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Socio-Economic Status and Legal Factors Affecting African American Fathers

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INTRODUCTION

Class, ethnicity, education, employment status, and the law are all factors that impact a father's involvement in his children's lives. "Scholars like W.E.B. Dubois had argued all along, however, that African American female-headed families were the outcome, rather than the cause, of racial oppression and poverty."³ "According to the 2000 U.S. Census, only 33.3 percent of black children lived in two-parent families, compared with 75.2 percent of white children."⁴ A 2009 survey reported similar findings: only 37 percent of African American children lived with two parents.⁵ Therefore, the majority of African American children are raised by single parents or grandparents.⁶ Unfortunately, these statistics may correlate with the "high rates of unemployment and incarceration and low rates of education among black men."⁷

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³ DALTON CONLEY, YOU MAY ASK YOURSELF: AN INTRODUCTION TO THINKING LIKE A SOCIOLOGIST 259 (Karl Bakeman ed., W.W. Norton & Co. 2008).

⁴ *Id.* at 260.

⁵ ROSE M. KREIDER & RENEE ELLIS, U.S. CENSUS BUREAU, LIVING ARRANGEMENTS OF CHILDREN: 2009 6 (2011), available at www.census.gov/prod/2011pubs/p70-126.pdf.

⁶ *Id.*

⁷ CONLEY, *supra* note 3, at 260.

When a parent, like the father, chooses to be involved in his children's upbringing, despite socio-economic obstacles, children generally have a higher self-concept.⁸ Experts agree that "[f]or their psychological well-being, children who do not live with their fathers need their father's encouragement, support, and closeness, as well as his love and caring. There are some exceptions, but children who do not have a relationship with their fathers are more likely to become smokers, drinkers, and serious drug abusers."⁹ Puberty is when a young man needs his father the most; therefore, the lack of a father-son relationship may lead to delinquency in teenagers.¹⁰ Ironically, the father may not be present due to the birth mother. Research has shown that sometimes it is the mother's choice to withhold the identity of the natural birth father because she is either unsure of his true identity or does not want to identify him.¹¹ For example, the mother may no longer desire to have contact with the birth father, or she has a new man in her life.

Traditionally, courts have implemented laws that deteriorate the fathers' parental rights by creating barriers to paternal identification, visitation, child support, etc.¹² Thus, a father's right to adequately parent his child is often interfered with. The courts commonly use the "best interest of the child test," discussed *infra*, which does not factor in all of the father's socio-economic obstacles which will ultimately have an important effect on the child's upbringing. Thus, courts (or "the system") may be perceived by African American fathers as obstructionists due to innate

⁸ See Cynthia R. Mabry, *Who Is the Baby's Daddy (And Why Is It Important for the Child to Know)?*, 34 U. Balt. L. Rev. 211, 228 (2004).

⁹ *Id.* at 229.

¹⁰ *Id.*

¹¹ *Id.* at 214-15.

¹² *Id.* at 214-21.

and societal inequities that shortchange and harass many lower income urban African American fathers.¹³

Despite the income status of a father, there are five major sociological theories used to examine African American families: Deficit, Matriarchy, Afrocentric, Ecological, Choice or Exchange. These theories clarify the value and roles that some African American men play in their progenies lives. Even with these theories, studies show that African American father's level of participation, and role in his children's lives is often based on his class, education, and employment status.¹⁴ Despite efforts to successfully raise their children, "these men experience a set of life circumstances, problems with schooling and educational access, difficult social and legal encounters, and poverty that set them apart from other fathers, such as those who are middle class, White, or living in a rural settings."¹⁵ Oftentimes, the consideration of "structural inequalities resulting from African American fathers' racial-ethnic identity and racial divisions in society"¹⁶ is neglected when developing family policy.

In General, the socio-economic class of African American males is more adversely impacted by societal ills, such as poverty and imprisonment than their White male

¹³ Vivian L. Gadsen et al., *Situated Identities of Young African American Fathers in Low-Income Urban Settings*, 41 FAM. CT. REV. 381, 381-90 (2003). The authors discuss how fathers saw themselves and the social issues that affected their ability to be actively involved in their children's lives.

¹⁴ Donna L. Cochran, *African American Fathers: A Decade Review of the Literature*, FAMS. IN SOC'Y: J. CONTEMP. HUM. SERVS., 340, 343, 346 (1997) ("This review also suggests ways in which future research, policy, service, and programs can be made culturally sensitive and reflective of the parenting experiences of these men." Cochran reiterates that "[F]atherhood for African American men cannot be separated from their shared culture and socio historical background, institutional racism, and the marginal status of African American males.").

¹⁵ Gadsen, *supra* note 13, at 381.

¹⁶ Tracey Reynolds, *Exploring the Absence/Presence Dilemma: Black Fathers, Family Relationships and Social Capital in Britain*, 624 ANNALS. AM. ACAD. POL. & SOC. SCI. 13, 12-28 (2009) (discussing how culture, race, economics, and gender influences the attitudes and behaviors of fathers in the Caribbean).

counterparts.¹⁷ The authors theorize that despite positive male role models in the African American community, current laws are more oppressive toward African American fathers; and inevitably the disparate and discriminatory impact on African American families is more substantial than on Caucasian families. Also, combined with the aforementioned socio-economic factors and legal benefits bestowed on mothers by the courts, African American fathers' ability to emotionally, physically, and monetarily participate in their own children's lives is greatly hindered. Consequently, a lack of money and education often prevents some fathers from challenging these biased laws, thus perpetuating a cycle that works against the child's best interest.

This article presents an overview of the legal problems faced by fathers in general. However, this article does place an emphasis on the socio-economic factors affecting African American fathers. The topics covered concern: how the courts effect the level of involvement (or lack thereof) of fathers due to some judges perceived notions of the child's best interest, mothers choices that also have an effect on a fathers presence in his child's life, the dominant family models that affect the presence of African American fathers, the role media and society play in the negative perceptions of African American fatherhood, some positive stories of fathers in the African American community, and finally, recommendations for changes in society and the law to help increase parental involvement by African American fathers.

¹⁷ See Cochran, *supra* note 14, at 342. (Cochran asserts that "African American males have been identified as a high-risk population on the verge of extinction (Smith, 1988). They experience higher rates of unemployment, poverty, morbidity, and imprisonment and have shorter life expectancy, less access to health care, and less education than their White counterparts (Majors & Billson, 1992; Staples & Johnson, 1993)." *Id.* at 342); see also RICHARD MAJORS & JANET MANCINI BILLSON, COOL POSE: THE DILEMMAS OF BLACK MANHOOD IN AMERICA (Lexington Books ed., 1992); ROBERT STAPLES & LEANOR BOULIN JOHNSON, BLACK FAMILIES AT THE CROSSROADS: CHALLENGES AND PROSPECTS (Jossey-Bass Inc., 1993); LINDA ANDERSON SMITH, NAT'L ASS'N FOR SOC. WORKERS, BLACK ADOLESCENT FATHERS: ISSUES FOR SERVICE PROVISION 269-71 (1986).

I. THE IMPACT OF CLASS, EDUCATION, EMPLOYMENT STATUS, AND THE LAW ON AFRICAN AMERICAN FATHERHOOD

A. *The Impact of Socio-Economic Status on Parental Involvement*

Class, education, and employment status are all factors that affect a father's time and resources when participating in his children's lives. "For almost a decade, young, low-income African American fathers in urban settings have been at the center of research, practice, and policy discussions on fathers and families."¹⁸ African American children are influenced by the "limited opportunity and social problems" urban settings' offer, because many of their fathers suffer from similar problems associated with "poverty, hardship, crime incarceration, and a series of harsh life circumstances . . ."¹⁹

The following statistics were gathered from a survey in the *Family Court Review* in 2003, and illustrate an African American father's ability to support or interact with his children based on his socio-economic status:

- Many fathers have never married the mothers of their children.
- 60% percent of men surveyed were teenagers when they conceived their first child.
- 39% of the fathers surveyed had two or more children.
- Almost 50% of the fathers had not completed high school.

¹⁸ Gadsen, *supra* note 13, at 381.

¹⁹ *Id.*

- Only one third of fathers who maintained custody of their children had a positive relationship with their fathers.²⁰

Despite these disheartening statistics, most of the fathers who participated in the survey saw their children at least two days a week, demonstrating that African American fathers are involved in their children's lives, even when they do not live in the homes of their children.²¹ An overwhelming majority of the men in the survey believed their role as a father included providing "social, psychological, and financial support, such as offering advice (95%), and comforting the child during difficult times (95%), setting high expectations for the child's schooling (95%), and working to support the child financially (95%)."²²

Despite these beliefs, many low-income African American fathers are influenced by their own perception of the world when raising their children. According to Elijah Anderson, an ethnographic researcher, urban African American men believe there are three segments of society: the street, the home, and the system.²³ The street is a place where men engage in destructive practices, and danger is always present.²⁴ For instance, the sixteen African American fathers that were in Gadsen's sample study defined the streets in various ways, using terms such as

²⁰ *Id.* at 386-87. Gadsen and her co-authors used a combination of data, observations, and questionnaires from a sample of fifty three African American fathers on the perceptions and activities associated within and outside the home. Of the fifty three African American fathers in the focus group, 16 were interviewed.

²¹ *Id.* at 387.

²² *Id.* Gadsen and her co-authors used various criteria, such as age and marital status, to complete their survey.

²³ ELIJAH ANDERSON, CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY (N.W. W. Norton, 1999) (Anderson's book was used as the main source for Gadsen's analysis of black fathers when comparing domestic life versus street life).

²⁴ Gadsen, *supra* note 13, at 390.

‘hustlin,’ ‘hangin’ out,’ and ‘partying’ to describe activities outside of the home.²⁵

For example, street life—including drug dealing—oftentimes leads to incarceration, with the threat of lengthy jail time. Street life is seductive because it is free, unrestricted, and fast. Fathers reported that when they are in the street they are primarily concerned with “oneself,” their own wants, needs, and survival.²⁶ Accordingly, when fathers are in the streets the majority of their time is spent “circumventing responsibility (and the law).”²⁷

Most of the fathers sampled in “The Study of Young African American Fathers” by Gadsen believed they were not able to provide childcare and raise their children in the streets.²⁸ Likewise, many of these fathers would not be deemed legally “fit” for the role of primary caretaker; to be considered “fit,” the primary caretaker parent must:

- (1) feed and clothe the child appropriately;
- (2) adequately supervise the child and protect him or her from harm;
- (3) provide habitable housing;
- (4) avoid extreme discipline, child abuse, and other similar vices; and
- (5) refrain from immoral behavior under circumstances that would affect the child.²⁹

²⁵ *Id.* at 390-91.

²⁶ *Id.* at 391.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See, e.g.,* David M. v. Margaret M., 385 S.E.2d 912, 924 (W. Va. 1989). In the *David M.* case, Margaret M. appeals from a divorce decree order entered by the Circuit Court of Wood County. She claims that the court erroneously awarded David M. custody of their son, Timothy, age six. The Circuit Court ruled that although Margaret M. was the primary caretaker of her son, she was not a fit and a suitable person to have permanent care and custody of the child. David M. presented to the court instances of sexual promiscuity by his former

In the West Virginia Supreme Court case of *David M. v. Margaret M.*, the court ascertained that the custodial parent must perform the following duties:

The "primary caretaker" is the parent who has taken primary responsibility for, *inter alia* the performance of the following caring and nurturing duties of a parent: (1) preparing and planning of meals; (2) bathing, grooming and dressing; (3) purchasing, cleaning, and care of clothes; (4) medical care, including nursing and trips to physicians; (5) arranging for social interaction among peers after school, i.e. transporting to friends' houses or, for example, to girl or boy scout meetings; (6) arranging alternative care, i.e. babysitting, day-care, etc.; (7) putting child to bed at night, attending to child in the middle of the night, waking child in the morning; (8) disciplining, i.e. teaching general manners and toilet training; (9) educating, i.e. religious, cultural, social, etc.; and, (10) teaching elementary skills, i.e., reading, writing and arithmetic.³⁰

The Gadsen survey found that for fathers who stayed in the home, they understood the need to "accept and fulfill their responsibilities toward their children."³¹ Stability is often provided to children when fathers put their children first. However, home life is slow and "is dedicated to child care, with parents cooking, cleaning, feeding, and playing with their children."³² Some fathers attempted to fluctuate between the street world and the domestic life in the home.³³ However, this lifestyle proved problematic because these fathers tended to treat their children like peers, instead of maintaining a father-child hierarchal

spouse. However, the higher court considered that the fact that the term sexual "promiscuity" (a term that tends to mean different things when applied to women than to men, with women getting the short end of the double standard) on the part of the woman would cause a court to declare her 'unfit.'" The award of custody was reversed and the child was returned to the mother.

³⁰ *Id.* at 923.

³¹ Gadsen, *supra* note 13, at 391.

³² *Id.*

³³ *Id.*

relationship.³⁴ This type of relationship may be harmful because it neglects important boundaries between a parent and child. Also, involvement in street life may cause children to grow up too fast due to exposure to street elements that are “destructive, dangerous, and unproductive.”³⁵ Ultimately, the streets are a troublesome environment for young adolescents because the streets lack a supportive atmosphere for child-rearing. Furthermore, when fathers gravitated from the streets into the home, they found that the role of caregiver did not coincide “with their identities as men,” and that they lacked “the necessary skills to care for children on their own.”³⁶ For these men, balancing two worlds, one of which included domesticity, became a challenge.³⁷

The third segment of society was referred to as “the system,” which is comprised of “[w]hites or at least members of the middle class, with laws and policies that shortchange and harass lower income urban Blacks.”³⁸ Low-income fathers felt hostility toward the system when the law intervened and attempted to force them to support their children.³⁹ Consequently, Gadsen’s research discovered that men’s hostility toward the justice system reduces intrinsic “connections between a father and his child.”⁴⁰ Many fathers are faced with the economic complexity of having to provide for their children and themselves, while working low wages.⁴¹ Most of the urban fathers surveyed referred to “the system as biased and heartless”.⁴² Thus, they believed that the system had no interest in their

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*; see also *David M.*, 385 S.E.2d at 917-18.

³⁷ Gadsen, *supra* note 13, at 391.

³⁸ *Id.* at 390.

³⁹ *See id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 392.

⁴² *Id.*

personal and economic circumstances when assigning child support obligations.⁴³ One African American father stated:

Dealing with the court systems is like being public enemy number one. You know, it's like sometimes they don't care to know the situation; it's just automatically. Sometimes I just think fathers get a bad rap in court. I know I been to court one time...my child support was in arrears. I was working. Instead of just having me maybe pay five more dollars a week, they wanted me to do community service. Which, I was working at the time so I didn't do the community service. They locked me up and charged me \$1,000 for that...My son's mother was trying to tell them, even she was trying to be on my side and say hey, he's paying his support, he's been...But they didn't want to hear it. Just locked me up, you know.

CJ voices the court system here as heartless and unproductive. Those in the court system, he stated, stereotype him, despite the fact that he has started to pay child support, as "public enemy number one." They also act in capricious and unproductive ways. He argued that although the system should want him to work and provide child support, those in it impose community service and lock him up, such that they jeopardize his ability to do both. Hence, the system is both unjust and ultimately self-defeating.⁴⁴

Another study has found that fathers are more involved in their children's lives when they have "high levels of income and education, stable marriages, good extra familial [sic] support, a mature attitude toward family responsibility, a productive communication style, and psychological commitment to family."⁴⁵ Basically, fathers are involved in their children's lives when opposite socio-economic factors to what many African American fathers have are present. Overall, Vivian L. Gadsen found that African American fathers defied stereotypes that declared their lack of involvement in rearing their children.⁴⁶ "The

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Cochran, *supra* note 14, at 345.

⁴⁶ Gadsen, *supra* note 13, at 395.

few fathers that did fit the societal stereotype of an absent dad or uninvolved father . . . were the exception rather than the rule.”⁴⁷ Many fathers in the study felt “motivated to break the intergenerational cycle of father absence.”⁴⁸ Generally, urban fathers discussed how a “transformative event—like the absence of the child, incarceration, or the death of a relative—to inspire their involvement with their children” and form a lasting bond.⁴⁹

Further, present law mandates that courts apply the “child’s best interest test” when determining issues such as visitation under the Child Custody Act.⁵⁰ However, courts should recognize that criminalizing low-income fathers who are attempting to support their children is not beneficial to the family structure as a whole. Placing fathers in jail when they are in arrears may jeopardize their employment status, which may result in a child’s need for government assistance if the mother is also low-income—which is not in a child’s best interest. Summarily, it is in the best interest of the child for judges to evaluate all of the financial obligations of the father when making family law decisions.

B. The Impact of Law on Fathers’ Custody, Visitation, and Maintenance of Rights

The following cases examine the legal history of issues such as custody, visitation, and other rights in regards to: fathers whose incomes range from low-income to high-income, moral integrity, and criminal history. In the early 1900s, courts generally followed the common law principles that awarded custody to fathers after divorce: “[a]t common law the father has the paramount right to the custody and control of his legitimate minor children, subject only to lawful regulations for the benefit of the children.”⁵¹ Fathers

⁴⁷ *Id.*

⁴⁸ *Id.* at 396.

⁴⁹ *Id.*

⁵⁰ *See, e.g., Snyder v. Snyder*, 429 N.W.2d 234, 236 (Mich. Ct. App. 1988).

⁵¹ *Porter v. Porter*, 53 So. 546, 547 (Fla. 1910).

especially received preference when the mother was deemed to be at fault for the severance of the marriage.⁵² “That rule was a logical extension of the inferior legal status of women, the husband’s property right in his family’s labor, and the husband’s absolute obligation to support his children.”⁵³ However, the aforementioned law was eventually overturned in consideration of “society’s expectation that children would be raised by women. By 1950, it was almost always the rule that a mother was the preferred custodian of young children if she was a fit parent.”⁵⁴

In *Porter v. Porter*,⁵⁵ the father presented a petition alleging that the mother of their three children abandoned their home in Palm Beach County.⁵⁶ The mother was also accused of restricting the minors’ liberty by relocating them to Duval County without the father’s informed consent.⁵⁷ The lower court awarded custody of the two young boys to the father, but the mother was allowed to maintain custody of her young daughter.⁵⁸

In another example, the Supreme Court of Appeals of West Virginia, in *J.B. v. A.B.*,⁵⁹ upheld the “tender years presumption.”⁶⁰ The court found that the “tender years presumption” test meant that “the law favors the mother if she is a fit person, other things being equal.”⁶¹ The mother-

⁵² *David M. v. Margaret M.*, 385 S.E.2d 912, 915 (W. Va. 1989).

⁵³ *Id.*

⁵⁴ *Id.* at 915, n. 11. (citing Henry H. Foster Jr. & Doris Jonas Freed, *Child Custody*, 39 N.Y.U. L. Rev. 423, 425 (1964); Syllabus Point 1, *J.B. v. A.B.*, 242 S.E.2d 248, 250 (W. Va. 1978) (Tender Years Presumption Test: “With reference to the custody of very young children, the law favors the mother if she is a fit person, other things being equal.”; Syllabus Point. 1, *Funkhouser v. Funkhouser*, 216 S.E.2d 570, 570 (W. Va. 1975); Syllabus Point 2, *Settle v. Settle*, 185 S.E. 859, 859 (W. Va. 1936); *Beaumont v. Beaumont*, 146 S.E. 618, 619 (W. Va. 1929)).

⁵⁵ *Porter v. Porter*, 53 So. 546 (Fla. 1910).

⁵⁶ *Id.* at 546.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *J.B. v. A.B.*, 242 S.E.2d 248, 250 (W. Va 1978).

⁶⁰ *Id.*

⁶¹ *Id.*

appellant successfully appealed the lower court's decision awarding custody to her husband based on evidence of the mother's lack of fitness due to sexual misconduct.⁶² On appeal, the father's primary argument in maintaining custody of his child was to assert that the "presumption of law that a mother is the natural custodian of children of tender years is unconstitutional"⁶³ From a strictly biological perspective, the higher level court explained that "children of the suckling age are necessarily accustomed to close, physical ties with their mothers, and young children, technically weaned, are accustomed to the warmth, softness, and physical affection of the female parent."⁶⁴ Therefore, the lower court's decision was overturned on the basis of determining whether a mother's instance of sexual misconduct is sufficient to overcome the tender year's presumption.⁶⁵ The higher court held that an occurrence of sexual misbehavior by a woman during the marriage, which was a wrong against her husband and unrelated to her ability to care for her child, was inadequate to defeat her fitness as a parent.⁶⁶ The court was not willing to punish an innocent child for the transgressions the mother committed against her husband.⁶⁷ Due to an urban father's lifestyle and lower-income, fathers have the added burden of proving they are fit, as well as rebutting the tender years' presumption test when they desire custody of their children.

Economic hardships are also an issue when fathers seek visitation rights. In *Snyder v. Snyder*,⁶⁸ the plaintiff-father appealed an order from the lower court cancelling his visitation rights.⁶⁹ The Michigan Court of Appeals enjoined the father "from having his children in the presence of any

⁶² *Id.* at 250-51.

⁶³ *Id.* at 251.

⁶⁴ *Id.* at 253.

⁶⁵ *Id.* at 256.

⁶⁶ *Id.* at 255-56.

⁶⁷ *Id.* at 256.

⁶⁸ *Snyder v. Snyder*, 429 N.W.2d 234 (Mich. Ct. App. 1988).

⁶⁹ *Id.*

woman with whom he was having a relationship, but to whom he was not married.”⁷⁰ The facts of the case state that the father moved into the home of a woman to whom he was not married.⁷¹ The defendant-mother raised concerns about the “suitability of plaintiff’s living arrangements for the children.”⁷² After a Friend of the Court completed a home inspection, the father’s living arrangements were deemed suitable for the purposes of parental visitation.⁷³ Nevertheless, the mother denied the father his right to see his child, and the defendant-mother later filed a petition to “limit visitation,” and “wrote a letter to the trial court asking that overnight visitation be suspended until after the hearing.”⁷⁴ The plaintiff-father argued that he was living with his girlfriend out of economic necessity, yet he agreed that it was morally wrong for two unmarried people to live together.⁷⁵ He claimed that if his financial situation improved, he would get married to his girlfriend.⁷⁶ At the trial court level, the plaintiff-father lost his visitation rights because he was declared morally bankrupt.⁷⁷

However, the higher court in *Snyder* ruled that “cancelling the plaintiff’s visitation rights based solely on the court’s disapproval of plaintiff’s lifestyle constituted an abuse of the trial court’s discretion.”⁷⁸ Since economic woes

⁷⁰ *Id.* at 235.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 235-36. Upon receiving the letter on December 18, 1986, the trial court summoned counsel for both parties to court and read the letter into the record. The trial judge indicated that he was shocked upon reading the letter and that he strongly believed that children should not be exposed to a “meritorious relationship.” When counsel for plaintiff noted that there was no evidence of any harm to the children, the trial court stated that no proof of harm was needed and that harm could automatically be assumed by exposure of the children to the relationship. The trial court ordered that plaintiff was not to have the children in the presence of the woman with whom he was living.

⁷⁵ *Id.* at 236.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 237.

disproportionately plague African American fathers, living with a woman is a viable option for establishing monetary, physical, and emotional stability. However, the *Snyder* case also demonstrates that it takes resources and time to appeal lower court decisions. African American fathers with limited resources may encounter the loss of visitation rights based on a lower court's biased determination of morality and suitability issues. The trial court's ruling in the *Snyder* case is another instance of the judicial system's skewed decisions in favor of mothers against fathers.

The loss of visitation and parental rights are some of the many issues that African American fathers face when they are incarcerated. For example, in the case of *In re Abdullah*,⁷⁹ a father was faced with termination of his parental rights based on his state of incarceration.⁸⁰ The Department of Child and Family Services filed a petition to terminate his parental rights on the basis of Abdullah's criminal conviction.⁸¹ The "DCFS's amended petition alleges that the respondent is an unfit parent by 'reason of depravity in that he has been convicted of the murder of . . . [his child's] mother, Anna Abdullah.'"⁸² The respondent father appealed the lower court's decision finding him unfit, and he won in the Illinois Appellate Court.⁸³ The mere fact a father has a conviction is not clear and convincing evidence to substantiate that the parent is unfit.⁸⁴ The appellate court ruled that "no matter how reprehensible" the nature of a crime, a parents rights may not be terminated purely on that basis.⁸⁵ "The label of a criminal conviction tells us little about the infinite combination of human conduct and circumstances that can be stereotyped by it. Perhaps proof of the factual evidence that was the

⁷⁹ *In re Abdullah*, 400 N.E.2d 1063 (Ill. App. Ct. 1980).

⁸⁰ *Id.* at 1063-64.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 1064.

⁸⁵ *Id.*

basis of the conviction may constitute parental unfitness”⁸⁶ But, the mere fact of a conviction is not enough proof to terminate parental rights and declare a parent unfit.⁸⁷

All of the aforementioned issues may result in a father missing out on his children’s younger years, thus decreasing his involvement and potential to influence his own children. Without adequate time and resources to file and fight appeals, African American fathers are forced out of their children’s lives by the system they fear. Although African American fathers need more support by society to make better choices, the state also has a major impact on the future of African American children. The burden should also be on the courts to provide adequate counsel, and competent lawyers should be encouraged to work pro bono in the best interests of children regardless of a father’s low-income or incarceration status.

II. FAMILY MODELS THAT ARE PRESENT AMONG AFRICAN AMERICAN FAMILIES

As mentioned supra, there are five models which have been used to analyze African American families in the United States: Deficit, Matriarchy, Afrocentric, Ecological, and Choice or Exchange Theory.⁸⁸ “The two frameworks social scientists most frequently use are the Deficit and the Matriarchy models. These models traditionally have focused on the role of negative environmental factors on the psychosocial development of African Americans.”⁸⁹ After examining each model, it is apparent that African American fathers subconsciously subscribe to one or a combination of several models when parenting.⁹⁰

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See generally Cochran, *supra* note 14, at 346 (Cochran suggests theory, methodology, and future studies for “[a] discussion of implications for policy, services, and programs” that would assist accurate statistics, research, social programs, and laws that would help black men in their role as fathers).

⁸⁹ *Id.* at 341.

⁹⁰ *Id.*

The Deficit model, which emerged more than thirty years ago, used archaic research that has led to the stereotype of African American men as inadequate.⁹¹ For example, the beliefs by some social scientists were that African American men have “inferior intelligence, perceptual skills, cognitive styles, family structure, and other negative factors associated with African Americans.”⁹² This model has deficiencies because it “devalues behaviors, values, and lifestyles that differ from White middle-class norms.”⁹³ Consequently, this model also does not take into consideration the history, environment, and other socio-economic factors that affect an African American man’s role in his children’s life. Furthermore, the study is antiquated because it uses outdated statistics, and focused on men “who have not accepted their parental responsibilities and ignore men who fulfill their obligations to their children. Similarly, more attention has been focused on African American fathers who live outside the household than on their counterparts.”⁹⁴ More applicable and relevant research should focus on present-day statistics, large sample sizes from every economic level, and include African American fathers who live inside and outside the home. Lastly, the sample study should incorporate modern day social problems and situations.

The Matriarchy model is based on Daniel Patrick Moynihan’s 1965 report, which was entitled *The Negro Family: A Case for National Action*.⁹⁵ As the “assistant secretary of labor for President Lyndon Johnson,” he wrote the aforementioned document based on his conclusions of

⁹¹ *Id.*

⁹² *Id.* (citing L. Johnson, *Perspectives on Black Family Empirical Research: 1965-1978*, in *Black Families*, 91-106 (H.P. McAdoo ed., 1988); JOSEPH L. WHITE & THOMAS A. PARHAM, *THE PSYCHOLOGY OF BLACKS: AN AFRICAN-AMERICAN PERSPECTIVE* (Prentice Hall 1990)).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See Kathryn Edin, Laura Tach & Ronald Mincy, *In this Issue: The Moynihan Report Revisited: Lessons and Reflections after Four Decades*, 621 *ANNALS AM. ACAD. POL. & SOC. SCI.* 149, 149 (2009).

the black family.⁹⁶ Nevertheless, the Matriarchy model resembles elements of the Deficit model. In many African American households, the woman is the “primary or only breadwinner.”⁹⁷ “Studies using the [M]atriarchy model contend that African American women serve as the head of the household because of the inability of African American men to fulfill their familial responsibilities. According to this theory, slavery emasculated and debased men and created the matriarchal family structure.”⁹⁸ Moynihan argued that “‘pathological’ matriarchy . . . undercuts the role of the father in black families and leads to all sorts of problems later in life, such as domestic violence, substance abuse, crime, and degeneracy.”⁹⁹ Moynihan made the argument that the African American family was headed for a “complete breakdown.”¹⁰⁰ His report, though infamous, reported that the decline of the African American family was due to “out-of-wedlock” childbearing.¹⁰¹ Ironically, the prevalence of unwed mothers “among whites is now as high as it was for African Americans when Moynihan released his report.”¹⁰² Another contributing factor to the prevalent rate of single black mothers is the fact that “African American adolescent males who impregnate are much more likely than their European American counterparts to encourage their sexual partners to avoid abortion and therefore are more likely to become fathers as a result of unplanned pregnancies.”¹⁰³ Often, this factual evidence is

⁹⁶ *Id.*

⁹⁷ CONLEY, *supra* note 3, at 258 (The Moynihan Report found that twenty five percent of black wives out-earned their husbands, versus eighteen percent of white wives).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Edin, Tach & Mincy, *supra* note 95, at 149.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ William D. Allen & William J. Doherty, *The Responsibilities of Fatherhood As Perceived by African American Teenage Fathers*, 77 FAM. IN SOC'Y: J. OF CONTEMP. HUM. SERV. 142, 143 (1996).

documented as an “ethnic predisposition toward early pregnancy and cultural preference for early parenting.”¹⁰⁴

Nevertheless, the Matriarchy theory asserts that African American women are the head of the household due to the inadequacies within African American men.¹⁰⁵ For example, when African American men are not present in the home, African American women often play the role of both mother and father. But, when African American men are present many black women view them as “ineffective.”¹⁰⁶

According to the Moynihan report and similar arguments, the matriarch is your quintessentially bad black mother. She’s domineering and unfeminine, always wearing the pants in the family. She’s hefty and gruff. She spends so much time away from home that she can’t supervise her own kids. And when she is at home, she’s too bossy and strong; thus, she emasculates her man and drives him away. If only the matriarch could be a little more feminine, a little less strong, a little *whiter*, suggested the report, the black family could lift itself up out of poverty.¹⁰⁷

The Matriarchy theory is problematic because it stereotypes African American women as bossy females who drive their men away from the home because they emasculate them. This model also has deficiencies because it does not take into account the socio-economic problems that cause some African American men to choose to live outside of the home. Finally, this model is flawed because the Moynihan Report casted blame on the African American woman for every problem in the African American community. “The image of the matriarch makes it easier to lay the blame on African American families for their own problems—social ills such as neighborhood decay,

¹⁰⁴ *Id.*

¹⁰⁵ See Cochran, *supra* note 14, at 341.

¹⁰⁶ See *id.*

¹⁰⁷ CONLEY, *supra* note 3, at 258-59 (citing DANIEL PATRICK MOYNIHAN, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION (1965)).

stagnating wages, single motherhood, higher divorce rates, and lower school achievement.”¹⁰⁸ Blaming African American women solely for the absent African American father is not the answer. However, some sociologists claim that the “root of patriarchy” has a history that began during the “days of slavery, which reversed roles for men and women and continued to haunt African Americans” until this present day.¹⁰⁹

The Afrocentric model is favored more by the authors of this article because it examines the history of African Americans. This model argues that African American fathers should be studied within the context of cultural values and the social patterns of African Americans.¹¹⁰ This model engages in a “comparative study of African and Afro-American cultures.”¹¹¹ The view offers another way of interpreting the African American family structure and community; including how raising children is “more of a collective effort with strong neighborhood support—the ‘it takes a village’ model.”¹¹² The evolution of this model developed based on the fact that many African American’s were separated from their biological families at the auction block during slavery by white owners.¹¹³ African American’s had to adapt to this social circumstance by transforming the definition of family from immediate blood lines to racial classification.¹¹⁴ Currently, slavery remains a valid explanation for current understandings of an African American family. “The cultural legacy of these family patterns is that despite marital ties being valued for their legal significance, family and kinship ‘blood ties’ are recognized as embodying cultural significance for people

¹⁰⁸ *Id.* at 259.

¹⁰⁹ *Id.* at 258.

¹¹⁰ Cochran, *supra* note 14, at 341-42.

¹¹¹ *Id.* at 342.

¹¹² CONLEY, *supra* note 3, at 260.

¹¹³ *Id.*

¹¹⁴ *Id.*

belonging to the racial-ethnic group.”¹¹⁵ Furthermore, “black men and women often occupied indistinct work roles, often performing the same labor side by side in plantation fields.”¹¹⁶ Consequently, the “legacy of their [African American’s] shared labor was incompatible with a nuclear family, a model predicated on the differentiation between male and female spheres,”¹¹⁷ and thus African American family structures have been viewed negatively by society.

The Ecological model considers the “historical, political, and social influences on African American fathers.”¹¹⁸ This view has been more effective at eliminating stereotypes because it considers the idea that African American males are living in two worlds: the African American community, and the mainstream community.¹¹⁹

Conversely, perhaps the Choice or Exchange theory is the most effective model because it considers both “Afrocentric and [E]cological principles,” such as the “social, political, economic, historical, educational, family, community, and residential” factors in parental involvement.¹²⁰ This is a practical model for African American males because Afrocentric values and the choices that African American males make are included in the cultural analysis.¹²¹ Previously, research methods and literature was “restricted by overuse of the deficit and matriarchy models.”¹²²

The Afrocentric, Ecological, and Choice or Exchange theories lack the scapegoat method of the Matriarchy Model, which is comfortable placing blame on the black mothers for the social ills of African Americans. Also, these

¹¹⁵ Reynolds, *supra* note 16, at 17.

¹¹⁶ *Id.*

¹¹⁷ CONLEY, *supra* note 3, at 258.

¹¹⁸ Cochran, *supra* note 14, at 342.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

theories are more applicable because they negate the limited nature of the Deficit Model, which focuses on “deficits in character” of the African American male.¹²³ “Contemporary theories such as the Afrocentric, Ecological, and Choice or Exchange provide a sociohistorical context by which both positive and negative dimensions of African American fatherhood can be examined.”¹²⁴ Consequently, the aforementioned approaches are more inclusive, relevant, and valuable to the improvement of black father-children relationships.¹²⁵

III. THE SOCIOLOGICAL IMPACT OF ABSENT AFRICAN AMERICAN FATHERS ON THEIR CHILDREN

In *Grutter v. Bollinger*, the United States Supreme Court acknowledged that “Racism is piercing. It is inflammatory. It is painful. It is enraging. It is dehumanizing. It can make African American children feel ‘flawed and unworthy.’”¹²⁶ Unfortunately, since discrimination and racism do have an effect on how many African American children perceive themselves, parental involvement can aid children in avoiding feelings of inferiority, “insecurities, low self-esteem, and self-hatred.”¹²⁷ The Afrocentric, Ecological, and Choice or Exchange theories acknowledge that sociological factors in society also impact the relationship between African American fathers and their children.¹²⁸ When the father is absent he is not able to protect his child from the negative perceptions that many people have of African Americans. Research has shown that “as early as [age] three or four, children of color realize that their skin is a different color than their white playmates’ skin and that they are treated differently because of their skin color.”¹²⁹

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Mabry, *supra* note 8, at 230.

¹²⁷ *Id.*

¹²⁸ Cochran, *supra* note 14, at 341-42.

¹²⁹ Mabry, *supra* note 8, at 230.

It is important that African American fathers be present in their children's lives in order to show them "how to cope with racism" and that they can be "successful adults despite [the] racism" that pervades society.¹³⁰ Fathers as parents can teach their children how to survive by setting positive examples for their children instead of passing on feelings of "self-doubt, inferiority, or bitterness about how African Americans are treated" in our society.¹³¹

Oftentimes, African American fathers find it difficult to obtain work because they are unfairly characterized by society's perception of them as "threatening and overly aggressive."¹³² In the United States, "African American men are treated differently than African American women"; therefore, African American fathers should teach their sons "how to cope in a society that fears them."¹³³ Ultimately, the father's personal experiences are valuable to their sons' development and personal well-being.¹³⁴ When parents create a bridge between ethnic heritage and identity, the resulting knowledge of their cultural history, "helps them develop a sense of pride and buttress their sense of identity."¹³⁵ The father and the mother can participate in providing the child with a positive cultural identity by sharing "stories, and purchas[ing] books, toys, and other materials that are multicultural and that depict African Americans."¹³⁶

In the event that the mother and father come from diverse cultures, but the father is absent from the child's life, "the child will develop only a sense of the mother's culture."¹³⁷ However, when an African American father is involved, he can provide the child with knowledge of his

¹³⁰ *Id.* at 231.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 232.

¹³⁶ *Id.*

¹³⁷ *Id.*

culture as well.¹³⁸ Mabry suggests that “[w]hen the father is absent, the mother should ensure that the child knows the father’s culture through interaction with people who share that culture.”¹³⁹ The positive result is that the “child will then develop a greater sense of identity through these cultural experiences.”¹⁴⁰

If a father does not co-habitate with his children, yet is involved in their lives, the children may still benefit from “child support, inheritance rights, medical support, veteran’s educational benefits, workers’ compensation dependent’s allowances, social security death benefits, pension benefits, and the right to bring certain causes of action, including wrongful death.”¹⁴¹ These economic benefits for the child simply do not exist when the identification of the biological father is not present.

IV. MOTHERS CHOICES AND THEIR IMPACT ON THE FATHER’S INVOLVEMENT WITH HIS CHILDREN

A. *Emotional, Mental, and Economic Barriers to Paternal Identification*

Oftentimes mothers present obstacles to paternal participation, which serve as hindrances to a father’s involvement with the child.¹⁴² A “[s]trained relationship with the mother of their child” can affect “both the quantity and quality [of] father child interactions.”¹⁴³ When the fathers maintained a close relationship with the mother they saw their children every day.¹⁴⁴ But, fathers who had a strained relationship with the mother were only able to visit with their children every other day or once per week.¹⁴⁵

¹³⁸ *Id.*

¹³⁹ *Id.* at 232-33.

¹⁴⁰ *Id.* at 233.

¹⁴¹ *Id.*

¹⁴² Allen & Doherty, *supra* note 103, at 150.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 147.

¹⁴⁵ *Id.*

In other words, negative feelings between a mother and father can cause separation between the father and his child. Furthermore, some fathers felt that the family and friends of the mother were obstacles “if they were hostile to the young father or not supportive of the couple’s relationship.”¹⁴⁶ For instance, various fathers have been faced with verbal assaults from the mother’s partner as well.¹⁴⁷ One man stated that “after trying repeatedly to see his child and the child’s mother, he was chased at gunpoint from her father’s house by some of her relatives.”¹⁴⁸ These experiences may cause a father to keep a physical or emotional distance from his child if contact may result in physical injury or death.

While a father may make decisions to stay away from his children, there are choices made by the mother that may create an absence of the father in the home.¹⁴⁹ For example, some mothers identify a different man as the father on the birth certificate.¹⁵⁰ Also, some mothers have physical custody and decide that they do not want the fathers to have contact with the children or even know that they have children.¹⁵¹ This occurs when the father “may have become disinterested in the mother, the child, or both of them,

¹⁴⁶ *Id.* at 150.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Mabry*, *supra* 8, at 214.

¹⁵⁰ *Id.* at 217; Beyond birth certificates, mothers who give birth to non-marital children may also mislead their sexual partner into completing further documentation, such as signing an acknowledgement of paternity or following through with an order of filiation, under the pretense he is the father, when he is actually not the biological father. This could similarly cause harm to children who are effectively hampered from knowing and forming a relationship with his/her true biological father. In regards to non-marital children, this can be avoided with DNA testing done prior to an acknowledgment of paternity, but not all men have the means to complete DNA testing or believe they have reason to distrust the mother, and therefore many fathers of non-marital children do not complete DNA testing to verify paternity scientifically, and rather rely on their personal belief about paternity or what the mother told them.

¹⁵¹ *Id.* at 214-15.

either before or after the child was born.”¹⁵² Therefore, the mother decides that she will independently support her child both financially and emotionally.¹⁵³ “Another reason a child may not know the father’s identity is that the mother is fearful or ashamed of the unpleasant and painful relationship that she had with the child’s father.”¹⁵⁴ In some cases, the mother may have suffered abuse at the hands of the father, so she failed to disclose the true paternity in order to protect herself and her child.¹⁵⁵ Also, a mother may feel shame because the child was conceived as a result of a rape or incestuous assault.¹⁵⁶ Consequently, identifying the father in the aforementioned situations “may place the mother and her child at risk of harm.”¹⁵⁷

Another factor that may prevent the child from knowing his/her biological father is the “marital presumption.” “A minority of states continue to uphold the common law principle that when a married woman gives birth to a child, there is a conclusive presumption that the woman’s husband is the child’s legal father.”¹⁵⁸ This presumption is to save the child and the family from public embarrassment with regard to the following social policies: “preservation of the integrity of the family, protection of the welfare of children by avoiding the stigma of illegitimacy and keeping them off welfare rolls, and insurance of the stability of titles

¹⁵² *Id.* at 214.

¹⁵³ *Id.* at 214-15.

¹⁵⁴ *Id.* at 215.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* (citing Footnote 33: See Michael H. v. Gerald H., 491 U.S. 110, 119 (1989), reh’g denied, 492 U.S. 937 (1989); Susan H. v. Jack S., 37 Cal. Rptr. 2d 120, 122 (Cal. Ct. App. 1994); Strauser v. Stahr, 726 A.2d 1052, 1053-54 (Pa. 1999) (applying the presumption because the marriage was intact); B.S. v. T.M., 782 A.2d 1031, 1034, 1036 (Pa. Super. Ct. 2001) (declining to apply the presumption because the couple’s ‘hellish marital situation has already occurred’); Wyo. ex rel. NDB v. EKB, 35 P.3d 1224, 1229 (Wyo. 2001) (quoting statutory provisions for the presumption); Unif. Parentage Act 204(a)(1) (amended 2002), 9B U.L.A. 311 (Supp. 2004)).

and inheritance.”¹⁵⁹ In those minority states, if the mother’s “marriage remains intact” a challenge to paternity may not occur even if the husband knows he’s not the father.¹⁶⁰ When a “conclusive presumption is enforced, even if a mother, her husband, or her lover” are doubtful of the paternity they are precluded from issuing a suit to identify the natural birth father.¹⁶¹ In those cases, the “court may decide that it is not in the child’s best interest to conduct genetic testing.”¹⁶² Later, if a divorce or separation ensues between the presumed father the law of “paternity by estoppel will preclude a man who has held himself out as a child’s father from requesting scientific testing to prove that he is not the child’s father or denying that he is the child’s father.”¹⁶³ Occasionally, a mother chooses to misrepresent the identity of the father in order to keep her marriage intact or to avoid hurting her husband’s feelings, or for the purposes of withholding information until the marital union is dissolved.¹⁶⁴

Unwed mothers have also deceived men into falsely believing that they are the birth father of their child.¹⁶⁵ In those cases, the boyfriends relied solely on the mothers’ word that they were the birth fathers; therefore, they will waive genetic testing.¹⁶⁶ Then they swear in affidavits that the children are theirs, and the courts will issue child support orders.¹⁶⁷

In addition to paternity issues, the following are more factors that may interfere with a child’s identification of his/her father, thus preventing a relationship with him:

¹⁵⁹ *Id.* at 215-16.

¹⁶⁰ *Id.* at 216.

¹⁶¹ *Id.*

¹⁶² *Id.* at 217.

¹⁶³ *Id.* at 218.

¹⁶⁴ *Id.* at 220-21.

¹⁶⁵ *Id.* at 221.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

- In 2002, 3.4 million children were residing in homes “with adults who received public assistance,” and to avoid causing trouble for the fathers some mothers will say that they do not know the identity of the fathers.
- Some mothers have multiple partners and may not know the father’s identities.
- Mothers do not identify the fathers because they do not want any interference when they place the children up for adoption.
- The father is a married man.
- Sometimes the mother fears retaliation from the father of some of their other children.
- Mothers want to protect their right to privacy.
- Confidentiality and sealed adoption records prevent disclosure.¹⁶⁸

Sadly, adoption statutes that promote confidentiality “require that all records of the adoption proceeding be sealed. The records that are sealed include the child’s original birth certificate and any other documents that identify the child’s birth parents.”¹⁶⁹ Thus, sealed adoption records prevent disclosure of information that will facilitate a relationship, or knowledge that may identify the birth father.¹⁷⁰ A final issue that may interfere with the identification of the father is that some mothers have received artificial insemination from an anonymous donor. Since these fathers have a right to confidentiality, they may never be identified.¹⁷¹

Some mothers have legitimate reasons for withholding the information that may ascertain the biological father’s

¹⁶⁸ *Id.* at 223-25.

¹⁶⁹ *Id.* at 225.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 225-26.

identity.¹⁷² However, some mothers are “acting to ensure their own self-preservation instead of acting in their children’s best interests.”¹⁷³ These “selfish decisions” serve only protect their own interests or to shield the men who have chosen not support their progeny.¹⁷⁴

Generally, when a child does not have a father in the home, society often blames the father. However, research shows that there are many factors, including the mother’s choices, which preclude true identification of the father or a relationship between the father and his child. Unfortunately, it is the child that suffers when a mother and father face difficulties in their union.

B. Legal Ramifications of a Mother’s Choice to Hide the Paternity of Her Children

Issues concerning paternity were raised in the case of *In re State, Div. of Child Support Enforcement, ex rel. NDB*.¹⁷⁵ The state sought to establish the paternity of the child in question because the mother’s second husband, JDB, claimed that he was not the father based on a home kit DNA test.¹⁷⁶ Initially, the mother was married to her first husband, RWR, when she conceived the child.¹⁷⁷ However, she had an affair with JDB after she discovered that her first husband “had been diagnosed by a physician as having a low sperm count and low sperm motility”.¹⁷⁸ She divorced her first husband and married the man with whom she had an affair.¹⁷⁹ Subsequent to divorcing the mother, JDB discovered that he was not the father of the child.¹⁸⁰

¹⁷² *Id.* at 224.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *In re State, Div. of Child Support Enforcement, ex rel. NDB*, 35 P.3d 1224 (Wyo. 2001).

¹⁷⁶ *Id.* at 1226.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

However, the divorce decree stated that one child had been born of their union (marital presumption).¹⁸¹ Similarly, the first husband, RWR, also stated that he did not seek to have a father-child relationship with the child because he had a “sense that Child did not want to be with him and did not like him (thus, he did not want to force Child to continue an unsatisfactory father-child relationship).”¹⁸² Furthermore, he had limited visitation with the child because the “[m]other tended to interfere with his court ordered visitation.”¹⁸³ The matter at issue was that the first husband, RWR, did not want to submit to a court ordered DNA test claiming a violation of his constitutional rights.¹⁸⁴ Subsequently, the court ruled that subjecting him to DNA testing was not an unreasonable search and seizure.¹⁸⁵ The facts in the case help show that when a mother is unsure of the parentage of her child, this can create a distance between father and child.¹⁸⁶ Consequently, a father may not provide the same emotional, physical and economic support when there are doubts about his role in the child’s life. Nevertheless, regardless of the father’s feelings toward the child and mother, it is in the child’s best interests

¹⁸¹ *Id.*; see Wyo. Stat. Ann. Section 14 2 504(a)(ii) (The mother’s first husband was the presumed biological father of the child born during the mother’s marriage to the second husband, but within 300 days of his divorce from the mother. The mother’s second husband was the presumed biological father of the child born during the marriage. *In re State, Div. of Child Support Enforcement*, 35 P.3d. at 1229).

¹⁸² *In re State, Div. of Child Support Enforcement*, 35 P.3d. at 1227.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 1230 (holding that: The court may, and upon request of a party shall, require the child, mother or alleged father to submit to genetic tests...The tests shall be of a type generally acknowledged as reliable by accreditation bodies designated by the United States secretary of health and human services and performed by a laboratory approved by such an accreditation body).

¹⁸⁶ See *id.* at 1230 n.9 (citing *In re Paternity of D.A.A.P.*, 344 N.W.2d 200, 204-05 (Wisc. 1983); *State on Behalf of Kremin v. Graham*, 318 N.W.2d 853, 855-56 (Minn. 1982); See also *Statezny v. State*, 18 P.3d 641, 644 (Wyo. 2001); *Eustice v. State*, 11 P.3d 897, 904 (Wyo. 2000); *McLoughlin v. McLoughlin*, 996 P.2d 5, 8 (Wyo. 2001), *cited in In re State, Div. of Child Support Enforcement*, 35 P.3d at 1230).

emotionally, physically, and monetarily for the courts to establish accurate paternity.¹⁸⁷

In the case of *Estate of Cornelious*, a woman claimed that the “presumption of legitimacy” barred her from proving that the deceased was her biological father.¹⁸⁸ Thus, she was prevented from inheriting the deceased’s estate because he died “intestate, leaving neither a spouse nor legitimate children.”¹⁸⁹ The appellant argued that her due process rights were denied because she couldn’t prove “Cornelious was her natural or biological father.”¹⁹⁰ “Trudy was reared and supported by David, who was named as her father on her birth certificate. He was never told of the present proceeding, and he died thinking he was Trudy’s father.”¹⁹¹ The court ultimately ruled that Trudy “seeks to establish that another man was her father, and she does so not for reasons of filial piety but solely for financial considerations.”¹⁹² Thus, the court determined that her parentage would not be voided.¹⁹³

In this case, it was the adult child who was trying to establish paternity.¹⁹⁴ Generally, the mother or the state is resolved to determine the parentage of the child. However, *Cornelious* is relevant because when a mother chooses to put a different man’s name on the child’s birth certificate, the child is denied the right to know the true nature of

¹⁸⁷ See *In re State, Div. of Child Support Enforcement*, 35 P.3d at 1228 n.7 (stating that “[a] child’s interests in an accurate paternity determination are broader than the interests of all others and include support, inheritance, and medical support. An accurate determination of paternity results in intangible, psychological, and emotional benefits for the child, including familial bonds and learning of cultural heritage”) (citing *Hall v. Lalli*, 977 P.2d 776, 781 (Ariz. 1999)).

¹⁸⁸ *Estate of Cornelious*, 674 P.2d 245 (Cal. 1984).

¹⁸⁹ *Id.* at 246.

¹⁹⁰ *Id.* at 248.

¹⁹¹ *Id.* at 249.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

his/her parentage.¹⁹⁵ It could be argued that the father who raises a child may be a better father than the biological father. Yet, a mother should evaluate the negative consequences of hiding the identity of the birth father. There are emotional scars and economic hindrances that could last into adulthood. Not only is the child denied a relationship with his/her biological parent, a child may be denied an economic opportunity because he/she is unable to inherit from his/her birth father.

The court in *Turner v. Suggs* considered a motion filed by a father to vacate paternity adjudication on the basis of fraudulent misrepresentations made by the mother.¹⁹⁶ The appellant-father, Suggs, and the appellee-mother, Turner, engaged in a sexual relationship prior to marriage.¹⁹⁷ Turner gave birth to her child on August 18, 1995, and she informed Suggs that he was the father of her child.¹⁹⁸ Suggs accepted responsibility for the child based on Turner's "unequivocal representations."¹⁹⁹ Consequently, he treated the child as his son and assisted with the care of the child.²⁰⁰ Eventually, the relationship between the appellant and the mother ended.²⁰¹ "Ramsey County sought to adjudicate appellant-father of the child and to address custody, support, and visitation issues."²⁰² At the hearing, Suggs "waived his rights to genetic tests and to representation by counsel."²⁰³ Suggs claimed that he relied on Turner's insistence that he was the father of the child, and he was adjudged the father because there were no other presumed fathers.²⁰⁴ Therefore, the court ordered him "to

¹⁹⁵ *Id.*

¹⁹⁶ *Turner v. Suggs*, 653 N.W.2d 458 (Minn.Ct. App. 2002).

¹⁹⁷ *Id.* at 462.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

pay child support and other expenses, and awarded him joint legal custody as well as reasonable visitation.”²⁰⁵ Subsequent genetic tests performed on Suggs and the child, determined that he was not the father.²⁰⁶ Once he informed the district court of the test results, it suspended Suggs’s child support obligation.²⁰⁷ However, he refused to repeat the DNA tests for the court, and moved to vacate the paternity adjudication under the Minnesota Statute.²⁰⁸

Ultimately, the court denied Suggs’s motion.²⁰⁹ The court concluded that he had produced no evidence proving that Turner had committed fraud on the court or on the true biological father.²¹⁰ In the *Turner* case, the question of paternity leaves a child in limbo. While the court is trying to identify the true birth father, the children involved suffer in these types of cases. The relationship between the presumed father and the child may be strained because the presumed father is not sure whether he is really the father. Also, the child can sense that his/her relationship with the father is not secure because of the tension between the mother and the presumed father. Furthermore, the actual

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 461. When determining whether to vacate a paternity adjudication based on fraud and newly discovered evidence the courts reviewed the following statute:

Where a man stipulates to paternity of a child based on the representations and sworn statements of the child’s mother, and where subsequent genetic tests indicate that those representations and sworn statements were false, the genetic tests may be used to seek relief from the paternity adjudication on the basis of newly discovered evidence and fraud.

When considering whether to vacate a paternity adjudication on the basis of newly discovered evidence and fraud under Minn. R. Civ. P. 60.02(b), (c), and where the party seeking relief admits that he may still be adjudicated the child’s father in a subsequent paternity proceeding, a district court shall not consider the child’s best interests in determining whether to vacate the paternity adjudication. *See also* MINN. R. CIV. P. 60.02(b), (c).

²⁰⁹ *Id.*

²¹⁰ *Id.* at 462.

birth father may be denied the opportunity to develop a relationship with his child during the formative years. The biological father may not be informed at all that he is the father in many cases. Additionally, the biological father may not have the economic means to pursue paternity in ongoing hearings. Also, when child support is suspended by the court, and the presumed father decreases his visitation because there is evidence of misrepresentation, the child's best interest is not being served. Mothers should make a conscious choice to be as sincere as possible when it comes to paternal identification. The mental, physical and economic lifestyle of the child could be improved if mothers choose to be completely honest with the fathers.

In *Doe v. Doe*, the court barred the mother's request for genetic testing.²¹¹ In 1988, the plaintiff-appellant (the mother) gave birth to a daughter, and in 1992 a son was born during the marriage.²¹² The mother and the presumed father were divorced in 1994.²¹³ The Divorce Decree stated that there were two children that required support.²¹⁴ The mother was granted physical custody of both children.²¹⁵ Two years later the mother filed a "Petition for Paternity, Custody and Other Relief" claiming that another man (the alleged father) was actually the son's biological father.²¹⁶ The "[a]lleged father denied the allegations in Mother's petition and asserted defenses of res judicata and estoppel. Presumed [f]ather also asserted the same defenses. Both defendants filed motions to dismiss the action on these grounds, which the family court initially denied without prejudice."²¹⁷ The guardian ad litem asserted that it would be in the best interests of daughter and son for genetic tests

²¹¹ *Doe v. Doe*, 52 P. 3d 255, 256 (Haw. 2002).

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.* at 257.

²¹⁶ *Id.*

²¹⁷ *Id.*

to be conducted.²¹⁸ However, the court rejected the mother's request for genetic testing.²¹⁹

The family court ruled that Mother was barred from pursuing the paternity issue because: (1) the issue of Son's legitimacy had already been determined by the Divorce Decree and was barred by *res judicata*; and (2) Mother was equitably stopped from asserting a position inconsistent from the positions she had taken in numerous other motions in the custody and support proceedings wherein she asserted that Presumed Father was the father of Son. The family court also ruled that Son was in privity with Mother as to his interest in the divorce proceeding and was, therefore, precluded from pursuing the paternity action as well.²²⁰

The Court of Appeals in the *Doe* case, ruled that a final judgment—including a divorce decree—can justify paternity actions “asserting defenses based on *res judicata* and equitable estoppel.”²²¹ Furthermore, the mother was barred from bringing an action against the alleged father in her case to establish the paternity of her son.²²² In this case, the father by marriage, according to the Divorce Decree, remained the natural father by Hawaii law.²²³ Similar to *Doe*, “[o]ther states that have adopted the UPA [Uniform Parentage Act] [and] have expressly reached similar conclusions.”²²⁴ Unfortunately, *Doe* is another case that

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 257-58.

²²¹ *Id.* at 267.

²²² *Id.*

²²³ See HAW. REV. STAT. ANN. § 584-4 (LexisNexis 2012), which addresses the presumptions of fatherhood in which a man is presumed to be the natural father.

²²⁴ *Doe*, 52 P.3d at 259 (citing *Blake v. Myrks*, 606 A.2d 748, 751 (Del. 1992) (concluding that ‘the Delaware Parentage Act is not the exclusive means of establishing paternity’); *In re Paternity of JRW and KB*, 814 P.2d 1256, 1261 (Wyo. 1991) (rejecting the appellant’s contention that the Wyoming Parentage Act ‘invalidate[s] any other paternity determination not made in strict compliance with the Act’); *State ex rel. Daniels v. Daniels*, 817 P.2d 632, 635 (Colo. App. 1991) (holding that ‘the UPA does not mandate the exclusion of the doctrine of *res judicata*.’ (Emphasis omitted)).

was tied up in litigation because a mother possibly misrepresented facts concerning the biological father of her child.²²⁵ As the years pass, a presumed father builds a connection with a child. That connection may become frayed when questions of paternity are at issue in court. Generally, but not always, the court will assert that the child's interest is benefited by determining the accurate father of the child.²²⁶

In reality, many urban fathers face economic difficulties, which do not permit them to constantly appeal decisions that they may deem unfair. Many low-income African American fathers are at the mercy of the courts to make the best decision on the lowest level of evidentiary hearings. Many times fathers will trust the mothers' paternity claims because they love the women, they are in a relationship with the women, and/or they don't have the money to litigate the issue in the courts. A further examination encourages fathers to be observant and aware. From the moment that they suspect that there are issues of paternity, fathers should seek legal counsel, and make the court aware of their concerns. This may prevent the wrong man from having to pay child support for a child that is not his own. More importantly, this will allow the natural birth father a once in a lifetime opportunity to establish a real bond with his biological child. As previously stated, when true paternity of is unknown, the children often miss out on important sociological, economic, and emotional benefits. Often times, once a father is presumed based on a previously co-habitive relationship, divorce decree, or mother's affidavit, the court may be reluctant to order DNA

²²⁵ *Id.* at 267.

²²⁶ *See* In re State, Div. of Child Support Enforcement, ex rel. NDB, 35 P.3d 1224, 1228 n.7 (Wyo. 2001) (citing *Hall v. Lalli*, 977 P.2d 776, 781 (Ariz. 1999), stating "[a] child's interests in an accurate paternity determination are broader than the interests of all others and include support, inheritance, and medical support. An accurate determination of paternity results in intangible, psychological, and emotional benefits for the child, including familial bonds and learning of cultural heritage.").

testing which could determine another man to be the natural father of the child.

V. HOW THE MEDIA AND SOCIETY PLAY A ROLE IN THE PERCEPTION OF AFRICAN AMERICAN FATHERHOOD

Many fathers interviewed by social scientist, Tracey Reynolds, were painfully aware of the “negative stereotypes concerning nonresident black fathers” and their participation in their children’s lives.²²⁷

These nonresident fathers felt that they were universally constructed as ‘bad fathers’ because they did not live up to Western culturally prescribed notions of family—mother, father, and children living within a nuclear family unit—or fatherhood, wherein the father has the primary role of economic provider.²²⁸

In a media infused culture, society has often judged African American fathers through the guise of television and movie screens. “The 1990s media typically portrayed black men as ‘no good,’ ‘worthless,’ ‘good for nothing,’ ‘deadbeat’ fathers.”²²⁹ Consequently, the media often reinforces the idea that all black fathers are negligent in their children’s lives on television, and in movies, newspapers, magazines, and novels. With the exception of James Evans on *Good Times* and Cliff Huxtable on *The Cosby Show*, the African American fathers were not seen as positive role models in their children’s lives on U.S. television.²³⁰ “Negative images of African American fathers have been reinforced by dominant societal stereotypes and the academic literature.”²³¹ The African American male was primarily ignored, distorted, or minimized in the media prior to the 1980s.²³² However, recent depictions of African

²²⁷ Reynolds, *supra* note 16, at 17.

²²⁸ *Id.* at 18.

²²⁹ *Id.* at 16.

²³⁰ Nick Chiles, *The Good Father*, ESSENCE, Nov. 2009, at 160.

²³¹ Cochran, *supra* note 14, at 340.

²³² *Id.*

American males are presenting a “more balanced and representative portrayal[s] of African American fathers” in society.²³³ Some young African American fathers reported that negative stereotypes of African American males influenced their own perceptions of themselves.²³⁴ Some of the African American’s interviewed could not even imagine themselves as fathers because of society’s lack of African American role models in the public eye.²³⁵ “From this mix of scholarly ignorance and public indignation, a compelling yet distorted image of unwed inner-city fathers emerged and captured the American public’s imagination: the ‘hit-and-run’ father.”²³⁶ However, recent research supports that the unwed “hit-and-run” father is rarer than public discourse on poverty, family structure, and race suggests.²³⁷

According to the “Fragile Families and Child Wellbeing Study,” parental involvement remains high even by a child’s fifth birthday.²³⁸ In actuality, father involvement decreased for all races “when the father and mother enter subsequent relationships and have children with new partners.”²³⁹ Contrary to popular belief, when African American fathers were compared to white and “Hispanic fathers from high-poverty neighborhoods”, there was a lower decline based on parents’ relationship status.²⁴⁰ Although many fathers wish to refute these stereotypes by sharing personal experiences of positive father-child relationships, “they lacked access to the forms of capital that would enable them to develop a collective voice with which to publicly challenge these popular and policy representations.”²⁴¹ Nevertheless, these unflattering depictions of African American males in society

²³³ *Id.*

²³⁴ Allen & Doherty, *supra* note 103, at 149.

²³⁵ *Id.* at 149-50.

²³⁶ Edin, Tach & Mincy, *supra* note 95, at 150.

²³⁷ *Id.* at 151.

²³⁸ *Id.*

²³⁹ *Id.* at 152.

²⁴⁰ *Id.*

²⁴¹ Reynolds, *supra* note 16, at 18.

did not deter father's efforts to spend time with their children and provide "emotional support" even though they did not live inside the homes with them.²⁴²

VI. POSITIVE STORIES OF AFRICAN AMERICAN FATHERHOOD

In recent decades, the state of the African American family has seen a decline. "More than 54 percent of Black children live in single parent homes headed by women; one-third of Black children suffer in poverty."²⁴³ Therefore, Pulitzer Prize winner and best-selling author, Nick Chiles, like other fathers present in the home feel like rare "false heroes."²⁴⁴ Ultimately, he rejects the patronizing notion that society should be impressed when African American fathers engage in a "run-of-the-mill daily routine of parental chores" as if this is some sort of achievement.²⁴⁵ Yet, resident African American fathers are in a conundrum of sorts.²⁴⁶ Chiles states, "We complain bitterly of being ignored, and then we gruffly reject efforts to reward us merely for being present."²⁴⁷

However, pop culture images of the African American family have grown more positive in recent years. For example, in 2009, while watching an African American family decorate a tree in a commercial, Nick Chiles, had a revolutionary thought. "This year's prototype of the all-American family was Black; the family was a stand-in for the Obamas, repackaged by Madison Avenue. In one giant leap, the Black family had gone from endangered to ideal. A Black man was now the American archetype of Dad."²⁴⁸ Chiles reiterates "Obama may well be the first real-life icon

²⁴² *Id.*

²⁴³ Chiles, *supra* note 230, at 160.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

of African American fatherhood in our history.”²⁴⁹ In past speeches Obama has encouraged African American men to act in a more mature fashion.²⁵⁰ Ultimately, Obama has had a positive influence on the perception of African American fatherhood.

Everyone remembers the headlines when Obama took his daughters out for ice cream.²⁵¹ They “ordered vanilla custards, along with a bag of ‘puppy pops’ for their dog.”²⁵² The media managed to put a negative twist on those facts. Some people suggested that President Obama’s children appeared too “perky and cute, the mother beautiful and accomplished, the father smart and caring.”²⁵³ Due to the common image of African American men as absentee fathers, the image of Obama may seem manufactured to some people.²⁵⁴ But, writer Leonard Pitts, Jr., who published the book *Becoming Dad: Black Men and the Journey to Fatherhood*,²⁵⁵ in 1999, said that reporters fail to acknowledge that everyday African American men are spending time with their children.²⁵⁶ “No pool reporter chronicled it, but somewhere that same Saturday afternoon, some other brother, times untold millions, was engaged in the same ordinary, extraordinary act of being a father to his children.”²⁵⁷ Sadly, Pitts, Jr. laments African American men who are supportive and loving to their children don’t make the headlines unless they are the President of the United States.²⁵⁸

²⁴⁹ *Id.*

²⁵⁰ See e.g. Annette John-Hall, *One Man’s Testimony On Black Fatherhood*, PHILADELPHIA INQUIRER, June 20, 2008, at B01.

²⁵¹ Leonard Pitts, Jr., *Family Values*, ESSENCE, Nov. 2009, at 160.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ Tim Engle, *Of Sins and Sacredness: Columnist’s Personal Search Leads to Study of Black Fatherhood*, THE KANSAS CITY STAR, MO., June 9, 1999, at B01.

²⁵⁶ Pitts, *supra* note 251, at 160.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

In 2008, the future President Barack Obama spoke in a “Father’s Day sermon-esque speech delivered at the Apostolic Church of God on the South Side of Chicago.”²⁵⁹ Sabir Alim, a self-proclaimed reformed father, was inspired by Obama’s Father’s Day speech.²⁶⁰ He viewed Obama’s speech as a positive message, and disagreed with people who perceived the speech as an “accusation or an attack”.²⁶¹ President Obama admonished black fathers for not being accountable and absent from the home and said they are “acting like boys instead of men”.²⁶² “Obama told of how his own father abandoned him. Which made him determined to break the cycle and be there for his children.”²⁶³ This message about responsibility and accountability affected not only fathers, but mothers as well. Author, Annette John-Hall states “While very real economic and societal impediments have a seismic impact on a black family’s foundation—which Obama acknowledged—this is about personal responsibility. About what government can’t fix.”²⁶⁴

Sabir Alim, who is the founder of “Daddy’s Right Here, Inc.” in Philadelphia, is a prime example of this notion of personal responsibility.²⁶⁵ His organization helps to teach African American men how to be good fathers.²⁶⁶ Formerly, he was verbally abusive, and used to sell and smoke crack cocaine.²⁶⁷ Due to his involvement with drugs, he could not afford to buy his children certain things, such as ice cream.²⁶⁸ However, despite his deficiencies as a father, he still did his children’s hair, cooked meals, and picked them

²⁵⁹ John-Hall, *supra* note 250, at B01.

²⁶⁰ *Id.* at B02.

²⁶¹ *Id.*

²⁶² *Id.* at B01.

²⁶³ *Id.*

²⁶⁴ *Id.* at B02.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

up from day care programs.²⁶⁹ Mr. Alim has now transformed his life by completing the “12-steps” of the Alcoholics Anonymous program, where he realized that his own inadequacies as a father were due to his father’s absence, earned a Master’s Degree from Lincoln University, and has recommitted himself to his girls.²⁷⁰ However, he does blame himself for all three of his daughters becoming single mothers.²⁷¹ He agrees with Obama that it is time to break the cycle of absent parenting.²⁷²

CONCLUSION

Since a male influence is critical to a child’s self-identity, mothers “should [also] look to other adult males to act as role models for the child.”²⁷³ For instance, “male role models may include the child’s uncle, grandfather, neighbors, teachers and coaches, or the mother’s partner.”²⁷⁴ Even though a child acquires surrogate fathers in the community, he/she may still desire to know his/her natural birth father.²⁷⁵ However, “a paternity determination may not be in the child’s best interest.”²⁷⁶ Some biological fathers may serve as a negative role model because they are abusive or engaging in activity that may be hurtful to the child.²⁷⁷ Nevertheless, despite class, ethnicity, education and employment status, a father can make a conscious choice to be active in his child’s life. This involvement will have a lasting impact that will likely result in the child having a better self-image and positive cultural identification.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ Mabry, *supra* note 8, at 236.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.* at 235-36.

However, despite a father's best efforts, a mother's choices can cause a child to never know his/her father or have a strained relationship with him. Mothers have to examine the role they play in their children's relationships with their fathers. Unfortunately, some mothers make it difficult or deny the fathers an opportunity to attain or maintain a healthy relationship with their children because of the mothers' negative feelings towards the fathers. In the midst of a hostile environment, many mothers defy visitation orders by denying the fathers an opportunity to see their children. Fathers must be vigilant in their legal, economic and emotional pursuit to have a positive impact on their children's lives.

The Matriarchy and Deficit Models are insufficient theories for contemporary analysis of African American fathers. Their reliance on archaic data and negative stereotypes, neglects to reach beneath the surface of African American fathers and their relationships with their children. Therefore, dependence on the aforementioned theories creates a narrow and superficial interpretation of African American fatherhood. However, the Afrocentric, Ecological, and Choice or Exchange theories acknowledge that class, education, ethnicity, employment status, socio-economics, politics, values, culture, etc., all influence a father's involvement in his child's life.²⁷⁸ Many fathers today credit their own fathers with teaching them how to be a positive role model, and they also acknowledge the other men, such as uncles, grandfathers, coaches, and step-parents, who showed them how to be positive fathers.²⁷⁹ Those personal narratives remind new fathers that a father's role is more than economic support; it is about the necessity for his emotional support and physical presence in his children's lives. Nevertheless, child support and visitation laws that are progressive, realistic, and fair are the best way to use a father's economic resources for the

²⁷⁸ Allen & Doherty, *supra* note 103, at 341-42.

²⁷⁹ Mabry, *supra* note 8, at 236.

benefit of his children.²⁸⁰ For example, when courts use reasonable factors to calculate child support, this increases a father's ability to pay. This may also have the chain reaction of reducing tension between mothers and fathers, which is ultimately beneficial for the child.

²⁸⁰ Bill Ruthhart, *New Method to Determine Child Support Taking Shape*, HOUSTON CHRONICLE, January 1, 2012, at A8. This article discusses the difference between the Income Shares Model and Percentage of Income Model for calculating child support.