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Dr. James Dobson
Focus on the Family
Colorado Springs, Colorado 80995

Dear Dr. Dobson:

I have been involved in correspondence between Timothy Masters, of your office, since 2001, regarding issues related to Joint Custody for separated or divorced parents. I have been a contributor to your work and read your publications. My last correspondence to you, via Mr. Ross Marshall, dealt with statements made regarding your position on shared parenting. Recently, I have been given a copy of your "Position Paper on Shared Parenting/Joint Physical Custody", and, once again, I am sorely disappointed in your position.

It seems to me that the main point of your position (against Joint Physical Custody) is related to work done by Dr. Judith Wallerstein, of Marin County, California, back in the 1970's. This work, done on a very narrow collection of upper middle-class parents in what is the most wealthy county in the state, unfortunately, has formed the basis for much of the doctrine currently espoused by the legal system, this despite the fact that modern social science has, to a large degree, debunked the sweeping conclusions reached by Dr. Wallerstein.

In 1971, Judith Wallerstein, Ph. D., studied sixty Marin County couples (mostly Caucasian and affluent), who divorced that year. This work, published, in 1980, was based on the fact that most of these families had presented to Wallerstein's clinic because they were "experiencing problems", and the participants in the study were recruited into the study (designed for long-term follow-up) with offers of free counseling¹. This research was observational and anecdotal in nature and not conducted under scientifically valid conditions. Although Wallerstein stated in her report that she tried to "weed out severely disturbed children", the appendix to the study reported that only one-third of the families which she worked with were assessed as having "adequate psychological functioning" *prior to the divorce*. These problems included a significant incidence of depression, sexual and rage issues, and nearly 25% of the couples reported that there had been domestic violence in the marriage²

The above is hardly surprising, since one would expect conflictual influences on the children in marriages which are being terminated. Unfortunately, however, other conclusions from that study suggested that, when there existed significant conflict between parents as to custody issues, Wallerstein reported that "joint custody was not in the best interests of the child". As to the issue of Joint Custody "not working" when there is a high level of conflict, Coontz also finds:

The Coontz study, cited above, further points out that much of the conflict between divorcing parents in the Wallerstein study may have been related to emotional dysfunction on the part of one or both parents; and this further presents the possibility of a rather bizarre scenario in which the dysfunctional parent, especially if such happens to be the mother, can virtually assure a primary custody ruling in her favor simply by being obstructive or otherwise contentious, thus fulfilling Wallerstein's presumption *against* joint custody. This occurs much more frequently than is imagined.

Claudia Miller, in the same publication as referenced above³ reports that a follow-up study done on Wallerstein's Marin County families has revealed that high levels of conflict over custody often lead to long-term difficulties as the children of divorce reach adulthood;

¹ Stephanie Coontz, Evergreen College, Olympia, WA; *Divorcing Reality*; Children's Advocate, January-February, 1998.

² *Ibid.*

³ *Ibid.*

and that, significantly, many of these difficulties can be traced to lack of involvement with the “other parent” (non-custodial), usually the father⁴.

Wallerstein’s 1980 work, with its limited (numbers) scope, has been challenged in recent years. One of the researchers involved in this challenge is Joan Kelly, Ph. D., a co-worker of Wallerstein; and, in a recent presentation to the Joint Meeting of the Bench and Bar in Birmingham, Alabama (January 13, 2000), she stated, among other things, that “Children really like and prefer a shared physical custody arrangement. What children want is regular involvement of both parents in daily activities; *they do not mind the inconvenience of changing residences to achieve this* (emphasis added). Children are not satisfied with standard visitation schedules.” Kelly further states that the (traditional form of) “visitation makes fathers peripheral in their children’s lives, and that this realization results in fathers dropping out...”⁵

Kelly further goes on to state in another published conversation that, “Until the late 1980s, we were not studying children in the married family. But when research began comparing children of married parents with those of divorced parents and examining a multiplicity of variables, we learned that within married families there are enormous variations with children’s adjustment.....if you look at the research, the divorced children (may) have more behavioral and academic problems than children whose parents are married, (but) the differences between the two groups are really quite small and they have been narrowing in recent years”⁶.

Most interesting, however, are Kelly’s comments concerning fathers,

“We’ve come full circle on fathers since the 1970’s. Back then we said that frequent contact with fathers was associated with better child adjustment following divorce. In the 1980’s several influential studies reported that there was no relationship between father contact and child adjustment. This was quite troubling for many clinicians. But in the 1990’s -- in fact in the last two years -- there have been studies that demonstrate a significant

⁴ Claudia Miller, *Divorce Doesn’t Go Away*, *op. cit.*

⁵ Joan B. Kelly, *Using Child Development and Divorce Research to Make Appropriate Custody and Access Decisions*; Joint Meeting of the Bench and Bar, Birmingham, AL; January 13, 2000.

⁶ Interview with Joan B. Kelly, Ph. D., *Conversation Corner, Association of Family and Conciliation Courts*, 1999.

relationship between a father's post-divorce involvement with his children and their positive adjustment. This occurs if the father's involvement is characterized as emotionally supportive and "active parenting" meaning discipline, problem solving and appropriate parenting behaviors. After divorce, fathers often drift away from active parenting because they have minimal time with their kids. One very interesting finding from a national study is that when dads are more actively involved with their children's school the children do better academically, are less likely to be suspended or expelled and like school better⁷

Even Wallerstein herself has come to recognize the impact that parental absence can have on the maturing child. In November, 1999, an article by Susan Whitney⁸, quotes Dr. Wallerstein (referring to children who lost access to one parent after divorce) as "Their loneliness is overwhelming; such are the core memories of these children....an abrupt and sudden diminution of nurturing." She cites a comment from a 28-year-old woman who recalled the sudden departure of her father as a "complete surprise", this at the tender age of 4. Such can occur easily when a parent who has been a daily influence on a child suddenly is seen on the traditional "every other weekend" schedule that many non-custodial parents are forced to endure under our present laws concerning so-called Joint Custody (as little as a 20% timeshare, the current "default" for a Joint Custody order, is considered as "joint physical and legal custody" under current California Law).

I might add, Dr. Dobson, that Dr. Joan Kelly was the major collaborator, with Dr. Wallerstein, of the 1971 and 1980 studies, and that she, along with Dr. Wallerstein, have essentially repudiated the conclusions which they made in their earlier, scientifically skewed research. New research, done by Dr. Kelly and her associates, has shed significant light on the issue of Joint Custody and a recent summarization of current principles can be summed up in the following points:

Kelly, in her contemporary research, develops new concepts concerning the need for the involvement of both parents after divorce or separation. In her presentation to the Alabama Bench and Bar⁹, she states:

⁷ *Ibid.*

⁸ Susan Whitney, *Fear lingers for children of divorce*, Deseret News, November 20, 1999.

⁹ Kelly, *op. cit.* *Using Child Development*....Joint Meeting of the Bench and Bar, Birmingham, Alabama; January 13, 2000

Attachments of Infants and Toddlers to Parents

- * At 24 months of age, children achieve object constancy, which means that they can retain the image of a parent well enough to tolerate some separation from that parent.
- * By 6 to 7 months of age, children form important, early attachments to the father as well as the mother.
- * At 18 months of age, the child's preference for the primary caretaker disappears; the presence of either parent is satisfactory to the child; either parent is seen as capable of raising the child

Maintaining the Parental Relationship

- * Legal conflict, apparent to judges in court, must not be confused as equivalent to genuine conflict outside of court. Legal conflict is not sufficient cause for sacrificing continuity of children's contact with fathers.
- * Courts have over-emphasized providing geographic stability of residence for the child at the expense of the more important emotional stability of regular time with each parent.
- * After divorce, children need to have a maximum of resources available through time with both parents, rather than removing one parent from their daily lives, which lessens resources available to children.

There are, of course, remaining differences of opinion regarding shared parenting issues; but I believe that it has been thoroughly shown (by work done *in the last decade and not in the 1970's*), that the problems associated with movement of children between the homes of their divorced/separated parents are less than those which are engendered by removing one parent (usually the father) from day-to-day connections with a child. How can a father who has "every other weekend" visitation participate in a child's school activities or other activities which are so dependent on the nurturing and guidance of both parents? Such fathers are usually relegated to the status of "Disneyland Dads", and their influence, if anything, is highly stylized and ineffectual.

If one is to oppose the idea of Joint and Equal Custody on the basis of “conflict” between parents, how can one justify “awarding” primary custody to the mother when it is often the mother who creates the resistance to participation by the father in the daily life of the child(ren)? If there were not conflict between the parents, a division of parenting responsibility would likely be unnecessary, as, in most such cases, the marriage might well be salvageable.

I am thoroughly amazed, Dr. Dobson, as to how you can base your positions on data which is, in the world of social science, almost antiquated; and how you can ignore current data, which has been gathered with better academic skill and without political and/or demographic prejudice.

Recently, one of the religious publications in our area, *The Catholic Voice*, the diocesan newspaper of the Diocese of Oakland, California, reprinted an article from the Vatican which spoke against the adoption of children by homosexual couples. One of the reasons why the Vatican opposed such adoption was that it purportedly “did violence to the need of a child for its mother and father”. Whether or not one opposes or approves of homosexual adoption, it is not difficult to agree that any scheme which denies a child maximum exposure to both of its parents, indeed, “does violence” to the child. In the absence of provable parental unfitness, anything other than Joint and Equal custody is just as violent.

Please, Dr. Dobson, I implore you to open your eyes and see what contemporary research is showing us. The children need your support!

Sincerely,

Robert A. Fink, M. D., President
California Parents United, Inc.

The best parent is both parents.....

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