Testimony on Matters of Custody Thomas Tessaro National Congress of Fathers & Children Pittsburgh Chapter

House Judiciary Committee Subcommittee on Family Law HB 418, 463 & 1639 Harrisburg, PA Dec. 17, 2009

Thank you for the opportunity to speak on behalf of the men who seek support from the Pittsburgh Chapter of the National Congress of Fathers and Children (NCFC).

My testimony will center on HB 418, 463, currently before this committee, as the proposed legislation relates to my experience helping guys from the Pittsburgh area who seek support from NCFC.

I receive frequent phone calls from guys who love their kids and desperately want to spend time with them, but are obstructed from doing so by the child's mother. They don't ask me, "How can I reduce my child support?" They ask me, (usually under emotional duress) "how can I see my kids?"

Additionally, I suffer the loss of my own children on an hourly basis. I've been excluded from their lives by the persistent and pervasive efforts and attitudes of their mother-behavior not challenged by the Allegheny County Court of Common Pleas. I frequently experience heartbreak when I discover some activity from which I've been excluded, or when I'm confronted by my children's negative attitudes toward me based on disparaging half-truths initiated by the only source with the knowledge of the matters to which they speak. I suffer the loss of my children daily.

In the trenches of **Western Pennsylvania** The Culture of Custody differs greatly from what I see portrayed in the media and from court committee recommendations --all who seem to obtain their information and stance from domestic violence or women's advocacy groups. From the perspective of the Father's with whom I speak, we need significant and sweeping change in Pennsylvania, starting with Custody and Domestic Violence laws. It seems to me, that our current laws, and the direction of our future laws, are based on myths, fear and a need for control, NOT on empirical evidence gathered from balanced research.

Fatherlessness and Its Effects. A father's presence in the lives of children is the single most important factor that determines whether or not children will be successful. This factor overrules socio-economic factors, ethnic and geographical factors, race and religion--children with a father do better than children without a father.

Children from fatherless homes are far more likely to: commit suicide¹, become teenage mothers (if they are girls), run away, have behavioral disorders², commit rape³, drop out

¹U.S. Dept. H.H.S. Bureau of the Census

²Center for Disease Control

³Criminal Justice and Behavior, Vol. 14 p. 403-26

of school⁴, end up in a state institution⁵ or prison while a teenager⁶.

Compared to children who are in the care of two biological, married parents — children who are in the care of single mothers are 33 times more likely to be seriously abused (so that they will require medical attention), and 73 times more likely to be killed.⁷

Despite these statistics, in 1995, nearly 2 of every 5 children in America did not live with their father⁸ and the Courts continue to award primary custody to mothers with the result that after two years after divorce, 51% of children in sole mother custody homes only see their father once or twice a year, or never⁹

Just last month, Nov. 2009, the Census Bureau reported that Mothers account for the majority of single custodial parents (83 percent) while fathers account for only 17 percent of single custodial parents, proportions statistically unchanged from 1994.¹⁰

My interviews with Western-Pa fathers who have been involved in the child-custody system since 1994 lead me to the same conclusion for Pennsylvania courts as reported by the Census Bureau --Nothing has changed.

In Pennsylvania currently, over 660,000 children live apart from their father in mother-headed households¹, despite the fact that children raised by single dads do better in 20 measured areas compared to children raised by single moms (including academic progress, social competence, psychological health and physical health.)¹¹

Women File Majority of Divorces. No one marries with the intent to divorce, but the dirty little secret of the divorce industry is that *almost 80 percent of divorces are filed by women*, most for trivial reasons as a small percentage are filed for significant cause.

My experience in Western Pa contravenes the **MYTH** that guys divorce their wives and run off with younger women. in every case that I am familiar, the female initiated the separation and/ or divorce, often without warning to her partner / husband. In several of these cases, the men have also suffered the shame of their partners infidelity, both

⁴National Principals Association Report on the State of High Schools

⁵U.S. Dept. of Justice, Special Report, Sept., 1988

⁶Fulton County Georgia Jail Populations and Texas Dept. of Corrections, 1992

⁷"Marriage: The Safest Place for Women and Children", by Patrick F. Fagan and Kirk A. Johnson, Ph.D. Backgrounder #1535.

⁸US News and World Report, February 27, 1995, p.39

⁹Guidubaldi, 1989; Guidubaldi, 1988; Guidubaldi, Perry, & Nastasi, 1987.

¹⁰Custodial Mothers and Fathers and Their Child Support: 2007, Us Census Bureau, Current Population Reports, Timothy S. Grall, November, 2009.

¹¹ Warren Farrell, Father and Child Reunion - Part I, www.warrenfarrell.com//highlights_art.htm

before and after separation.

Mother Obstructs Father's Custody. Once their partner /wife decides she's done, research shows that she typically makes it difficult for the man to maintain a relationship with his children. Contrary to one of the commonly accepted connotations of the "deadbeat dad" label, Fathers are not abandoning their loving wives and walking away from their children--they are being driven from their children's lives by mothers who would rather just "erase the dad." The most frequent reason (90%) given by father's for their disengagement from their children was obstruction of paternal access by the child's mother and her desire to break contact between father and child. 13

In Western Pa., don't believe the **MYTH** they dad's are abandoning their children Ms. Chairman, they are being driven from their homes and from their children's lives by the mothers of their children.

One of the defining aspects of this phenomenon is that the woman are freely admitting to obstructing Custody. In one poll, Forty percent of mothers reported that they had interfered with the non-custodial father's visitation on at least one occasion, to punish him¹⁴.

I spoke recently with a father who was, 9 months ago, having trouble seeing his children due to Mother's obstruction of his custody. He told me that he obtained a new lawyer and he won his custody case. I cringed and asked him the result, "I got 50-50 custody," he said.

This example rings true with my experience in Pittsburgh over several years--when men use the term "win" related to custody, it almost always means they obtained substantively equal custody. When I speak with women on the same topic, when they refer to 'winning' custody, it almost always refers to primary or sole custody;

Society's Contempt for Fathers. Misandry is defined as the contempt of or the disdain for the opinions and value of men. A misandraic culture says. "Who needs Dad!" In one poll, fifty percent of Mothers either saw no value in the fathers contact with

¹²S. Bravor, Divorced Dads, Shattering the Myths, Tarcher / Putnum, 1998, p50.

¹⁸ Minority Report and Policy Recommendations of the United States Commission on Child & Family Welfare, J. Guidubaldi, 1996, citing Kruk (1992).

¹⁴Frequency of Visitation by Divorced Fathers; Differences in Reports by Fathers and Mothers. Sanford Braver et al, Am. J. of Orthopsychiatry, 1991, p. 449.

his children and actively tried to sabotage it, or resented the fathers' contact.¹⁵ Yet, research examples abound with the importance of Fathers: Children raised by single dads are more likely to be assertive without being aggressive, leading to better social skills and more friends; more self-confidence and less depression. Children raised by dads are more empathetic (contrary to common **MYTH**) no matter what the family structure, the amount of time a father spends with a child is one of the strongest predictors of empathy in adulthood.¹⁶

A wonderful article on Fathers and Daughters, was recently written by a Pittsburgh-area Father and is *attached* to this testimony.

Women Are No Longer the Victim-class. Women are no longer the victims educationally, socially or economically.

Educationally. The current ratio of men: women attending college is 40:60. Contrary to common myth: boys have underperformed girls in primary school (k-12), since 1993. Additionally, women are significantly more likely to graduate from college than men.

Life Expectancy. Female life expectancy surpasses male life expectancy by several years. Men are significantly more likely to be killed by violent crime--black men disproportionately so. Men are three times more likely to commit suicide as women; [if you examine the national statistics on male suicide, you'll note an increase in frequency of men committing suicide between ages of 39 to 45 yrs--the typical ages at which a man gets his kids taken from him.

Economically. In terms of home ownership, in Allegheny County, there are three times as many single female homeowners as single male homeowners. In terms of salaries, when work commitment is factored into the equation, Female salaries surpass male salaries, not to mention that there are more women in the work place than men.

In terms of disposible Income, the transfer of wealth due to child support is not discussed, but, according to the Office of Child Support Enforcement, over \$1.5B was collected from the 'deadbeat' Dad's in Pennsylvania in 2007.

Contrast that amount with the fact that PennDOT had been given \$1.2 Billion in by Feds to stimulate the economy--yet, every year men in Pennsylvania give more than the amount given with intent to slimulate the entire Pa economy.

MYTH: Men are the Only Perpetrator's of Domestic Violence. Fact: More than 200 studies have found that women initiate at least as much violence against their male partners as vice-versa. Men make up about a third of domestic violence injuries and deaths in heterosexual relationships. A recent survey of 11,000 men and women,

¹⁵.J. Wallerstein and J. Kelly, Surviving the Breakup, Grant McIntyre, 1980, p.125 as referenced in Farrell, *Reunion*, p. 104

¹⁶ Farrell, Reunion, p.30

found that, according to both men's and women's accounts, 50 percent of the violence in their relationships was reciprocal (involving both parties) in which the women were more likely to have been the first to strike. When the violence was one-sided, both women and men said that women were the perpetrators about 70 percent of the time.¹⁷

One Pittsburgh-area dad was driven out of his Beaver County home by the mother of his kids through a baseless PFA, adjudicated at a hearing of which he was not informed. Now he is unemployed, living with a friend and may see his children every other weekend for a couple of hours, IF mother makes them available.

Almost a third of the fathers with whom I speak have been falsely accused of domestic violence. In one case mother clearly was the one perpetrating violence upon dad, but even with testimony of mother's aggression from dad's body guard, and dad's non-response, mother was granted primary custody of the children and has obstructed dad's custody since. Despite significant, unequivicable, uncontravened testimony from a child psychologist of the damage perpetrated upon the children by mother's damaging disparagement of father and obstruction of his custody time, the Judge did NOTHING to modify custody, or mitigate Mother's child abuse. Now, his children no longer spend any of allotted custody time with him.

Costs of Providing Courts to Service inflated case load that is grown by incentives to destroy the family. Family Court occupies significant Case load of the Unified Judicial System. Family Court actions vs. criminal and other civil actions. Emergency PFA's magisterial district. Compare recent Allegheny County budget. Courts: \$52M Dept.Of Public Works: \$34M

I fear that the Judiciary is building a judicial kingdom on the backs of Pennsylvania children--which is bad policy. It may satisfy short-term demands of a vocal voting block, but it is bad for our children. In challenging economic times, why add financial burden of maintaining a huge judiciary?

The economic costs of divorce have not been thoroughly studied. However, at least one study alleges over \$112 Billion is wasted each year by increased child poverty.¹⁸

ANALYSIS

HB 463: Presumptive Joint Custody is better policy for the Commonwealth.

Maintains Relationship with Both Parents. Children in Joint Custody situations are healthier and more stable than children in mother only households. According to research, children in joint custody arrangements are likely to have fewer behavioral and

¹⁷Whitaker DJ, et al. "Differences in Frequency of Violence and Reported Injury between Relationships with Reciprocal and Nonreciprocal Intimate Partner Violence," American Journal of Public Health (May 2007): Vol. 97, No. 5, pp. 941–47.

¹⁸The Taxpayer Costs of Divorce and Unwed Childbearings. B. Scafi, Institute for American Values, 2008

emotional problems, higher self-esteem, better family relations and school performance than children in sole custody arrangements. ¹⁹ Children in joint physical custody arrangements were found to be less depressed, less deviant, tried harder and did better in school than those in sole custody arrangements. ²⁰ Contrary to a the **MYTH** that joint custody is more harmful to children because it exposes children to ongoing parental conflict--several studies found that sole-custody parents reported higher levels of conflict than joint custody. ²¹ Joint Custody increases the likelihood that the children will have continued access to both parents, but especially with their father, which brings the attendant success for the child. It is the next best arrangement, compared to an *intact family*, if 3 conditions are met: the child has about equal time with mom and dad; the parents live close enough to each other such that the child does not need to forfeit friends or activities when visiting the other parent; and No bad-mouthing exists. ²² Research also shows that, if the three conditions aren't met, children on average do so much better with single dads, i.e., *primary father custody*. This would effectively apply 23Pa.C.S. 5303 (the policy of the Commonwealth)

My experience in Pittsburgh parallels this conclusion for the same underlying factors. The first underlying factor that establishes primary father-custody next in preference after substantively-equivalent custody is the existence of bad-mouthing, which is five times more likely occur maternally than paternally. The second factor that establishes primary father custody over primary mother custody is the fact that it is rare for the single mom to disappear from the child's life--they are more likely to stay involved. Alternately, dads are more likely to facilitate mom's involvement than mom is to facilitate dad's.

When children live with only their moms, the parents are nine times as likely to have conflict as when children live with their dads.

This finding is significant for if we conclude that parental conflict will prevent joint custody from working, Pennsylvania practice prefers awarding primary custody to Mother, but this practice is NOT supported by empirical evidence that it will produce the best outcome for the child-it is far more likely that the parents will have less conflict and that the children will have more of both parents (and thus, will do better) if the Court would award primary custody to Father.

Second, if primary father-custody is understood to be the first choice of the law if

¹⁹Bauserman, R., (2002) "Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review", Journal of Family Psychology, Vol. 16, No. 1, (2002) 91-102.

²⁰Adolescents After Divorce, Buchanan, C., Maccoby, and Dornbusch, Harvard University Press,1996.

²¹Bauserman, 93.

²²Warren Farrell, Father and Child Reunion, Tarcher/Putnam, New York, 2001, p.39

²³Glynnis Walker, Solomon's Children, Arbor House, N.Y. 1986, pp. 27, 84-85 as quoted in Farrell, *Reunion*. p.48.

conflict arises, it eliminates maternal incentive to create conflict in order to leverage custody in her direction. Once she knows the likely alternative to equal involvement is primary father involvement, the incentive is to reduce conflict and have equal involvement—which is better than primary father involvement.

Disempowers Parental Alienation. A presumption of substantively equal parenting time may mitigate alienating behaviors that frequently occur during divorce, which I have both experienced and heard described by Pittsburgh area dads. Alienating behaviors are in many ways similar to the practice of programming or brainwashing observed most frequently in Cults²⁴. Several of our members Alienating behavior include exaggeration of the target parents faults, revising the history of the target parent's behavior, suggestions and innuendos, encouraging exploitation, selective attention to faults.²⁵

Parental alienation wrecks havoc on a child's emotional health and the targeted parent's life. Parental alienation is child abuse²⁶ and should be labeled and treated as such. The statute needs to Implement language that instructs the Courts to sanction malicious or patterned alienating behavior that drives a wedge between a fit parent and his kids, including reduction of the parenting time of the perpetrating parent. The sanctions should be appropriate to child abuse.

Removes Incentives for Divorce. Joint Custody will decreases the divorce rate by removing one of the main incentives for dissolution--unilateral maternal control. Several researchers have studied motivation for divorce. Women are much more willing to file for divorce because --unlike men -- they typically do not fear losing custody of the children. Researchers found that the primary reason held by women for filing for divorce is to obtain primary custody of the children.

- 1. 67 to 75% of all divorces are initiated by the female partner;²⁷
- 2. 74to 80% of those are unilateral (non-mutual) divorces.²⁸

²⁴S. Clawar & B Rivlin, Children Held Hostage: Dealing with Programmed and Brainwashed Children, Section of Family Law, American Bar Association, 1991.p.vii

²⁵Richard Warshak, *Divorce Poison*, ReganBooks / HarperCollins, 2001, pp.147-203

²⁶ Amy Baker, Adult children of Parental Alienation Syndrome--breaking the ties that bind, Norton, NY, 2007, pp. 85 - 99.

²⁷Maggie Gallagher, The Abolition of Marriage: How We Destroy Lasting Love, Washington, DC: Regnery, 1996, citing Frank F. Furstenberg, Jr. and Andrew J. Cherlin, "Divided Families: What Happens to Children When Parents Part", Harvard University Press, 1991, p. 22.

²⁸Ilene Wolcott and Jody Hughes, & "Towards Understanding the Reasons for Divorce," Melbourne: Australian Institute of Family Studies, Working Paper No. 20, June 1999, as quoted in The Australian, 5 July 1999. Beuhler, "Whose Decision Was It?" Journal of Marriage and the Family, Vol. 48, pp.587 - 595,1987. Braver & O'Connell, Divorced Dads, Tarcher Putnam, 1998, p.34. Lynn Gigy & Joan Kelly, "Reasons for Divorce: Perspectives of Divorcing Men and Women", Journal of Divorce and Remarriage, Vol. 18, 1992. Braver, Whitley, Ng, "Who Divorced Whom? Methodological and Theoretical Issues", Journal of Divorce and Remarriage, Vol. 20, 1993.

3. Significant marital issues were cited in a small number of those cases.²⁹

The likelihood of gaining child custody then becomes a factor that motivates divorce. Women are much more willing to split up because --unlike men -- they typically do not fear losing custody of the children. Instead, a divorce often enables them to gain control over the children. Custody absolutely swamps all the other variables according to Dr. Margaret Brinig, Professor of Law at the University of Iowa, as Children are the most important asset in a marriage, and the partner who expects to get sole custody is by far the most likely to file for divorce.

The correlation of divorce filing with custody is so strong, that Dr. Brinig has changed her view regarding marriage preservation--she previously advocated an end to quick no-fault divorces, but now she believes the key to marriage preservation is to rewrite custody laws to reduce the custody gains from divorce.³⁰

"In an analysis of divorce rate trends in the U.S., it was found that states with high levels of joint physical custody awards (over 30%) in 1989 and 1990 evidenced significantly greater declines in divorce rates in 1991 through 1995. Overall, divorce rates declined nearly four times faster in high joint custody states during this time period compared to states where the awarding of joint physical custody was rate."

Decreased family dissolution rate allows for constructive use of savings (college). Many Pittsburgh Dads have told me that the divorce litigation they were forced to endure exhausted all of their savings set aside for their children's college expenses.

Preserves Constitutionally-Granted Liberties. Most closely preserves Constitutionally-granted liberty interests of the parents in the care, custody, companionship and management of one's children--upheld repeatedly by US Supreme Court. We are born with inalienable rights, endowed by our Creator. . . (Pa Constitution). The Courts have long held that the care, companionship, management and custody of our children is part of our fundamental liberties.

Reflects Accepted Federal Mandates. We currently have a presumption built into our child-support statutes, required by the Federal Statutes; why can't a presumption be incorporated into custody?

Provides Economic Benefit. It is economically positive compared to the current system, it encourages parties to work out their problems as they will, by necessity need to communicate and cooperate--why not stay married?

As a former pastor, given the government-sponsored incentives maintained by the

²⁹Margaret F. Brinig and Douglas A. Allen, "These Boots Are Made For Walking': Why Most Divorce Filers Are Women" American Law and Economics Review 2-1 (2000): 126-169

³⁰Brinig, p. 160.

³¹"Child Custody Policies and Divorce Rates in the United States." Paper presented at the 11th National Conference of the Children's Rights Council. Washington, D.C., 1997 as reported in Father Facts, Wade Horn and Tom Sylvester, National Fatherhood Initiative, 4th ed. 2002

Courts today, no amount of marriage counseling will stop a woman from filing for divorce is she can kick her husband out of the house with a false pfa; get thousands of dollars from him in child support, no strings attached! keep the house, get over half of the family's assets and have the kids most of the time. . . No amount of counseling will negate the pot of gold at the end of divorce litigation.

Conclusion: **Presumptive Joint custody** is best for the children, respects the liberty interests of the parents, and will effect a decrease in marital dissolution rates if the three conditions aren't met for joint custody (substantially equal parenting time, close geographic proximately, no badmouthing)--HB 463 should be amended to include a presumption for an award of primary father custody.

HB 1639: Lacks a presumption of substantially equal parenting time--it is not as advertised. Additionally, the bill:

Allows move-aways with the kids requiring inadequate notice (30 days). This Bill will deny due process to the stationary parent and will prevent the stationary parent from opposing the move once it has occurred.

Over two years ago, a Pittsburgh-area dad came home to find his house emptied of furniture and his children and wife gone; his wife leaving only a note informing him that she and the children were going to live in NC with her boyfriend. It took him three weeks to locate his children in NC. As of about a year ago, his children had still not been returned to Western Pa.

The Bill will remove the Contempt on Custody statute 23 Pa.C.S. §4346. . . .

I've never had a guy tell me that the mother of his kids was incarcerated for contemptuous disregard of their custody order. Yet I know several guys who have been incarcerated for non-payment of their child support. Do we ever prosecute custody contempts?

- . . . provides for denial of custody on the basis of a'domestic incident', biasing the tables even more against fathers, who already suffer from effects of mandatory arrest policies, highly stacked laws and cultural bias
- ...provides incentive to mothers to create 'domestic incidents' in order to obtain primary or sole physical custody.
- ...Restricts access to information regarding the children to the parent with legal custody. Contrary to existing statutes which maintains a non-custodial parents right to information concerning his children.
- ...Dilutes the existing policy statement of the Commonwealth toward maintaining relationships with both parents in and through separation and divorce.
- ...Removes the word "maintains" from the clause weighing custody in favor of the parent most likely to permit, allow and maintain contact and physical access to the other

parent.

... Decreases the likelihood of <u>even qualifying for custody</u> by removing a parent from standing if found in violation of one of the long and growing list of offenses that are, by nature, biased against men.

HB 418: adds family law masters and makes small changes to a seldom-effective disciplinary method. The culture of the Courts, as I've experienced it includes the following observations:

- Professional courtesy trumps the Rule of Law especially in Appellate Review
- Judicial preference reigns over principle.
- Judicial honor subjugates individual justice.
- Promise of fiscal provision will outweigh empiracally-based policy.
- Judicial misconduct won't be discussed until federal indictments are issued.

Additional Issues that must be addressed in Domestic Relations laws:

Custody Contempt. Implement statutory language that establishes basis for adjudicating custody contempt as vigorously as support contempt. We need to equalize the rates of findings of contempt on obstruction of custody and non-payment of child support. Toward that end, provide a statute for the collection of the number of custody contempt petitions filed across the Commonwealth and the results of adjudication of the same-- percentage of petitions dismissed and granted, by gender, and the rate of contempt findings, by gender.

False PFA's. Implement statutory language that provides consequences for filing a frivolous PFA, including criteria defining frivolity and a presumption of payment of the fees for the defense.

I have seen men denied fundamental right to the care, companionship, custody and management of his children based on another person's fears. Our nation was built on the principle that we are innocent until proven guilty--that a man's actions determined his fate, NOT someone's perceptions or feelings of the man--Yet, everyday in PA, thousands of men are driven from their homes and separated from their kids on baseless PFA's, routinely granted (93% of the time in magisterial courts) with evidence that barely meets the lowest evidentiary standard.

Toward that end, provide a statute requiring collection of the <u>gender</u> of the PFA petitioner as well as the number of petitions filed across the Commonwealth. Also provide language requiring collection of the results of the PFA adjudication, by gender, including the number and percentage of petitions dismissed or granted, by gender.

Balance Best Interests with Rights of the Parties. Bring balance to the rights and interests of all parties, while giving weight to the best interests of the child. Implement statutory language that requires substantively equivalent parenting time with both parents, absent a finding of harm to the child based on the highest evidentiary

standard.

Maintain the consideration of a parents past efforts to maintain custody between the child and the other parent, in any child custody action.

Pennsylvania is at a moral cross roads. Law makers are faced with a choice: politics as usual, appearing the trial lawyers, the domestic violence benefactors, vocal special interest groups, building the judiciary off the bodies, hearts and spirits of our children OR"

A careful and firm policy decision that will benefit the children of Pennsylvania for years and years to come, building upon years of research, and old-fashioned common sense.

From my view, the Culture of custody indeed has to change, children should not be forced to choose and Mothers should not be allowed to drive fathers from the life of their children.

This Committee has the power to recommend a legislation that can give childhood back to the children of Pennsylvania. Ms. Chairman, members of the Committee, I urge you to pass legislation that presumes, absent a finding of harm to the child, that boys and girls will spend about as much time with their dads as with their moms through legislation that firmly establishes a presumption of approximately equal parenting time. Thank you.

Sincerely,

Thomas Tessaro
Board Member
Pittsburgh Chapter
National Congress Fathers and Children
Pittsburghfathers@comcast.net

The Effects of Divoleten Children

By a 9th GEETLE

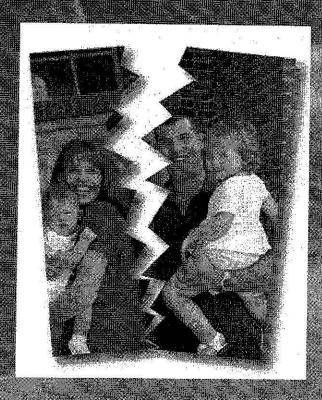
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- Percentage of Custody
 - 70% Mother
 - —1120% Joint
 - 10% Father
- 50% of Divorces Involve
 Children
- 25% of children of divorce have serious long term problems compared to 10% of children from intact families
 - Optoge attendance is 60% Tower and only 30% of children of cryance receive college support



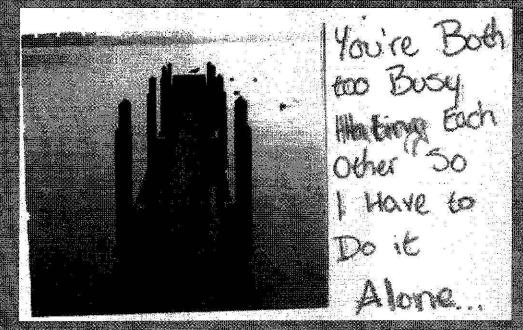
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