

**MINORITY REPORT AND POLICY RECOMMENDATIONS OF THE UNITED STATES
COMMISSION ON CHILD & FAMILY WELFARE
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REPORT TO THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES JULY 1996**

"All our institutions, particularly government, must reexamine the ways in which they affect families... We've passed programs in housing that have helped to destroy neighborhoods. We've enacted tax policies that discriminate against families of average and lower income. And we've done most of this in a mindless way, not deliberately, but often unconsciously. All of us in public life must begin to examine the effect of proposed and existing laws and programs on family life." Vice President, Walter Mondale (1977)

Introduction

Our Commission began its deliberations in January, 1995, with a dedicated staff and a collaborative spirit, accepting a noble mission to enhance children's access to both parents' financial and emotional resources. However, in our short tenure, we have had to cope with thorny issues that lie at the heart of gender conflict, family disruption, and the abdication of individual autonomy to the ever more cancerous intrusion of our judicial system. Frustrated attempts to resolve our disparate points of view sometimes led to political expediency and watered down recommendations. On several critical issues, rather than offering the President, and Congress clear suggestions for change, the Commission majority made only small steps in the necessary direction. One could accept this posture on most issues, acknowledging that the wheels of government do indeed grind slowly. However, the issues facing this Commission are so central to children's mental health that impatience is a necessary virtue. Commissioner Harrington's minority report to this Commission, and a prior minority report to the U.S. Commission on Interstate Child Support by Don Chavez, provide excellent extensive analyses of central issues in our national family disruption crisis, and offer a number of cogent remedies. This minority report is intended to amplify and extend these analyses from my own professional perspective as a clinical and research psychologist.

This report identifies flaws and biases in Commission procedures and addresses the Commission's failure to critically evaluate testimony, particularly with regard to the interpretation of empirical research on the relationship of father involvement to healthy child development. It then offers perspective on several issues and central propositions that were either minimized or entirely excluded from consideration by the Commission majority. Finally, recommendations are proposed for legislative initiatives to supplement those offered in the majority report.

Procedural Deficiencies

Some of the problems of this Commission were no doubt attributable to the minimal funding available. For example, with only \$250,000 allocated from a much larger initial authorization, the Commission was limited to three public hearings, and no Commissioner was permitted to participate in more than two hearings. At the hearings, Commissioners were limited to five minutes in questioning each panel and further limited to one question for individual witnesses. Severe restrictions on travel support precluded testimony from several witnesses who had a great deal to offer and were willing to donate time but were unable or unwilling to fund their own travel expenses. Following our last meeting in September 1995, Commissioners were not

involved in the creation of the final report and were not even provided with a draft until six months later in March, 1996. At that point we were offered our only opportunity to review the draft report, but were not provided with the critiques of other Commissioners. During that period of time, from September to March, and subsequently from March until July, 1996, the Commission staff worked solely with the Commission Chair, Mary Cathcart. Individual Commissioners were not consulted at all regarding material to be included, omitted or emphasized. At no time in our deliberations as a group did the Commission afford staff and the chair such wide latitude in determining the ultimate nature of our report. Beyond the liabilities of limited funding, this Commission failed on at least three other counts. First, the majority frequently minimized attention to its primary Congressional mandate to address issues of parental access. For example, although divorce and unwed motherhood are the central reasons for parental absence, almost no attention was directed to the specific societal factors that have created a nation of single parents. The majority report makes brief mention of family economic deficits, but no acknowledgment of the sweeping tide of individualism and accompanying values deficits. Consequently, only feeble preventative recommendations are observable in the final report. The Commission should have considered such issues as the financial and personal incentives to divorce, the reduction of social sanctions for divorce, the role of the "no-fault" legal standard, the explosive growth of the "divorce industry", the diminishing standards of personal accountability, the effects of government subsidy on the increase in unwed motherhood, and the deterrents to marriage inherent in our legal procedures for determining financial and child custody awards.

The second major omission was the Commission's unwillingness to critically evaluate the relative merits of conflicting testimony and submitted materials. Rather than exercising their responsibility to weigh the evidence when issues were contentious, the majority simply listed those in favor and those opposed. No attention was paid to the rigor of research methodology or the quality of empirical foundations underlying witness testimony. The Commission report notes that it was necessary to "retreat from" the responsibility to formulate a recommendation where Commissioner disagreements were apparent, exceptions to a rule existed or research evidence appeared to be contradictory. I strongly disagree with this posture and believe that the Commission "retreated" from its responsibility to invest effort in the discernment of truth. For example, no consideration was given to documents submitted by this Commissioner examining the validity of two fallacious arguments in opposition to joint custody -- one of which argues that joint custody should not be awarded where conflict exists between the parents, and the second argues that there is no bias in the courts against fathers since they are highly likely to be awarded custody when they request it. In each of these cases, the Commission was provided with clear and objective analysis of these false claims that exposed the absolute inadequacy of the data base supporting such blatant distortions. An even more grievous problem is the exercise of bias in the reporting of research evidence bearing on the central issue of shared parenting. Although our agreed upon mission statement focuses on children's access to both the financial and emotional resources of each parent, the majority refused to endorse any guideline for a presumption of shared parenting after divorce. Even with strong provisions for exceptions based on spousal violence, substance abuse, or other impediments, the Commission was unwilling to endorse a recommendation for a marginal 30% -70% time share standard. The bias against a presumption of joint custody was observable in several Commission actions. For example, bias was clear in the uncritical acceptance of testimony opposing joint custody, the attempt to limit testimony of those in favor, and the ignoring of substantial supportive documents. Commission procedure for each hearing was to create "balance," resulting in the search for those who would speak against shared parenting, typically using the subterfuge of conflict or spousal violence. While the word "balance" appears to connote our even-handedness, this approach reinforced a polarization of the Commission,

subverting our Congressional mandate and dilution our efforts to maximize children's access to their fathers. Rather than seeking testimony that would , suggest ways to expand post-d' Divorce e. father involvement, the Commission solicited a considerable amount of testimony to preserve the sole-mother- custody status quo in divorce, while focusing on increasing father involvement in unmarried rather than divorced conditions. Another exercise of bias was the Commission's inconsistency about the linkage between payment of child support and access to children. On the one hand, on pages 12 and 13, the Majority Report notes that child support payments are much more likely when children have contact with their noncustodial parent, whether that parent is the mother or the father. Yet on page 14, the report asserts that "...payment of child support and access to children are separate and distinct issues." The attempt to artificially separate two forms of parental support that ordinarily go hand in hand is a distortion of modern society. Rather than allowing direct support from a caring parent, it requires one parent to pay a middleman (often an adversarial one) financial support (with no accountability) in order to care for the child. Joint custody presents an interesting dilemma to those who promote sole custody. If the child enjoys both greater financial support and greater emotional assistance from both parents, how can one justify continuation of sole mother custody? Yet, if joint custody becomes widespread and fathers are directly supporting their children, how can one justify payment of full child support awards to mothers? In the final report, only two authors were cited in favor of a presumption of joint custody and five others were cited as opposed. An objective characterization of the full range of testimony would have included the support of several outstanding researchers and child development experts, including strong endorsement from an extensive review of literature submitted by Division 16 of the American Psychological Association. Acknowledging that all research evidence is probabilistic, it is nonetheless quite possible to arrive at conclusions to guide public policy based on the currently available research literature. This Commissioner generated the Commission recommendation that the government should sponsor needed research to clarify critical issues regarding the family and child welfare. However, I do not believe that government officials should delay legislative action in anticipation of future research findings. To do so would jeopardize the well-being of at least two million children who experience either divorce or unwed motherhood each year, as well as countless others who are currently struggling to cope with the confusion and adversity foisted on them by misguided adults. We now have had the advantage of approximately 20 years of research studies to inform our legislative decisions. It is time to act on this accumulated wisdom.

Research Evidence

Socialization Failure: What We've Done For 20 Years Has Not Worked In the "Best Interests of the Child".

Widespread and well recognized evidence now documents the decline in socially responsible behavior of our nation's youth. This decline markedly coincided with the rapidly, escalating divorce rate from the mid-sixties and with the movement toward a matriarchal society. I first heard the alarm bells when Senator Birch Baye's Senate Subcommittee issued its report on juvenile crime and violence more than 20 years ago. The 1975 Subcommittee report described unprecedented increases in several areas of juvenile crime over a three-year period, 1970-73. For example, serious assaults on peers increased by 85.3 % , serious assaults on teachers by 77.4 % , rapes and attempted rapes by 40.1 % , and homicides by 18.5 % . Drug and alcohol offenses on school property increased by 37.5 % and the number of weapons confiscated in schools increased by 54.4 % . The divorce rate was in the process of doubling between 1965 and 1978.

Simultaneously, new research by Wiley (1977) had illustrated a steady decline in nationally administered standardized test scores, beginning in the mid-sixties and becoming more pronounced in the late seventies. According to Wiley, these substantial declines in a wide array of measures, from SAT and ACT tests for high-school seniors to Iowa Tests of Basic Skills for middle-elementary students, could not be explained by differences across the years in pupil composition or alterations in tests. Having reviewed these data, in 1980 I concluded a special issue of the School Psychology Review, entitled "Families: Current Status and Emerging Trends" with the following statement: We are beginning to recognize the impact of pervasive family disruption on a wide range of children's school behaviors. We are becoming uncomfortably aware that the increasing divorce rate isn't just a passing fad or a temporary artifact of the post World War II baby boom. Most importantly, we are beginning to understand that the growing lack of commitment to child-rearing may be one of the most significant societal changes in our lifetimes. (pp. 378, 379) Continuing evidence of socialization failure was cited seven years later by U.S. Secretary of Education, William J. Bennett, in an issue of the American Psychologist (1987). After describing massive expansion of federal spending during the 1960's and 1970's to improve the well-being of American children, Bennett asks, "How did American children fare during those 20 years of unparalleled financial commitment?" He then reported that the birthrate for unwed teenagers rose 200%, the rate of homicide among young people more than doubled, juvenile arrests more than doubled, and that there was no way to even estimate the proliferation of drug use (p. 247). Bennett concluded that the absence of fathers was a likely cause of these juvenile problems. To illustrate these trends from my own state level perspective, during the period when the divorce rate and subsequent father absence was more than doubling from the 1970's to 1990, Ohio experienced a 35 % increase in cases of child and adolescent serious emotional disturbance, a 158 % increase in learning disabilities cases, a 65 % increase in state facilities' juvenile confinement rate for crime and violence, and a 175% increase in confinement rate in P Private facilities for juveniles. More recent information from the Annie E. Casey Foundation (Kids Count Data Book, 1994) documents that, in the very brief period from 1985 to 1991, we Ohioans experienced a 74 % increase in juvenile violent crime arrest rates, a 31 % increase in births to single teenagers, and an 8 % increase in teen violent deaths. During that same six- year time period, the percent of Ohio children in single parent families rose 9 % to a current level of 22.5 % of all Ohio families. - We have been witnessing these horrific increases in problems of children and youth without relief for at least two decades. They are not conveniently explained away by demographic bulges in the size of the youth population. Yet, we have steadfastly adhered to the same adversarial gender-biased judicial procedures with preferential maternal custody and disgruntled absent fathers as the rule. Our Commission recommends movement in the corrective direction, but timidly shies away from the needed endorsement of gender equity.

Divorce and Father Absence: How much Evidence do We Need?

From a scientific point of view, statistics demonstrating what now amounts to 30 years of strongly parallel increases in divorce rate, single parenting, father absence, and children's maladjustment are highly suggestive but not definitive in determining causal relations. However, it would be foolhardy and against all rules of common sense to ignore such a strong association. Moreover, a wealth of research studies have now been conducted to strengthen the conclusion that divorce, single parenting, and father absence are strongly related to adverse child and adolescent outcomes. From the perspective of child psychology, what does the accumulated research evidence conclude? First, it is abundantly clear that existing divorce procedures have not worked "in the best interests of the child." Repeatedly, in study after study since the mid-1970's, divorced-family children have been shown to function more poorly than children from biologically intact two-parent families on a wide range of academic, social, and emotional

measures. My own research studies, on the first nationwide sample of 699 children from 38 states, strongly confirm the substantial decrements in performance of divorced family children on standardized tests, self-reports, and independent ratings by parents and teachers. (e.g., Guidubaldi, 1989; Guidubaldi, 1988; Guidubaldi, Perry, & Nastasi, 1987) These results are also confirmed at two follow-up periods in subsamples from the original study -- one that included 220 subjects at 2 and 3-year follow-ups and another that included 81 adolescents and young adults in a 7 and 8-year follow-up study. This study also concluded that (a) the effects of divorce are not temporary stressors but rather long-term influences, (b) boys have more difficulties adjusting to divorce, particularly as they approach adolescence, (c) contrary to the position of some professionals (e.g., Bane, 1979) the decline in socioeconomic status after divorce is not a sufficient explanation for children's decreased performance, and (d) authoritative child-rearing style and structure in home routines such as bedtimes, mealtimes, and television viewing habits relate to better child outcomes. One of the most striking findings was that 51 % of children from sole mother custody families see their fathers "once or twice a year or never." In our smaller 7 and 8-year follow-up sample we found that even after an average of 11 or 12 years following the divorce event, adolescents who have good relationships with their noncustodial fathers have fewer teacher-ratings of behavior problems, fewer attention or aggression problems, higher grades in Language and Social Studies, and are less likely to abuse drugs or alcohol according to their own self-ratings. In the only other nationwide study, Furstenberg and Nord found almost the exact percentage (50%) of father absent cases. One can speculate whether this high incidence of absence stems from fathers' selfish interests in pursuing less responsible lifestyles, or whether their parenting efforts are thwarted by restrictions imposed by custodial moms or gender biased court orders. This interpretation is supported by Kruk (1992) who notes the most frequent reason for fathers' disengagement (90%) was obstruction of paternal access by the child's mother and her desire to break contact between father and child. Interestingly, this explanation is not even considered in the Commission's listing of possible reasons on page 14 of the majority report. Fathers also mentioned that they ceased contact because of their inability to adapt to the constraints of the visiting situation (33%). Regardless of interpretation of motives, the fact remains that sole maternal custody relates strongly to ultimate father absence. Another salient research issue is the highly replicated finding that boys fare much more poorly than girls in post-divorce households. Since more than 88 % of divorced-family children are in sole mother-custody homes, and as explained earlier, half of these have almost no contact with dads, it is clear that many boys are being reared without benefit of a same-sex parental figure. Thus father absence may reasonably be hypothesized as an explanation for the strong gender differences in post-divorce child adjustment -- a condition not easily ameliorated by the school environment which is populated by female role models for at least the first seven years of formal schooling. The relationship of father absence to child adjustment in unmarried mother households presents additional evidence for a policy of shared parenting. In our studies of urban children in special education (e.g., Guidubaldi & Duckworth, 1996), we find that 70% of children (mostly boys) with severe behavioral handicaps have no father contact at all according to the mothers' ratings. These children and adolescents are often the most disturbed or potentially dangerous students in school. One is compelled to ask how many of them would exhibit more cooperative behavior if their fathers were available and influencing their daily lives. Research summaries previously provided to Commission members document an impressive array of significant relationships between father involvement and better child adjustment for the total sample of urban children in special education, including categories such as learning disability, mental retardation, severe behavior problems, and sensory handicaps. Once again, the Commission majority failed to respond to highly pertinent data.

Joint Custody: A Win-Win Proposition

The overwhelming weight of testimony and printed material presented to the Commission supports the notion of increasing the involvement of parents in the child's life. Our mission statement embodies this challenge to ensure that children receive not only financial support but also emotional support from both parents. We have heard consistent support for more father involvement from respected researchers and child development specialists such as Sanford Braver, Joan Kelly, Richard Warshak, Henry Biller, Nicholas Zill, and others. Why then is there still Commission opposition to a recommendation that would, by definition, increase father involvement opportunity for those seeking to maintain parenting roles after divorce?

As Richard Warshak's testimony indicates, no study has found that joint physical custody is disadvantageous to children. Where researchers have found significant differences, they favor the joint custody arrangement. Only a few empirical studies raise any concerns at all about joint custody and these have been given an unwarranted anti joint custody "spin." These studies merit a closer look. For example, Janet Johnston's work has been cited as opposing joint custody. She notes in her article, "Court-ordered joint physical custody and frequent visitation arrangements in high-conflict divorce tend to be associated with poorer child outcomes, especially for girls" (High Conflict Divorce, 1994, p. 165).

A closer look at her definition of high conflict families reveals that she estimated the incidence from Maccoby and Mnookin's California study where 25 % of the divorcing families were judged to have high conflict, but only 10 % of these (2.5 %) show an association between joint custody/frequent visitation access and poorer child adjustment. Clearly, such an extreme population should not serve as the basis for policy that affects the welfare of the other 97.5 % of the population. Johnston, herself, acknowledges that joint physical custody and frequent visitation are not detrimental to the majority of children. She notes that, "In some cases, especially where parents are cooperative, they are more beneficial" (p. 176). Maccoby and Mnookin's work is also sometimes cited as evidence against joint custody. However, closer scrutiny of their article about joint legal custody (Albiston, Maccoby, & Mnookin, 1990) reveals no negative effects and, conversely, a positive effect between joint legal custody and decreasing discord between the parents for families in which the children visited both parents. The authors conclude that, "Thus the retention of joint legal custody as an option for its affirmation of the involvement of nonresidential parents and its potential impact on perceptions of gender roles may be warranted" (p. 177).

In addition to Maccoby's conclusion that joint custody provides a "symbol of the expectation that both parents are to continue in their role as parents after the divorce, "we should recognize that the presumption of joint custody has another equally powerful anticipatory effect. Mindful of the fact that equality of parenting privilege will be the cornerstone of court decisions, parents are likely to be far more cooperative in pre-trial mediation, and may avoid litigation all together. If on the other hand, either of the potential litigants forecasts an advantageous position in court, their involvement in meaningful mediation may be severely compromised, and the efforts of even the most skilled mediators may be thwarted. Political extrapolations have sometimes resulted in the conclusion that where there is conflict at the time of divorce (when isn't there?) joint custody should be precluded. If this conclusion were allowed to stand, it would serve as incentive to promote conflict by those desiring sole custody. Conflict is certainly present in most divorcing situations, but it usually subsides with time. Temporary anger is common in reaction to such a powerful psychosocial stressor. It is not ordinarily indicative of pathology and should not result in an abrogation of parenting rights. Moreover, the expansion of the definition of spousal abuse has further confused the issue. Rather well defined rules of evidence pertaining to occurrences

of physical abuse provide necessary safeguards against false claims, as well as protecting those who are truly victims.

However, in recent years, more amorphous claims of "psychological abuse" have been elevated to the same level of consequence and have become widespread in divorce actions. Often rules of evidence are cast aside and the simplistic "guilty until proven innocent" orientation is exercised by confused judges who have limited ability to distinguish between truly menacing verbal behavior and harmless verbal expressions of anger (which flow both ways in marital discord). These distortions have fueled the controversy over what might otherwise appear to be an obviously fair proposition -- that neither parent should lose parenting privileges or responsibilities as a result of divorce. A frequently heard rationale for sole mother custody concerns the issue of pre-divorce parenting role performance serving as a precedent for post-divorce parenting roles. In response, it should be noted that during the marriage, traditional role complementary provides for efficient childrearing, wherein one of the parents usually serves as the primary bread-winner, providing for the child's food shelter, clothing, etc. while the other parent's main focus is on utilizing these resources in providing direct services for the child. Neither contribution should be denigrated in determining post-divorce childrearing privileges or responsibilities. Since both roles were essential for child welfare, since both parties may be presumed to have had at least a tacit agreement to these role divisions, and since in many families the roles are not mutually exclusive and may involve a considerable amount of overlap, the pre-divorce parenting roles should not be the basis for post-divorce parenting time and should not place either parent at a disadvantage in custody conflicts.

Furthermore, it is blatantly clear that post-divorce lifestyles are markedly changed for all parties concerned, and a consequent redefinition of roles and privileges is essential. For example, to expect mothers to be dependent economically on their divorced spouses neglects their capabilities to become self-sufficient, productive wage earners, and in fact may promote attitudes of learned helplessness. To expect fathers to continue to provide for the child's well-being through child support payments to their ex-spouses neglects the father's capacity to contribute directly to the child's well-being and may promote anger, resentment, and a sense of "taxation without representation". For many fathers, the orientation is that of a second-class citizen placed outside the child's mainstream, useful only as a source of continued financial support. For many mothers, this unequal post-divorce situation results in the feeling of continued economic dependency, a need to support the child on a reduced financial base since two households must now be maintained, and the inability to move forward into new employment opportunities because of the heavy childrearing burden essential in sole custody. Another argument frequently heard against joint custody is that children are unable to make transitions from one parent's home to another. No evidence is brought to bear on this assumption, and indeed ample evidence exists to support the alternative conclusion that developmental capabilities, of even young children, enable them to make healthy transitions from one environment to another (as in movement from home to daycare, baby-sitter's residence, and grandparent's homes). On what basis then, should we conclude that even young children cannot make the transition from one loving parent to another? Do the minor inconveniences outweigh the positive contributions of a highly involved caring parent?

Considering the controversy over the issue of joint custody and the distortions of research findings in the service of preserving the sole-mother custody status quo, I asked two officials of the American Psychological Association, who gave testimony, to provide the Commission with an objective analysis of this body of research. I requested this openly in the Cleveland, Ohio Commission hearing on April 20th, and no objections were raised by other Commissioners.

Following its approval by the Division 16 Operating Committee, the subsequent report was submitted on June 14, 1995, by Beth Doll, the Division Vice President for Social Council and Ethical Responsibility and Ethnic Minority Affairs. It began with the following statement:

"A search of the empirical research specific to joint custody was conducted. Major data-based studies available at the time of this review have been individually summarized and evaluated as relevant to the findings and adequacy of the methodology as requested. While flawless studies on such a complex subject are extremely rare as indicated by the evaluations, the goal of this report is to provide a synthesis so that the Commission's policy recommendations may be predicated on the best available empirical base. To minimize some of the confusion in such a highly charged area of study, this review focused on the weight of evidence as determined by both replications of findings and consideration of methodological rigor. This document then reviewed results from 23 studies, providing abstracts of each and summary findings according to criteria of (a) father involvement, (b) best interests of the child standard, (c) financial child support, (d) relitigation and costs to the family, and (e) parental conflict. On each of these criteria, the report supports the conclusion that joint custody is associated with favorable outcomes."

Regrettably, this objective analysis from the world's largest organization of psychologists was ignored in our Commission meetings and in our final report. As an authoritative source of information on the social and emotional well-being of our citizenry, the APA has consistently promoted standards of gender equity. In its Council meeting in 1977, almost 20 years ago, it recognized the centrality of these issues: Be it resolved that the Council of Representatives recognizes officially and makes suitable promulgation of the fact that it is scientifically and psychologically baseless, as well as a violation of human rights, to discriminate against men because of their sex in assignment of children's custody, in adoption, in the staffing of child-care services, and personnel practices providing for parental leave in relation to childbirth and emergencies involving children and in similar laws and procedures.

Cultural Context

Parents' Constitutional Rights: A Biological Imperative

Any meaningful attempt to reestablish stability of marital relationships must be in with a careful analysis of cultural factors that contributed to the etiology of family disruption. The commission failed to address these issues, and thus its report, replete with recommendations, lacks a conceptual core. At a minimum, we must comprehend and adhere to rights guaranteed by our U.S. Constitution. Secondly, we need to examine historically the events that psychologically predisposed many to view marriage as an unnecessary obstruction of their freedom, and thirdly, we must consider those factors that currently serve as enticements to divorce and unwed motherhood. A comprehensive analysis of these issues cannot be offered in this brief report; however, excerpts to illustrate the rights of parents and the erosion of traditional fatherhood provide prerequisite elements. The primacy of parenthood has been safeguarded by the United States Constitution as illustrated in the following citations: The rights of parents to the care, custody and nurturance of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institution, and such right is a fundamental right protected by this Amendment (First) and Amendments 5, 9 and 14. **Doe v Irwin** 441 F Supp 1247; U.S. D.C. of Michigan, (1985).

A parent's right to care and companionship of his or her children are so fundamental, as to be guaranteed protection under the First, Ninth, and Fourteenth Amendments of the United States Constitution. **In re: J.S. and C.**, 324 A 2d 90; supra 129 NJ Super, at 489.

Federal courts (and State Courts), under Griswold can protect under the "life, liberty, and pursuit of happiness" phrase of the Declaration of Independence, the right of a man to enjoy the mutual care, company, love and affection of his children, and this cannot be taken away from him without due process of law. There is a family right to privacy which the state cannot invade or it becomes actionable for civil rights damages. **Griswold v Connecticut**, 381 US 479, (1965).

The U.S. Supreme Court has made it clear that a "parent's right to custody and companionship of a natural child has been specifically accorded protection under the Constitution. "Smith v. Organization of Foster Families" 431 US 816, 53 Led 2d 14, 97 S ct. 2094 (1977); Stanley v Illinois supra; Caban v. Mohammed 441 US 380, 99 S ct. 60 Led 2d 296 (1979).

The Permissive Society: Psychologically Enabling Divorce

In the face of a father's constitutional guarantees of parental rights, as well as clear psychological research evidence documenting the benefits to the child of continuing father involvement, regardless of marital status, how has it come to pass that father absence now characterizes the lives of millions? Our Commission report appears to suggest that the failure of marriage in American culture is largely the outcome of low wages, unemployment, and general economic difficulties. However, as noted by Islamic authors at a recent inter-religious colloquium in Rome: Several studies in the U.S.A. prove that the divorce rates declined in times of economic depression and rose during the time of economic prosperity. The depression of 1932 to 1933 had the lowest rate of divorce and the highest rate in the 1980's during the period of economic achievement. Mothers are leaving home to earn money for a better living, but in many cases at the cost of a very high price. Money is definitely essential for the maintenance of a family. But one should not forget that money can buy a bed but not sleep, finery but not beauty, a house but not a home, medicine but not health, luxuries but not culture, sex but not love, and amusements but not happiness. (1995, p.74)

Our search for underlying causes of family disintegration and father absence must begin with an acute awareness of a process we might describe as the "dethronement of authority." That process had its inception during the tumultuous 1960's and flourished in the 1970's. Its theoretical roots were in the humanistic psychology movement that taught self actualization, in Kohlberg's rejection of the boy scout bag of virtues in favor of moral reasoning, and in the process of civil disobedience that led to success of the civil rights movement. In each case, the authority of traditional mores was challenged. The exposure of abuses and deceptions by authorities in the Vietnam War, Watergate, and other scandals to follow, nourished anti-authority sentiment which was expressed in a generalized manner to such divergent targets as the President of our country, university officials, policemen, clergy, and to fathers who traditionally represented the ultimate authority within the family. Time and time again, traditional authority was characterized as outdated, insensitive, and so dedicate to self preservation that it was not open to needed change.

On the other hand, the impatience of change agents oversimplified the virtues of change and ignored the society's need for a well- anchored foundation of tested values. Gender role complementarily gave way to role redundancy; parental authority roles were undermined by declining religious influence , desensitizing of taboos by the rock music industry, and by the new

phenomenon of widespread divorce. Confrontation politics reigned and "Times were a changin." Several corollaries to this anti-authority movement soon became obvious and ultimately assumed the mantle of political correctness. Slogans such as "I'm OK, you're OK " "Do our own thing, " "Don't worry, be happy, and "Different strokes for different folks" all reflected the new legitimacy of socially approved egocentrism.

America's traditional sympathies for the underdog mutated into a fetish of inflated entitlements, and millions of Americans compromised their dignity for nurturance. Accountability for personal failures was conveniently transplanted to the educational system, the nation's economy, and to a disease model that provided convenient exoneration from guilt for sins of excessive indulgence. This was the context in which cultural civility declined, family stability began to erode, and socialization of our children failed. It is not surprising that the father's traditional role as head of household was severely challenged by their children who were encouraged to be more rebellious by permissive media, negative peer group models, and on occasion, by mothers who were themselves alienated from their spouse or ex-spouse. Equally undermining paternal authority was the new "liberated" woman's role.

Several factors contributed to increased autonomy from the homemaker and mother roles. Expanding maternal employment opportunities and a new movement to provide "equal pay for equal g work" brought about greater economic independence. Simultaneously, widespread use of the birth control pill brought about greater independence from child-rearing permitting women to govern their own fertility. In the absence of compelling social mores, and with declining influence of religious prescriptions, marital loyalty bonds were seen as less obligatory. These were the circumstances existing when "no-fault divorce rulings emerged. Coupled with economic independence, fertility control, and cultural permissiveness, the "no-fault" divorce option provided the enabling legal vehicle for quick and easy exits from unfulfilling marriages. Henceforth, parents could leave their spouses with minimal guilt using the convenient rubric of incompatibility. However, if children were involved, and if they too must be left behind, divorce-initiating parents could be overwhelmed by guilt. Thus, in order to psychologically manage the termination of the marriage, the initiator must have some assurance of continued salience as a parent. The judicial sole-mother custody award enabled millions of mothers to divorce with absolution.

In today's world, if one investigates the simple question, "Who initiates divorce?" we find from Monthly Vital Statistics Report, May 21, 1991, that from 1975 to 1988, in families with children present, wives filed for divorce in approximately two-thirds of the cases each year. In 1975, 71.4 % of the cases were filed by women, and in 1988 65 % were filed by women. While these statistics alone do not compel a conclusion that women anticipate advantages to being single rather than remaining in the marriage, they do raise that reasonable hypothesis -- one that the Commission majority refused to consider. If women can anticipate a clear gender bias in the courts regarding custody, they can expect to be the primary residential parent for their children. If they can anticipate enforcement of child support by the courts, they can expect a high probability of support moneys without the need to account for their expenditures. Clearly, they can also anticipate maintaining the marital residence, receiving half of all marital property, and gaining total freedom to establish new social connections and intimacy relationships. Weighing these gains against the alternative of remaining in the marriage with a spouse who may, in the wife's judgment, be oppressive, unfaithful, or just plain boring, could result in a seductive enticement to obtain a divorce. Solutions to this hypothesized scenario are elusive, but without question, should include reconsideration of the ease with which divorces are granted when children are involved.

The Divorce Industry: The Fox in the Hen House

Once the decision to divorce is seriously considered, a powerful set of forces that enable and promote this process is brought to bear. Some have referred to this as the "divorce industry." It includes judges, attorneys, psychologists, social workers, property appraisers, accountants, and others who stand ready to make a profit from the misfortunes of the divorcing couple. The divorce industry is now so vast and so profitable that it may be impervious to change without major legislative intervention; yet, lawyers are typically the most influential forces in drafting legislation. To date, our tripartite government has defaulted on this topic to a monopolistic judiciary.

Even with ample evidence of violations of Constitutional rights, Congress has been reluctant to act in defense of children's right to their fathers' nurturance. Does this inaction result from a fear of alienating the entire female electorate? If asked, this myth would easily be dispelled by the paternal grandmother who has lost her grandchildren; the new wife who must cope with excessive child support payments to an ex-wife, as well as her husband's frustrated attempts to see his children; the daughter who is now grown, but remembers vividly the pain of father loss; and the many women who want to marry and have children, but find men unable to make a commitment. Of all the parties in the divorce process, domestic court judges clearly play the most influential roles.

In an era when half of the married population may be expected to divorce, the procedures for electing and assigning judicial personnel to domestic court responsibilities need to be examined. Domestic court judges, at this moment in our history, are extremely powerful persons, controlling the most important decisions of childrearing privilege and asset distribution for millions of families. An individual's basic rights of parenting his or her own offspring, and enjoying the fruits of his or her own labor, have been seriously compromised in our society. The courts entrusted with these potentially earth-shattering decisions are among our lowest status courts, and judicial personnel are often elected without regard to their level of knowledge and understanding of family dynamics, home economics, or child development. Moreover, they are often on the bench for extended periods of time, and have little likelihood of public criticism from attorneys in their communities since these players in the divorce game depend on the goodwill of their local judges to ensure their success rate and financial livelihood. Finally, their decisions - good or bad, fair or unfair -- are largely impervious to modification.

Appeals courts are yet another expensive layer of judicial bureaucracy for litigants, and even if litigants are not deterred by financial, mental energy, and exorbitant time costs, the likelihood of appeals court reversals are minimal given the use of the ambiguous and extremely broad, "abuse of judicial discretion" test. Successful modification of trial court judge's rulings in state supreme courts is an even more unlikely probability. Thus, citizens desperately require a more effective set of remedies for bad judicial decisions, and a more efficient and viable procedure for removal of judges who repeatedly abuse their power. Regardless of whether the abuse stems from gender bias, idiosyncratic or whimsical personality preferences, ignorance, or indifference, judges must be held accountable for the drastic changes they mandate in the lives of their constituents.

Throughout the past 20 years, my experiences as a Licensed Psychologist and Counselor have provided a first-hand view of family disruption and afforded the opportunity to witness dozens of cases of severe judicial abuse. From my professional experience, it seems that the combination of sympathy for the perceived underdog and envy for those more successful than ourselves has

led to a Robin Hood approach that pilfers funds from those with deep pockets, extracts an exorbitant commission, and distributes the rest to those considered too weak to fend for themselves. A few brief examples (with modified names for anonymity) may illustrate the greed, exploitation, and injustice that occur in courts across this count on a daily basis:

While serving as a counselor for Gordy, the owner of an auto body repair shop, his new wife informed me that she falsely accused her ex-husband of sexually abusing their eight-year-old daughter. After his arrest, she dropped charges, but only after he agreed not to be involved in the daughter's life, and to not meddle in her new marriage.

A ten-year-old boy, Billy, and his 12-year-old sister, Vera, were brought by their mother to my office because of severe school discipline problems. They had recently experienced the divorce of their parents and both were severely alienated from their father. When dad came to visit, they would refuse, slamming the door in his face and cursing with the ugliest of epithets. Mother supported their abusive behavior and explained that father was only getting what he deserved since he had been sexually unfaithful with his secretary.

Paul was going through a divorce process, but on the advice of his attorney, was living in the family home under a temporary separation order. He was contesting custody of his twin 5-year-old boys and had previously seen three psychologists, spending more than \$6,000 for court ordered psychological assessments of himself, his wife, and their children. One evening, without warning, his wife hit him over the head with a heavy scotch tape dispenser, knocking him unconscious. When he regained consciousness he called an ambulance. In the emergency ward, as he was receiving 26 sutures, he told the medical staff what happened. They laughed.

Gino, who owned several restaurants, was divorced from his wife. Later, he impregnated a woman he was dating and offered to marry her. She refused saying she didn't love him. After the baby was born, Gino established paternity and regularly paid \$1,500 per month child support. Five years later, the child's mother brought Gino to court stipulating that because his income was higher than the maximum used in state child-support guidelines, he should pay the same percentage but based upon his actual income so that the "child" could be kept in the style he would have been entitled to if a marriage had occurred. Her motion demanded \$1,000,000 back child support, interest, and attorney's fees, as well as \$100,000 per year in future child support.

Jim, who had custody of his daughter, came to counseling because he was considering a second marriage, but could not rid himself of the fear of financial exploitation, which he experienced at the hands of his first wife. His ex-wife had two college degrees, was in good health and received a large cash settlement in the divorce. She claimed she could not obtain a job commensurate with her credentials, but had filed only four applications in nine years. At the divorce trial, Jim had been ordered to pay \$1,300 per month alimony. He was still paying that amount nine years and three appeals later. The appeals court continued to rule that circumstances had not changed and that the trial court judge was operating within his "breadth of judicial discretion."

Marvin is an Orthodox Jewish man who had married Svetlana, a Russian immigrant. She fell in love with another man and would not return from her nightclub singing job until morning. She filed for divorce and was moving to another state with her new man. She insisted on taking their 5-year old son with her. Marvin refused, asserting that the son, Sheldon, had many ties in the Orthodox community where he lived. Svetlana won custody and moved from St. Louis to Tacoma.

Sam is a self-made millionaire, having developed patents for innovation of manufacturing procedures in a major industry. He married late in his forties and had a prenuptial agreement.

Four years and two children later, his wife filed for a divorce. Sam had bought a house for her and the children, was paying private school tuition for both children, and had established a substantial enrichment fund for the children's use in travel and recreational activities. A long 9-year period of court battles ensued over the issue of child support, his ex-wife demanding more than the \$6,000 per month she was currently receiving, as well as more than \$120,000 for her own legal expenses. Sam refused, was thrown in jail, and humiliated on the T.V. news as a millionaire "deadbeat dad." His children watched the T.V. coverage of their father's incarceration.

Recommendations

The Commission has stated 23 recommendations. Operating on the assumption that 10% of a loaf is better than none, all of these are further endorsed by this minority report. This Commissioner contributed to the framing of several of these recommendations, but believes that the Commission majority has strayed from its original mandate, omitted major issues, and moved only marginally in other areas. The recommendations by Commissioner Don Chavez, in his aforementioned minority report to the Interstate Child Support Enforcement Commission, are also endorsed as substantial remedies to the financial plight of children from divorced and unwed parent families. Most pertinent of all are the extensive array of 53 well-conceived recommendations drafted by Commissioner Bill Harrington in his minority report from this Commission. These recommendations are jointly endorsed by this Commissioner, including especially Harrington's recommendations:

- (#1) establishing a White House "Council on Father Involvement;"
- (#14) Congressional hearings on the "Campaign of Misinformation" regarding punitive child support schedules and standards for alimony payments; (#20) abolishing father-excluding welfare policies and creating welfare policies to encourage family togetherness; (#24) establishing a three-year plan designed to provide incentives to earn a living and to remove the child from welfare dependency;
- (#27) establishing a new policy of rebuttable presumption of shared parenting/joint custody for AFDC cases;
- (#36) establishing statewide commissions on the status of fatherhood and child welfare;
- (#43) establishing education and sensitivity training for judicial officers and support staff regarding anti-father gender bias; (#44) establishing rules of professional conduct for lawyers that reduce the tendency to over-litigate for family law clients; and
- (#46) promoting and encouraging men to be elementary school teachers.

Recommendations specifically stemming from the arguments in this report are as follows:

1. In order to maximize children's adult nurturance and safeguard both parents' constitutional rights of parenthood, thus increasing the attractiveness of marriage by assurance of fair treatment in the event of marriage failure, the President and Congress should promote legislation to ensure gender equity in divorce and unwed-parent child custody and financial settlements. This legislation should incorporate a rebuttable presumption of joint legal and physical custody, and should include provisions for determining fair child support awards to eliminate the phenomenon of disguised alimony.
2. In order to provide needed reforms in our domestic courts, the President and Congress should promote legislation to improve the accountability and responsible decision making of domestic court judges, including term limits, annual reviews by superior

courts, and measures to make the appeals process less costly and less time consuming for litigants. Specifically, this minority report recommends:

- A. That a system of state supreme court routine monitoring of local domestic court judges be implemented.
 - B. That a standardized procedure be made available for monitoring of local domestic court judges by citizen groups, with reports given to state supreme courts for remedial action where warranted.
 - C. That the term of office for domestic court judges be limited to four years, with option for renewal by election or reappointment not to exceed two consecutive terms.
 - D. That each domestic court judge be required to keep an independent file of all rulings relating to children in divorce, paternity, or adoption proceedings. Such file should be available for public review as an expected part of judicial accountability.
 - E. That the "breadth of judicial discretion" standard be modified to require domestic court judges to issue rulings based on the preponderance of established evidence. Accountability should ensure that rulings are not predicated on hearsay or unfounded character assassination. Findings of fact and conclusions of law should be reviewed by appellate court judges to ensure that rulings are consistent with established evidence.
3. Considering the child's right to enjoy the support of both parents, and also the strong relationship between effective child rearing and the culture's level of civility and socially responsible behavior, the President and Congress should enact legislation that places restrictions on the use of "no-fault" divorces when children are involved.
 4. Acknowledging that American Public Schools have been historically entrusted with the tax supported mission to enhance both the academic capability and the good citizenship of our children, and recognizing the efficiency of utilizing a well established agency of government rather than generating a new bureaucracy to address a critical societal problem, the President and Congress should enact legislation that restores the school's ability to work effectively with parents as partners in the socialization process. Such legislation should include restoration of neighborhood schools, incentives for effective school-based parent organizations, utilization of school mental health professionals to assist families in distress, and effective school-based parent education programs.
 5. In order to restore responsibility as a prerequisite to parenting, the President and Congress should enact legislation that would remove incentives and provide deterrents to the selfish practice of reproduction without obligation. Both fathers and mothers should be held to a standard that requires diligent effort on behalf of their children, rather than relying on taxpayers and governmental compensation for their own delinquency.
 6. In order to address more specifically the declining popularity of marriage and pervasive father absence, the President and Congress should establish a new Commission to explore ways to reinforce stable co-parenting relationships in the interests of our nation's children.

Personal Perspective

In closing this report, I have sought the counsel of a friend from inside the beltway. I respect him greatly for he has been one of the most eloquent spokespersons for children's and fathers rights during the past decade. Hearing only a few passages of this report by phone, he has advised me to soften my tone, expressing not anger, but sorrow at the Commission's missed opportunity to rectify major societal problems. His well-intentioned advice is politically sound and it has given me pause, but being neither attorney nor politician, I find it difficult to stifle my passion

about these problems. They are of such magnitude that they are strangling the potential of a whole generation of Americans. The strident voices of some of us informed observers need to be heard above the slow hum of politics as usual. Passion and a sense of urgency must guide our nation's lawmakers, for the lives of children truly hang in the balance. To preempt the potential critic who is forever searching for personal information to defuse another's logical argument, I'll close by sharing a few personal experiences that have indeed shaped my thinking -- in the direction of realism. My own father was hospitalized when I was five years old, and he never returned. My mother, who had only an eighth grade education, struggled with low level laboring jobs to rear all four of us children. Her religious values, hard work ethic, and her personal qualities of honesty and nurturance toward others provided each of her children with a strong foundation to meet our own challenges. Some may claim this proves the case for sole mother custody; however, my mother defied the odds and my father's loss was through illness and death, not divorce or unwed motherhood. More powerfully, I can personally attest to the many years of grieving for his lost guidance and support, and I know first-hand the vulnerability to male peer group influence as a compensatory source of masculine guidance.

The greatest of my personal adult challenges was my own divorce. When my long-term wife decided that she wanted her "freedom," I learned first-hand what so many of my male clients had grieved about in my private psychologist office -- the absolute loss of power to control the two most important things in one's life: parenting privilege and the fruits of one's own labor. I was fortunate because of my daughter's choice, to have the privilege of Mr. Mom status for the past nine years, I know full well the nurturing capability of fatherhood. I also understand how financial injustice, imposed by judicial injustice, can generate a legacy that places unnecessary long-term burdens on both adults and their children. As I write my final sentences, I'm preparing to leave for the hospital here in Tallahassee, to visit my newly arrived second granddaughter and baby sit with my first. Please Mr. President and members of Congress, do all that you can to restore civility and justice to this society so that the children of this new generation will be stable and secure. Do this for all our nation's children -- and especially for Bailey Page and Madison Emma.

ORIGINAL SIGNED John Guidubaldi, D.Ed., L.P, L,P,C,C. Commissioner, U.S. Commission on Child and Family Welfare

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