Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia

FCA.REPS@aph.gov.au

Lee Nifin
PO Box 1364
Glen Waverley
Victoria 3150

7 August 2003



*Re: Patterns of Parenting After Separation: A Report To The Minister For Justice And Consumer Affairs. Family Law Council, Australian Government Printing Service, Canberra April 1992*

**This matter is brought to your attention because similar misinformation such as that outlined below - may also be undertaken during this Inquiry by those opposed to shared parenting and residency and a child's right to a parent-child relationship with his or her father.**

I am writing to share concerns about the 1992 paper *'Patterns Of Parenting After Separation'* (Hereinafter *Patterns of Parenting*). The report published by the Family Law Council of Australia opposed a statutory joint custody presumption (now known as joint residence or residence/residence in Australia).

What is troublesome about the current family law debate is the extent to which immoderate and unscientific views have influenced the policy recommendations of bodies such as the Australian Family Law Council. For example, in a subsequent 1992 article published in the Australian Journal of Family Law, the Council without the benefit of any supporting data explained its opposition to joint residence in the following terms:

Council's view is consistent with feminist criticism of the model, i.e. the model facilitates control over the child and the mother by the father, not a shared program of day-to-day care and residence Moreover, the serious problem of sloppy scholarship and results-oriented research bias bearing on the central issue of joint residence is clearly demonstrated by *Patterns of Parenting*. The paper first produced for the Minister of Justice and Consumer Affairs was submitted by Council to the 1992 Joint Select Committee examining the operation of the Family Law Act 1975 (Cth).

While concluding that children's access to both the financial and emotional resources of each parent is a desirable goal the Family Law Council refused to endorse any guideline for a rebuttable presumption of joint residence after divorce. Even with strong provisions for exceptions based on spousal violence, child abuse, substance abuse, or other impediments, the Council was unwilling to endorse a recommendation for a marginal 30%-70 % time-share standard.

The bias against a presumption of joint residence was observable in several other Council actions. For example, bias was clear in the uncritical acceptance of feminist testimony opposing joint residence (e.g. Professor Lenore Weitzman's debunked 1985 work) and the ignoring of substantial supportive research. Second in its brief survey of family law in the United States, *Patterns of Parenting* reviewed several U.S. jurisdictions enacting the Council's preferred model of changed family law terminology (e.g. Florida, Maine, & Washington state). However, no comparable analysis of the states enacting presumptive joint residence laws was made (e.g. Louisiana, Montana, New Mexico).

It is of some interest to note that terms custody and access are absent from the 1987 Washington Parenting Act, which refers instead to parenting functions and residential schedules. The statute has

proved to be so unappealing to the general community and many lawyers, that in 1989, two years after it's enactment, joint residence supporters obtained 135,000 signatures opposing the law (Joint Custodian 1994).

To further prop its wobbly opposition to joint residence, Council after citing Lenore Weitzman (a prominent member of the American gender feminist organization NOW) misrepresented California joint custody law as a preference statute and wrongly advised that the law was repealed in 1988. The statute in fact states a presumption in favour of joint custody only when parents agree to such an arrangement and lists joint custody and sole custody as co-equal options when parents cannot agree (Nygh 1985; McIsaac 1986). Section 4600.5 (a) of the California civil code creates a presumption for agreement and it was not repealed. Disturbingly, this false advice was central to *Patterns of Parenting* recommendations against joint residence (See reference 7 below).

In 1996 after stonewalling the writer for approximately 18 months, the Council acknowledged that its California advice was wrong. However, it refused to accept responsibility for the misinformation or to correct it. The refusal was based on the flimsy argument that the 1996 Family Law Council as constituted did not make the misrepresentation, nor did it know how the inaccuracy occurred (letter from Jennifer Boland, Chairperson, Family Law Council 14th June 1996). In like fashion, the Family Court is unwilling to correct the same misrepresentation contained in the Court's submission to the 1992 Joint Select Committee. Despite the Family Law Council's acknowledgement that the advice on California law was false, the Court stands by its incorrect reporting (letter from Len Glare, Chief Executive Officer 7th August 1996).

The unwillingness to accept responsibility and the lack of attention to academic canons raises serious questions about objectivity and responsibility. The misleading of a Federal Minister and the 1992 Senate inquiry are other serious concerns. In this context, it is important to note that the California pretext was repeated by government advisors to a recent New Zealand parliamentary review of family law (see, e.g. Hall & Lee 1994).

The catalyst for gender feminist opposition to joint residence was not the failure of joint residence, but the latest round in a political struggle that is painfully analogous to a courtroom battle between husband and wife. As recently as 1996, in the U.S. NOW issued National Conference Resolutions announcing that the group was preparing a counterassault against all father advocacy organizations in the United States, because their recent successes—primarily legislation that inched fathers minimally forward to permitting them to spend more time with their children—threatened all women (see, Now Action Alert Father's Rights Bill Advances in the House. 20 October 1999. http://www.now.org/issues/right/alerts/10-20-99.html).

The situation outlined above is scandalous. It appears that the misleading of a federal inquiry and a government minister are unimportant issues.

Authored By: Yuri Joakimidis, National Director, Joint Parenting Association

I support this statement by the Joint Parenting Association…

Name: Lee NIFIN
Address: PO Box 1364 Glen Waverley VIC 3150
Contact: Membership Officer, Nuance Exchange Network
Email: nuance@mbox.com.au

References

1. Patterns of Parenting After Separation: A Report To The Minister For Justice And Consumer Affairs. Family Law Council. Australian Government Printing Service, Canberra, April 1992 (Hereinafter *Patterns of Parenting*)

2. Family Law Council. Note: Patterns of Parenting After Separation. 6(3) Australian Journal of Family Law (December 1992) pp 189-190 at 190.

3. Weitzman L. The Divorce Revolution: The Unexpected Social and Economic Consequences For Women and Children In America. The Free Press, New York (1985)

4. Eliminate Terminology? Joint Custodian (1994) p 4

5. *Patterns of Parenting*, Recommendation 14 at 3 (*The introduction of a joint custody presumption is not recommended*)

6. *Patterns of Parenting* at 36:

a. *California was the first state in the United States to introduce a statutory presumption of joint custody after separation* (paragraph 4.46).
b.
b. *California repealed its joint custody presumption in 1988. Prior to its repeal, Weitzman (1985) criticised California's legislation* (paragraph 4.57).

7. *Patterns of Parenting* Conclusions at 31(paragraph 4.51 o):

*The joint custody presumption has been tried and abandoned in at least one major jurisdiction...*

8. Family Court of Australia, Submission 940 vol 30 (b), 26th May 1992 at s5837 p 9

*In 1980, in California a presumption in favour of both joint legal and joint physical custody was enacted...The presumption was repealed in 1988...*

9. Nygh J. Sexual Discrimination and The Family Court. 8 University of New South Wales Law Journal 1986. Justice Nygh writes:

*Section 4600.5(a) of the California Civil Code provides for a presumption that joint custody is in the best interests of the child where both parties agree to an award of joint custody, thereby, it would seem, relieving the court from the duty to make further inquiries. There is it would seem, no such presumption in the case of contest* (*ibid* at 70).

10. McIsaac H. The Divorce Revolution: A Critique. 10(5) California Family Law Report (May 1986) at 3071 (*In fact, the law states a presumption if parents agree, and then has joint custody and sole custody as equal options for the courts to decide upon if the parents cannot agree*)

11. Hall G & Lee A. Family Court Custody and Access Research Report 8. Discussion Paper, Department of Justice, New Zealand (December 1994) at p 75. The authors state:

*In 1988.... the State of California, which had earlier gone so far as to embrace in its statutes a presumption that joint custody was in the best interests of the child, recognised that this presumption was untenable and removed it.*