

Changing Legal Process for Changing Times  
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Keynote Script

Presenters:

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LG: My name is Lloyd Godson and I am a divorce attorney in Boston, Massachusetts. I am very honored to be here today. I would like to thank Anne Berger and the Board of ICCFR for this opportunity. I would especially like to thank Dr. Insa Schoningh for all of her help and hard work to prepare this conference. I am honored to be sharing this address with Grant Howell, my talented colleague from London and a fellow member of the International Academy of Matrimonial Lawyers. Divorce in Massachusetts is an adversarial procedure. Although some individuals are choosing mediation, collaboration, and even arbitration, these are private endeavors. There is no publicly funded mediation, collaboration or arbitration. What does this have to do with the theme of this conference, “Changing Times: Impacts of Time on Family Life?” Everything.

GH: I completely agree and I was also honoured to be invited here today. My name is Grant Howell and I am a Family Partner at Charles Russell Speechlys LLP in London, England with over 30 colleagues specialising in Family Law. I deal with relationship breakdown whether that involves divorce (whether of opposite sex or same sex marriages), children or cohabitants. I am also a Family Law arbitrator. The same processes are available as outlined by Lloyd but in contrast there is some public funding available. However, that is much more limited than was the case until recently as I shall mention. The negative impact that has had has been exacerbated by a policy of austerity leading to reduced state benefits, less local authority funding and increased insecurity in the job market with the rise of practices such as zero hours contracts.

LG: To provide you with the context for my remarks today, Grant and I will now summarise the respective legal systems we operate under. The American legal system is adversarial and is based on the premise that a real, live dispute involving parties with a genuine interest in its outcome will allow for the most vigorous legal debate of the issues, and that courts should not have the power to issue decisions unless they are in response to a genuine controversy. The American legal system is based on a system of federalism, or decentralization. While the national or “federal” government itself possesses significant powers, the individual states retain powers not specifically enumerated as exclusively federal. Most states have court systems which mirror that of the federal court system. The Massachusetts court system consists of the **Supreme Judicial Court**, the Appeals Court, the Executive Office of the **Trial Court**, and seven **Trial Court** departments. In Massachusetts there are 14 counties containing court departments in each county. The Probate and Family Court is a Department of the Trial Court of the Commonwealth. It is headed by a Chief Justice who reports to the Chief Justice for Administration and Management. There are 14 divisions of the Probate and Family Court Department, which correspond to the counties or geographical areas they serve. There are 51 Probate and Family Court judges.

The Massachusetts Probate and Family Court system is overburdened and underfunded. With more than 6.7 million state residents the Probate and Family Court handled nearly 97,500 domestic relations cases in 2014, that is over 1900 cases per judge. Let us not forget that these same judges also handle probate, equity, and name change petitions in addition to the domestic relations cases.

Budgets are down. The cost of lack of resources is driving the amount of time it takes for a couple to get a divorce.

Divorce law has changed over the years in the United States. Sole physical custody of children, usually to the Wife, has changed to parenting plans involving both parents. According to the US Census:

- An estimated 14.4 million parents lived with 23.4 million children under 21 years of age while the other parent(s) lived somewhere else.
- About 18.3 percent of custodial parents were fathers.
- More than one-quarter (28.1 percent) of all children under 21 years of age in families lived with only one of their parents while the other parent lived elsewhere. About half (50.6 percent) of all Black children lived in custodial-parent families.
- Most custodial parents had one child (56.8 percent).
- The proportion of custodial mothers with incomes below poverty (31.8 percent) was about twice as high as that for custodial fathers (16.2 percent).
- About half (48.9 percent) of all custodial parents had either legal or informal child support agreements, and custodial mothers were more likely to have agreements (53.4 percent) than custodial fathers (28.8 percent).
- About three-quarters (74.1 percent) of custodial parents who were due child support in 2011 received either full or partial payments, including 43.4 percent who received full payments.
- Over half (56.3 percent) of custodial parents with joint-custody arrangements received full child support payments, and 30.7 percent received full payments when there was no contact between the child and the child's noncustodial parent(s).
- About 62.3 percent of the \$37.9 billion in child support due in 2011 was reported as received, averaging \$3,770 per year per custodial parent who was due support.

Divorce rates are down in the United States. Those who married in the 2000s are so far divorcing at lower rates, which, if it continues, will result in a divorce rate of 33%. What are the factors contributing to lower divorce rates? People are getting married later in life, which often means they are more financially stable. Birth control reduces the chance of surprise babies. There is also an increase in cohabitation. Interestingly, fewer lower-income individuals are getting married now than in the past. Marriage used to be something everyone did regardless of class. Now that living together seems less shocking, some people have less incentive to tie the knot. Some women don't see the economic advantage to marrying and simply don't. Cohabitation break up can be just as disruptive as divorce. According to the New York Times, people with more education are more likely to marry now than ever before and often these marriages last longer. The Times story also notes another interesting statistic: Women file for the majority of divorces (about two-thirds). Economic independence makes it easier for women to leave a marriage. But there might be another, simpler reason: "Married men are happier than married women."

If you are looking for some fun facts:

1. Couples with different drinking habits are more likely to divorce.
2. Divorce can have a serious impact on men's health.
3. Couples with longer commutes are more likely to divorce.
4. Using Facebook excessively leads to relationship problems.
5. Couples who share housework are more likely to divorce.
6. If a Husband has a close relationship with his in-laws the probability of divorce decreases by 20%
7. If a Wife has a close relationship with her in-laws, the probability of divorce increases by 20%.
8. Women close to divorce work more hours.

GH: In England and Wales, the Family Justice system involves one very recently unified Family Court. A senior judge, known as the President of the Family Division, is in charge of it and it is run under the auspices of a Government Department, the Ministry of Justice headed by the Lord Chancellor an official who can trace his history back to the year 605 with judicial duties as part of the role since at least the 13<sup>th</sup> Century.

Prior to the creation of the Family Court on 22 April 2014, the courts dealing with family matters were numerous reflecting the English court system generally which has developed over 1,000 years rather than starting from scratch. Magistrates, for example, can trace their history back to 1285.

Until 2006, the Lord Chancellor was part of the executive, the legislature and the judiciary. The Lord Chancellor's role changed drastically on April 3 2006 as a result of the Constitutional Reform Act 2005. This major change to affect the judiciary has been described as the most significant since Magna Carta. The Act establishes the Lord Chief Justice as President of the Courts of England and Wales and Head of its Judiciary, a role previously performed by the Lord Chancellor. For the first time an express statutory duty is placed on the Lord Chancellor and other Ministers of the Crown to protect the independence of the judiciary, which is officially recognised as a fully independent branch of the government.

Today, appearing in an English and Welsh court is not exactly a comfortable experience. But at least it is preferable to trial by ordeal, used until almost the end of the 12th century to determine guilt or innocence. Under this system, the accused would be forced to pick up a red hot bar of iron, pluck a stone out of a cauldron of boiling water, or something equally painful and dangerous. If their hand had begun to heal after three days they were considered to have God on their side, thus proving their innocence. Another, extremely popular 'ordeal' involved water; the accused would be tied up and thrown into a lake or other body of water. If innocent, he or she would sink. There were two problems with this method, which was often used to try suspected witches: the accused was tied right thumb to left toe, left thumb to right toe, which made it almost impossible to sink; and opinion is divided as to whether those who did sink were fished out afterwards. William II (1087-1100) eventually banned trial by ordeal – reportedly because 50 men accused of killing his deer had passed the test – and it was condemned by the Church in 1216.

In olden days, criminal and civil disputes could also be decided by trial by combat, with a win held to prove either innocence or the right to whatever property was being disputed. Either side could employ their own champions, so the system wasn't perhaps as fair as it might be. An early example perhaps of instructing the strongest advocate as your lawyer? Trial by combat gradually fell into disuse for civil cases, although it wasn't until someone involved in a dispute in 1818 tried to insist on it that it was realised this was still, technically, an option. Trial by combat was quickly banned, forcing litigants to rely on more conventional routes.

I shall be focusing later on the realities of operating under the English legal system but let us start with the official line. Today, the stated objective of the family justice system is to help families avoid disputes as far as possible but also, if disputes or problems should arise, to enable them to resolve those problems quickly and with the minimum of pain caused to those involved. If at all possible the parties are encouraged to resolve their disputes out of court, for example through mediation, on the grounds that they are more likely to stick to any agreement if they themselves have had a role in formulating it.

When disputes do come to the courts, the cases are dealt with by magistrates and judges specially trained to deal with issues affecting families. These disputes often involve very difficult circumstances, for example relationship breakdown or child contact. Judges and magistrates work to

make the circumstances of family disputes less adversarial and hearings can often be quite informal with, for example, all parties sitting around a table.

Family law mainly involves two sorts of work: private and public. Private cases are disputes that involve parents and, if there are any, concern their children. For example, divorces or separations, who the children should live with, who they should see, where they should go to school or even if they can move to live abroad with one of their parents. The cases can also involve grandparents and other relatives.

Public work is the term used for cases when local authorities take action to remove children from their parents' care because they are being hurt in some way. Such cases can lead to children being adopted and this is also dealt with by a family judge.

The objective is that the judge should have all the papers the day before so she or he will know all about the case before it comes into court. In practice, underfunded courts leads to inefficiency and this objective not being met to the extent that the prudent practitioner will take along to court spare copies just in case the judge does not have them let alone had the chance to consider them. Valuable court time can be lost in the judge requiring an adjournment for a time to read the papers that should have been available to the judge by at least the day before.

Cases can take a long time to resolve and the Government's stated objective is that those involved see the same judge throughout the case, if possible, so that there is a consistent approach to dealing with the problems that are being addressed. However, again a reduced number of judges in order to save costs contributes to cases often coming before various judges leading to the very inconsistency that the system sets out to avoid.

The gap between the State's stated objective, as set out on its official website, and the reality is best indicated when considering the official court statistics (taking the last quarter of 2014 for this discussion's purposes). The website states;

“The parties are usually represented by lawyers who have been specially trained to do this difficult and sensitive work.”

However, this disregards the consequences of the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in April 2013, which made changes to the scope and eligibility of legal aid. From April 2013, legal aid is now only available for private family law cases (such as contact or divorce) if there is evidence of domestic violence or child abuse and child abduction cases. Legal aid remains available for public family law cases (such as adoption). The removal of legal aid for many private law cases has resulted in a change in the pattern of legal representation. There has been an increase in cases where neither party or only the applicant are represented, whilst those cases with only the respondent represented have stayed relatively constant. Cases where both parties are represented have fallen over time, with a sharp decrease seen around the time that the LASPO reforms were implemented.

Figures show that the number of private law cases where both parties were represented dropped by 42% in October to December 2014 compared to October to December 2013, and by 64% compared to October to December 2012. This has a seriously damaging impact on the operation of the family justice system.

The judges are specially trained as these cases affect peoples' lives in a very close and sometimes devastating way. The judge has a statutory duty to put the children's interests and welfare first.

The judge will have reports from an expert court officer (who works for an organization called CAFCASS) who will talk to the children and try to ascertain their wishes. The ability, however, of CAFCASS to perform its role effectively has been hamstrung by lack of funding and under resourcing leading to an increased use of Independent Social Workers (ISWs) by those who can afford to pay them.

Hearings in the family courts are in private and only those who are involved can attend. The judge does not wear robes and the proceedings are much more informal than those in a criminal court to try and ensure that people, who may otherwise be frightened and nervous, do not feel intimidated and can tell the judge what they want to say. Of course, the people in the cases will know each other, they may be angry and upset and feelings can run high. The case can cause distress and a family judge has to try to keep people calm and be sensitive to everyone's point of view. Sometimes witnesses are too frightened or upset to be in the courtroom and arrangements can be made to help them by using a video link.

Four categories of judge hear Family cases;

1. Judges who sit in the High Court have jurisdiction to hear all cases relating to children and exercise an exclusive jurisdiction in wardship. They also hear appeals and cases transferred from the lower parts of the family court system.
2. Circuit Judges (Designated Family Judges and Nominated Care Judges) preside over public law cases, and can make orders for adoption, and the protection, care and supervision of children.
3. District Judges - Family are full-time judges who deal with the majority of family proceedings. They will preside over both private cases, such as divorce, and public cases too. District judges of the Central Family Court in London are considered to be members of the High Court, and can hear both former High Court and county court cases. They hear cases relating to divorce (including financial and property adjustment issues and the care and upbringing of children), civil partnerships, care proceedings, and adoption.
4. District Judge (Magistrates' Courts) are legally qualified, salaried judges and they usually deal with the longer and more complex matters that come before the former magistrates' courts. They will sometimes sit alone, but mostly sit on the Bench with two other magistrates.

Ministry of Justice official figures show that;

- During 2014, family courts dealt with around 240,000 new cases, down from the 266,000 new cases in each of the previous three years.
- In October to December 2014, divorce made up 47% of new cases in family courts, financial remedy 16% and private law 18%.
- The number of cases that started in family courts in England and Wales in October to December 2014 dropped 3% to 59,000 compared to the equivalent quarter of 2013. This is in line with the previous quarters of 2014 but lower than the average of 66,700 cases per quarter in 2011 to 2013. This is mainly due to falls in matrimonial and private law cases.
- Following the publicity surrounding a notorious case (Baby P) where a failure to take a child into care led to a 17 month child's death in 2007, the number of children involved in public law applications made by local authorities jumped in 2009 from around 20,000 to almost 26,000 per year. This had subsequently increased in the past three years to nearly 30,000 per year. Figures have remained fairly steady at around 7,000 per quarter, with 7,426 children involved in public law applications in October to December 2014.
- Over 99% of petitions filed for matrimonial proceedings are for divorce. There are small numbers of annulments and judicial separations. The number of divorces is fairly stable at around 30,000 per quarter.

So now you have the background of our respective systems, what are the issues we wish to highlight from our professional experience?

LG: We had a first time event at my law firm two months ago. One of our clients was murdered by her husband. Could this be the product of the system we have developed in the United States? Are there better ways to advance the divorce process? Could this have been avoided?

GH: Happily, my firm has not had a similar experience but we do see the system itself not assisting a resolution but causing yet further problems. Quite apart from long court delays made worse by substantial cuts in funding for the courts, the fact that divorce may be based on fault leads to a damaging focus on the unhappy past when what is required is an emphasis on sorting matters out for the future of all involved. There are moves to remove fault, which is controversial with some, but for me that can not come soon enough to remove this particular problem with the process.

LG: Where does the process start? In Massachusetts the process usually starts with Lawmakers drafting legislation to correct a perceived problem within society. Our Lawmakers observed a perceived issue in the child support and alimony laws. But where did these perceptions come from? Are they real perceptions or simply motivated groups pushing a particular agenda? Are Fathers concerned to spend time with their children or are they simply tired of paying child support and alimony to an individual, usually a Mother, they believe is misusing the resources? In Massachusetts there are many special interest groups. Some Fathers seek more time with their children while others seek more money in their pocket. Many see an element of unfairness to a permanent alimony award to an individual that they were married to for a relatively short period of time. Is it fair to be married for ten years and be forced to pay alimony for a lifetime. Is it fair to be required to pay an alimony award after retirement? In Massachusetts the answer has been for government to form a blue ribbon panel comprised of activists and experts of varying viewpoints creating consensus through negotiation. These negotiations have created alimony reform of time limited alimony based upon the length of the marriage and alimony termination at retirement. But this legislation has also impacted child support guidelines creating a lower percentage payment for the raising of children than for paying alimony to a childless spouse.

GH: In England, the impact of public policy considerations and the State's finances on family law legislation cannot be over-emphasised. This is heightened by the principle of the Welfare State introduced in the 1940's with the potential that if people cannot support themselves financially or be supported financially, by say an ex-spouse or the other parent of a child, the State will pay.

This imperative, and a salutary tale of what can go wrong if it becomes overriding, is best illustrated perhaps by the history of the introduction of a State Agency to deal with child support instead of relying upon the court system as had been the case previously. The Child Support Agency (CSA) was launched on April 5 1993 in a bid by the Government to recoup the cost of paying benefits to nearly 900,000 single parents, most of them mothers, who receive little or no maintenance from their former partners. By December, the agency was forced to reopen and reassess around 150,000 cases following complaints from absent fathers (particularly through high profile organisations like Families Need Fathers and Fathers4Justice) that their maintenance payments were too high and from mothers still not receiving any financial support from former partners. The agency received more than 1,000 complaints in its first year. In July 1994, it emerged that the CSA secured less than £15m in new money from absent fathers over the same period. In September of that year, its first Chief Executive quit following nationwide protests by fathers groups. In July 1995, the National Audit Office found that fewer than half the maintenance orders made by the CSA were correct and in September it emerged there was a five-fold rise in unpaid maintenance in the agency's first year of operation. By February 1996, the backlog of unpaid maintenance had topped £1bn. 19 years on the successor to the CSA remains in place with continuing complaints as to its inefficiency and rigidity in the application of a formula based approach. Despite that no subsequent Government has wanted to bring back the more discretionary process of the courts, preferring to seek to exercise direct control.

As for what Lloyd knows as alimony, the possibility remains in England of an ex – spouse making monthly payments to the other spouse while they are both alive. While it is becoming increasingly more frequent for such orders to be only for a limited time instead there is still concern expressed by senior members of the judiciary as to the impact, for example, on women who may not have worked for decades while bringing up the family only to find that following divorce and being at a disadvantage in the job market due to their age they will suffer financially. Others argue the concept of life long financial support from a former partner is outmoded in a society seeking to avoid discrimination.

LG: Do other industries also chase funding for the creation of profit? In Massachusetts we have private judges and mediators. Many mediators are lawyers and many are social workers. Each group has industry lobbyists seeking to guide lawmakers to help their particular industry. Should economics guide the shaping of our laws?

GH: As mentioned, in England economics do guide the laws. Whether profit in the resolution of family disputes is a good thing or bad thing depends upon the objective being pursued which has to be resolving matters in the best way for the family. It is important to note that the vast majority of English family lawyers operate under a code of practice, enshrined into a court protocol, which has this objective at its heart is key. Removing lawyers from the system may lead to a case of “be careful what you wish for” if the alternative is ill informed litigants in person or other commercial advisers not bound by such rules of professional practice. By way of example, problems have arisen in England with the use of non –legally qualified advisers called McKenzie Friends

LG: Does the impact of time, or more specifically lack of time, lead to stress in family life and ultimately divorce? I left home at 17 years of age. I worked in many jobs trying to pay for my college education and ultimately to pay for my law school education, graduating at the age of 33. The journey required working two or more jobs at a time, completing undergraduate studies at night and on the weekend while working full-time, and working four part-time jobs while going through a full-time law school program for three years. During this time I also started a family. My oldest son was three when we moved across the country so that I could attend law school. This stress and lack of time contributed to my first divorce. Think about what your journey was like.

GH: Although from a working class background, I had an easier journey to law than Lloyd but the conditions I benefited from no longer survive. My education, including university and law school, was free and my upkeep funded by the State. No-one seeking to follow that path now, or indeed for some years, has the same advantages. The removal of State maintenance grants, increase in tuition fees and more restricted job opportunities means that without support from the family this and similar professional career paths are extremely difficult and stressful for a large section of society.

LG: Our paths are simply examples that we are intimately familiar with. What of the single Mother trying to educate herself? Trying to build a better life for her children, to provide more food and more opportunity? Should we applaud her for working so hard and taking time away from her children? Should we demonize government for not providing more support for her? Should we provide more support for the parent who chooses to stay at home and raise children?

GH: Good questions, to which can be added what is the impact of changing parental roles? This year in England has seen changes to benefit new fathers. Employed mothers will still be entitled to 52 weeks of maternity leave and State financial support but working parents will have much greater flexibility about how they ‘mix and match’ their leave. They may take it in turns or take it together, providing it is not more than 52 weeks in total. The English law is not discriminatory in its language but in practice over the years it has often been suggested that there has been a presumption that young children’s place may be with their mother. Family law needs to reflect changing lifestyles and family arrangements.

LG: What choices do we make through life? What choices are made for us? Are we immigrants in a new country? Have our parents made choices that directly impact our future? Should we pursue education? Should we pursue higher education? Does our culture create an inequality between groups based upon age, gender, race, or religion? Is there a cultural clash between the laws of the country in which we reside and the culture within which we have been raised? Have we made decisions regarding raising our children that have directly impacted our financial reality? Have we made decisions that have already impacted our children that we do not yet realize?

GH: In the 35 years I have been in practice, the impact on children of relationship breakdown has remained one of the most worrying aspects. Even if there is no abuse as such the negative results for a child of their parents breaking up are clear. For me, that is not a reason to revert to former times and make it harder for people to separate but instead to have in place processes that assist to resolve matters. What children see as how to behave in a relationship, however dysfunctional, can all too often provide the template for their own relationships when they grow up. The need to recognize the voice of the child is now key in thinking on family law reform in England but there is much to do. Also, the cultural point that Lloyd raises has increasing relevance in English Family Law, where to quote one striking example due to historical reasons Quakers are recognized in a way that Muslims are not. Not only the process but also the law itself is yet to catch up with the changing times of the demographic realities.

LG: Many cultures prefer to handle family matters within their own communities. Are male dominated societies wrong because the rest of the culture believes in equality? An example in the United States of a unique cultural perspective are polygamist Mormons who are no longer recognized by the Church. Some have ended up in the news with abuse issues. Most live in small communities keeping to themselves. Men have multiple wives and many children. Women relish their role as wives, mothers and homemakers. Their community raises their children as one. There are no daycare issues.

GH: A big and very current issue in England. Family law must serve all communities. At present, there are clear differences as between the English law and its court's view of the handling of family matters by different communities. In a 2013 case called *AI v MT*, an English court expressly endorsed the Jewish parties going through an arbitration process at the Beth Din. Both Jewish and Quaker marriages in England are recognized under English law without a separate English civil ceremony while Muslim marriages are not. The most recent census in 2011 indicated 0.5% of the UK population was Jewish (263,000) while the corresponding figure for Muslims was 4.8% (2.7 million).

LG: What happens when a family faces crisis? I suppose it depends upon the crisis. Is the crisis a sick child or a sick parent? Is the crisis the loss of a job or substance abuse? Is the crisis domestic violence? In our world many of these crises exist but there are few public supports to assist in a crisis. In the United States there are very few safety nets. Although many people have acquired health insurance, many have not, preventing the use of mental health professionals. The Court system can issue orders in an attempt to protect an individual from domestic violence, but these orders do not work all of the time. And what of the financial responsibilities? Many times it takes several months before any type of support is ordered for the benefit of the custodial parent and the children

GH: Again, this has real resonance as far as England is concerned and worryingly recent trends are worsening and not improving the situation. Financial austerity has led to extra pressure on the National Health Service and the ability to call upon the required medical and psychological support services when they are needed for those who can not afford private health care. As for legal assistance, legal aid is still available where domestic violence occurs. Its removal otherwise has had the unexpected consequence of damaging the support services by, for example, substantially reducing the amount of couples entering mediation as without the lawyer to act as gatekeeper and

pointing them in this direction they are unaware of the option or have no encouragement to take it up. In 2013/14, the number of mediation starts plummeted by 38% following the removal of legal aid from family lawyers for most family law matters. In pre-LASPO times, lawyers first had to make a compulsory referral to mediation before being allowed to access the next pot of legal aid. As a direct result, there were 13,609 mediation starts in 2012/13. With that requirement removed, this fell to 8,400 in 2013/14. Not surprisingly, the fall in numbers gave way to a massive £16.8 million underspend by the Ministry of Justice on family mediation in 2013/14. A striking example of the lack of joined up thinking bedevilling the family system in England.

LG: Should the Court system or the government provide services when a divorce is contemplated? What services should be provided? Where should the services be provided? Should the services be provided by a licensed therapist, a minister, a Rabbi, an Imam? Should these services be continued through the divorce process? Should services be continued after the divorce process? What about providing practical services like child care or job training?

GH: My answer to Lloyd's questions is an unequivocal yes! Society is based on relationships and unless their breakdown is fully addressed then the State has a major problem and will be faced with dealing with the consequences, which will far outweigh the cost of providing just the sort of practical services that Lloyd highlights. On potential breakdown, there are a variety of services available to employ be that counselling, mediation, arbitration or litigation. What is required is for those services to work together as an integral whole in the best interests of the family and, crucially particularly in contrast to the current position in England, have the resources of time and money to do so. Lloyd's reference to religious assistance is also interesting in the English context. Courts do take account of that possibility but the law itself has not kept up with the times, most strikingly in its recognition of some religious marriages and not others as giving access to financial support should the marriage breakdown.

LG: Should we as tax payers provide these services? How do we lessen the burden for those who may not need services? Is this a societal cost? In the United States there is constant friction between conservative and liberal factions regarding the cost of any type of public assistance. The concern is usually the cost of the bureaucracy necessary to implement the social reform. The question is always whether the cost is greater if the social reform is not implemented.

GH: All tax payers benefit from such properly funded services. Some may directly do so if they experience family problems and even those who are fortunate enough to avoid that happening may well otherwise suffer the consequences of increased anti-social behaviour of those in families left without any such support. In austere times, real difficulties arise as to trying to preserve and secure funding in this area. The Government just elected in England announced earlier this month that a further £249m is to be cut from the Ministry of Justice's budget this year. This follows a cut of 23% in the period 2010 to 2014 and £500m last year.

LG: What are the realities of life after the divorce process? In the United States those that stayed home to raise children are now entering the work force because the financial realities have forced them to. However, many are untrained for the current economy and must accept low level positions. Time is taken away from the family unit. Parents are forced to purchase child care which, at times, can be so expensive that the parent has to consider not working as an alternative. Most parents are forced into new neighborhoods where they have no family support and conditions are worse than before. Many are forced to seek help from their family. Many move in with their family creating stress among family members and, many times, generating care responsibilities for their parents, who are no longer able to care for themselves.

GH: Again, real parallels in England. Cuts in State housing benefit have forced the very sort of relocation that Lloyd mentions. In contrast, child care costs continue to rise, publically funded child care reduces and housing becomes ever more expensive. On break up, one household becomes two

and the inevitable extra need for finance merely serves to make matters worse. The reaction of the legal process has been an interesting one. There has been a rise in orders that delay realizing the financial investment in a home until say children grow up but on the other hand fewer orders providing for financial support for joint lives thereby relieving the State of potential liability in the future.

LG: What happens to the children after divorce? Often they find themselves in new homes and new school districts. Their friends are left behind. They see their parents less than they used to. Sometimes much less or not at all. Their economic world has also been shattered. Many times they move in with family who are not always kind and caring.

GH: Problems that are all too familiar. What is the English legal process doing about it? There has been an interesting move towards a focus on encouraging shared parenting rather than considering it best for a child to have a base with one parent. Similarly, it has become harder for one parent to relocate abroad with a child in view of the damage that will inevitably do to the relationship between the child and the parent staying behind.

LG: Shared parenting has also gained greater acceptance in the United States. The debate is whether it is proper to shuttle children back and forth between two households. Is there a better way? Should parents shuttle between two households? Courts have ordered this during the litigation process but never on a permanent basis. What are the effects on children to chaotic shuttling schedules between parents, school, and extracurricular activities? Often these children are also over counseled regarding the effect of divorce. Counseling becomes yet another venue for the parents to fight with their children in the middle.

GH: While English courts are now much more open to shared parenting but the practical implications highlighted by Lloyd are yet to be fully apparent. It is not that long ago that the court's view was that a child should have a base or, in the words of one judge, "know where his rugby boots were". As for counselling, "over – counselling" is not an issue as there still remains to a degree British reticence at seeking counselling help and also there is a dearth of counseling for children in practice particularly where parents are unable to afford to pay for it.

LG: What role does social media play in the lives of these children of divorce? Do they have more emotional needs that are no longer being met by their parents who are no longer together and no longer available to them? In the United States there is a concern regarding radicalization of children through social media. There have been no studies regarding whether the children of divorce are more susceptible to social media. One may argue that without proper parenting this may be a real risk for children who are already at risk.

GH: Same concerns in the UK, heightened by instances of teenagers going to join Islamic State in Syria. Interestingly, the lack of knowledge on the part of their parents of their social media use which had played a key part in their decision to go was highlighted in reports. As an aside, in the divorce context research commissioned in 2015 by an English law firm found that nearly a quarter or the 2,000 married people asked said that they had at least one argument a week with their partner because of social media use and 17 per cent said they rowed every day because of it.

LG: Is there social inequality built into the system? In Massachusetts divorce is very expensive for those who want to fight over their children. This happens often. Hundreds of thousands of dollars spent on divorce litigation. Charges back and forth of neglect and abuse. For those fortunate enough to have parents who don't fight, these high wage earners can maintain the same household through income and family support. They can maintain the same school districts or private schools. There is no question that these children will be able to go to college if they choose to.

GH: After decades of social mobility, England is in danger of slipping back towards the situation described by a former Prime Minister, Benjamin Disraeli, in his book “Sybil, or the Two Nations” published in 1845, in which he wrote;

“Two nations; between whom there is no intercourse and no sympathy; who are as ignorant of each other’s habits, thoughts, and feelings, as if they were dwellers in different zones, or inhabitants of different planets; who are formed by a different breeding, are fed by a different food, are ordered by different manners, and are not governed by the same laws...THE RICH AND THE POOR.”

In the context of the Family Law system, court fees increase and legal aid for most cases has been removed. Those who can afford it have access to legal advice and those who can not do not. Depressingly, given that justice was considered to be a fundamental part of the triumvirate with health and education requiring free access for the public the erosion of that right has not attracted the level of concern that attacks on the other two have enjoyed.

LG: But what of those individuals that cannot afford divorce. They attempt to navigate the system on their own. Many are victims of domestic violence. Many others cannot speak the language of their host country. Are these individuals ignored or shuffled through the system with little concern other than the volume that the Court system can no longer maintain?

GH: The biggest issue in the English Family Justice system today. Over 50% of family law cases in the courts now have no lawyers involved at all. Translation services have been privatised, which has led to a shortage of translators and a reduction in the quality of the service. To take one example of the issues that arise, in 2012, serious problems were experienced with Applied Language Solutions (ALS), the interpreter service appointed by the Ministry of Justice to provide interpreters to all courts across England and Wales. This new system for providing interpreters was intended to enable more efficient allocation of interpreting assignments across several agencies, including Her Majesty's Courts and Tribunals Service. It was said at the launch of the new arrangements that a single interpreter would be able to complete consecutive assignments for different agencies in the same general location where previously two, or more, interpreters would have been booked. However, the scheme was partially abandoned within two weeks of being launched. Instead the Ministry of Justice circulated instructions to courts and tribunals allowing them to hire interpreters from other sources in 'urgent' cases because hearings were being cancelled when ALS translators failed to appear.

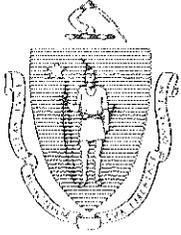
On a separate point, parents lose the right to look after their children and then have to try and persuade the Court of Appeal without knowing the law or how to present their case. Instead of the focus being on the best interests of the families experiencing breakdown, it appears to be, as Lloyd suggests, on reducing costs by either denying them access to the courts or making the experience a difficult and unpleasant one.

LG: The United States needs systemic change. The United States will never accept the concept of cultural courts because our constitution does not allow it. The concept of justice for all is a concept that will always remain. The problem is that there is not justice for all. The litigation system of the United States needs to be changed into a progressive system providing supports for those affected by divorce. The current system is overburdened and dysfunctional. The better system is one that provides for psychological, emotional, and financial supports for those in need. The constant banter is the requirement that supports be provided for everyone even if one can afford the support without public assistance. Government is for all of the people. Those that abuse the system by taking supports they can otherwise afford cause harm to those in need of the supports who cannot afford them. Time is taken away from the family and the raising of children. There is no doubt that cultures will continue to evolve. The issues of marriage, families without the benefit of marriage, same sex marriage will all impact the cultural evolution of our societies. But we cannot forget those without a voice. They are our children, the future leaders of our societies. We need to provide

supports for those without a voice. You are here because you are the best and brightest in your professions. Ideas need to be shared. More importantly, ideas need to be implemented.

GH: Conscious that my focus today has been on the problems and the negatives. I make no apology for that as they exist and need to be addressed, This is not to say though that the system was perfect or did not need to reform to meet today's changing times. Part of that reform needs to be an addressing of the points raised and in particular acknowledging and meeting issues thrown up by the changing nature of society, such as the rise in the number of the cohabitants and the religious make up of the country. The reform must involve ensuring that all the available processes are used when best suited to the situation and available to all. There is already provision under Part 3 of the Family Procedure Rules 2010 for courts to involve non –court dispute resolution processes such as mediation or arbitration. Different judges encourage this with different degrees of emphasis. Has the time come to make it mandatory in certain cases or across the board? How does this sit with a recognition of the autonomy of those involved to reach their own decisions and resolution? A prime topic for discussion.

LG: Thank you for this opportunity to present this topic to all of you. Grant and I look forward to the discussions related to this information.



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June 19, 2015

Lloyd D. Godson, Esq.  
Godson Legal Group, P.C.  
210 Broadway Suite 202  
Lynnfield, MA 01940

Dear Attorney Godson,

Thank you for the opportunity to address the International Commission on Couple and Family Relations.

I was interested to hear that the theme of the conference is "Changing Times: Impacts of Time on Family Life." Although there are many reasons and causes for family discord and divorce, the hectic, and sometimes frantic, pace of our lives can certainly impact the family's ability to communicate. And lack of communication is one of the most often cited reasons for divorce. Courts do not generally assist families prior to the decision to file for divorce. However, once the decision to divorce is made, the Massachusetts Probate and Family Court wants the process to be as streamlined and conflict-free as is possible. As a result, the Massachusetts Probate and Family Court has a number of initiatives to accomplish these goals.

One set of initiatives involves increasing access to justice for litigants in our court. Through the Signature Counter Experience trainings, court staff learn the necessary skills to help people who are going through a difficult time. Many of our courthouses now have Court Service Centers. Staff at the Court Service Centers provide legal guidance and assistance with forms. The Probate and Family Court also conducts workshops for mothers and fathers and goes into the communities it serves to educate people about child support.

Another set of initiatives involves keeping attorneys involved in Probate and Family Court cases. Many of the litigants in the Probate and Family Court are unrepresented by counsel. Not having an attorney can make a difficult and stressful time even more so. The Probate and Family Court participates in the Limited Assistance Representation program. Under the LAR program, an attorney represents or assists a litigant with part, but not all, of his or her legal matter. The attorney and litigant enter into a detailed agreement defining what tasks the attorney will be responsible for and those tasks for which the litigant will be responsible. Lists of qualified LAR attorneys are included on the court system's website so that litigants can see who is available for

this type of representation. We also have a section where attorneys who are bilingual are listed under the language which they speak.

As this conference understands, time is precious. Not just time with family, but also the time that is spent on the divorce process. To help both attorneys and litigants, the Probate and Family Court is implementing staggered scheduling in many of its courthouses. One of the important goals of staggered scheduling is to reduce the time spent waiting to be heard by a judge. Reducing this time has a positive effect on everyone involved in the matter.

The final initiative that I want to share with you involves creating different litigation options in the Probate and Family Court. One size does not fit all circumstances. To address this issue, the court is in the process of creating additional litigation options to the "menu" of options that currently exist. Some of the existing options include dispute intervention, mediation and conciliation. Additional options that we are exploring include an early case settlement process which would offer a faster track to adjudication for those who agree to limited discovery and participation in a settlement conference and mandatory screening referrals to ADR.

Again, thank you for the opportunity to share some of the work of the Massachusetts Probate and Family Court with you.

Sincerely,

A handwritten signature in cursive script that reads "Angela M. Ordoñez". The signature is written in black ink and is positioned above the printed name and title.

Angela M. Ordoñez  
Chief Justice