

September 21, 1997

Chief Justice John C. Holstein
Judge Duane Benton
Judge William Ray Price, Jr.
Judge Stephen N. Limbaugh, Jr.
Judge Edward D. Robertson, Jr.
Judge Ann K. Covington
Judge Ronnie L. White

Supreme Court Building
Jefferson City, Missouri, 65102

To the Supreme Court,

We, the undersigned Representatives, Senators, attorneys, professionals, and citizens of the State of Missouri request that this panel order a new Gender Bias Task Force study to be commenced at the earliest possible date, for the purpose of evaluating and correcting gender bias against fathers in custody decisions and child support awards in the family court system.

We believe that both the court's presumptions and decisions regarding custody decisions in divorce opposes the plain language directive of Missouri's presumed joint custody law, evidences plain gender bias against fathers, and is acting against the best interests of children in the majority of divorces.

Furthermore, we believe that the child support tables may be founded on numerical bases now admitted to be incorrect.

The enclosed report documents the widespread existence of gender bias in the decisions of Missouri's court system in ways clearly opposed by statutory directives set forth by the Missouri legislature.

We request that a new series of Gender Bias Task Force hearings be commenced at the earliest possible date, and for this panel to entertain cases bearing on the discriminatory practices of the lower courts described herein.

Sincerely,

David R. Usher
Secretary, National Congress for Fathers and Children
118 Oakwood, St. Louis, MO 63119

I. **Presumed Joint Custody Statute**

Pursuant to RSMo 452.375.5 (1), as so ratified in plain language by the Missouri legislature, Missouri is a presumed joint custody state:

*452.375 - Prior to awarding the appropriate custody arrangement **in the best interest of the child**, the court shall consider each of the following as follows:*

*(1) **Joint custody to both parents, which shall not be denied solely for the reason that one parent opposes a joint custody award;***

(2) Sole custody to either parent; or

(3) Third party custody or visitation:

The language shown above in boldface is the key statutory language for discussion below.

II. **Public Policy Declaration In Re the Best Interests of Children**

Pursuant to RSMo 452.375.4, as so ratified in plain language by the Missouri Legislature, the courts have been directed to presume that the best interests of child rest in joint decision making rights, responsibilities, and authority as regards children in divorce, and that frequent and meaningful contact between the child and parent is expected of the courts:

*452.375.4 - The general assembly finds and declares that it is the public policy of this state to assure children frequent and meaningful contact with both parents after the parents have separated or dissolved their marriage, **and that it is in the public interest to encourage parents to share decision-making rights and responsibilities of child rearing.** In order to effectuate this policy, the court shall determine the custody arrangement which will **best assure that parents share such decision-making responsibility and authority** and such frequent and meaningful contact between the child and each parent, as is indicated in the best interests of the child under all relevant circumstances.*

The language shown above in boldface is the key statutory language for discussion below.

III. **Statutory Meaning**

The meaning of I. and II. coalesce in directing the Missouri courts to presume custody awards that uphold the child's right to enjoy the maximum amount of parental involvement, the benefit of parental investment which rises only from parental authority, and the combined social and educational benefits of receiving parenting by both the father and mother, which by structural definition, is not possible in the context of a sole custody award to either parent.

Missouri Courts have held that the words used in a statute should be construed according to their "plain and ordinary meaning."¹ Furthermore, courts should construe statutory provision based on common usage unless such construction "produces an absurd result or ... defeats the purpose for which the Act was passed."²

To the extent that a statute is "plain, simple and straight forward, words must be accorded their normal meanings, and it is appropriate to assume the ordinary meaning of those words accurately expresses legislative purpose."³ In determining whether statutory language is ambiguous, Missouri courts consider whether the terms used are "plain and clear to a person of ordinary intelligence."⁴

IV. Performance of the Missouri Courts with Respect to Custody Statute

A. Data

According to data from the Missouri Department of Social Services, attached in collated form as **Exhibit A.**, courts in Missouri do not order joint custody in 84.2% of cases. Courts in Missouri order sole custody to the mother in 72.7% of cases, and to the father in only 15.2% of cases, by applying a "primary caretaker" doctrine as so approved by the Supreme Court as recently as 1993.

According to a new report by the National Congress for Fathers and Children [attached as **Exhibit B.**, regarding 2,777 divorces granted between January 1995 and October 1995 in St. Louis County, sole custody of children was given to the mother in 75% of cases, to the father in 10.3% of cases, and joint custody was ordered in only 14.7% of cases. The judge ordering the least amount of joint custody was judge Corrigan, at 3.5%, and the judge ordering the highest percentage of joint custody was judge Dolan, at 46.4%. The judge ordering the highest percentage of sole maternal custody was judge Commissioner Hayes, at 86.8%, and the judge ordering the highest percentage of sole custody to fathers was judge Seigel, at 18.8%.⁶

It is herein evident that Missouri courts have devised an approach to custody awards significantly opposing the directive of Missouri's presumed joint custody law. Instead of presuming joint custody, or custody to a responsible father, even when one or both parents seek sole custody, courts first look to the "primary caretaker doctrine" in awarding sole custody of children to women, a gender-biased outcome not founded in Missouri statute.

B. History Of Recent Judicial Review

The discussion of this court doctrine in the Report of the Missouri Task Force on Gender and Justice indicates, in two specific instances, that the courts have abrogated the directive and intent of Missouri's joint custody law by presuming sole custody to the "primary caretaker" when both parents seek custody, instead of joint custody to both parents when both parents seek custody⁷:

*"Nevertheless, a new gender-neutral presumption has been recommended both by public hearing witnesses and family law scholars. **It holds that when both parents seek primary custody, the court should prefer the parent who has served as primary caretaker during the marriage.** While the Task Force believes that fair and individualized attention must be given to the custodial interests of each parent, a truly gender-neutral presumption, such as one favoring the "primary caretaker," would not offend the modern notion of gender fairness in family law.*

*Both national statistics and the views of public hearing witnesses confirm that mothers most frequently serve as the primary caretakers of young children. **The necessary result of a "primary caretaker presumption," therefore, will be placement of children with the mother in most cases where both parents seek custody and both are fit.** This, in the view of the Task Force, would not constitute gender bias against fathers; it would merely reflect a general societal pattern upon which people agree during the stability of marriage, a pattern the courts ought not disrupt on account of the adversarial process of dissolution of marriage."*

The Supreme court has appropriately recognized that the previous "tender years doctrine" was nullified by the passage of Missouri's joint custody statute:⁸

"Although the new statute officially nullified the "tender years presumption," public hearing witnesses and survey respondents generally informed the Task Force that some trial judges continue to enforce the presumption as before, automatically placing young children with their mothers irrespective of the other facts and circumstances. The president of Equal Justice of Families of Divorce testified that some courts do not know the tender years doctrine has been abrogated. Some practitioners before the urban

courts, however, told the Task Force that this behavior has vanished in very recent years."

It appears from the discussion in this Report that the "primary caretaker" doctrine merely replaces the "tender years doctrine", trading of one form of constructive bias for another one.

The Report does reflect the mandate for gender-neutrality in child custody awards, which under the presumption for joint custody, direct the Supreme Court to assure gender-neutrality by making joint custody awards in the majority of cases:⁹

"Missouri law now clearly declares, and the Task Force concurs, that gender neutrality must be observed in all child custody cases, so that each case is decided on its objective merits. Just as young children must not automatically be placed with their mother when both parents are fit, adolescents must not automatically be placed with the same sex parent...."

The Task Force concluded that cultural biases against men as custodial parents are discriminatory, yet reverts to yet another discriminatory presumption substituting presumed parental "behavior" for parental "qualities" as the discriminatory basis:

*"Cultural biases that end to favor women over men as custodial parents upon dissolution of marriage have been found by the Task Force to substantially and unfairly discriminate against men in obtaining child custody. Such biases often have the effect of men being dissuaded by counsel from seeking custody absent proof of maternal unfitness. **A gender-neutral presumption has been recommended by both family-law scholars and public hearing witnesses. It holds that, when both parents seek primary custody, the court should prefer the parent who has served as primary caretaker during the marriage. While the Task Force believes that fair and individualized attention must be given to the custodial interests of each parent, a truly gender-neutral presumption such as one favoring the "primary caretaker" would not offend the notion of gender fairness in family law.**"*¹⁰

The boldfaced sentence of the above finding clearly violates the statutory provision of RSMo 452.375.1, which clearly instructs the courts to presume joint custody. In its place, the Supreme Court has substituted a presumption which has both the intent and the statistically-proven effect of presuming sole maternal custody in any dissolution, unless the mother rejects custody.

C. Discussion

The "primary caretaker" presumption is likely to falsely certify a parent merely on the basis of subjectively perceived marital patterns. It does not assess the quality or consistency of caretaking done, or whether there was any caretaking at all. The mere mental assignment of a parent, which at first consideration envisages a woman as primary caretaker during marriage is sufficient to invoke the "primary caretaker" doctrine in divorce.

This doctrine has the effect of presuming sole custody of children to responsible and irresponsible mothers alike, merely because they have figuratively done most of the caretaking in the past. Secondly, it effectively puts the father in the position of having to *prove* an overwhelming history of caretaking, as well as unfitness on the part of the mother, in order to attain custodial standing in the eyes of the court.

The "primary caretaker" doctrine also presumes that divorce implies a static outcome. Divorce entails necessary changes in the lives of all members of a family. Hence, if sole custody of children is the only way to resolve a divorce, then sole custody of children should go to the parent who has shown the most responsibility to the marriage, which includes being responsible, predictable, and reliable in terms of balancing duties to spouse, duties to children, working, and child rearing.

In some Missouri courts, the sole maternal custody outcome is virtually certain. The perverse judicial bias precludes that a father's interest and love for his children is less genuine than that of a mother, and is based on "monetary greed", thus arriving at a prejudicial decision for a sole maternal custody outcome. The first actual judicial action is to order child support on the basis of a sole maternal custody outcome, and then ask a father how much "visitation" he can subsequently afford.

This bias overtly presumes custody outcome on the subjective precognition that a mother's desire for sole control of children and a high child support order is unquestionably pristine, while a father's desire for shared involvement with children and a somewhat lower child support order is unquestionably perverse.

An article published in the St. Louis Post Dispatch, attached as **Exhibit C.**, reporting the judicial approach of St. Louis City Court judge Thomas Frawley, graphically relates this style of judicial bias:

But Frawley says that many men who ask for joint custody are just trying to reduce the amount of support they have to pay.

"I tell them, 'First, we are going to decide your support obligation.' After that's done, I ask them how often they want to see the kids, and most of them say every other weekend is fine," he said.

Here, judge Frawley discounts the father's love for his children as suspicious, where a mother's love is presumed genuine; where the father's desire to not pay support is perverse, whereas the mother's desire to receive a maximum amount of divorce funding is unquestionable; that joint custody is not a possibility, and that sole maternal custody is the *res judicata* outcome of any divorce filed in his court.

V. Court Expediency and Conflict Resolution Biases - Effect on Custody Presumption and Outcome

Rules of Court permit matters before the courts to be abbreviated in process to meet expediency requirements of the courts due to necessity. Secondly, the desire to decrease litigation impels the courts to presume a particular outcome so as to prevent excessive litigation.

The concept of sole maternal custody, via the "primary caretaker" doctrine has become a customary vehicle for meeting expediency and conflict resolution desires in Missouri.

However, it can be effectively argued that no particular presumption is likely to quash excessive litigation, or to decrease court time required in any case. The only requirement is that a presumption exists, and that a presumption shall be followed unless there is a compelling reason not to do so.

Sole maternal custody awards have the effect of encouraging fathers to litigate, delay, or otherwise hamper the proceedings by failing to comply with other court orders. Sole maternal custody translates into a complete legal amputation from his children, which subsequently translates into excessive property and support awards to the wife. The father has two sincere motives to litigate actively to protect his right to be a father, and a right to equitable property rights.

Litigation and relitigation is lower in states which have a presumption for joint custody, and joint custody is the preferred option in high-conflict situations because it helps reduce the conflict over time.

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VI. Structural Legal Biases - A Comparative Analysis of Sexism in the Courts

Relating to sections I. - V. above, performance of the courts evidences continuing legal policy biases against the social importance of fathers in the lives of women and children.

"Gender bias" is synonymous with "sexism", which is a line of thinking that rationalizes the apportionment of "good" qualities to one sex, and "bad" qualities to the other without respect for reality.

The only difference between "sexism", and its cousin "racism", is the group that is targeted for social and legal abuse. We are well aware of the outrageous abuses of blacks in America, which continued for many years with condonation of the courts. Much of racism has been eliminated from due process, however, sexism is abundant in today's court policy, doctrine, and rulings.

This sexist bias, incorporated as a "presumption", is now recognized as a matter of common knowledge by the National Center for Health Statistics in a report on national divorce data: ¹²

"Some reasons why wives are awarded custody more often are because they more often request custody of the children and also because of strong legal presumptions and traditions that favor the mother as the custodial parent, especially when the children are young."

The "primary caretaker" doctrine presumes that since a father, during a marriage, did not theoretically perform most of the caretaking he is presumed not to be an acceptable caretaker.

The structure of this bias is revealed by comparing it with forms of bias held against women in the workplace, which we have long held to be unconstitutional.

Employers are not permitted to discriminate against women, via overt or constructive means, in the workplace. We strike down any tenet holding that since women do more child care than do men, in traditional marriages, that we can then decline to hire them or retain them in the workplace. We have affirmed women's right to the esteem, responsibility, and social standing by affirming that their positions in the workplace are as secure as that of men.

However, in the area of family law, the "primary caretaker" doctrine holds that men, who do more work than childcare in "traditional" families, are somehow unworthy of the esteem, responsibility, and social standing associated with parenthood and rights to be joint or sole custodians of children of divorce or illegitimacy.

Hence, to continue denying fathers the same fundamental rights and opportunities to be in the family, based on "historical bias", is as biased and offensive as it would have been to deny women affirmative rights to be in the workplace based on the "historical bias" of the 1950's and 1960's.

A. Actual Gender Bias of the "Primary Caretaker" doctrine

The "primary caretaker" doctrine immediately bears the same purpose and produces the same statistically-skewed outcome as the now-defunct "tender years doctrine". Instead of awarding custody of children to women because of presumed gender traits, it awards them to women on the basis of presumed gender behavior.

The central issue is not that the language, in itself, is "gender biased". The issue is that the language of both the "primary caretaker" and "tender years" doctrine invokes a gender-directed social bias at first sight, that immediately calls to mind the schema of a mother-caretaker and an uninvolved-father-earner outcome. It is this "image", connected with both doctrines, that renders both doctrines equivalently gender biased, and therefore equally unacceptable as presumptions.

Both doctrines first presume that a mother is the preferred custodian, even if a father had significant shared involvement in parenting, and even if a father did most of the parenting in a marriage. A petition for sole custody in a dissolution by a woman is viewed by the courts as being normal and acceptable, and an identical petition by a father is suspicious, ridiculous, or even perverse.

A mother petitioning for sole custody of children normally does not have to prove anything in order to receive custody. Such a petition agrees with the bias of the "historical caretaker" doctrine, and is therefore self-sustaining and unquestioned in normal judicial process.

Yet, a father petitioning for sole custody must prove that the mother is grossly unfit, and additionally must prove that he has provided most of the child care, in order to have an opportunity for sole custody in the eyes of most courts.

It has been argued that a "precognition" attached to these doctrines is not a bias. However, when compared with racial biases we once deemed normal as a matter of court practice, now held to be unconstitutional under law, it becomes clear that a "sexist" bias is as unacceptable and damaging as would be a "racist" bias in any court presumption or decision.

B. Sole Custody Presumption - Nonstatutory Fictions of The Courts

Neither the primary caretaker doctrine or the tender years doctrine are statutory. Both are constructions of the courts, which operate independently on principles opposing the plain language meaning of Missouri statute, which presumes joint custody as the first outcome, and then to have no presumptions as to which parent should be the preferred sole custodian thereafter.

C. Primary Caretaker Doctrine - Justifications Going Against the Best Interests of the Child

The primary caretaker doctrine is often used to justify itself. When confronted with a petition for sole custody by a father, judges often justify a primary caretaker decision as being the "pragmatic" decision regardless of case facts, and take offense when a father presses any case requesting either joint or sole custody.

Neither doctrine suggests or requires any investigation of the quality of caretaking done by a mother, the consistency of it, or whether any caretaking was done at all. Both doctrines become subconsciously operative merely upon assertion by a woman, and rarely become operative upon assertion by a man.

There are many cases involving responsible fathers requesting joint or sole custody of children, where the wife abuses chemicals, or is emotionally unfit, or spends little time caring for children despite her assumed "marital role". The presumption attached to the "assumed marital role" defeats the entire purpose of custody decisions, in the best interests of these children, and places children in the sole custody of many mothers who are irresponsible, poor parents and role models.

D. Primary Caretaker Doctrine - A Defunct Principle

The disparity between attitudes of the courts, and the reality of modern fathering, constitute a "plain bias" against fathers. This occurs because of a transmogrification of attitudes towards fathers of the 1950's and the fathers of the 1990's.

Paternal involvement in the 1950's was quite minimal by today's standards. Since that time, a tremendous social change in the attitudes and parental involvement of fathers has occurred. As women became more involved in the workplace, fathers necessarily assumed more paternal involvement in the home.

A very recent longitudinal, large group study of parental involvement, applying data from the National Survey of Children found that:

"Fathers are nearly as involved as mothers with adolescents in intact families in both their affective relations and in their behavioral interactions. Fathers are more involved with sons than with daughters, and become disengaged with adolescents in family contexts of poverty and marital conflict. The involvement of fathers over the life course promotes the achievement and social behavior of youth during the transition to young adulthood."

Father involvement with adolescents in intact families is multidimensional, close to the level of mother involvement, but variable over the child's live course ... When marital conflict is high, fathers become more emotionally detached from children than mothers. Economic stress also affects the relationship between fathers and adolescents more so than the relationship between mothers and adolescents.

*Fathers who actively engage in joint activities and interaction with adolescents promote their educational and economic achievement and fathers who maintain a close a stable emotional bond with adolescents over time protect adolescents from engaging in delinquent behavior.*¹³

The above study immediately reveals the *prima facie* gender bias of the "historical caretaker" doctrine, which in Missouri results in sole custody orders to mothers in 72.7% of cases, sole custody to fathers in 10.5% of cases, and joint custody in only 15.2% of cases.^[Exhibit A]

The above study additionally suggests that the most important goals of court policy, in the best interests of children, are to:

- a. Subjectively, objectively, an inclusively regard both parents as valuable and necessary instruments of child rearing, without valuing one parent over another.
- b. Ensure unbroken relationships and parental authority as between children and both parents both during the dissolution process and thereafter
- c. Reduce conflict during dissolution by creating form petition language claiming "joint custody" to be entered in all newly filed petitions for divorce unless a parent is alleged unfit.
- d. Not inflict undue economic stress on the father at any time during the divorce, equally distribution of any economic shortfalls that might arise because of a divorce.
- e. Presume, encourage, and order joint legal and physical custody in all cases unless a parent is found unfit, or otherwise waives custody voluntarily.
- f. Where parents clearly cannot agree on child rearing, the courts should create a "residential custody with predetermined reversal" order which would initially grant residential custody to one parent and significant decision making responsibilities to the other, automatically reversing residency at the midpoint of the child's rearing; regarding the age of majority as the endpoint.

E. Strategic Misuse of Gender Biases Regarding Conflict in Dissolution

Present policy in dissolution filing requirements has the effect of rewarding conflict either intentionally or unintentionally created by a female spouse claiming sole custody in a petition. Most courts are reticent to consider joint custody if there is any conflict in a divorce. Yet, a petition claiming sole custody automatically generates serious conflict by detaching a father from his children for some period of time, and then putting him in the position of litigating to restore his parental authority and social role as a father.

Just like playing "chess", women's advocates and attorney's for the petitioner are well aware that conflict in divorce is a very effective strategy that inures to the benefit of the petitioner. Hence, it is not unusual for the petitioner to be as disagreeable as possible, and play to the emotions of a judge, to ensure that the court will avoid consideration of a joint custody order. Likewise, attorneys who represent fathers in divorces normally encourage their clients to summarily give up children, release the marital home, and accept a high child support order unless the father can clearly afford at least \$25,000 in legal fees to attempt saving his social role as a father.

F. Biases in Filing Procedures

The manner for filing a divorce established by the courts serves as a structural support for sole maternal custody and against any other outcome. A normative filing for divorce, claiming custody of children by a women, preemptively establishes the "primary caretaker" doctrine at the time of filing. This power play creates a strong historical barrier during the time of proceedings, effectively barring consideration of another custody outcome other than sole maternal custody.

Missouri statute grants the Supreme Court wide latitude in filing requirements, only requiring a statement of custody situation at the time of filing. The present laissez-faire procedure of the courts, is for the petitioner to choose the custody outcome desired by the petitioner, which is "ordered" at the time a petition for dissolution is filed. The court's policy should be to change the filing requirement to stipulate "joint legal and physical custody", unless allegations of parental unfitness are plead, in which case the court policy should be to consider the petition pleading to be an "ex-parte" action to be heard and evaluated without delay.

G. Change in Legal Foundation for Sole Custody Policy Doctrine

The continuing skew in divorce and illegitimacy custody outcomes, despite the change from the "tender years doctrine" to the "primary caretaker" doctrine, despite the fact that fathers are as involved in the lives of children as are mothers, suggests that neither doctrine is gender-neutral, and that a more rigid test for bias such as in *Griggs v. Duke Power*¹⁴ should be adopted in testing for biases in family court cases.

Correction of this bias requires courts to not only change the fundamental bases on which custody decisions are made in divorce, but also suggest that the courts should change the presumption that illegitimacy should result in maternal custody and a child support order. It also suggests that the courts should revisit cases balancing the "right to divorce" with men's social right "to be in the family".

A new doctrine, such as a "marital responsibility" doctrine, would tend to be more gender neutral in that it would value the overall marital performance of a spouse in terms of earning, caretaking, loyalty to spouse, and marital behavior as a role model for children, in selecting a sole custodian in the event that joint custody were not indicated.

It should be noted that if the joint custody presumption were truly followed, a presumption for sole custody would be unimportant. A true joint custody presumption expects that joint custody will occur unless a parent is found to be unfit or otherwise voluntarily declines custody participation, in which case, the sole custodian is revealed by process alone.

VII. Constitutional Protections of Parental Rights and The Rights of Children as Beneficiaries

The rights of parents to the care, custody and nurture 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 institutions, and such right is a fundamental right protected by this amendment (First) and Amendments 5, 9, and 14.¹⁵ Law and court procedures that are "fair on their faces" but administered "with an evil eye or a heavy hand" are discriminatory and violate the equal protection clause of the Fourteenth Amendment.¹⁶

Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs.¹⁷

A Father enjoys a right to associate with his children which is guaranteed by this amendment (First) as incorporated in Amendment 14, or which is embodied in the concept of "liberty" as that word

is applied in the Due Process Clause of the 14th Amendment and Equal Protection Clause of the 14th Amendment.¹⁸

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.¹⁹

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.²⁰

Sole custody to either parent has the effect of depriving one parent of parental authority and parental responsibility for a child, and denies the child the benefit of invested parental involvement. The Supreme court has created a presumption for joint custody outcomes in divorce, and possibility in instances of illegitimacy, holding that "the parent-child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection." A parent's interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility.²¹

The U.S. Supreme Court also implied that "a (once) married father who is separated or divorced from a mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child.²²

Equal protection under the law fundamentally requires courts to consider cases of gender bias against men with the same scrutiny as in cases of gender bias against women. Legislative classifications which distributes benefits and burdens on the basis of gender carry the inherent risk of reinforcing stereotypes about the proper place of women and their need for special protection; thus, even statutes purportedly designed to compensate for and ameliorate the effects of past discrimination against women must be carefully tailored. the state cannot be permitted to classify on the basis of sex.²³

In 1979, the Supreme court found that biases against men in the family are as unacceptable as were biases against women in the workplace. It held that the "old notion" that "generally it is the man's primary responsibility to provide a home and its essentials" can no longer justify a statute that discriminates on the basis of gender. No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas.²⁴

VIII. Public Policy and the Actual Best Interests of the Child Standard - Citations

For many years, social data has predicted or indicated that joint custody outcomes in divorce clearly predict better futures for children in the majority of cases,²⁵ specifically expressed in terms of improved emotional adjustment²⁶ and paternal involvement with children,^{27, 28} overall happiness, significant improvements in child support compliance,^{29, 30, 31, 32} children's satisfaction with the amount of contact with both parents,^{33, 34} and is effectively the closest model adhering to the Best Interests of the Child standard.³⁵

The most important causal factor of declining child well-being is the remarkable collapse of marriage, leading to growing family instability and decreasing parental investment in children.³⁶

Father-absence associated with divorce and sole maternal custody outcomes (expressed in diagnostic terms as the "paternal deficit"), is the primary predictor of many very serious problems for children:

- * A 72% increase in the overall likelihood that a white teenage girl will become a single mother, and a 100% increase for black teenage girls,³⁷ with other studies reporting up to a 600% increase in teenage illegitimate births.³⁸

- * A 77%³⁹ to 100%⁴⁰ increase in the overall likelihood that a teenage boy with father an illegitimate child.
- * A twofold increase that a child, particularly a boy, will become a delinquent.⁴¹
- * An 86% increase in the likelihood that a child will become a psychotic delinquent.⁴²
- * A threefold increase in the likelihood that a child will be involved in gang activity.⁴³
- * Presidential assassinations: Every Presidential assassination or attempted assassination has been by a male reared absent a father.⁴⁴
- * Up to 80% of rapists, motivated by varying psychological disorders.⁴⁵
- * A 200% increase in attempted or successful teen suicides.⁴⁶
- * A significant increase in the likelihood of homosexual behavior in males as well as females.⁴⁷
- * A significant increase in child sex-role conflicts,⁴⁸ and a 100% correlation with gender identity disorders.⁴⁹
- * A significant decrease in school performance,⁵⁰ a significant increase in disruptive school behavior;⁵¹ a significant decrease in performance on aptitude tests, in cognitive skills, in terms of grades, and is cumulative in nature;⁵² and predicts truancy and grade repetition.⁵³
- * A 200% increase in the likelihood that a child will require psychological treatment.⁵⁴
- * Low self-esteem in both girls⁵⁵ and boys.⁵⁶
- * Difficulty for girls in building a stable family life in adulthood.⁵⁷
- * A substantial increase in men's odds of ending up in the lowest occupational stratum.⁵⁸
- * Fatal child abuse by mothers.⁵⁹
- * Child sexual abuse.⁶⁰

The assumption that younger children benefit from sole maternal custody outcomes rising from the "primary caretaker" doctrine is particularly false. Father-absence before the age of four or five appears to have a more disruptive effect on the child's personality development than does father-absence beginning at a later period.⁶¹

Father-absence is the greatest social problem we face.⁶² It not only hurts the futures of children, but it places irreconcilable burdens on state agencies and the courts to act as substitute husband, father, mother, mediator, family, and wage-earner.

The Report of the President's Commission On America's Urban Families⁶³ found:

"The trend of family fragmentation drives the nation's most pressing social problems: crime, educational failure, declining mental health, drug abuse, and poverty. These, in turn, further fragment families. To date, the nation's basic response has been policies that attempt to address the negative consequences of this trend."

⁶⁴ With an average of 25,000 children per year suffering the consequences of divorce in Missouri, it is important for the courts to assure parental attachments and parental authority with respect to children unless a parent is found unfit or specifically requests not to be involved.

Reversing the trend of illegitimacy requires, above all, presence of a father in the daily lives of children. It is not "participation" of a father in the lives of children, it is the "presence" of a father:

We find evidence that fathers influence their children's successful transition to adulthood in two domains. Fathers who actively engage in joint activities and interaction with adolescents promote their educational and economic achievement and fathers who maintain a close and stable emotional bond with adolescents over time

protect adolescents from engaging in delinquent behaviors. Maternal involvement also reduces youth's delinquent behavior, although the effect of the stability of emotional involvement is more important among fathers- However, the stability of mothers' emotional bond with adolescents does influence the psychological well-being of young adults, a domain where father effects are absent. Neither dimensions of father or mother involvement are important in reducing the likelihood of teenage childbearing, a behavioral outcome that is typically influenced more by the presence of a father or father figure in the household.⁶⁵

This keystone structural problem can only be reduced by adhering to the joint custody presumption prescribed by Missouri statute, by granting sole custody to fathers when the wife is irresponsible to the marriage and is a bad parental figure, and third, by considering ways that courts can encourage spouses in marital weakness to work through the normal processes of marriage and aging rather than risking the futures of children in divorce.

Dr. John Guidubaldi, a commissioner for the U.S. Commission on Child and Family Welfare, reported in July, 1996, that there is no reason to avoid a joint custody presumption as a social norm:

"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.'" ⁶⁶

Bill Harrington, a commissioner for the U.S. Commission of Child and Family Welfare, reports:

"Joint custody should be the presumption and such a parenting plan should be easily approved when a father seeks to give significant parental involvement. The issue is not whether Joint Custody is good or bad. The Congressional findings in the Dec. 21st, 1995 issue of the Congressional Record, in support of Federal Welfare Reform (HR-4), discuss the disastrous consequences to children of sole mother custody, which occurs more than 70% of the time. Shared parenting is simply the best alternative. The motto that best describes this approach is: The Best Parent Is Both Parents. The challenge is how best to make increased parental involvement of BOTH FATHERS AND MOTHERS happen with the least conflict. Dr. A. Frank Williams (Cedars-Sinai Hospital, Los Angeles) authored a paper addressing the critical assessment between shared parenting and parental conflict. He concluded that shared parenting was only inadvisable in cases of severe conflict. Otherwise, he said that "warring" between parents usually subsided over time, and the best result for children was still in place (shared parenting)." ⁶⁷

IX. Rule 88 - Child Support Tables

A. Proclaimed Error in Numerical Basis

Dr. Lenore Weitzman's study of economic outcomes of divorce, published 11 years ago, claims that divorce causes a "73% decrease in women's standard of living and a 42% increase in men's standard of living" has been found to be false. In a recent re-analysis of her data, thought to be lost but recently rediscovered in the archives at Radcliffe college, Richard Peterson found that the data actually shows a "27% decline in women's standard of living and a 10% increase for men". Dr. Weitzman has publicly acknowledged that her previous reporting was in error, attributing it to a loss of the computer database on which the study was premised, and a weighting error in computer calculations done by a research assistant at Stanford University.

Weitzman's study has been utilized extensively in determining child support tables in many states across America. A Nexis search conducted by Peterson shows that her report is cited in 175

newspaper articles, 348 social science papers, 350 law review articles, 24 Appeals and supreme court cases, and President Clinton's 1996 budget proposal.

To the extent that this study has been incorporated into Rule 88 calculations, the tables must be adjusted to reflect the reported skew.

B. Plain Error Evident In Rule 88 Child Support Worksheets

There are other factors, defined within the meaning of "standard of living", not included in the corrected Weitzman study that would further narrow the skew between men's and women's post-divorce standards of living.

Rule 88 fails to recognize a father's out of pocket costs for replacing the marital services customarily performed by the wife, such as cooking, housecleaning, shopping, and daytime errand running, the share of mortgage or rent payment by a noncustodial parent necessary to provide living space when the children are with him; and costs for taxes borne where a child support payor bears all income tax liabilities, hence creating a secondary child-support "pass through" via the Internal Revenue Service equaling about 15% to 30% of the ordered amount of support.

Rule 88 allows costing-in of a variety of expenses, once considered to be "maintenance", that a wife incurs because a husband is no longer a contributor in her household. Yet Rule 88 does not allow costing-in of identical expenses the husband invariably assumes because a wife is no longer a contributor in his household.

If gender neutrality is to be observed, Rule 88 should incorporate the costing-in of all basic expenses formerly construed as "maintenance", which correlate in reality with "loss of spousal services". To evidence structural neutrality, the Rule 88 worksheets given to a divorcing husband and wife should contain the same line items, and permit the same claims.

Rule 88 holds that courts should maintain a child's prior standard of living in divorce. This tenet inures to the benefit of a spouse receiving sole custody, essentially attempting to maintain the status quo for the custodial parent (through the child) while holding the non-custodial parent economically responsible for swallowing all shortfalls that invariably arise when an average family suddenly has two households to support in divorce. There is no evidence that "fiscal status quo" translates into better futures for children.

C. Plain Error in Rule 88 "Ability To Pay" Presumption

There is very strong evidence that many child support orders exceed a noncustodial parent's real ability to pay, and are the primary cause of support arrears in America. In a large-group G.A.O. survey of women owed past-due amounts of child support, two-thirds of custodial mothers surveyed reported the reason for an unpaid arrearage of support was that the "father was unable to pay."⁶⁸

In 1987, one-third of white males and one-half of black males did not have an income adequate to support a family of four above the poverty level.⁶⁹ Despite this fact, it is not uncommon practice for courts to impute income at the time of dissolution which does not reflect the realities of the workplace and the market forces that commonly leave men temporarily unemployed or chronically under-employed. In the context of downstream criminal or civil nonsupport cases, it is common practice for Missouri judges to demand large lump-sums of cash, above and beyond the statutory collection limitations of URESA⁷⁰, or face incarceration.

It is not unusual to find child support orders that approach or exceed a fathers gross income, either due to the fact that a father acts as an "insurer" of income when held up against a fixed amount of support, a standard of support that no married man in Missouri is either held to or could probably fulfill any better than his divorced counterpart.

For example, a father earning \$2,000 per month gross pay in 1996, pursuant to Rule 88 would pay a total of \$1,314 per month in child support as follows:

<u>Child 1</u>	<u>Child 2</u>	<u>Child 3</u>	<u>Child 4</u>	<u>Child 5</u>	<u>Child 6</u>	<u>Total</u>
\$373	\$308	\$259	\$216	\$108	\$50	\$1,314

Assuming a standard deduction, this single father would pay yearly federal taxes of \$3019, and \$966 in Missouri taxes, for a total of \$3,985 in annual taxes, or taxes of \$332.08 per month.

Thus, after child support and direct taxation, this father is left with a net take-home pay of \$353.92 per month, or 17% of his gross pay. If the court adds in statutory amounts for day care, health care, or maintenance, then his take home pay will be even less, if anything at all. Taxes and child support have reduced his share of income by 83%, and could exceed 100% of his income..

Of course, it is absurd to believe that anyone can live on less than \$354 per month, much less accumulate any fallback assets with which to live on or pay support should he be laid off. Yet this is what the Court orders this man to do, and considers him a "deadbeat" when he fails.

D. Rule 88 Prefers Illegitimacy And Divorce Over Marriage

Recently, welfare reform was accomplished to ostensibly reduce illegitimacy by encouraging personal responsibility. However, it is well known that revisions to the Family support Act in 1968, welfare payouts have since been directly connected to child support recoupments. Hence, the words "welfare" and "child support" have borne basically the same structural meaning for nearly twenty years.

The elements of HR 3734 and H.R. 4, as enacted at the federal level do little to change this arrangement, yet do much to shift welfare recipients into the court system, on to the child support rolls, and then enforce child support with tremendous vigor.

The arrangement remains basically the same as before, valuing child support over marriage, and especially, funding a continuing social demise of fatherhood at the entitled economic expense of husbandry.

However, the new arrangement is deceptively effete: we think we have reformed welfare and restored the value of the American family when in fact we have made only a horizontal structural shift from a visible welfare state to a somewhat less visible one. The welfare state now resides in the court, and it is as lively and damaging to family structure as ever.

Since 1968, divorce rates have nearly doubled, rising from 2.6 divorces per 1,000 population annually to 4.9 divorces per thousand in 1994.⁷¹ Yet, in the same time period, illegitimacy rates have nearly quadrupled, from 330,000 births in 1968⁷² to 1,289,592 births in 1994⁷³.

Bringing forth the situation of the divorcing husband and wife illustrated above, we will now recharacterize the situation, assuming that one woman has instead chosen to have six illegitimate children by six different men, each of whom earns \$2,000 per month:

<u>Child 1</u>	<u>Child 2</u>	<u>Child 3</u>	<u>Child 4</u>	<u>Child 5</u>	<u>Child 6</u>	<u>Total</u>
\$373	\$373	\$373	\$373	\$373	\$373	\$2,238

Thus, under Rule 88, this woman would receive \$2,238 per month in child support, or an annual income of \$26,856, without requirement to work or marry. She receives 170% more child support than a more responsible woman who was married and did not have children out of wedlock.

Secondly, each of the men in this arrangement can economically survive. After taxes and child support are deducted, they are each left with survivable take-home pay of \$1,295 per month, or 360% more take-home-pay than the man who did not irresponsibly create children out of wedlock.

Most fathers of illegitimate children do not stop with one child. Nor do the women Why? Sometimes, the first child is an accident of youth. But once a woman is caught the child-support trap, she is encouraged to have more children out of wedlock in order to achieve a suitable income level.

The men are socially predestined to come into contact with women, who despite having many forms of contraception available, do not use contraception because they are looking to earn money the only way they know how ... by having children out of wedlock ... imitating, in kind, the women in see their neighborhoods who receive large checks every month for doing nothing but getting pregnant.

E. The Marriage Market and Child Support - A Discussion of Natural Law

While it is important to ensure that those in need are helped, the entitlement of divorce and illegitimacy has significantly interfered with the marriage market.

Women's (and children's) needs for men are still predominantly economic⁷⁴, and men's needs for women are still predominantly social⁷⁵. When these needs are traded in an open market, marriage and intact two-parent families are the socially-beneficial result.

However, the marriage market is not open. Entitlements such as welfare and child support have distorted the marriage market to the point that six in ten marriages end in entitled divorce, and four in ten children are entitled to be borne out of wedlock.

The source of this entitlement is child support, and the higher the child support entitlement, the more we interfere with the marriage market.

We have spent 5.2 trillion dollars in welfare expenditures, interfering in the marriage market, since 1968. This is more than we have spent on national defense in the same time period.

It is in the best interests of children to keep child support at lower levels rather than higher levels. Most men will support their children, and raise them well in the intact two parent family. Most men cannot support two households and raise children when they do not have parental authority or physical proximity to children in the same household. Most men cannot support two households, which is essentially what is expected of men in divorce.

We suggest that the courts should now reflect the intent of federal welfare reforms, in reducing or limiting the entitlement of child support until we see the divorce rate and illegitimacy rates decrease to acceptable, manageable social levels.

The child support tables should be modified appropriately, to progressively discourage illegitimacy, promote marriage, and generally reflect the above considerations.

Given the wide statutory latitude granted to the Supreme court in determining child support tables and amounts, the Court has an opportunity to set positive social policy in the best interests of Missouri's women, men, children, and families.

X. Court Bias Preferring Divorce Over Personal Responsibility in Marriage - Impact on Public Health

Divorce is clearly associated with various negative mental and physical health consequences, some of which have been cited above. As previously cited, father-absence strongly predicts these consequences. Public health is an implicit matter embodied in the Best Interest of the Child Standard.

However, the conventional application of the Best Interests of the Child Standard does not reflect the fact that the best interests of children are immediately dependent on the overall mental and physical health of parents.

Positive measurements of the emotional health of children cannot be anticipated when children are raised in homes where parents are under excessive stress, or where parents are themselves not healthy, or are generally unhappy.

Hence, we must accept the overarching fact that the Best Interest of the Parents must be met before the Best Interests of the Child can be decided.

We can roughly measure the overall emotional health of individuals in terms of subjective happiness. Individuals who are content with their lives, and who feel "in control" of their lives are most likely to be happy. Those who are living in situations where the American Dream seems out of reach, in situations that they cannot control given reasonable effort and diligence, or who are living in stressful situations are not likely to be as happy.

We find that divorce is associated with unhappiness, and marriage is associated with the highest levels of happiness.

In a survey of 1.1 million American adults studying subjective levels of happiness, 39% of adults who were married reported being "very happy", 325% higher than divorced individuals. Only 12% of divorced individuals reported being "very happy".

Yet, never-married individuals reported happiness levels 200% higher than divorced individuals, at 24%. These findings were consistent for both women and men.

Thus, there is a connection between marital status and overall happiness levels. While the study cited does not measure the causal relationship between happiness level of marital partners and subsequent divorce, the fact that divorce levels are so high, and the fact that about half of the married individuals surveyed will statistically divorce at some time in the future, one can argue reasonably that the level of happiness is probably more dependent on marital status than vice-versa.

Marriage is a social structure that is comparatively conducive to happiness, even where one or both partners may not be emotionally perfect. Marriage reduces structural poverty, guarantees a helpmate, and offers stability in lives of marital partners without government mandates being placed on either marital partner. Divorce predicts structural poverty, places the custodial spouse under stresses related with child rearing without a helpmate, and places the noncustodial spouse under stresses associated with social rejection, loss of children, rebuilding a home, and ever-present incursions of government only interested in a large child support check without guarantee of sufficient employment to fulfill the earnings mandate.

This, in turn, affects the best interest of children, where the majority of problems children face occur absent the intact family structure.

Hence, as a matter of good public policy in the Best Interests of Children, it is important for courts to fully utilize the wide discretion granted them by Missouri divorce statute in considering policy that would tend to prefer, or even encourage reconciliation as opposed to policies that encourage tumultuous legal separation of families by a spouse who probably lacks good cause for immediate protection or a divorce.

There are many other issues of public health strongly associated with father-absence, such as heart attack, parental suicide, cancer, stress-related disorders, abortion, child abuse, and domestic violence.

One cannot reasonably argue that a 54% divorce rate is either necessary or supportable. It is clearly diagnostic of the problem. We must regard it for what it is: a major social problem requiring wise intervention from the courts in reversing the costly and dangerous continuing trend towards a troubled, effete, fatherless America.

Exhibit A.

Sorted By County

04/17/1992 16:30 Filename: MO-KIDS.005 Page 2

04/17/1992 16:30 Filename: MO-KIDS.005 Page 1

What Happens to Missouri's "Children of Divorce" - 1990
Data Provided by: Missouri Department of Health

County	***** Custody *****				***** Dollars *****				*****\$*****			
	Husband	Wife	Joint	Other	Husband	Wife	Other	None	Husband	Wife	Other	None
Adair	2	34	10	3	2	40	0	1	3	30	0	13
Andrew	11	31	3	0	3	16	0	0	0	88	3	9
Atchison	8	14	2	0	2	53	0	0	5	42	3	14
Audrain	5	50	6	0	2	22	1	7	41	20	3	4
Barry	6	20	6	1	1	22	0	0	18	18	2	2
Barton	4	19	4	1	3	31	0	0	23	23	8	8
Bates	4	32	1	1	1	15	0	0	57	60	11	11
Benton	4	19	4	1	1	20	0	0	6	6	1	4
Bollinger	5	13	1	2	1	17	0	0	2	2	2	2
Boone	28	222	29	3	17	217	2	56	3	3	3	3
Buchanan	30	208	17	5	18	212	8	22	25	25	12	12
Butler	22	166	8	2	1	127	1	49	11	11	1	1
Caldwell	3	17	3	0	3	17	0	0	1	1	1	1
Callaway	4	75	1	1	0	71	1	9	1	1	1	1
Camden	11	44	1	1	3	40	2	18	1	1	1	1
Cape Girar	15	159	16	1	8	157	4	22	1	1	1	1
Carroll	5	17	0	1	0	20	1	2	3	3	3	3
Carter	1	9	0	0	0	9	0	0	1	1	1	1
Cass	16	128	37	0	7	149	0	25	1	1	1	1
Cedar	7	26	3	0	3	25	2	6	5	5	5	5
Chariton	0	16	2	0	0	14	0	4	1	1	1	1
Christian	8	83	33	0	4	102	1	17	1	1	1	1
Clark	1	20	9	0	0	26	0	4	1	1	1	1
Clay	34	286	81	11	18	328	9	57	3	3	3	3
Clinton	3	20	14	0	0	31	0	5	1	1	1	1
Cole	21	131	65	2	7	174	3	35	3	3	3	3
Cooper	2	30	3	0	0	29	2	4	1	1	1	1
Crawford	10	56	8	1	0	58	0	16	1	1	1	1
Dade	1	8	5	0	0	10	0	4	4	4	4	4
Dallas	7	26	6	0	5	26	0	8	6	6	6	6
Daviess	3	15	0	0	0	14	0	1	1	1	1	1
De Kalb	2	14	3	0	1	14	0	3	2	2	2	2
Dent	2	32	4	0	0	16	0	0	1	1	1	1
Douglas	3	18	9	2	2	24	2	5	7	7	7	7
Dunklin	17	115	2	2	2	117	1	17	2	2	2	2
Franklin	39	188	22	1	15	196	6	39	1	1	1	1
Gasconade	4	20	2	0	3	35	4	4	2	2	2	2
Gentry	47	329	159	19	18	405	28	103	8	8	8	8
Greene	5	29	2	2	2	28	6	6	2	2	2	2
Grundy	6	10	4	0	2	14	6	6	1	1	1	1
Harrison	9	48	18	2	1	60	2	14	3	3	3	3
Henry	3	9	5	0	1	8	0	3	1	1	1	1
Hickory	3	5	3	0	1	9	0	2	1	1	1	1
Holt	4	16	2	1	1	18	2	4	3	3	3	3
Howard	13	72	25	1	1	85	2	24	5	5	5	5
Howell	3	16	3	0	1	17	0	5	3	3	3	3
Iron	159	1,222	250	33	72	1,305	39	248	3	3	3	3
Jackson	17	183	69	6	12	227	1	85	1	1	1	1
Jasper	58	359	58	22	10	399	1	25	2	2	2	2
Jefferson	23	107	7	5	10	104	1	25	1	1	1	1
Johnson	2	7	2	0	1	6	1	3	1	1	1	1
Knox	15	72	11	1	3	70	1	25	2	2	2	2
Laclede	12	31	7	0	2	36	1	11	1	1	1	1
Lafayette	5	39	5	1	2	39	2	9	1	1	1	1
Lawrence	2	20	4	2	2	23	4	4	1	1	1	1
Lewis	15	58	8	2	6	61	16	9	4	4	4	4
Linn	7	23	6	2	2	26	6	7	1	1	1	1
Livingston	3	28	4	2	2	26	9	7	1	1	1	1
McDonald	4	9	2	0	1	9	0	5	1	1	1	1

Total (13,480) 1,413 9,801 2,055 211 503 10,676 181 2,120
Percent 10.5% 72.7% 15.2% 1.6% 3.7% 79.2% 1.3% 15.7%

CUSTODY DECISIONS STATISTICAL ANALYSIS AND RESEARCH

For St. Louis County, Missouri

by **Dan McLaughlin**
National Congress For Fathers and Children

Edited by David R. Usher

The need for a statistical assessment of St. Louis County's handling of child custody matters is evident by the absence of valid data. This research was conducted because of the many different informal reports on the nature of custody decisions being rendered by the court system.

The actual, official statistics for the number of dissolutions, with or without children, contested and non-contested, and by type of custody award, were extremely difficult to find and obtain. I met indifference, resistance, and some deception in my search for information. For 17 months, from June 94 through Oct. 95, I researched, reviewed, and entered 2,777 custody decisions into a database for analysis.

In addition, some data has been collected from other sources and incorporated into this report. These sources include published domestic filing notices, published dissolution granted notices, published Family Court minutes, review of the actual dissolution files, review of the monthly file disposal reports, and official state records derived from Certificate of Dissolution of marriage decrees.

1994 - DEPARTMENT OF HEALTH, BUREAU OF VITAL STATISTICS DISPOSITION OF CHILDREN BY COUNTY

St. Louis County: Mother - 84.4%
Father - 6.1 %
Joint - 9.3 %

The Mother-to-Father custody award ratio in St. Louis County is 14:1

Missouri: Mother - 73.8%
Father - 8.9%
Joint - 15.9 %

The Mother-to-Father custody ratio in Missouri is 8:1

Summary: St. Louis County awards mothers custody by an overwhelming statistical margin, and in greater percentages than the rest of the State of Missouri.

1994 - DEPARTMENT OF HEALTH, BUREAU OF VITAL STATISTICS
DISPOSITION OF CHILDREN BY PETITIONER
STATE OF MISSOURI

Petitioner - Mother Mother 84.2%
 Father 4.4%
 Joint- 12.0%

Mother to Father sole custody ratio when mother petitions is 21 : 1

Petitioner - Father Mother 59.5%
 Father 23.8%
 Joint 17.8%

Mother to Father sole custody ratio when father petitions is 2.5 : 1

The petitioner was the mother twice as often as the father, a ratio of 66% to 33%.

Summary: The fact that "equal" citizens petition for dissolution at a two to one ratio suggests unequal treatment in the courts. The data bears out this assumption by showing that a mother can increase her custody award success ratio by **840%** by filing for dissolution first.

CUSTODY DISPOSITIONS IN CONTESTED DISSOLUTIONS
January through October, 1995 - St. Louis County

Total cases contested: 200
 Total cases identified with children: 68

Custody Decisions: To Mother: 51 [75.0 %]
 To Father: 7 [10.3 %]
 Joint: 10 [14.7%]

The unadjusted Mother-to-Father custody award ratio is 7:1

In cases litigated over custody issues, the Mother-to-Father custody award ratio is 17:1

Summary: Of these seven cases in which a father won custody during a contested dissolution, only three were contested over child custody. The other four were contested over money. *This means that in ten months, only three fathers won custody awards when the custody was contested (two of those had questionable mother behavior.)*

CUSTODY AWARDS TO FATHERS, BY FACTORS INVOLVED**95 Cases Reviewed - (Contested and Non-Contested)****St Louis County**

Cases in which custody was of teenager or young adult	31	32.6%
Cases in which the mother was unfit.	22	23.0%
Cases in which the mother did not show up for court.	13	13.7%
Cases in which the mother agreed to father custody.	21	22.1%
Cases with indeterminate factors.	3	3.15%
Cases by judge's decision. (both had questionable mother behavior)	2	22.1%
Other:		3.15%

Summary: The cases reviewed are over half of St. Louis County's yearly total of cases in which a father receives custody of his children. Clearly, except when the child is old enough to decide for him or herself, a father will not receive custody of his children in St. Louis County *unless the mother is unfit or does not want custody.*

CHILD SUPPORT- ST. LOUIS COUNTY**(17 months reviewed, June 94 -Oct. 95)****Mother custody - 2,011 cases**

- 93% of cases have child support ordered.
- \$351 average child support award (of awards less than \$1000 per month).
- 45 child support awards over \$1000 per month. (\$1,777 average)

Father custody - 236 cases

- 49% of cases have child support ordered. (47 % statewide)
- \$279 average child support award per month.

Joint custody - 434 cases

- 70% of cases have child support ordered.
- \$360 average child support award (of awards less than \$1,000 per month).
- 60 cases have significant maintenance, \$1,632 average, or child support over \$1000 per month.

Contested cases - 76 cases

52 cases	Mother custody, where average child support order was \$469 per month.
14 cases	Father custody, where average child support order was \$209 per month.
10 cases	Joint custody, where average child support order was \$463 per month.

(6 had significant maintenance averaging \$1,746)

CHILD SUPPORT - FACTORS INVOLVED

Mother custody - No child support, 10 cases reviewed.

- Five fathers were served by publication. They abandoned their children before there was a support order.
- Two fathers were incarcerated.
- One father paid mortgage in lieu of support.
- One father's "child" was 21 years old.
- One father was unemployed and the mother requested "no support at this time".

Joint custody - No child support, 7 cases reviewed.

- In two cases the parents had similar incomes.
- In two cases the "children" were adults.
- In two cases the father was the primary custodian.
- In the last case the father appeared unemployed and was ordered to pay college costs.

Father custody - With child support awards, 114 cases reviewed. (includes 19 modifications)

- 25% received a full-chart child support award.
- 24% received no child support award, great economic diversity.
- 4% received no child support award, slight economic diversity.
- 8% received a below-chart child support award.
- 2% received a below-chart child support award, economic diversity.
- 14 % received no child support by agreement. (2 cases economically diverse)
- 17 % received no child support with reason, mostly unfitness.
- 5% received no child support, with no reason stated.

CHILD SUPPORT SUMMARY

Almost every mother with custody receives child support awards, except in abandonments and incarcerations.

Fathers with custody receive child support roughly half of the time that they are awarded custody, in amounts averaging 20% less than mothers receive. Much of this difference can be attributed to factors such as economic diversity. One fifth of the cases without child support, however, have no reason stated on the record. The files on these cases imply differential treatment and custody bargaining.

Child support is awarded in the great majority of joint custody cases, at a higher average monthly award than in sole custody. In the small number of cases reviewed when child support was not awarded, there was either a contributing factor, or the father was the primary custodian.

Contested cases show the greatest disproportions. *Both mother-custody and joint custody categories increase average child support awards to mothers by 25% and 22%, respectively when the cases are contested; while the average of child support awards to fathers decreases 25% when custody is contested.* A child that lives with a father after

a contested case is awarded only 44% of the support amount that a child living with a mother is awarded.

EXAMPLES OF JUDICIAL BIAS

The statistics on mother custody versus father custody overall, by petitioner, in contested cases show significant evidence of judicial bias. When the factors involved are examined, in the small number of cases involving father-custody awards, the presence of judicial bias becomes indisputable.

The ratio of maternal sole-custody decisions to paternal sole-custody decisions, where the custody decision is rendered without determining factors stated on the record is 64 : 1.

In cases where "mothers agree to father custody but don't pay child support", the ratio zooms to 210 : 1.

In half of the contested cases 'in which a father was awarded custody, he also was ordered to pay an average bill from the mothers attorney's fees for \$7,768.

Individual examples of judicial bias include:

- **Judge Brenda Loftin:** A father was awarded custody of his child after the mother left to return to live in South America. The father was to lose custody of his child if the mother came back.
- **Commissioner McKee:** In order to obtain custody of his a child a father had to sign an indemnification stipulation stating that he would never try to obtain child support. If he did, in the future ask for child support, he would be liable for all attorney's fees.
- A mother was found to have psychological problems. If she was to leave her own mother's home, the grandmother received the custody of the child, not the father who asked for custody.
- **Commissioner Smith:** A court ordered evaluator's written testimony was not allowed as evidence while the evaluator was in the hospital. Neither was evidence of the mother's lesbian activity in front of the children allowed. Mother custody.
- **Commissioner Smith:** An employed mother was found to have made several false allegations of adult abuse that increased her attorney's fees substantially. The father was still ordered to pay \$7,500 of the mother's attorney's bill.

CONCLUSION

The social and economic impact of the family breakup is enormous. Yearly, tens of millions of dollars in attorney's fees are spent in St. Louis County while at least \$40-million to \$50-million more exchanges hands as court-ordered child support.

Researchers have identified father-absence as the single most important predictor in determination of many social problems, yet St. Louis County indirectly encourages mothers to petition for dissolution by determining custody with *statistically-absolute* gender-biased preference for mother custody, propelled by a clear economic incentive.

Missouri law specifically states that in custody decisions "no preference can be given based on sex". Three years ago the Missouri Report on Gender and Justice concluded that Missouri courts delivered "rote application of societal stereotypes".

The 21st Judicial Circuit Court of St. Louis County continues to discriminate with unequal treatment of custody decisions and child support orders based predominantly on gender.

JUDGES RECORD - ST. LOUIS COUNTY

June, 1994 to October, 1995

(In Declining Order of Sole Custody Fairness)

Higher Joint-Custody percents are marked in **boldface** (40% or over)

Higher overall paternal contact percents are marked in *italics* (40% or over)

<u>Judge</u>	<u>Total Cases</u>	<u>Custody Awards in Percents</u>				<u>Percent Receiving Child Support</u>		<u>Custody Ratio</u>
		Father	Mother	Joint	Father+Joint	Mother	Father	Mother-to-Father
Seigel	69	18.8	66.6	13.0	31.8	93	38	3.5 to 1
C. Smith	96	15.6	69.8	12.5	28.1	91	20	4.5 to 1
Schiff	71	15.5	71.8	12.7	28.2	92	36	4.6 to 1
C. McKee	64	12.5	71.9	14.0	26.5	91	37	5.7 to 1
Quillin	121	11.6	73.6	11.6	23.2	92	64	6.3 to 1
Cohen	59	11.9	76.3	10.2	22.1	87	71	6.4 to 1
Hemphill	83	12.0	77.1	8.4	20.4	100	50	6.4 to 1
C. Lemay	45	11.1	71.1	5.5	16.6	100	80	6.4 to 1
C. Brano	48	10.4	72.9	9.0	19.4	97	60	7 to 1
Loftin	191	10.5	77.5	8.9	19.4	93	60	7.4 to 1
McAllister	175	9.7	78.3	9.1	18.8	94	41	8 to 1
Hais	200	9.5	76.0	13.0	22.5	95	53	8 to 1
Block	198	8.1	71.7	18.0	26.1	91	31	8.9 to 1
McShane	54	5.6	63.0	31.5	37.1	94	33	11.3 to 1
Corrigan	57	7.0	86.0	3.5	10.5	90	25	12 to 1
Goeke	225	3.6	51.5	43.6	47.2	88	37	14.5 to 1
Dolan	87	2.3	64.4	46.4	48.7	93	50	28 to 1
C. Hayes	38	0.0	86.8	13.2	13.2	94	0	33 to 0
Whittington	130	2.3	83.8	12.3	14.6	96	33	36 to 1
Kintz	123	1.6	83.7	11.4	13.0	96	50	52 to 1
High score:		18.8%	86.8%	46.4%	48.7%	100.0%	80.0%	
Average:		9.0%	70.1%	15.4%	24.4%	93.4%	43.5%	
Low score:		0.0%	51.5%	3.5%	10.5%	87.0%	0.0%	

The records of individual judges are as accurate of a profile as can be obtained based on statistical averaging of the decisions, according to the court division that they were assigned to. A margin of error must be considered due to judge movement, case movement, and data reporting errors.

Citations

1. State v. Patterson, 729 S.W.2d 226, 228 (Mo App, 1987).
2. Sternberg Dredging Co. v. Walling, 158 F.2d 678,681 (8th Cir. 1947)
3. United States v. Jones, 811 F.2d 444,447 (8th Cir. 1987)
4. Alheim v. Mullendore, 714 S.W. 2d 173,176 (MoApp, 1986)
5. *Missouri Law Review*, [1989, Vol. 54], p. 1105,1106.
6. National Congress for Fathers and Children, "Statistical Analysis and Custody Research", June, 1996.
7. The Missouri Supreme Court, "Report of the Missouri Task Force on Gender and Justice", [March 3, 1993]; p. 115, 116.
8. *Ibid.*, p. 113, 114.
9. *Ibid.*, p. 114, 115.
10. *Ibid.*, p. 142-3.
11. William N. Bender, Ph.D. "Joint Custody: The Option of Choice." *Journal of Divorce and Remarriage*. Vol. 21(3/4) 1994.
12. Centers for Disease Control and Prevention - National Center for Health Statistics, *Monthly Vital Statistics Report*, Vol. 43, no. 9 Supp., March 22, 1995; p. 5
13. Kathleen Mullan Harris, Frank F. Furstenberg, Jr., and Jeremy K. Marmer; "Paternal Involvement with Adolescents in Intact families: The Influence of Fathers over the Life Course", presented at the annual meeting of the American Sociological Association, New York, N.Y., August 16-20 1996; University of North Carolina at Chapel Hill, Chapel Hill, NC 27516. p. 27.
14. Griggs v. Duke Power Co., 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d. 158 (1971); Dothad v. Rawlinson, 433 U.S. 321, 97 S.Ct. 2720, 53 L.Ed. 2d 786 (1977).
15. Doe v. Irwin, 441 F Supp 1247; U.S. D.C. of Michigan, (1985).
16. Yick Wo v. Hopkins, 118 US 356, (1886).
17. Santosky v. Kramer, 102 S Ct 1388; 455 US 745, (1982).
18. Mabra v. Schmidt, 356 F Supp 620; DC, WI (1973)
19. In re: J.S. and C., 324 A 2d 90; supra 129 NJ Super, at 489
20. Griswold v Connecticut, 381 US 479, (1965)
21. Stanley v. Illinois, 405 US 645, 651; 92 S Ct 1208, (1972).
22. Quilloin v. Walcott, 98 S Ct 549; 434 US 246, 255-56, (1978).
23. Orr v. Orr, 99 S Ct 1102; 4340 US 268, (1979).
24. Stanton v. Stanton, 421 US 7, 10; 95 S Ct 1373, 1376, (1975).
25. R.A. Warshak, The Custody Revolution, 1992
26. S.A. Nunan, "Joint Custody Versus Single Custody Effects On Child Development." Doctoral thesis, California School of Professional Psychology, Berkeley; 1980 [UMI no. 81-10142].
27. Dr. John Guidubaldi and the American Psychological Association, Division of School Psychology; "Preliminary Summary - Empirical Research Describing Outcomes of Joint Custody", June 14, 1995; p. 1.
28. William N. Bender. "Joint Custody: The Option of Choice." *Journal of Divorce & Remarriage*. Vol. 21(3/4) 1994.
29. U.S. Department of Commerce, Bureau of the Census, "Who Pays Child Support", May 1995 .
30. Amanda Thomas and Rex Forehand, "The Role of Paternal Variables in Divorced and Married Families"; *American Journal of Orthopsychiatry*, Vol. 63, No. 1, January 1993.
31. Judith A. Seltzer, "Relationships between Fathers and Children Who Live Apart: The Father's Role after Separation", *Journal of Marriage and the Family*, Vol. 53, No. 1, February 1991
32. *Ibid.*, Bender.

33. D.A. Luepnitz. "Maternal, Paternal and Joint Custody: A study of Families After Divorce." Doctoral thesis, State University at Buffalo, 1980. [UMI no. 80-27618
34. B. Welsh-Osga, "The Effects of Custody Arrangements On Children of Divorce." Doctoral thesis, University of South Dakota, 1981; [UMI no. 82-6914.
35. *Ibid.*, Guidubaldi, p. 2.
36. Council On Families In America, "Marriage In America - A Report To the Nation", March, 1995 [New York], Institute for American Values.
37. Sara S. McLanahan, "Family Structure and Dependency: Reality Transitions to Female Household Headship," *Demography* 25, February 1988, p. 1-16.
38. Yuko Matsuhashi, et al., "Is Repeat Pregnancy in Adolescents a 'Planned Affair?'" *Journal of Adolescent Health Care* 10 [1989], 409-412., epitomized in *The Family in America: New Research*, December, 1989.
39. William Marsiglio, "Adolescent Fathers in the United States: Their Initial Living Arrangements, Marital Experience and Educational Outcomes," *Family Planning Perspectives*, 19, November/December, 1987, 240-251.
40. Bryce J. Christensen, "From Home Life to Prison Life: The Roots of American Crime," *The Family in America*, Vol 3, No. 4 [April, 1989], P. 3.
41. Margaret Wynn, Fatherless Families: a Study of Families Deprived of a Father by Death, Divorce, Separation, or Desertion Before or After Marriage. (New York: London and Maxwell, 1964), p. 147.
42. Robert Zagar, et al., "Developmental and Disruptive Behavior Disorders Among Delinquents," *Journal of the American Academy of Child and Adolescent Psychiatry*, 28 [1989]: 437-440.
43. *Ibid.*, Christenson, p. 4.
44. Dr. Fren B. Chartan, "A Psychiatric History: What Assassins Have in Common," *The Birmingham News*, 7 July, 1968.
45. Raymond A. Knight and Robert A. Prentky, "The Developmental Antecedents and Adult Adaptations of Rapist Subtypes," *Criminal Justice and Behavior*, Vol 14 [Dec., 1987], 403-426.
46. Professor Victor R. Fuchs, Stanford University, *Los Angeles Times*, 24 October 1988.
47. Henry S. Biller, Paternal Deprivation: Family, School, Sexuality, and Society (Lexington, Mass.: D.C. Heath, 1974), p. 114.
48. *Ibid.*, Biller, p. 140.
49. George A. Rekers, "Inadequate Sex Role Differentiation in Childhood: The Family and Gender Identity Disorders," *The Journal of Family and Culture*, 2, No. 3 {Autumn, 1986}, p. 8-31.
50. Maxine Thompson, Karl L. Alexander, and Doris R. Entwisle, "Household Composition, Parental Expectations, and School Achievement," *Social Forces*, 67, Dec., 1988, 424-451.
51. Rex Forehand, et al., "Family characteristics of Adolescents who Display Overt and Covert Behavior Problems," *Journal of Behavior Therapy and Experimental Psychiatry*, 18, [December, 1987]: 325-328.
52. Henry B. Biller and Richard S. Solomon, Child Maltreatment and Paternal Deprivation: A Manifesto For Research, Prevention and Treatment (Lexington, Mass.: D.C. Heath, 1986), p. 136.
53. Gary Bauer, "Report to the President from the White House Working Group on the Family," February, 1988.
54. Neil Kalter, "Long-term Effects of Divorce on Children: A Developmental Vulnerability Model," *American Journal of Orthopsychiatry*, 57 (4), October, 1987.
55. Elyce Wakerman, Father Loss: Daughters Discuss the Man that Got Away (Garden City, N.Y.: Doubleday, p. 109.
56. Henry S. Biller, Father, Child and Sex Role (Lexington, Mass: D.C. Heath, 1971.), p. 3
57. Sara McLanahan and Larry Bumpass, "Intergenerational Consequences of Family Disruption," *American Journal of Sociology*, 4 [July, 1988], 130-152.
58. Timothy J. Biblarz and Adrian E. Raftery, "The Effects of Family Disruption On Social Mobility", *American Sociological Review*, 1 [February, 1993] p. 97

59. *Ibid.*, Biller, Child Maltreatment and Paternal Deprivation: A Manifesto for Research, Prevention, and Treatment; p. 21f.
60. Andrea J. Sedlak, "Supplementary Analyses of Data on the National Incidence of Child Abuse and Neglect" (Rockville, Md.: Westat, August 30, 1991), table 6-2, p. 6-5.
61. Henry B. Biller, Ph.D, Professor of Psychology, University of Rhode Island, address to the House Committee on Children, Youth, and Families; 10 November 1984. pp. 79ff.
62. David Blankenhorn, Fatherless America, [(New York: BasicBooks, 1995), Title page.
63. Governor John Ashcroft and Annette Strauss, President's Commission on America's Urban Families, *Families First*; [January, 1993], U.S. Government Printing Office, ISBN 0-16-041600-0
64. *Ibid.*, [11], Table 4, p.13.
65. *Ibid.*, Kathleen Mullan Harris, et. al., p. 28.
66. Dr. John Guidubaldi, D.ED., L.P., L.P.C.C., Commissioner, "Report of the U.S. Commission On Child and Family Welfare", July, 1996.
67. *Ibid.*, Bill Harrington, President, American Fathers Alliance.
68. Government Accounting Office, "Mothers Report Receiving Less Support From Out-Of-State Fathers", .
69. Janet Riblett Wilkie, "The Decline in Men's Labor Force Participation and Income and the Changing Structure of Family Economic Support", *Journal of Marriage and the Family*, 53 [February, 1991, 111-122; p. 117.
70. 150% of the amount of monthly support to pay down an arrearage, or a maximum of 60% of gross periodic pay.
71. Centers for Disease Control and Prevention - National Center for Health Statistics, *Monthly Vital Statistics Report*, Vol. 43, no. 13, October 23, 1995; p. 4, Fig. 2.
72. St. Louis Post Dispatch, "Rate of Births To The Unwed Sets Record; Up 75% in the 80's"; February 17, 1993, Source Chart: Center for Health Statistics.
73. U.S. Department of Health and Human Services - National Center for Health Statistics, *Vital and Health Statistics - Prenatal Care in the United States, 1980-1994*; Series 21, No. 54 [July 1996], p. 13, Table 7.
74. David J. Eggebeen and Daniel T. Lichter, "Race, Family Structure, and Changing Poverty Among American Children", *American Sociological Review*, [1991], Vol. 56 (December: 801-817); p. 817
75. Margaret Mead, Male and Female: A Study of the Sexes In a Changing World, [New York: William Morrow and company, 1949].