest, the termination is usually granted quickly and easily. When there is a contest, however, the termination should be decreed only upon a showing of good cause.

Formerly, it was considered bad form, even unethical, to base a wife's defense in the typical case cited here on the position that if the husband is going to get rid of the

\* Robert R. Lavercombe, Attorney at Law, Law Offices of Beckman, Lavercombe, Fox, and Weil, Cincinnati, Ohio

## ASCD Audio Cassettes

Audio cassette recordings of renowned educators speaking on some of the controversies in which schools and society are currently embroiled are available from the Association for Supervision and Curriculum Development.

Addresses were recorded "live" at ASCD conferences. The cassettes may be used with any cassette player. Each is packaged in a plastic case for convenient storage.

**William M. Alexander**, "Curriculum Planning as It Should Be," 1971. 62 min. **\$6.00.**

**Jerome S. Bruner**, "The Process of Education Reconsidered," 1971. 50 min. **\$5.00.**

**Price M. Cobbs**, "Dare To Care / Dare To Act," 1971. 46 min. **\$5.00.**

**Arthur W. Combs**, "Accountability for Humanism," 1973. 50 min. **\$6.00.**

**Dan W. Dodson**, "Action for the Seventies: What Is Our Unfinished Agenda?" 1972. 44 min. **\$6.00.**

**Richard L. Foster**, "Accountability: Social and Political Influence," 1973. 56 min. **\$6.00.**

**Richard L. Foster**, "Educational Supervision: Dead or Alive?" 1969. 38 min. **\$5.00.**

**Alexander Frazier**, "Open Schools in Perspective," 1973. 54 min. **\$6.00.**

**Alexander Frazier and Doctoral Students**, "Questions About Open Schools," 1972. 60 min. **\$5.00.**

**Jack R. Frymier**, "Curriculum for Individuality," 1973. 48 min. **\$6.00.**

**Jack R. Frymier**, "A Curriculum Manifesto," 1972. 60 min. **\$6.00.**

**Charles M. Galloway**, "Personalized Teaching for Individualized Learning," 1973. 50 min. **\$6.00.**

**Ruth Love Holloway**, "Reading and the Individual," 1973. 45 min. **\$6.00.**

**Alvin D. Loving, Sr.**, "One America by the Year 2000," 1972. 45 min. **\$6.00.**

**Hugh J. Scott**, "Financing and Supporting an Education To Insure Individual Development," 1973. 48 min. **\$6.00.**

**Charles E. Silberman**, "Crisis in the Classroom—A Diagnosis with Suggestions for Remedy," 1971. 33 min. **\$6.00.**

**Neil V. Sullivan**, "Crisis in Values," 1971. 37 min. **\$6.00.**

**Neil V. Sullivan**, "Forces Affecting Educational Decisions," 1973. 50 min. **\$6.00.**

All audio cassette orders must be accompanied by payment—no billed purchase orders, and no discounts on quantity orders of cassettes.

**Order from:**

**Association for Supervision and Curriculum Development**  
1201 Sixteenth St., N.W., Washington, D.C. 20036

wife for a newer model, he must pay a substantial price. Lately, the law seems to have moved away from that notion. In the traditional divorce states the practice is to recognize that the law cannot force the husband to live in the same house with the wife and the children and the law cannot order the parties to have affection for each other; but the law can, and does, provide a method for obtaining financial security for the middle-aged woman who does not have the means of competing in the business world, having spent her productive years at housekeeping. Accordingly, she should have the means of insisting that when the husband is giving way to his middle-aged urgings, he will do so (at least legally) only after having made adequate arrangements for his first family.

Adequate arrangements for the first family should be more than an equal division of the property and a basic support allowance. When the man moves on to greener pastures with his increased earning capacity, which he developed while living with his first family, and with his youthful companions, lately acquired, society should require him to provide generously for the mother and the children. No specifics can be given to cover all cases; but typically a generous division of property should be from 60 to 75 percent for the discarded wife, and her alimony should be permanent (subject to her remarriage) and should be flexibly arranged to escalate and de-escalate with the departing husband's income.

The new no-fault divorce laws are not designed to give the middle-aged woman the protection she needs, but under the traditional divorce laws, her attorney will be in a position to see that she is properly protected.

Again, the arguments that no-fault is needed to prevent acrimony and perjury are sailing under false colors. Although there are, of course, exceptions, the contested divorce cases today take place because one, or sometimes both, of the parties are not entitled to a divorce—and what's wrong with that? If divorce is made as easy as buying a ticket to a show, then it would be much simpler to eliminate the formality of getting married in the first place. □

Copyright © 1973 by the Association for Supervision and Curriculum Development. All rights reserved.