

# IF ANYBODY ASKS YOU WHO I AM: AN OUTSIDER'S STORY OF THE DUTY TO ESTABLISH PATERNITY†

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When Minerva looked into the face of her child asleep beside her in the bed, she saw peace, she saw freshness, she saw the world the way it should be. Contentment slept in Kiji's lips, pink brown lips closed loosely like a small bow. In the curl of her lashes rested hope. In her balled fists, strength and vulnerability.

Minerva hated to wake her. The morning light had just begun to diffuse blue-grey into the small bedroom of Minerva's mother's house. They had to get up early to make it to court on time. The lawyer had said they needed to be there by eight.<sup>1</sup>

After dressing herself, Minerva slipped the baby's night clothes off and gently slid her head and arms into the ruffled red dress that James had bought for her. Kiji looked like a valentine in it, all red with white lace. James even bought her a little bow to put in her thick black curls. It was made from white satin ribbon and had a red heart in the middle.

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I also am indebted to the body of scholars who preceded me in advocating for and writing narrative scholarship. I particularly want to thank Mari Matsuda for her article, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987), which influenced my decision to write this piece in the way that it is written.

This story is fictional but true. There is no one particular Minerva Copeland, James Walker, or Judge Jennings. Lake Village and Helena also are intended to be fictional places. I chose a format using endnotes instead of footnotes in an effort not to disrupt the flow of the narrative. The endnotes, however, are an integral part of this article and serve to provide the reader with the background necessary to understand the legal and social context in which this piece operates.

Minerva was so proud of the gift that she even told the lady lawyer down at child support about it. That lawyer had smiled a wily, sly kind of smile when she told Minerva to clothe the baby in that pretty dress. She called it "a nice touch." Minerva had looked puzzled. To explain, the child-support lawyer added, "Just in case." Just in case, what? Minerva wanted to know. *Just in case James denied that the baby was his.* If he did, then the lawyer could ask Minerva who had bought the child her dress.

Just in case James denied Kiji? Minerva had wanted to shout. Why would he do that? You who don't know me. You who don't know James. Tell me, why would he do that? Kiji is his. Kiji is his pride, too, looks just like his sister, Rose. He came to the hospital when she was born, and he knows how to quiet her when she cries.

Minerva had looked into the wide face of the lawyer. That lawyer obviously thought she was pretty smart. She looked at Minerva like that dress idea was so good she expected Minerva to stand up and clap for her. Minerva looked at her straight in those blue eyes and didn't even blink. She didn't say anything either, but she wanted to tell that lawyer that she wouldn't even be talking to her no way if she didn't have to. The only reason she was there in the first place was because her caseworker said that if she wanted to keep on getting her check for Kiji she would have to "identify the father."<sup>2</sup>

The lawyer wasn't the only one who wanted to know who the baby's father was. When Minerva got pregnant, her mother also demanded to know. She was so mad. When Minerva finally said his name, her mother got even madder. *He's a sorry so-and-so. Not fit to kill. He ain't got no job. He ain't got no education. He ain't got his own place to stay. And you, how you gonna take care of this baby? What was in your head? Wasn't nothin' in your head?* But after some time and soothing from Minerva's aunts, her mother came around. She may not like James. She may not like what they done. But it's not this baby's fault. And this baby's going to come into the world meeting a loving family. There's no cause for Minerva to give up on her life. All of us will help to raise this baby.<sup>3</sup> And James will have to help too and come around often.

There was no talk of a wedding, but there was a serious sit down with everyone in the family and James too. And he was told. He was told in no uncertain terms that he was going to be a daddy and he was expected to act like one. He hung his head that night and mumbled a lot of "yes ma'ams," but as Minerva grew he seemed to grow too. He called on her almost every day and helped take her to the doctor. They played at picking out names until they found just

the right ones. He kept on romancing her too, even when all of her friends were busy teasing her about her duck walk.

Sure, Minerva heard the talk: "He's proud now but when that baby comes out and starts crying he'll be gone." Or: "Maybe he'll be around at first because it's all exciting but then he'll turn up missing when it starts getting boring and someone else with more time on her hands starts lookin' good." This kind of talk, which Minerva heard from sisters older and seemingly wiser, weighed heavily on her. But like all the grim predictions she'd been given about nearly everything in her life, she tried to "just shake it off and pack it under her feet."<sup>4</sup> Shake those warnings off like so much dirt that was being shoveled on top of her head. Maybe if she just shook it off and packed it under her feet long and hard enough she could begin to stand higher, and then everyone would have to admit that this time they were wrong.

Then when the baby was born, not only did James come to the hospital with her, he stayed right there and even went with her into the delivery room. For twelve long hours, he stayed with her, wetting her lips with ice chips, rubbing her calves when her legs ached, telling her it was going to be all right. The sweat beading on his upper lip showed that he knew her pain. In her final scream, his slim body seemed to ripple like clothes on a line buffeted by a strong wind. But he wasn't scared away. He came back the next day to visit her in the hospital and then took her home to her mother's house. He still treated Minerva like she was special, although they had to stop some of the romancing during her laying-in time. He always treated Kiji like she was his. And now Kiji was five months old.

Minerva finished dressing Kiji in the red dress and the bow. But this time felt different from the times she had dressed her in it for church. At church, Minerva would sit between her mother and her aunts and hold Kiji in her arms, rocking her steady to the rhythm of "If Anybody Asks You Who I Am."<sup>5</sup> If anybody asks you who I am, who I am, who I am. *If anybody asks you who I am, tell him I'm a child of the King.* Minerva saw her daughter then, just as she was, a princess in her fine dress, just as she was, a child of the King. But putting the dress on her this time, Minerva felt a peculiar sadness, a feeling that she was participating in a plot, one filled with a kind of meanness that James did not deserve, a meanness that she did not own but was forced to carry.

When she stood back in the early morning light to inspect her child, innocent in her sleep and beautiful in all her finery, Minerva felt like maybe she wouldn't go to court this morning. Maybe she would stay home. She would be just one more "no show" for the

lawyer. It would be no surprise. The judge wouldn't notice. He had plenty more children to match up with daddies. That lawyer and the judge could probably stay busy all day and be perfectly happy without her. Then James could go on giving Kiji presents and be the kind of daddy he wanted to be.<sup>6</sup>

When Minerva first met the lawyer back at the child-support office, the lawyer started out by saying that she did not represent Minerva. She represented The State.<sup>7</sup> She said the reason she represented The State was because Minerva and Kiji were receiving AFDC and The State wanted its money back. It was James's responsibility to support his child, and the support The State gives is not a gift. *But he does support Kiji, as best he can*, Minerva said. *How? Does he give you any money?*<sup>8</sup> *No, but. . .* The lawyer looked relieved.<sup>9</sup> *Anyway, it was in the child's best interest that the daddy be established legally. Just in case.* Another "just in case." For the lawyer, these were words to live by. *Just in case what?* Minerva asked. *Just in case James should die and have any money to be left to anyone.* Minerva knew right then and there that this woman was definitely not as smart as she thought she was.

Even though the lawyer did not represent Minerva, this fact did not stop her from asking and expecting answers to the most personal questions. When did she have sex with James? How often did she have sex with James? Even *where* did she have sex with James?<sup>10</sup> Not even her mother or her aunts had asked her such personal questions. And, the lawyer said, if James did not admit paternity before the hearing started, Minerva would have to say it all over again in court in front of the judge and all those people.

Minerva wished that she had talked to James about going to court before today. Even though he had been at the house since she knew about the court date, the right time never seemed to come up. She had told him after the baby was born that she was going to have to name him as the daddy if she was going to be able to get her check. Back then, he seemed to understand, but this was today and maybe he would get as angry as she felt herself becoming.

The lawyer said that, after the judge found James to be Kiji's daddy, the judge would tell James that he would have to pay child support. But Kiji wouldn't get the money. The State would. Except then The State would give back to Minerva and Kiji the first \$50.00 that James paid to The State each month.<sup>11</sup> If James wasn't working, the court might not order him to pay more than \$50.00 per month anyway<sup>12</sup> and The State would just give her back all the money. But, Minerva wanted to know, what if I'd rather not do this at all? If The State won't be getting any money out of James, then why do I have to do

this? The lawyer looked at Minerva and said in that tone grown people use when a child asks "why?" one too many times, "Because The Law says so."<sup>13</sup>

Maybe she wouldn't go to court at all. The whole thing was silly and was beginning to feel dangerous. But then there was the question of the money. Or no money. The only job that Minerva ever had was part time at the corner store, and as soon as she left to have Kiji that job was taken.<sup>14</sup> Jobs were not easy to come by, and nothing was free. James helped, but he didn't have much either.<sup>15</sup> He did whatever odd jobs he could find and, when he had the money, he helped with the pampers and the little presents like this dress—the special things he wanted his little girl to have. But that was nothing to count on. And besides they needed a medical card.<sup>16</sup> The corner store didn't provide none of that even if she could have her old job back. Looking at her child still asleep on top of the sheets, there was no question about it. Minerva had to go to court today.<sup>17</sup>

But did Kiji have to wear *this* dress? Would the lawyer report her to welfare because she didn't have Kiji wear the properly deceitful clothes? Probably not. The lawyer would probably be so busy that she would forget all about her stroke of genius. After all, the lawyer said to be prepared to spend the whole day there because the judge just does a "cattle call," rounding up as many as twenty cases for the day—there's no telling when he'll get to you.<sup>18</sup>

So, as gently as she had slipped the dress on, Minerva slipped it off again. She hung it up on the tiniest metal hanger in her closet and fastened the velcro bow to the lace on the collar. Even if Kiji's daddy did deny her, she would always have this dress. It would be hers from her daddy, a gift from a time before The Law made him say something he didn't really mean.

Minerva and Kiji were ready to go to court. Kiji wore a plain white t-shirt and pink bloomers over her diaper. The baby bag was packed and ready to go. Minerva's Aunt Pat, who had a car, took them both. When Aunt Pat looked at the baby's clothes disapprovingly, Minerva explained that she heard it gets awful hot in that courtroom with all those people in there in the summer. No sense in the baby sweating all over her good clothes.

The road out of Lake Village was dusty. A cloud of dust and exhaust followed the old Pontiac all the way through the small town. On her way out of town, she spotted the green sign, "Lake Village, Population 1,355." "I guess now there's 1,356," Minerva said.

"No probably not," Aunt Pat said, reminding Minerva of all the old folks who'd already passed this summer on account of the heat. The county extension service promised fans every year. There were never enough. And, of course, there were still those who didn't have electricity any way.<sup>19</sup> *Lake Village*. It sounded so romantic. It seemed like the promise of something graceful and cool. But where were the lakes? Where was the coolness? It was humid and hot and a lot of folks didn't even have running water in their houses, much less a lake to swim in.

About ten miles after the sign, they turned onto the macadam road that led to Helena. A few minutes more and they were turning off the highway and onto the marked streets of Helena, population 15,565, so the green sign said. As they made their way into the heart of town, Minerva could see the courthouse in the middle of the town square. It rose high above everything else. Its white-washed walls reflected the early-morning sun. The gold dome on the roof looked polished to shine. Minerva began to feel sick. In that building she would have to tell her secrets for the whole world to hear.

Inside the building there were long hallways with gold-lettered signs on every door. Minerva supposed the signs signified some important job that everyone did. But the words were foreign. Some even unpronounceable. Circuit and Chancery Clerk. Personal Property Assessor. Prothonotary. Inside each door, behind tall counters, were white women with their hair done and, behind them, in offices with glass fronts so they could watch the white women, were white men in shirt sleeves.

Out of the restroom came a housekeeper pushing a large trash basket on wheels. She picked up little scraps of paper without even seeing them—her old fingers just seemed to know they were there. Out of the corner of her eye, the housekeeper did see Minerva and her Aunt Pat. "You lost, honey?" Minerva was relieved to see Ms. Johnson, a friendly and familiar face from Lake Village.

"We have to be in Judge Jennings' courtroom."

"Oh, he's upstairs. You can take the elevator and then you'll see lots of other folks waiting there too."

The hallway of the second floor was crowded with sullen mothers, angry fathers, and children whose energy the parents fought hard to contain. In the sea of bodies, some sitting on folding chairs, some pacing nervously, Minerva searched for James. She saw the lawyer with a stack of folders in her arms, but she could not find James.

The lawyer shouted above the din for everyone to listen up. She said the judge wanted her to call roll. She shouted out the names,

receiving mostly quiet replies or silence. But one smart-alecky man barked back, "Here!" as loudly as she had called out his name. He was standing no more than two feet away from her. The lawyer flinched in surprise, sending a ripple of laughter through the crowd.

Minerva at last heard her call James's name. And she heard his muffled reply from the other end of the hallway. She needed to get to him, but she couldn't see where he was.

The lawyer continued her announcement: "Now some of you are here to establish paternity. Some of you are here because the absent parent has failed to pay his child support. For those of you who are here because you've failed to pay child support, I want to let you know now, I'll be asking the judge to put you in jail.<sup>20</sup> The judge wants me to talk to as many of you as I can before we get into the courtroom to see if we can work out some agreement."

Naturally, the lawyer was swarmed by men<sup>21</sup> who were behind in their child support and wanted to avoid a visit to the county jail. The word "jail" stabbed at Minerva. Some of the other women appeared alarmed too, while others sat with their arms crossed on their chests, nodding approvingly—hurt, anger and disappointment all mixed up on their faces. Others shook their heads as though no amount of threatening or cajoling would make any difference. The children, most not old enough to understand, looked passively at the men who scrambled for the white lady's attention.

Minerva tried to make her way through the bustling bodies to where she thought she had heard James's voice. As she pushed her way through, she heard the lawyer say, "Ladies, please don't talk to the defendants. Let me do the talking." Minerva continued to look for James.

She found him standing in the far corner of the hallway. He looked angry. "Girl, what you doin' this to me for? Haven't I treated you and Kiji right?" Minerva tried to explain it was not her choice, that she had to do it if she was going to be able to get a check for Kiji. "Don't make no sense. Now they gonna make me pay some money I don't have and I won't be able to help you no more. Before long, I'll be busted for not paying too, just like these guys. How much are you getting from this check anyhow?"

"It's about \$200.00 a month."<sup>22</sup>

"Girl, drop this thing and I'll pay you what I can. I promise. Ain't I been good to you so far?" Minerva looked at him standing there and she believed he wanted to do right by her. For one small moment, she almost let herself make the choice to say no to this whole thing, to make her Aunt Pat take her home.

"I'll be getting a medical card too, James, so Kiji can get all the doctor appointments she needs."

"I'll try and help you with that too. Just let this thing go."

She looked at him there in his t-shirt and jeans, his old raggedy shoes. She knew he wanted to do it, but he just couldn't. She had to think of Kiji now, what Kiji really needed. And the sad truth was James couldn't give it.<sup>23</sup>

"I'm sorry James, I just can't. I need the money and the card. I just do."

"Well then, I guess you won't be needing me no more." He turned quickly and walked away. Minerva sat down in an empty folding chair and rocked Kiji back and forth in her arms, using the motion to comfort herself as much as Kiji. Her mind was a jumble of memories and needs, snatches of music and confusion.

After about an hour, the lawyer started hollering again. Kiji began to cry—shrill little cries made shriller by the marble floors and tile walls. "I'm sorry if I haven't gotten to you yet. It's time we go into the courtroom now. Some of you should wait out here since we can't all fit in there. We'll call you when it's your turn."

Minerva sat in the hallway trying to calm Kiji. She gave her another bottle. Aunt Pat sat beside her and reassured her that she'd done the only thing she could, that any man not willing to take responsibility for his child in the eyes of the law wasn't worth having no way. Minerva stayed quiet. Kiji finally dozed off, still sucking at the bottle. The courtroom door opened and the lady lawyer stuck her blond head out to say, "Minerva Copeland versus James Walker."

Minerva carefully slipped the nipple from Kiji's lips, slung the baby bag over her shoulder and got up. James appeared from around the corner he had disappeared behind before. Kiji, weary of all the moving around for what appeared to be no good reason, began to fuss again. Aunt Pat rummaged in the baby bag for the pacifier. Minerva felt pulled down and back as she moved slowly toward the courtroom door.

The lawyer beckoned her to a seat toward the front of the courtroom behind a worn oak table. She pointed James to a table on the opposite side of the room. He stood there all by himself. The lawyer sat on Minerva's side. Aunt Pat sat behind her.

The judge was an old, white<sup>24</sup> man with silvery hair. He wore a black robe and sat up high like he was behind an altar. He looked like the God of the Old Testament and he did not look pleased. He had files stacked high on either side of his head. "Betsy, where in the heck is this file?" He thumbed through a stack that threatened to



slide off his desk. Betsy, who sat beneath him in a kind of box, had white-blond hair and wore lots of makeup. She seemed to fly up to his altar like an angel and, like magic, slipped just the right file out of the stack. Then she floated back down to her seat and put a big cup up to her face. It covered her mouth and nose and was attached by a cord to a tape-recording machine. The black edge of the cup was smeared with pasty beige makeup. Minerva was startled and wondered if the poor woman could even breathe.

The judge began to talk without looking up. "We're here to decide the matter of *The State ex. rel. Minerva Copeland versus James Walker*, case number 93-C-518, a paternity action alleging James Walker to be the father of Kiji Kanetra Copeland, now five months old. Proceed." The woman below him spit the words back into the mask. Minerva watched as she put his words in her voice and then trapped them in that machine.

"The State calls Minerva Copeland." The lawyer told Minerva to go to the witness box. She passed Kiji to her Aunt. She raised her hand and said "I do," just like in the movies. It felt like it was all happening too fast, like somebody had forgotten to do something first. And as the questions began, Minerva realized what that something was. They had forgotten to ask James whether Kiji was his before they got in here. So the lawyer asked Minerva all the same questions she had asked in her law office. She asked them like she knew them all by rote, like she'd asked them of a million Minervas, like every Minerva was the same and none of them had any feelings to speak of:

*What's your name?*

*Where do you reside?*

*Are you the mother of—pausing to look down at the file to find the right place—Kiji Kanetra Copeland?*

*Who is the father of Kiji Kanetra Copeland?*

*When did you first have sexual intercourse with James Walker?*

*When did you last have sexual intercourse with James Walker?*

*Have you had a sexual relationship with James Walker throughout the period of time that you've just stated?*

*When did you have your last menstruation before you learned you were pregnant?*

*When was the last time you had sex with James Walker before you had your last menstruation?*

*Did you have sex with anyone else during this period?*

*Has James Walker ever admitted to you that he is the father of Kiji Kanetra Copeland?*

*Would you tell the Court about the times that James Walker has admitted to being the father of Kiji Kanetra Copeland?*

*Does James Walker work, that you know of?*

*Do you receive AFDC?*

*Is that your only source of cash income?*

*Do you receive food stamps?*

*Do you receive Medicaid?*

*No further questions.*

Minerva was mortified. She heard herself answer each question as though she were sitting in the back of the room with all of the other women who were shushing their children. She didn't look at the judge, whom she could hear breathing above her. She didn't look at James. She didn't look at the lawyer. She looked out at the faces who sat in the courtroom, many of them from Lake Village, the faces who now knew her business.<sup>25</sup> It was small comfort that they too might be subjected to the same set of questions.

The judge looked up from the file. "Is this your baby, young man?" For Minerva, time stopped. James had seen her pain. What would he say?

"Yes, sir," James said quietly and without looking up. Minerva let go of her breath. She knew he would not deny her. So why did she have to tell it all? For whose benefit were those answers?

"You have a job?" the judge asked.

"No, sir."

"Well, you need to get yourself one. You're a father now."

"I know, sir."

"Well, you need to support this child. So I'm going to find that you are the father of"—again a pause while the judge looked down to find the name—"Kiji Kanetra Copeland and I'm going to set support at \$15.00 per week beginning in two weeks. You can find that somehow, even picking up cans. You pay it to the clerk downstairs. If you get a job, you let this lady here know right away. Do you understand?"

"Yes, sir."

"Alright, you may be excused."

As the lawyer and the judge prattled on about orders and when the first payment would be due, Minerva tried to look at James, tried to see if, now that it was over, maybe it would be like it never happened.

But James would not look her way. He turned quickly on his heels away from that battered table, almost overturning the chair he never got to sit in. He rushed past the hard-back benches, past the watchful eyes, and pushed hard through the courtroom doors. The big oak doors flapped wildly on their hinges, then reached a slow rhythm of in and out, and finally stopped.

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1. Minerva is required to interact with the lawyer in this story because she receives AFDC benefits. 42 U.S.C. § 602(a)(26)(A) (1993); 45 C.F.R. § 232.11(a)(1) (1993).

In 1935, Congress enacted legislation establishing the Aid for Dependent Children program [hereinafter, AFDC]. Act of Aug. 14, 1935, ch. 531, Title IV, § 401, 49 Stat. 627 (codified as amended at 42 U.S.C. §§ 601-617 (1988)). The AFDC program, a partnership between the states and the federal government, provides minimal monthly subsistence payments to families meeting established need requirements. 42 U.S.C. § 601.

About forty years later, Congress passed The Family Support Act [hereinafter, the F.S.A.], requiring states receiving federal AFDC funds to establish and enforce child-support obligations. Social Security Act Amendments of 1974, Pub. L. No. 93-647, § 101(a), 88 Stat. 2351 (1975). A strong motivating force behind the passage of this legislation seems to have been Congress's desire for reimbursement of AFDC expenditures. See S. REP. NO. 93-1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 8133, 8145-47. Every state receiving AFDC funds must establish a child-support enforcement agency known as an "IV-D Agency" which must meet standards promulgated by the Office of Child Support Enforcement [hereinafter, OCSE], a division of the Department of Health and Human Services. 42 U.S.C. § 652(a) (1988). Substantial failure to meet the OCSE standards will result in the reduction of federal AFDC funding to the offending state. 42 U.S.C. § 603(h) (1988).

States commonly establish several countywide or multi-countywide offices to actually locate absent parents, to establish paternity and support obligations and then to enforce them. Every state, the District of Columbia, and the United States territories participate in the IV-D program. See OFFICE OF CHILD SUPPORT ENFORCEMENT, SIXTEENTH ANNUAL REPORT TO CONGRESS 51 (1991) [hereinafter, Sixteenth Report].

The F.S.A. has been amended several times since 1975 to broaden its scope and to increase collections. In 1984, states receiving AFDC payments were required to offer full parent-locator and child-support services to all custodial parents, regardless of whether they were receiving AFDC. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (codified as amended at 42 U.S.C. § 651 (1988)).

Despite the broadening of services to include non-AFDC parents, the focus of the program remains upon AFDC collections. This focus is reflected in the funding structure for IV-D agencies. The operational costs for IV-D agencies are paid by the federal government to the states based upon a percentage of costs incurred, and an incentive payment tied to a percentage of collections made. However, the incentive payments for non-AFDC collections are capped by a percentage of the amount recovered under AFDC collections. 42 U.S.C. § 658(b)(3) (1988). Incentive payments are an integral part of any IV-D agency's budget, and the message to state agencies is clear—make AFDC collections your top priority.

Because of federal reimbursement and incentive payments, the state IV-D programs generally do not operate in the red. However, at the federal level, the size of the Title IV-D program deficit has risen dramatically every year since 1989. For example, in 1991, taxpayers suffered a net loss of \$201,000,000 in the operation of the federal IV-D program. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 386 (1993) [hereinafter ABSTRACT]. Not coincidentally, this serious deficit spending began when the 1988 amendments to the Act took effect. These amendments subjected the states to higher standards with regard to the rate of paternity establishment, the most costly undertaking of any of the support efforts. 42 U.S.C. § 652(g) (1993); see Deborah Harris, *Child Support for Welfare Families: Family Policy Trapped in its Own Rhetoric*, 16 N.Y.U. REV. L. & SOC. CHANGE 619, 635-41 (1987-1988) (discussion of the budgetary deficit brought on in large part by paternity-establishment regulations).

2. In order to receive AFDC benefits, custodial parents must assign to the state their right to child support from any other person which has accrued at the time the assignment is executed. 42 U.S.C. § 602(a)(26)(A) (1993); 45 C.F.R. § 232.11(a)(1) (1993).

AFDC recipients must also cooperate with the state's IV-D agency to establish and enforce child-support obligations, including establishing paternity. 42 U.S.C. § 602(a)(26)(B) (1993); 45 C.F.R. § 232.12(a) (1993). Failure to cooperate results in the termination of the uncooperative parent's share of the AFDC benefits. That portion of the benefit which is dedicated to the child must be made under a "protective payment" arrangement which excludes the mother by making payment to third parties. 45 C.F.R. § 232.12(d) (1993).

The consequences of a woman's failure to cooperate in establishing paternity are long lasting and severe. For example, in *Douglas v. Babcock*, 990 F.2d 875 (6th Cir. 1993), cert. denied, 114 S. Ct. 86 (1993), the Sixth Circuit affirmed the state's denial of pregnancy-related Medicaid benefits to a woman for her second pregnancy because she failed to cooperate in establishing the paternity of her first child born ten years earlier.

A good-cause exception to the duty to cooperate does exist. Its terms, however, are narrowly tailored to meet circumstances in which establishing paternity would present a serious danger to the child. 45 C.F.R. § 232.42 (1993). Advocates for AFDC recipients contend that even this limited exception is not well publicized to them. Therefore, the number of women who do claim under the good-cause exception are not representative. See Harris, *supra* note 1, at 622. Finally, even when women are adequately informed to claim under the good-cause exception, just over 64 percent of the claims for good cause were found to be valid and were granted. See SIXTEENTH REPORT, *supra* note 1, at 108.

No national statistics are kept on the rate of benefit termination for noncooperation among AFDC beneficiaries. However, the reasons that a custodial parent might want to avoid cooperation are numerous and are not limited to the narrow confines of the good-cause exception. At the very least, the establishment of paternity involves intrusion by strangers into private sexual matters. The adversarial system may also inject friction into an ongoing relationship in which the father is already supporting the child to the custodial parent's satisfaction. Still other mothers may be fearful of their children's fathers if their relationships with the fathers have been charged with abuse. Many women may be concerned that establishing paternity and requiring child support may lead the father to attempt to obtain custody or to kidnap or abuse the child during visitation.

Because a Title IV-D attorney's representation is limited only to issues necessary to establish and enforce child support, see 42 U.S.C. § 652(a)(1) (1988), a mother forced to cooperate with an IV-D Agency on a paternity matter may find herself unrepresented on the custody and visitation issues collaterally raised. For descriptions of the problems encountered by AFDC recipients as they attempt to comply with the cooperation requirement, see Amy E. Hirsch, *Income Deeming in the AFDC Program: Using Dual Track Family Law to Make Poor Women Poorer*, 16 N.Y.U. REV. L. & SOC. CHANGE 713, 725 (1987-1988); James W. Johnson and Adele H. Blong, *The AFDC Child Support Cooperation Requirement*, 20 CLEARINGHOUSE REV. 1389, 1393-1407 (1987); Paula Roberts, *In the Frying Pan and in the Fire: AFDC Custodial Parents and the IV-D System*, 18 CLEARINGHOUSE REV. 1407 (1985); Paula Roberts and Michael Allen, *An AFDC Mother's Right to Counsel: Custody Issues in Proceedings Instigated by the IV-D Agency*, 19 CLEARINGHOUSE REV. 278 (1985).

3. The high rate of poverty among African-Americans has long been blamed on the "female-headed household," rather than on sexist and racist social structures that actively work against them. In 1965, the Moynihan Report announced: "At the heart of the deterioration of the fabric of Negro society is the deterioration of the Negro family. It is the fundamental cause of weakness in the Negro community . . . [U]nless this damage is repaired, all the effort to end discrimination and poverty and injustice will come to little." OFFICE OF POLICY PLANNING AND RESEARCH, U.S. DEPT. OF JUSTICE, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965). For a critical reaction to the Moynihan Report, see JUNE JORDAN, *TECHNICAL DIFFICULTIES: AFRICAN-AMERICAN NOTES ON THE STATE OF THE UNION 65-80* (1992).

The preoccupation with re-engineering African-American families is perhaps nowhere more evident than in efforts to enforce child support. The vituperative zeal directed against the "female-headed household" often overlooks the strength and resilience of the extended African-American family in all of its many forms. For a wealth of data on the African-American family throughout African and American history interspersed with individual family stories, see ANDREW BILLINGSLEY, *CLIMBING JACOB'S LADDER: THE ENDURING LEGACY OF AFRICAN-AMERICAN FAMILIES* (1992).

4. THE WILLIAMS BROTHERS, *The Goat*, on *THE GREATEST HITS*, VOL. I (Malaco Records and Tapes 1991). *The Goat*, a gospel song, tells the story of a farmer who had an old goat. One day, when the farmer went into town, the old goat fell into "an old dug well." When the farmer returned, he found his goat at the bottom of that "old dug well." He tried to get the old goat out but finally had to give up because "everything he tried to do, it failed." So the farmer decided "the least I can do is give him a decent burial." He began to shovel dirt down into the well. But unbeknownst to the farmer, the goat was just shaking the dirt off and packing it under his feet. "Pretty soon that old goat begun to get higher." The singer advises the listeners to do the same as the old goat "when trouble comes in your life."

5. I believe that the song quoted above comes from a more modern version of the African-American spiritual, *Goin' Up Yonder*. WALTER HAWKINS, *Goin' Up Yonder*, in *SONGS OF ZION 181* (1982). See DIXIE HUMMINGBIRDS, *If Anybody Asks You*, on *GOSPEL AT IT'S BEST* (MCA Records, Inc. 1990). The "Child of the King" theme can also be found in other contemporary African-American gospel recordings. See *THE MIGHTY CLOUDS OF JOY, Child of the King*, on *THE MIGHTY CLOUDS OF JOY* (MCA Records, Inc. 1973). For an analysis of African-American spirituals as

freedom songs out of which grew a unique liberation theology, see JAMES H. CONE, *THE SPIRITUALS AND THE BLUES* 32-56 (1991).

6. According to a study conducted by Economics Professor Robert I. Lerman, approximately 36% of unwed fathers visit their young children regularly and provide some kind of support. Susan Chira, *Novel Idea in Welfare Plan: Helping Children by Helping Their Fathers*, N.Y. TIMES, March 30, 1994, at A10. However, the father-child bond typically suffers with the passage of time. While 57% of fathers with children under two visited more than once a week, only 22% remained in frequent contact by the time their children reached the age of 7.5. *Id.* Many factors contribute to the unravelling of the father-child bond, a chief factor being the unravelling of the father's relationship with the mother. *Id.*

Programs that have succeeded in helping families to continue nurturing the important bonds between fathers and their children focus upon teaching young parents to work together as parents, even if they live apart. *Id.* The friction generated by a bureaucratic child-support system that forces AFDC recipients to take legal action against the fathers of their children may become yet another impediment to building healthy family relationships. *See, id.*

7. Even though AFDC recipients have been held to have standing to enforce a state's failure to abide by OCSE's requirements, *see* *Howe v. Ellenbacker*, 8 F.3d 1258 (8th Cir. 1993); *Albiston v. Main Comm'r. of Human Serv.*, 7 F.3d 258 (1st Cir. 1993); *Carelli v. Howser*, 733 F. Supp. 271 (S.D. Ohio 1990), *rev'd on other grounds*, 923 F.2d 1208 (6th Cir. 1991); *but see* *Wehunt v. Ledbetter*, 875 F.2d 1558 (11th Cir. 1989), *cert. denied*, 494 U.S. 1027 (1990); *Mason v. Bradley*, 789 F. Supp. 273 (N.D. Ill. 1992), the state by virtue of assignment, not the recipient of AFDC benefits, is considered to be the client. *See Child Support Enforcement Legislation: Hearings Before the Subcomm. on Public Assistance and Unemployment Compensation of the House Comm. on Ways and Means*, 98th Cong., 1st Sess. 122, 122 (1983) (testimony of Virginia Ingle, SPLIT, Inc.) (mother was regarded as "not an involved party" at a court hearing at which her support payments were cut).

8. Because every AFDC recipient enters into an assignment of child support in exchange for benefits, all money given by the noncustodial parent to the custodial parent is to be reported and delivered to the state. 42 C.F.R. § 433.147(a)(4) (1992).

9. Not only does the child-support-enforcement attorney not represent the AFDC recipient, but the lawyer is also required to report any suspected abuses of the system to the state's department in charge of administering the AFDC benefit program, 45 C.F.R. § 302.31(a)(3) (1992). This requirement places the lawyer in the difficult position of deciding whether to disclose information obtained during a conference that may have the feel of an attorney-client communication. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6. (1993).

10. The social-work bureaucracy has had a long history of intruding into single mothers' lives. The experience of single women receiving AFDC today parallels that of similarly situated women at the turn of the century:

From the moment they stepped into a maternity home or social agency, unmarried mothers were asked the question, "[H]ow did you become pregnant?" Chances were good that they would be asked to tell the "story" of their pregnancy more than once, questioned again and again by maternity home matrons and social workers eager to discern the "truth" amid omissions and outright lies. Judging from the frustrated remarks of those who worked with unmarried mothers—many of whom believed that they lied with uncommon "ease and fluency"—discovering the "true story" of out-of-wedlock pregnancy was a difficult task indeed. . . .

The voracious desire of evangelicals and social workers to know how the unmarried mothers had become pregnant suggests that they were after something more than the biological facts they presumably knew.

REGINA G. KUNZEL, *FALLEN WOMEN, PROBLEM GIRLS: UNMARRIED MOTHERS AND THE PROFESSIONALIZATION OF SOCIAL WORK, 1890-1945*, 103 (1993). For a discussion of institutionalized punitive attitudes in today's child-support paternity-establishment system, see Harris, *supra* note 1, at 621. For a legal narrative describing the subordination of one woman who acted as a class representative for other "noncooperative" mothers, see *Tomas v. Rubin*, 926 F.2d 906 (9th Cir. 1991), *opinion clarified upon denial of motion for reh'g.*, 935 F.2d 1555 (9th Cir. 1991). The facts in *Tomas* reveal that Ms. Tomas was denied benefits after being interviewed at least four times and after attesting under penalty of perjury at least three times as to her lack of knowledge of the identity of the father of her child. A child-support investigator also called her home, asked an unknown man answering the phone who the father of Ms. Tomas's child was, contacted her purported "friends and co-workers" to inquire about the paternity of her child,

required Ms. Tomas and a man named by "friends and co-workers" as the father to undergo blood testing, only to have the putative father be excluded by the results. *Id.* at 907-908. In response to discovery, the agency described the factors it considered in determining cooperation. Among them were "[m]aintaining a pleasant, conversational tone of voice and demeanor during the interview" and "[m]aintaining eye contact." A noncooperative mother, on the other hand, was characterized by "[n]ervous/distrustful/hostile attitude," "[d]efensive demeanor," "[a]ntagonistic behavior from start of interview," "[n]o eye contact," "[n]o attempt to describe [the] possible father in any way. . . . the way they met, where they went, how many times . . . they me[et], what friends or acquaintances were involved, etc." *Id.*, at 911, n.4.

11. The AFDC recipient is entitled to the first \$50.00 of each month's support collected without a corresponding reduction in her monthly AFDC payment. 42 U.S.C. § 657(b)(1) (1991); 45 C.F.R. § 302.31(b)(1) (1993). The remaining amount is kept by the state as reimbursement for AFDC funds expended. 42 U.S.C. § 657(b)(2) (1991); 45 C.F.R. § 202.51(b)(2) (1993). If any balance remains after the state's reimbursement is satisfied, the AFDC recipient receives a check for that amount. 42 U.S.C. § 657(b)(3) (1993). However, this balance will be counted as income for purposes of determining her continuing eligibility for AFDC benefits.

12. Every state receiving federal AFDC funds must establish uniform guidelines for determining child-support awards. 42 U.S.C. § 667(a) (1993). The guidelines create a rebuttable presumption that the amount derived through the guidelines is correct, with all deviations from the amount requiring written findings. 42 U.S.C. § 667(b)(2) (1991). The statute does not prescribe the specific formula to be applied by the state in developing the guidelines. Fewer than fifteen states use a percentage-of-income model which takes a fixed percentage of the obligor's income, no matter how small or large. Margaret Campbell Haynes, *Understanding the Guidelines and the Rules*, 16 FAM. ADVOC., Winter 1993, at 14, 15. Some states use a descending-percentage model that takes a decreasing percentage of the obligor's income as the income amount increases. *Id.* at 16. More than thirty states use an income-shares model, which combines the incomes of both the obligor and the custodial parent to formulate the amount owed. *Id.*

Because most formulae adopted under the guidelines rely in one way or another on the obligor's income, however, an unemployed absent parent presents a particular problem. Many states employ the concept of imputed income under which an unemployed absent parent's past work history or skill level is used to establish the income that he should be earning. That imputed income is then used to compute his child-support obligation under the guidelines. *See Scapin v. Scapin*, 547 So.2d 1012, 1013 (Fla. 1st Dist. Ct. App. 1989) (holding that earning capacity, taking into consideration recent work history, occupational qualifications, and best efforts to gain employment equal to capabilities, can be imputed as income); *Coffey v. Coffey*, 575 A.2d 587 (Pa. Super. Ct. 1990) (holding that support award should be based upon earning capacity, less reasonable expenses, not merely upon cash flow); *McCormick v. McCormick*, 621 A.2d 238, 240 (Vt. 1993) (holding that lifestyle and personal expenses may be imputed as income for purposes of child support). Some states also impute minimum wage to unemployed, unskilled workers, even if they have had no prior work history. *See Terpstra v. Terpstra*, 588 N.E.2d 592, 594-595 (Ind. 4th Dist. Ct. App. 1992); *Gebhart v. Gebhart*, 783 P.2d 400, 404 (Mont. 1989). Finally, some courts impose a minimum preset amount which is less than that which would be derived using minimum-wage imputation. *See Beaudoin ex rel. Michelle J. v. Joseph K.*, 165 A.D.2d 359, 361 (1991) (establishing a \$25.00 monthly minimum child-support obligation against an unemployed 16-year-old father of two); *but see Rose ex rel. Haney v. Haney*, 592 N.Y.S.2d 531, 532 (N.Y. App. Div. 1992) (the irrebuttable presumption created by New York's statutory minimum is inconsistent with preemptive federal law governing guidelines). While case law such as that found in *Joseph K.* is scarce, likely due to the lack of resources for appeal among individuals like Joseph K., an award of a mandatory minimum based upon the convictions of the judge rather than upon the obligor's ability to pay was frequently my experience practicing in Arkansas and West Virginia.

13. Legal scholars with clinical backgrounds have commented extensively on the subordinating tendencies of the traditional attorney-client relationship, particularly in the poverty-law context, and have proposed alternative client/community-centered models. *See Paul R. Tremblay, Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947 (1992); Lucie E. White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 1 (1990); Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989); Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-88).

14. In 1992, African-American men nationally suffered an unemployment rate of 15.2%. African-American women fared marginally better with a 13.0% unemployment rate. These rates contrasted sharply with white unemployment rates for the same period: 6.9% for white males and 6.0% for white females. ABSTRACT, *supra* note 1, at 401. For a report on the declining economies of small towns in the deep south typical of the one in which this narrative is set, see Peter Applebome, *Deep South and Down Home, But It's a Ghetto All the Same*, N.Y. TIMES, Aug. 21, 1993, at A1. For a description of the rich African-American traditions found in the midst of the extreme poverty of the rural south, see Anne Raver, *In Georgia's Swept Yards, a Dying Tradition*, N.Y. TIMES, Aug. 8, 1993, at A1.

15. While it is true that divorce has left many previously economically stable women and children to survive on AFDC benefits while their ex-husbands continue to live well above the poverty line, S. Rep. No. 1356, 93d Cong., 2d Sess. 120 (1974), *reprinted in* 1974 U.S.C.C.A.N. 8133, 8146-8148 (citing M. WINSTON & T. FORSHER, NONSUPPORT OF LEGITIMATE CHILDREN BY AFFLUENT FATHERS AS A CAUSE OF POVERTY AND WELFARE DEPENDENCE (1971)); *see also* LENORE J. WEITZMAN, THE DIVORCE REVOLUTION 337-340 (1985), the fact remains that divorced women are far more likely to receive child support and to avoid dependency on AFDC benefits than mothers who never married. Philip K. Robins and Katherine P. Dickinson, *Receipt of Child Support by Single-Parent Families*, 58 SOC. SERV. REV. 622, 636 (1984). Furthermore, research into the causes of poverty in the African-American community has found that "two out of three blacks living in female-headed households were already poor before a change put them in female-headed families." Rose M. Brewer, *Black Women in Poverty: Some Comments on Female-Headed Families*, 13 SIGNS 331, 334 (1988).

The utility of establishing a child-support obligation is obviously tied to the availability of gainful employment for the non-custodial parent. On average, fathers of children receiving AFDC benefits earn incomes which are 60 percent below the national average income earned by males employed full time. Ron Haskins, et al., *Estimates of National Child Support Collections Potential and the Income Security Act of Female Headed Families: Final Report 47, REPORT TO U.S. OFFICE OF CHILD SUPPORT ENFORCEMENT, BUSH INSTITUTE FOR CHILD AND FAMILY POLICY* (Apr. 1985). Another study found that absent fathers who are defendants in litigation brought by child-support enforcement agencies have a high incidence of annual incomes at or below the poverty line. F. SONENSTEIN AND C. CALHOUN, *THE SURVEY OF ABSENT PARENTS: PILOT RESULTS 21* (1988). One would expect that, given the higher rates of poverty and unemployment among African-American males nationally, *see* ABSTRACT, *supra* note 14, the unemployment and poverty statistics would be even higher if the African-American absent-father population were isolated. A 1992 study of the 1990 labor-market experience of young African-American men from low-income backgrounds in Wisconsin supports this proposition. Harold M. Rose, et al., *The Labor Market Experience of Young African American Men from Low-Income Families in Wisconsin vi-viii* (Nov. 1992) (unpublished study, on file with author). The study revealed that the unemployment rate among this population in Milwaukee County for the three-month period from January to March 1990 was ten times that of the official unemployment rate for the County. Among those young African-American men (ages 20-24) who were able to find work, the average annual wage was \$2,130.00. *Id.* at viii.

16. AFDC recipients are automatically eligible for Medicaid. 42 U.S.C. § 1396a(a)(10)(A) (1988). From 1975 to 1990, Medicaid spending has nearly tripled, reaching \$65 billion in 1990. Leon E. Irish, *Long Term Health Care and Disability Insurance*, C796 ALI-ABA 757, 765 (1993). *See also* Eleanor D. Kinney, *The Role of Judicial Review Regarding Medicare and Medicaid Program Policy: Past Experience and Future Expectations*, 35 ST. LOUIS U. L.J. 759, 789-90 (1991) (increasing Medicaid expenditures, caused by the inclusion of new categories of needy individuals, connected to the growth in the budget deficit).

The burgeoning Medicaid budget has caused Congress to focus on reimbursement for Medicaid through the IV-D program, even though Medicaid spending on AFDC eligibles is a relatively small percentage of the overall layout, with the largest percentage expended on the elderly and the disabled. MARIAN WRIGHT EDELMAN, *FAMILIES IN PERIL 69* (1987) (noting that, in 1984, 72 percent of all Medicaid expenditures went to elderly or disabled recipients, none of whom were on AFDC). Congress, however, anxious to reimburse Medicaid costs wherever possible, now requires states participating in the AFDC program to include medical-support provisions in all decrees or orders governing child support. 42 U.S.C.A. § 652(f) (West Supp. 1994). These medical-support provisions require absent parents to extend health-insurance benefits to their children whenever coverage is available at reasonable cost. *Id.*

The cost of health insurance is considered reasonable "if it is employment-related or other group health insurance, regardless of service delivery mechanism." 45 C.F.R. § 303.31(a)(1) (1993). Many states allow the cost of health insurance to be factored into the child-support

equation, either by using it to reduce the net income of the obligated parent for purposes of the child-support equation or by counting it as child support directly. *See, e.g.*, Schwab v. Schwab, 505 N.W.2d 752, 757 (S.D. 1993) (relying on South Dakota Codified Law § 25-7-6.16); Francis v. Hasselius, No. C9-92-2190, 1993 WL 191653, at \*2 (Minn. App. June 8, 1993) (relying on Minnesota Statute § 518.551, subd. 5(a) (1992)). This forced inclusion of medical support results in lowered child-support awards. Lowered child-support payments impact the reimbursement rate under the AFDC program, the cost effectiveness of the IV-D agencies themselves, and the women who leave the AFDC rolls, saddled with artificially low child-support awards.

17. State courts' dockets undoubtedly have felt the impact of increased paternity-establishment activity. The Office of Child Support Enforcement reports that the Title IV-D program was responsible for establishing paternity in 479,066 cases in 1991. SIXTEENTH REPORT, *supra* note 2 at 1.

18. Stacked dockets heighten the dynamic of impersonally administered justice and strengthen the impression among involuntary participants that child-support enforcement is just another extension of the AFDC bureaucracy. While this dehumanizing effect is probably present in all regions of the country to some degree, social workers familiar with the system have noted its extremes in the South. RUTH SIDEL, *WOMEN AND CHILDREN LAST: THE PLIGHT OF POOR WOMEN IN AFFLUENT AMERICA 93-95* (1986) (describing conversations with various Southern social workers and quoting Dorothy Johnson, a social worker living and working in Atlanta, Georgia). One social worker described southern counties administering AFDC as "little nations" inhabited by AFDC recipients who cower in fear of losing their benefits. *Id.* at 93.

19. The percentage of African-Americans living at or below the poverty line in the South is staggering. In 1989, for example, 43.0% of African-Americans in Arkansas lived below the poverty line. In Louisiana, the percentage for that year was 45.7%. In Mississippi, the rate climbed to 46.4%. These three states represent the highest African-American poverty rates in the United States for 1989. ABSTRACT, *supra* note 1, at 471.

20. Most states use either civil or criminal contempt powers to enforce the nonpayment of child support, although the use of civil contempt is by far the more frequent vehicle. Whether contempt is brought civilly or criminally, time in jail is the penalty. Jeff Atkinson, *The Child's Needs Versus the Parent's Ability to Pay*, FAM. ADVOC., Winter 1990, at 26, 27-28.

Despite the lack of prison space and prosecutorial staff, efforts to treat the willful nonpayment of child support as a federal crime have increased. In August of 1993, Attorney General Janet Reno brought her children's-rights agenda to the nation's attention, with the development of guidelines for enforcing the federal Child Support Recovery Act, 18 U.S.C. § 228 (Supp. V 1993). Under the guidelines, any non-custodial parent willfully owing more than \$5,000.00 in support for a child in another state or owing any lesser amount for more than a year may be prosecuted by the United States Attorney. *Id.* at § 228(d). The first offense will be considered a misdemeanor with the possibility of a fine or six months' imprisonment. Any subsequent offenses will result in a fine, up to two years' in prison, or both. *Id.* at § 228(b).

21. In most child-support arrangements, men are the obligors. Therefore, those who are challenged for contempt are usually men. In 1992, only three percent of all children under eighteen lived solely with their fathers; 23% of children under eighteen lived only with their mothers. Between African-American mothers and fathers, the gap widens. Only three percent of African-American children under age eighteen live solely with their fathers, while 54% live only with their mothers. ABSTRACT, *supra* note 1, at 64.

22. AFDC benefit amounts vary from state to state. The Southern region of the country generally offers lower benefit amounts than most other regions. For example, in the East South Central region of the country (Alabama, Kentucky, Missouri, and Tennessee), the average AFDC monthly family benefit was only \$171.00 in 1991. The West South Central region (Arkansas, Louisiana, Oklahoma, and Texas) provided an average monthly family benefit of \$183.00 in 1991, while the South Atlantic region (Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia, and the District of Columbia) offered \$273.00. For this piece, I use a rough average of these three regions. The average monthly benefit for the entire United States in 1991 was \$394.00. ABSTRACT, *supra* note 1, at 382.

23. *See* ABSTRACT, *supra* note 14 (unemployment rates for African-American men).

24. By applying state court jurisdictional data supplied in BNA's DIRECTORY OF STATE AND FEDERAL COURTS, JUDGES AND CLERKS (Kamila King & Judith Springberg eds., 1992) [hereinafter, BNA], to a compilation of all black state court judges for 1991, JUDICIAL COUNCIL OF THE NATIONAL BAR ASSOCIATION, ELECTED AND APPOINTED BLACK JUDGES IN THE UNITED STATES (1991), I estimate that only \_\_\_\_\_ African-American judges nationwide adjudicated in trial courts where family-law matters were likely to be heard. The minuscule size



of this number becomes apparent when compared to the approximate total number of family-law judges who sat in the United States in 1992: \_\_\_\_\_. BNA, *supra* note 24.

Twenty-nine states elect at least some trial-court judges. THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 190-92 (1994). Many of these states employ at-large election systems which effectively dilute the voting strength of minority African-American populations. Under the usual at-large system, a countywide or multi-countywide district majority elects all the judges for the jurisdiction. If racial-bloc voting occurs, the white majority will thus elect all the judges, despite the existence of a substantial African-American community. See generally MINORITY VOTE DILUTION, (Chandler Davidson ed., 1984). If the minority population is politically cohesive and geographically compact so that it constitutes a subdistrict majority, and if the white population engages in racial-bloc voting, at-large systems are subject to attack under Section 2 of the Voting Rights Act. Thornburg v. Gingles, 478 U.S. 30 (1986); see also 42 U.S.C. § 1973 (1993).

Section 2 of the Voting Rights Act applies to the election of trial-court judges. Houston Lawyers' Ass'n v. Attorney Gen. of Texas, 501 U.S. 419, 428 (1991). However, even with subdistricting as a remedy to the at-large system, many small African-American communities remain left out if they are separated from larger ones by substantial white population centers. For a description of this and other problems with the subdistricting remedy, see Pamela S. Karlan, *Maps and Misreadings: The Role of Geographic Compactness in Racial Vote Dilution Litigation*, 24 HARV. C.R.-C.L. L. REV. 173 (1989). Therefore, it is possible that, even if Minerva and others from Lake Village chose to exercise their rights under Section 2 of the Voting Rights Act, by challenging the dilution of their voting strength, the remedy would leave them out. If Helena, a majority white county seat separated them from other black communities, their challenge would fail. Professor Lani Guinier sought to address this type of problem by advocating alternative remedies for vote dilution, such as cumulative voting. See Lani Guinier, *No Two Seats: The Elusive Quest for Political Equality*, 77 VA. L. REV. 1413 (1991); Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 MICH. L. REV. 1077 (1991).

Shaw v. Reno, 113 S.Ct. 2816 (1993) has further eroded the ability of African-Americans to exercise effective political power through majority-minority subdistricts as violative of the Equal Protection Clause of the Fourteenth Amendment.

Of course, the issue of voting for judges who administer family law and make paternity determinations may become moot; federal child-support legislation has remove more and more paternity "adjudications" and child-support actions from the courts and placed them into the hands of administrators. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 659 (codified as amended at 42 U.S.C. § 666 (Supp. 1994)) (requiring states to institute hospital-based programs for voluntary acknowledgement of paternity, and requiring procedures which permit such acknowledgements to be both conclusive presumptions of paternity and the bases for seeking support orders). For a critical commentary on concerns raised by the administration of family-law justice outside of the traditional adversarial process, see National Center on Women and Family Law, Annual Review of Family Law, 27 CLEARINGHOUSE REV. 1055, 1055-1056, 1061-1063 (Jan. 1994).

25. Title IV-D does not require the states to hold closed paternity hearings. In my research I have found to be [sic] Wisconsin to be the only state that statutorily requires paternity hearings to be closed. See WISC. STAT. ANN. § 767.53 (1993).

