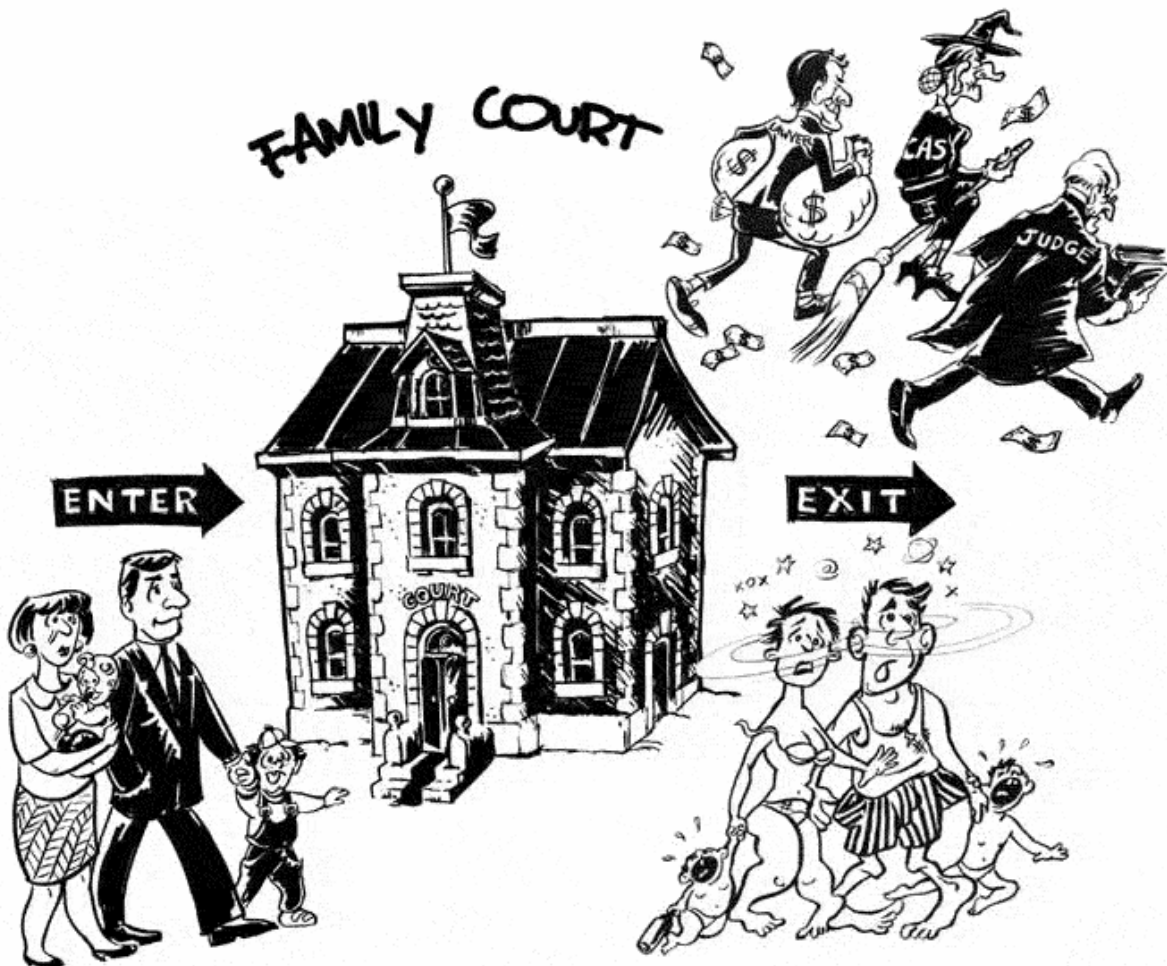


## Understanding “The System”

By Michael McCormick, ACFC Exec. Dir.

We’ve all heard the expression a picture is worth a thousand words. There are around 7,500 words in this section. Perhaps this picture describes, more eloquently than all those words, America’s family court system.



**“There is no system ever devised by mankind that is guaranteed to rip husband and wife or father, mother and child apart so bitterly than our present Family Court System.”**

Judge Brian Lindsay

New York

For the typical man experiencing a break-up involving children, the American family law system appears (and is) overly complex and highly inefficient. I recall that first attorney meeting over 14 years ago where after listening to what the likely course of events would be I asked that fateful question, how much is this going to cost me? The response was: "It will cost you around \$2,500."

Later I asked my attorney how it was that a \$2,500 divorce had now eclipsed \$20,000 with no readily apparent way to stop the running meter? His response: "The \$2,500 was for the divorce, the balance has been the child custody issues and I can't predict when those might end." I learned the register stops ringing only when you run out of cash.

Family court always struck me as a bit of an odd place. Every time I'd go into the courtroom it seemed reality was suspended, logic went out the window and reason and common sense were being avoided like the plague.

I was regularly told what we're doing (the lawyers, court, me and my ex) is determining what is in the Best Interest of the Child (BIC) and it's crucial that we do this for every case so the divorce does the least amount of harm to your child as possible. "That's what you'd want isn't it, Mr. McCormick?" Turns out, there's a collection of these standard one-liners that are thrown at you as money leaks, or rather pours, from your pockets.

Several years ago I was doing some repairs on an old boat. As the bill kept creeping up the mechanic at the boat yard said: "Guess no one told you BOAT stands for 'Bring Over Another Thousand.'" I've learned that like the boat yard, when you're in court, Best Interest of the Child (BIC) really just means Bring In Cash.

Many men operate under the impression the judge is the 'Supreme Being' in a courtroom, and in the individual instance you'd be right. But the factors that go into the development and operations of the courts have their genesis far outside the courtroom. Your case results have been determined in many instances long before you enter the courtroom. In

the next section we will look at some of those factors that make up the operation of the family court.

When all is said and done, the family courts are really little more than 'institutions' that perpetuate themselves at the expense of our nation's families. More than any other single institution they are ripping the social fabric of our society to shreds.

What do you feel and think about the experience of being inside family court?

---

---

---

---

---

What do you think about the financial cost of being in court?

---

---

---

---

---

---

The Emotional Cost To You? To Your Children? To Your Ex?

---

---

---

---

---

## The Family Court Influencers

In this section we'll break down the family court. But first let's start with a brief civics lesson refresher on the structure of our government. It's divided into three parts, the Executive Branch, the Legislative Branch and the Judicial Branch. Our nation's Founding Fathers designed this form of government in order for each branch to serve as a check and balance to the power of any other. By design the judiciary was to be the weakest of the three branches. Bear in mind those early men in our nation's history were concerned lest any single group or another began exercising 'same hands' control over the nation. Rightly they knew that such control leads to tyranny.

The Founder's had firsthand experience with the power of an unchecked judiciary and did not want any such thing for America. Consider where we are today in light of these quotes from some of the leading individuals in our history.

*[The Judicial Branch] may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.*

Alexander Hamilton, Federalist No. 78, 1788

*And it proves, in the last place, that liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments.*

Alexander Hamilton, Federalist No. 78, 1788

*If the present Congress errs in too much talking, how can it be otherwise in a body to which the people send 150 lawyers, whose trade it is to question everything, yield nothing, & talk by the hour? That 150 lawyers should do business together ought not to be expected.*

Thomas Jefferson, Autobiography, 1821

*One single object... [will merit] the endless gratitude of the society: that of restraining the judges from usurping legislation.*

Thomas Jefferson, letter to Edward Livingston, March 25, 1825

## **All Three Branches are Involved in Family Court Actions**

You've seen a bit of what our nation's founders had to say about the design of our form of government and the concerns of the rising power of an unchecked judiciary. Today the judicial branch of government exercises more influence over the affairs of private citizens than at any time in our nation's history.

Attorneys holding bar cards are members of the judicial branch of government. There is a frightening trend in our society today that is fast leading to the creation of a nation bearing very little resemblance to its founding. That trend is this, attorney's are now working in, and coming to dominate, every branch of government. That's a broad statement, so we'll confine our discussion to the area of family law for the sake of demonstrating just how corrosive the environment currently is for families.

While there are many good attorneys practicing law and working in the best interest of their clients there are also many conflicts of interests in the family law system. Consider this situation in light of the above statements. Let's say you were a banker and wanted to charge more fees for checking accounts and credit cards in your state. But you know citizens will never vote to allow higher fees and charges so what would you do? You might get together with other bankers from around the state and decide it would be beneficial to hire a lobbyist to work to get your legislation passed. A couple of your banker friends might also decide to run for office and attempt to get elected. Before you know it there's a special interest group doing what it can to influence legislation in a manner that might be good for the bankers, but not necessarily good for the broader general public.

But that's not how a Republic, which America was founded as, is supposed to work. In a Republic those charged with making the laws are supposed to act in the interest of the greater good for the greatest number of people, not serve the interest of special interests. In the case of family law what happens in the above example happens all the time in reality. In many states bills affecting family law functions are formulated in legislative judiciary

committees. These committees are often made up of a large percentage of attorneys, often practicing family law attorneys. Consequently the very people who are practicing family law are also making the laws that affect their livelihoods. Most people would call it a conflict of interest when members of one branch of government, the judiciary –and all bar card carrying attorney’s are members of the judicial branch of government – are able to occupy a significant number of seats in the legislative branch.

It’s one thing for legislators to seek comments from the professions which will be impacted by proposed legislation. It’s quite another to allow those same people to write the laws and control the votes on issues that affect not only their business but reach right into the heart of America’s families.

Consider that conflict in divorce generates fees and billable hours. You then begin to understand why everything in a custody case seems to take forever to work out and costs so much. It’s because that’s the way the system is designed. Charles Dickens said the first priority of the legal profession is to create business for itself. Reread above what Thomas Jefferson said about sending lawyers to Congress to do the people’s business. I hope you will begin to understand why once you have reached some kind of resolution in your individual case it’s critical for you to become involved in changing ‘the system.’ It’s the only way your children will not experience what you have.

Does this situation strike you as a ‘conflict of interests?’ What are some of the ways such a system might be detrimental or beneficial?

---

---

---

---

Now take this one step further and consider the influence of attorneys in the executive branch of government, at both the state and federal level. Once the legislature passes a law it’s the responsibility of the executive (aka administrative) branch of the government to see

that law is implemented. Once a law goes into the executive branch another set of processes begins. A department of the executive branch will be responsible for developing the rules on how the law will take effect and when, where and who will enforce the law. It is typically the responsibility of attorneys within the executive branch (who are also members of the judiciary) to develop these processes and procedures. Are you beginning to see how the legal profession comes to influence every aspect of the family law system, from making the law, to implementing the law, to running the courts which enforce the law?

To get an idea of just how over-lawyered Americans are, consider that today in a country with a population of 310 million there are nearly 1.2 million attorneys. This means there is one attorney for every 260 citizens. A comparably industrialized country, Japan, has a mere 1 attorney for every 3,000 citizens. And guess what, there are several hundred thousand soon to be hatched attorneys studying in our nations' law schools. Are you starting to get the picture?

Identify some of the times in your case where the system made no sense. Were there times when what was going on seemed of no benefit to anyone but the system?

---

---

---

---

---

With this background let's brief take a look at how we arrived at the present day 'system' of family law. We'll take a look at the two greatest issues in family law today, child custody and child support. A synopsis of the history of each will show how we arrived at a place where over 40% of America's kids will spend a good part of their childhood absent one of their biological parents; in over 85% of cases that removed parent is Dad.

## **The Evolution of Modern Child Custody Awards – From Father Custody to Best Interest of the Child and Points In Between**

In an incredible demonstration of just how far the social pendulum swung in a relatively brief period of time it's interesting to note at the end of the 19<sup>th</sup> Century and early in the 20<sup>th</sup> Century in the rare event a divorce took place the Father was almost always granted custody of the children. In those days there was essentially no social safety net and also very little divorce. The prevailing notion of the time was that children would be better off with the Father as he was likely in the best position to care for them. This was particularly true when America was still primarily an agrarian society and children were considered necessary contributors to the family economy.

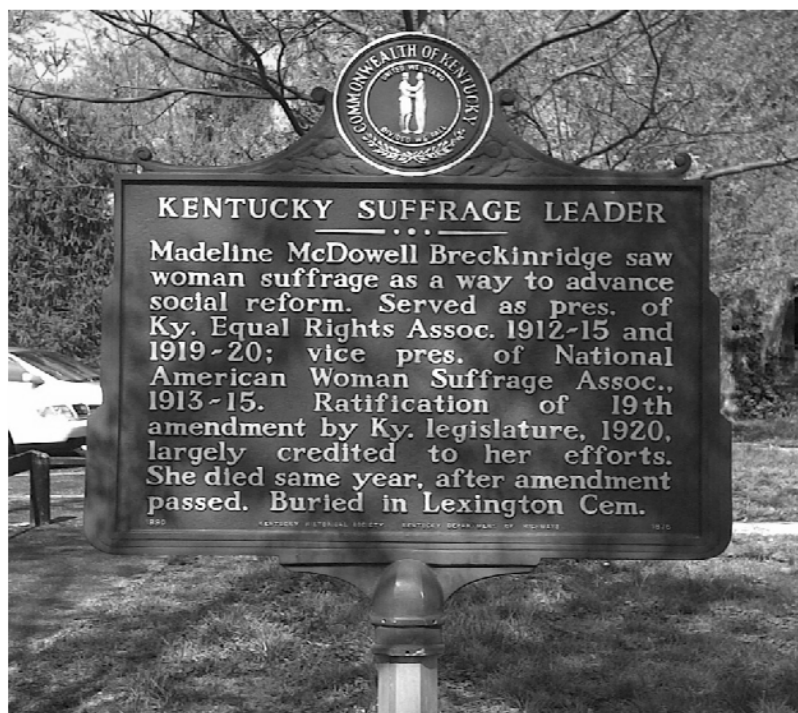
As society became more industrialized fathers began working away from home in greater numbers. Society began to see men's role as going out to work while mothers stayed at home to care for the younger children. It was in this environment that the next phase of thinking around custody began and it was articulated in what became known as the Tender Years Doctrine. Put simply this doctrine embraced the notion that children, typically under age seven, had needs that could be better met by the mother than by the father. It was not atypical at around seven years of age for children of divorce (which was still very rare) to leave the mother and go live with the father who was thought better equipped to prepare the children educationally and for life outside the home.

During this period of time women were becoming more vocal on the 'civil rights' scene and influential in the area of social issues ultimately achieving the right to vote in 1920. It became recognized that taking children from their mothers at a young age and giving them to their fathers to raise wasn't working out particularly well for mothers and to a lesser extent children and their fathers, who were now working outside the home. Developing along with the Tender Years doctrine, child custody practices were becoming influenced by what are known as the primary caretaker doctrines. This doctrine resulted in children remaining primarily with their mothers in the still rare event of divorce the rationale being,



as the doctrine name implies, she was the primary caretaker of the children. This doctrine prevailed well into the 1960's and its influence today is still significant.

The plaque below stands outside the Henry Clay home in Lexington, Kentucky. Clay was the second longest serving Speaker of the United States House of Representatives. Clay ran for President five times in his life but was never elected. His great grand-daughter, Madeline McDowell Breckenridge was very active in the women's rights (suffrage) movement. The first sentence of the plaque summarizes the goal of early women working for the right to vote.



With the advent of the 1960's America began experiencing a period of previously unknown social and cultural upheaval. The civil rights movement began in earnest, an unpopular war was being fought in Vietnam and around the country a 'revolution' in thinking was underway. With the publishing of Betty Freidan's book "The Feminine Mystique" the modern women's liberation movement was born. Betty described the life of a middle class

housewife as nothing more than existence in a comfortable concentration camp. From these beginnings the modern feminist movement and its attending ideology heavily influenced our thinking; socially, academically, politically and legally.

Until this time fault based divorce was the norm across the nation. It was axiomatic that whoever prevailed in a fault based divorce was going to receive custody of the children. Ronald Reagan authorized the first no-fault divorce bill in California in 1969. Years later he stated signing no-fault divorce was the legislative action he most regretted. Between 1960 and 1980 the annual number of divorces in America nearly tripled. It's interesting to note that in the early years of no-fault divorce almost 75% of all divorces involving children were filed by the mother. Today around 2/3's of all divorces involving children are filed by the mother. Economics professors Drs. Margaret Brinig and Douglass Allen in their paper "These Boots Were Made for Walking" posit the expectation of receiving custody of the children is the single greatest factor in determining who files for divorce. Contrary to popular belief it is not men who abandoned their marriages or their children.

What are your impressions of American family life looking back at the fifties, sixties and seventies?

---

---

---

---

Were families stronger then or today? Weaker? In what ways?

---

---

---

---

---

## **A Brief Bypass Into the Feminist Movement as a Family Law Influencer**

Let's take a very brief look at the rise of the feminist movement in America and its affect on the nation. Prior to doing so, I want to state categorically my great love, respect and admiration for what women bring to our lives as men and to society. According to God's plan men and women are designed to be complements to each other. Each working and serving to bring out the best in the other and to provide each other a haven of love, warmth and mutual respect. In the context of child rearing, marriage is the optimal environment. The Apostle Paul instructed husbands to love their wives as Christ loved the church, to love them as we love ourselves and for women to reverence their husbands. In a positive way, Christianity has done more to advance the status of women than any other religion or ideology known to man.

Over the last forty plus years the beautiful essence of what it means to be uniquely male and uniquely female has given way to a dominant social construct founded on men and women's competitiveness with each other rather than the complementary nature of each. In my opinion the result of this approach has been a severe coarsening of our society. Couple this with a massive divorce rate, falling marriage rates and rising cohabitation rates and we've created quite a pickle for ourselves.

We've all heard the expression that marriage is a civilizing institution for men. Numerous books have been written arguing over who benefits most from marriage - men, women or the kids. This is about as silly as arguing over whether the sun rises in the East. All such argument does is drive divisions between men and women. A good friend of mine notes the fact of the matter is that marriage is a civilizing institution for men, women and children. Without it societies decay, rapidly.

Anyway, I'm digressing; let's get back to the rise of the modern feminist movement and its impact on the family courts. The National Organization for Women (NOW) is probably the best known of the current feminist organizations. It was founded in 1966 by the above

mentioned Betty Freidan and a number of other emerging feminist leaders. In the early days of its existence NOW garnered a significant level of support from men as well as women. Its dominant messaging was of the need for equality between the sexes. As a matter of fact in its founding document of 1966 NOW states that Shared Parenting in divorce should be the norm arguing women would never be equal in the workplace until men were recognized as equal in the home.

Karen DeCrow, an early leader of the modern era of feminism, was the President of NOW for several years until 1974. Ms. DeCrow still maintains to this day, four decades after her tenure that fathers should be as much a part of their children's lives after divorce as mothers. So what happened? About 1976 there was a significant shift in NOW's position with respect to men and women. NOW leaders adopted a position that it was men who were oppressing women and were therefore the problem for what ailed women in the world. Consequently, the world needed the yoke of patriarchal domination cast aside in order for all, but particularly women, to be free to fulfill their destiny. As Christina Hoff-Sommers notes in her book "Who Stole Feminism," it's fair to conclude the radical faction of NOW captured the organization and feminist movement.

Rather than equality for everyone, the mission of NOW became the advancement of women by 'taking' from men. And thus the sense of victimhood and entitlement became part of the national landscape. As indicated in the picture above a goal of the women's movement was to secure the vote as a means to effect social reform. With the vote secured the next evolutionary step became securing for women all the perceived 'privileges' of men. In order to do that however women needed to be convinced they were oppressed and their husbands, fathers, brothers and men in general were deliberately intent on oppressing them. It's of historical interest to recognize in the early days of the suffrage movement there was noted concern the movement itself was a direct attack on the Christian family.

On a positive note women were encouraged to earn college and advanced degrees, to seek higher levels of employment in the corporate world and in general to reach their full potential. On the flip side the prevailing undercurrent messaging from feminist movement

leadership was women could not find fulfillment in motherhood and homemaking. That somehow staying home and raising a family was a 'lesser' accomplishment than becoming a lawyer or doctor or business owner or politician or whatever. It's impossible to ignore the fact that women's access to the vote, property ownership rights, education and the other advantages of society resulted from male support for the principal of equality. Such action can hardly be accurately described as the work of oppressors.

Starting in the 1970's women studies programs began emerging on university campuses. These programs became the intellectual mouthpieces for the women's liberation movement. Consider this, today there are over 400 women's studies programs on college and university campuses around the nation. There are no, zero, none, zip, nada male studies programs of note anywhere in the continental United States. Think about the impact of 40 years of directed victim programming, and think about the impact of what that type of programming means in areas like family law. Think a bit further and is it any wonder a Fortune 50 company like Verizon thinks nothing of running advertising portraying men as buffoons unable to think or do anything for themselves or their kids unless under the tutelage of a woman? Is it any wonder substantially fewer men than women go onto college these days? Is it any wonder government in general and family law in particular became a natural ally and extension of the feminist movement and its goal of social reform?

The feminist movement influence in family law is pervasive. It is estimated nearly 70% of all family law attorney practitioners are female. There is a National Association of Women Judges whose mission statement indicates its purpose is to advance the cause of women in the profession. There is no corresponding association of male judges. Over 80% of the child support system workforce (56,000+ employees) is female. Females dominate the infrastructure of family court administrative systems and of the over 1,200 domestic violence shelters nationwide fewer than a dozen offer services to male victims of domestic violence despite the fact that 35% of all domestic violence victims are men.

Any man who has been falsely accused of abuse in the context of a divorce or custody case knows the challenge of having the full weight of the state against him as he attempts to overcome charges based largely on he said/she said allegations. Mandatory arrest and primary aggressor laws on the books in many states have been translated to mean “arrest the man” regardless of the actual facts of the situation.

Almost every state has an organization of female lawyers dedicated to advancing the cause of women in the law and pro bono legal services for females are readily available through legal aid offices in most states. At the federal level there is a female dominated Office of Violence Against Women located in the Department of Justice and in one of his first actions as President; Barak Obama created the White House Council on Women and Girls. Every Cabinet Secretary (the highest political appointee) of each Department of the United States Government is a member of the Council and is charged with reviewing their agency with an eye toward ways to increase opportunities specifically for women. For nearly three years the White House has rejected repeated requests and proposals to create a similar council to address the challenges facing boys and men in our society. The current administration’s head of domestic social policy is a former board member of Emily’s List, an organization dedicated to promoting the feminist agenda in politics.

These observations are not meant in any way to disparage the wonderful contributions of women to our society. What is important to recognize is that governments’ role in relationships and social advances between the sexes should not be considered in a zero sum sense, in other words that opportunity benefits one group at the expense of another. Rather, the actions of government in particular should be geared toward increasing opportunity for all citizens, not just one-half of the population based on a victim ideology that blames men for all of our nation’s woes.

There is no escaping the fact that the feminist revolution has taken a particularly hard toll on all members of the family, women, men and their children. Here is but a brief example of the influence of the feminist ideology on family life. In his 1939 book, ‘The Negro Family in America’ based on his dissertation in 1932, sociologist Dr. Franklin Frazier noted that

approximately 11% of African American Children were born out of wedlock. The out of wedlock birthrate in the Caucasian community was approximately 5%. Thirty years later shortly before his death in 1968 Dr. Martin Luther King noted the out of wedlock birthrate in the African American community was 25%, in the Caucasian community at the time it was 12%. Today the out of wedlock birthrate in the African American community is just over 70% and in the Caucasian community it is approaching 35%. While it would be inaccurate to suggest the feminist movement is solely responsible for this phenomenon it cannot be denied that one plank of the feminist mantra posits women should be free to express themselves sexually however they desire.

Throughout feminist literature runs a strong undercurrent, very prevalent today, that marriage between a man and a woman is not a necessary, or even desirable, prerequisite to having children. As a result over 40% of America's children are born into single parent (female headed, no dad) households. Every one of these cases PLUS the 1 million annual divorces create another family law case file. Walk into any courtroom in the nation, any day of the week, and the docket will be loaded with family law hearings of one sort or another.

The impact of feminist ideology has hardly been benign on our society. The problem with feminist ideology can be summed up in this simple saying sighted on a T-shirt; "Feminism is the idea we can make both sexes equal simply by focusing on the rights and issues of one of them." Feminism is deeply ingrained today in the political, academic and legal structures of our society. Men and women together have a responsibility to see the tremendous potential of all our citizens employed in ways that advance every member.

Again in closing, the contributions women make to family life, our society and nation are significant and valued. There is no denying however that 'feminism' as a movement has generated seriously negative consequences for members of society, women included. It's encouraging to see a number of younger women today turning their backs on the radical feminist movement and embracing again the idea of men and women as complements.

Can you think of situations and examples of how the feminist movement has affected family law?

---

---

---

---

Name some other areas outside family law where the effects of feminism are felt.

---

---

---

---

---

Have you seen the effects of feminist ideology in your relationships with women? In what ways?

---

---

---

---

What are some steps men can take to 'level the playing field'?

---

---

---

---



## **Back to the Evolution of Child Custody**

For feminist cries for equality between men and women to be taken seriously the obvious female gender preference of the tender years and primary caretaker doctrines needed to be addressed. During the 1970's as states began moving away from fault based divorce statutes the 'battle' shifted from who was at fault for the marriage breaking down to who would receive custody of the children. The Best Interest of the Child Standard emerged as a supposedly gender neutral way to determine where and with whom the children should live. Recall that between 1960 and 1980 the divorce rate tripled in the United States with between 66% and 75% of all divorces involving children being filed by mothers.

The Best Interest of the Child (BIC) standard is now used by courts nationwide. It was thought at the time to be the fairest alternative to what were clearly female preference statutes. In reality the tender years and primary caretaker doctrines continue to heavily influence child custody awards. Here's what Hillary Clinton had to say about BIC back in 1973, "Best interests operates as an empty vessel into which adult perceptions and prejudices are poured." As recently as 2002 the American Bar Association described BIC as "more of an aspiration than a standard given its depth, vagueness and subjectivity."

For well over thirty years BIC has been the standard for determining custody and currently results in a situation where mothers are awarded primary residency of the children 84.7% of the time. The standard visitation schedule granted to most dads today is still every other weekend and a few hours for dinner one evening on the alternating week, along with some holidays and a week or two in the summer.

BIC is supposed to provide a 'fair' method for making custody determinations.

Unfortunately, BIC has exacerbated litigation over child custody. Like no previous time in history children are now at the middle of protracted legal disputes. It is because of BIC that parents are forced to 'slug it out' to see who will remain the primary parent to their children. BIC has been subject to tremendous interpretative, ideological and political

influences over the years. For instance, in the world of domestic violence, often times a mere allegation of abuse is enough to invoke a statutory prohibition that joint custody is not in the child's best interest.

Family law does not readily recognize children need both parents unless the parents themselves are willing to agree. In many states there are statutory provisions that will not allow a judge to award joint custody, much less anything approaching equal time sharing with the children if one parent objects. As you can imagine these provisions become powerful weapons in the hands of spouses' intent on driving the other parent out of the life of the children.

Looking over the history of how we arrived at this point in family law a man would be right to conclude that there appears to be little logic to how the system developed. An individual would also be right to conclude the system developed in a way that put the interests of the legal profession ahead of the interest of the unfortunate individuals who find themselves within its grasp. In the next section we will take a quick look at some of the other 'hangers-on' who feed off the system and then a brief closing look at potential future scenarios of family court operations.

Did you think the best interest of your children was the paramount consideration in your custody case?

---

---

---

---

How would you improve the BIC standard?

---

---

## **Other Family Law Profiteers:**

We used to ask newcomers to divorce to play a game with us. The game is called gnip-gnop and it goes like this. You give me a dollar. I tell you how to get the game started. You serve up the first volley and the other side sends the ball back to you. You give me another dollar. I tell you where to hit the ball back to the other side. They return the shot. You give me another dollar. I tell you how to play that shot. On and on the game goes until finally you have no more dollars or the referee steps in and says the game is finished. You await the referee's decision and she declares a winner. You're told you played the game well, but don't really understand much more about the rules of the game than when you started. You don't know how to hit a winning shot or much else for that matter. All you know is that the game is over, your coach has all the money that was in your pocket and someone else is going to pick the game winner. Yeah, you're right, the game is a lot like family court and gnip-gnop is simply ping pong spelled backwards.

Family law has become big business. According to a recent report by the Institute for American Values the annual costs of divorce and unmarried parentage to the federal taxpayer exceeds \$112 billion per year. According to the National Fatherhood Initiative taxpayers spend \$99 billion each year making up for dads' absence from the home. These figures do not count the additional estimated \$20 billion per year in legal fees generated by the profession from unsuspecting litigants.

Family law has spread its tentacles throughout society, resulting in a number of 'cottage industries' springing up around the system. Judges in many jurisdictions sit at the top of a vast patronage system. You might have seen these maligners around the court or had them directly involved in your case. It's not uncommon for a judge to order a custody evaluation to assist her in determining who should have custody of the children. She might decide the parties need a psychological evaluation. And if there is a business involved in the case you can count on hiring a forensic accountant to value your assets. If there's a restraining order

in place you can bet you'll be visiting your kids in a supervised visitation center, if at all. And if it just so happens your ex was a stay-at-home spouse you may have the privilege of paying for the other side's legal fees for a divorce you never wanted in the first place.

In some states you'll get to pay for a parenting time coordinator and of course there's the cost of court ordered therapy to 'help' everyone figure how to make the best of their reconfigured life. Along the way you can add the cost of process servers and those court reporters who take your depositions along with the per page fees that come with actually transposing the deposition into a readable document. Let's not forget the guardian-ad-litem or child reps, because nowadays every kid needs their own attorney also.

What's happens when other 'professions' come to the table and feast on the carcass of a dying family? There becomes less will to change the system. Family law welcomes other professions to the table knowing their generation of dollars assures an absence of criticism.

What's been your experience with these ancillary experts?

---

---

---

---

To their credit there is one sector of 'rebellious' attorneys who recognize the damage our family law system is causing and are attempting to do something about it. These are the attorneys who practice collaborative law. Collaborative attorneys represent clients in divorce cases but agree they will not take their clients cases into court. If they are unable to negotiate an agreement between the parties outside court the lawyers will withdraw from the case. Collaborative law works great when a couple is willing to work together to achieve a resolution to their case. What keeps it from being optimally effective is the fact that it's practiced in the shadow of existing statutes. If the statutes do not create a level playing field there is no incentive to work cooperatively. Another one of those famous one-

liners of the legal profession is - "Never give up in mediation (collaboration) what you know you'll win in litigation."

## **The Future of Child Custody**

As we've seen there are a number of forces at play in the arena of family law, particularly where child custody is concerned. Family law today is at a critical point in its existence. The profession recognizes the public discontent with current practices, particularly the standard practice of removing a fit parent from the life of their child and reducing that parent to mere visitor status.

Citizens recognize the system is broken and is not acting in the best interest of children, parents and extended family members. The public overwhelmingly supports a change in the practice of family law which would embrace shared parenting and give children a full relationship with both parents in the event of divorce. In a 2004 non binding ballot initiative in the state of Massachusetts over 500,000 people, representing 84% of the ballots cast voted in favor of equal time sharing for kids of divorce. A 2009 survey in Parade magazine showed 65% support for dads having equal time with the kids after divorce. A 2010 Canadian poll conducted by Member of Parliament Maurice Vellacott of over 1,000 individuals indicated 90% support for equal parenting after divorce.

We are unquestionably at a time where stated public policy objectives regarding families, social science data, statutes and court practices are out of synch with each other. Most family law statutes around the nation adopted the BIC standard in the 1970's and early '80's and have not been significantly updated since that time. For example I have spent several years working on the Illinois Family Law Study Committee as part of a multi-disciplinary group working to update states laws, something that hasn't happened in a significant way since 1977. It's not uncommon for family law changes to be adopted and then stand without modification for a number of years in order to allow time for the changes to be implemented and their impact felt in practice.

In what direction will the future of family law go? Right now there are competing opinions

on what should happen next. Almost all stakeholders agree we can do better than the current system.

One of the tremendous debates going on in the psychological community today concerns whether, or how much value, there is to a child having a dad in their life. Some psychologists are arguing that it's more important for children to have one stable residence and one visitor parent rather than the child having a full relationship with two parents. The research on this point is fairly clear. Children do best when they are able to spend at least 35% time with each parent as a baseline. Research also indicates children continue to benefit as the time sharing allocation approaches 50%. Within this broad time spectrum however there are researchers who posit very young children should never be away from their primary caregiver on an overnight basis until the child is over age two. Other psychologists and child development experts indicate young children are fine spending alternating periods of time with each parent so long as the intervals between seeing each parent are not too long.

Judges are often divided on the question of legal presumptions affecting custody being written into the statutes directly. They want the greatest possible discretion to determine what is in the best interest of the children. More and more judges however want guidance written into the statutes so long as they retain the capacity to deviate from the preferences should the individual case situation warrant.

The domestic violence organizations don't particularly like shared parenting because they believe it will be easier for abusers to gain custody of children. They argue women will stay in abusive relationships to protect their children. Often times these are the most vocal critics of children being able to have a full relationship with both parents. While victims of abuse deserve and need protection from their abusers when the facts are separated from the hype around this issue, chronic domestic violence affects a relatively small number of cases. What often happens is that the exceptions become the lens through which all cases are viewed. When that happens it colors the system for everyone in a negative way and makes abuse of the system and by the system more prevalent.

Feminist groups, whose ideologies significantly influence the domestic violence coalitions, are uniformly against shared parenting. They have had decades of success in politics, education and law promoting the notion that children of divorce are best off when mother provides the physical care and dad provides support in the form of child support and/or an alimony check.

The three groups most significantly impacted by family court decisions are those who are often least heard from in the debate over child custody. Those groups are the children of divorce, the non-custodial/non-primary residential parent (most often Dad) and the extended family with whom the child loses relationships when a divorce occurs and shared parenting is not practiced.

To affect the future of child custody and put an end to the current adversarial model it will be necessary for these three groups to exercise their political power to say 'enough is enough.' It's time for the adults who experienced the loss of a parent as a child to step forward as a block and demand change. It's time for all the parents who've lost relationships with children to unite around this issue. And all the grandparents, aunts, uncles and siblings who have seen a family member go through this need to make their voices heard.

Michigan Supreme Court Justice Maura Corrigan noted over 1/3 of Michigan's citizens have an open file in the state's family courts. That equates to over 3 million people. If that statistic holds true nationally then over 100 million people are directly impacted by the family courts. Imagine the enormous change that would occur were even a fraction of these people willing to demand better for our nation's families. The results would be immediate, positive and beneficial on a near and long term basis.

Let's close out this section on the family courts by discussing the importance of a Dad to his child. Here's what it means for a child to have a Dad who's fully engaged in the life of his child(ren):



- 1) They do better academically
- 2) They are less likely to use drugs and alcohol as minors
- 3) They are less likely to smoke
- 4) They are more likely to finish high school and attend college
- 5) They earn more
- 6) They are much less likely to live in poverty
- 7) They are healthier mentally, emotionally and physically over their lifetimes
- 8) They are less likely to become sexually active at an early age
- 9) For girls, they are less likely to become pregnant as a teen
- 10) They are less likely to become involved with the juvenile justice system
- 11) They are less likely to take their own lives.

In every possible way imaginable kids are better off when their loving Fathers are fully available to them. Being a Dad is so much more than being an ATM machine. Your full involvement; emotionally, mentally, physically, spiritually, intellectually and financially positively impacts not only your children, but your community, your nation and future generations.

Justin Furstenfeld, founder of the platinum album selling band “Blue October” recently released an album called ‘Any Man in America’ about his experiences in family court. In one song written to his daughter, the lyrics say, “I may have been gone but I never walked away.” Let’s stop letting society define men and particularly Fathers in negative terms. In a few decades we’ve gone from “Father Knows Best to Father is Worthless.” It’s not true, and it’s our responsibility as men who love our children to demand better for them.

By acting and making family law system improvement your lifelong social cause we will not only turn this system around, you will be writing a history for your child that vividly shows them current practices are not what you wanted for them. Love for our kids is expressed in many ways. The men of this nation are being put through ‘trial by fire’ in the family courts.

If we do not grow weary in doing good we will prevail and the hearts of our children will be returned to us, their Fathers.

Visit the American Coalition for Fathers and Children at [www.acfc.org](http://www.acfc.org) for additional resources and information on the family court system. Become involved with organizations that are working to improve family law.

What are some things I can do to make the future better for my children? Mentally, Physically, Emotionally, Spiritually, Intellectually and Financially?

---

---

---

---

---

How can I become active in my community, state and nation to help improve the family law system?

---

---

---

---

---

What can I do to help myself and the man next to me who is experiencing or has experienced similar circumstances?

---

---

---

---

---