Divorce and the Military

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Divorce and the Military
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## DIVORCE AND THE MILITARY

With increasing frequency, more service members deployed to combat zones are encountering ambushes on their flanks and rear by their closest allies, their spouses. Imagine the plight of a member of the United States military serving abroad in a combat zone: While deployed, his spouse has leaves him, files for divorce, moves his children, and sells his possessions. During his deployment, he is frozen in a state of legal stasis, unable to defend himself. The convergence of no-fault divorce, imputed valuation of child support and adjustments, deployments, and the Uniformed Services Former Spouses Protection Act (USFSPA) has created a lucrative opportunity for civilian spouses.

## BACKGROUND

During the last forty years the United States has accepted divorce with greater frequency. Today, the divorce rate among civilians remains over fifty percent.[i] While the numbers of civilian divorces remains high the trend appears to have stabilized with marginal drops in the overall rate. Unlike that of their civilian counterparts, the divorce rates among the military are increasing service-wide at historic levels. The most notable of these groups are Army officers with a seventy-eight percentage divorce rate between 2003 and 2004.[ii]

## NO-FAULT DIVORCE

No-fault divorce was introduced in California in 1969[iii] and is now fully accepted in all fifty states within the United States. With the "deregulation" of divorce, America's divorce rate has skyrocketed by two hundred and seventy-nine percent from 1970 to 1992[iv] with the female partner initiating seventy percent of the divorces. The law was created to eliminate stressful, contested divorces by allowing one party to sue for divorce with "no cause". The unintended consequence of the no-fault divorce is the automatic faulting of the defendant (usually male) allowing the petitioner to be favored during the divorce proceedings.

The favoring of the petitioner during divorce allows the initiating spouse to prepare for the divorce months in advance by positioning assets and building custody arguments while the defendant may be completely unaware or unable to react while deployed. Couple this prior preparation with the legal trends that favor the female partner, the defendant is poised to lose a sizable amount of assets and a large portion of his income. This legal trend can be proven statistically by the U.S. Census Bureau findings "…women who are heads of households have a net worth that is 141 percent of the net worth of men who are heads of households."[v] Although the Census Bureau did not differentiate how these households gained their net worth, the

assumption is that men usually have a greater income potential while women have a greater legal advantage in family court. Because the majority of households are products of divorce, the greater income potential of men has translated into a greater support responsibility. Men appear to be more affluent when comparing incomes of their former spouses, but this appearance is dispelled once the net worth comparison is made.

**IMPUTED VALUATION OF CHILD SUPPORT AND ADJUSTMENTS**

In American divorce, custody is primarily awarded to the female partner in ninety percent[vi] of the decisions. According to Warren Farrell, Ph.D., the only man to be elected to the Board of the National Organization for Women, the courts have created a male-hostile situation: "We tell women," says Farrell, "they have the right to children but tell men they have to fight for children." Farrell continues to describe the situation as "taxation without representation"[vii] when divorce forces men to leave their families, but at the same time they are responsible for continued economic support. Moreover, child support orders are unfair to military service members because the payments are based on an imputed value instead of actual pay. Family advocate and journalist, David R. Usher describes this disadvantage:

Courts are quite likely to base the child support order on

> imputed civilian pay – which is commonly much higher than military pay. It is not exceptional to see military men paying over half of their pretax income as child support.[viii]

In addition to unfair child support rulings, the military reservist has additional problems with civilian courts with regard to support adjustments. On average, a reservists' civilian income is greater than his military income while he is activated. Consequently, the reservist's child support is based on his greater civilian income. Once activated, these reservists remain legally bound to the higher child support payment without the means to pay it.

Moreover, adjusting a child support payment in a timely manner is crucial for U.S. reserve forces. David R. Usher illustrates this scenario:

> Where only 4% of civilian men are able to get support modifications, we can safely say it is far more difficult to accomplish from a tent in Iraq…There is no federal requirement that support orders must be based on military pay, and no guarantee a modification will be granted. Many reservists have only 72 hours to report for duty – not enough time to even get the attention of a system that generally refuses to treat men fairly in the first place.[ix]

**DEPLOYMENT**

For the military divorce, deployments exacerbate the problems created by divorce. The high operational tempo since the end of the Cold War has seen active duty deployments increase by three hundred percent and the increased activation of reservists by one twelve-hundred percent.[x] This tempo is

creating greater military-specific divorce problems. For example, civilian spouses can take custody of the children legally through the courts with no opposition while their husbands are deployed. Secondly, prior to a military deployment, the service member is urged to sign a Power of Attorney (POA) to a trusted family member. Depending on the scope of the POA, the stateside spouse has the ability to sell or confiscate community property including homes, vehicles, furniture and bank accounts. While deployed, the service member may be completely unaware or unable to prevent this appropriation of property placing him in a defenseless "legal stasis" position. Usher describes the situation:

> …the best time to divorce a man is when he cannot defend himself because he is on the other side of the world. It is quite simple to seize the family, get a hefty (temporary) support order, and move on. That's the beauty of no-fault divorce. You do what you want while the husband pays the costs and assumes the fault by default.[xi]

**UNIFORMED SERVICES FORMER SPOUSES PROTECTION ACT (USFSPA)**

The USFSPA was created and enacted in 1982. The proponent of the law was Doris Mozley, a career military wife and mother of four children. She was married for thirty years to a Navy officer. Upon his retirement, Mozley was divorced and faced an uncertain future. She had faithfully served her husband and four children as a homemaker. Mozley had forgone a career, a pension, and the ability to provide for herself to care for her

family. Once divorced, she had few prospects for her future and little security for her own retirement in the form of a pension. This experience led Mozley to begin her campaign to military spouses from this injustice, and she was successful in bringing about the passage of the USFSPA.[xii] Today the USFSPA is credited with the division of military retirement as community property during divorce. While Mozley's case may have been the ideal for which the law was created, it also allowed those less deserving to take advantage of the military service member. The major disadvantages of USFSPA are the one-income head of household bias, lack of statutory limits in duration, and no fault provision.

BIAS

Until the 1950's, American divorce was uncommon, and the family structure was based around a one-income head of household. Consequently, the divorce laws provided for a greater distribution of support and property to the dependent wife. This distribution was designed to protect the dependents and to shift the burden from the state which otherwise might be forced to assume an additional welfare burden. The dynamic of the American household changed with the entrance of highly educated and skilled women into the workforce. However, the USFSPA continues to treat the American family as a single income entity. Infact, the USFSPA can automatically award the division

of up to fifty percent of a military retiree's retirement benefit.[xiii] In contrast, no system for the division of civilian retirement exists except by court decision, and this decision is not guaranteed.

STATUTORY LIMITATIONS

Additional problems exist with respect to USFSPA's statutory limitations. Rarely are military retirement benefits overlooked during the division of property. However, when such benefits are omitted from the settlement, the ex-spouse can sue to rectify the "oversight" at any time after the divorce. Other forms of "overlooked" property (i.e. homes, vehicles, assets) cannot be sued for after a specified period following the divorce. More commonly, the ex-spouse sues for an increase in her division of the retirement or for entitlement that she legally waived during the divorce. Here again this standard does not apply to other types of property. Imagine being awarded a residential property during a divorce, only to lose a portion of that home during a divorce proceeding 30 years later.

NO-FAULT PROVISION

The third major problem with the USFSPA relates to "no-fault divorce" as it applies to the division of military retirement. The courts apply general guidelines when judging the portion of retirement to be awarded during divorce. With no-fault divorce (initiated without cause), the military member

has little ability to defend his retirement during a divorce proceeding. The faithfully married service member is treated exactly the same as the abusive, adulterous one. The converse is just as true: the unfaithful spouse is equally as entitled to the military retirement as the deserving spouse as noted by Jacey Eckhart, a reporter for the Norfolk-Virginia Pilot:

> It didn't matter to the court whether your ex-spouse married your half-brother. Or if she refused custody of the kids. Or if she remarried and drove a new Lexus while you drove around in a 21-year-old clunker. The pension was simply an impersonal asset -- like savings, like bonds, like a house in the 'burbs.[xiv]

**CONCLUSION**

Existing laws and increased deployments are creating epidemic divorce rates and disparate impacts among the military. Immediate reform of existing divorce laws is required to reduce the inequality existent in divorce today is required. Clearly the U.S. needs to address these issues in order to ensure military personnel can serve their country without distraction.

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[i] Usher, David R. "DIVORCE AND CHILD SUPPORT ARE EVISCERATING MILITARY RECRUITMENT" Newswithviews.com. http://www.newswithviews.com/Usher/david.htm June 4, 2005.

[ii] Gomulka, Gene T. "Marriage in the Military: Let's Lower Military Divorces" *WWW.Military.com*.http://www.military.com/NewContent/0,13190,Gomulka_080105,00.html.

Zoroya, Gregg. "Soldiers' Divorce Rates Up Sharply." *USA TODAY*. *http://www.usatoday.com/news/nation*.

Groening, Chad and Jenni Parker. "U.S. Troop Deployment Patterns Put Military Families Under Stress" *http://headlines.agapepress.org*. http://headlines.agapepress.org/archive/6/222005e.asp June 22, 2005.

[iii] McMillen, Tom. "Finding Fault With No-Fault Divorce." *Rocky Mountain Family Council* http://divorcesupport.about.com/gi/dynamic/offsite.htm?zi=1/XJ&sdn=divorcesupport&zu=http%3A%2F%2Fwww.rmfc.org%2Fdivop1.html

[iv] McMillen, Tom. "Finding Fault With No-Fault Divorce." *Rocky Mountain Family Council.* http://divorcesupport.about.com/gi/dynamic/offsite.htm.

[v] Farrell, Warren, Ph.D. *The Myth of Male Power.* New York: Berkley Books, 1994. 32.

[vi] Farrell, Warren, Ph.D. *The Myth of Male Power.* New York: Berkley Books, 1994. 170.

[vii] Farrell, Warren, Ph.D. *The Myth of Male Power.* New York: Berkley Books, 1994. 249.

[viii] Usher, David R. "DIVORCE AND CHILD SUPPORT ARE EVISCERATING MILITARY RECRUITMENT" Newswithviews.com. http://www.newswithviews.com/Usher/david.htm June 4, 2005.

[ix] Usher, David R. "DIVORCE AND CHILD SUPPORT ARE EVISCERATING MILITARY RECRUITMENT" Newswithviews.com. http://www.newswithviews.com/Usher/david.htm June 4, 2005.

[x] Shinseki, Eric K. *The Army Family: A White Paper.* 2003. 9.

[xi] Usher, David R. "DIVORCE AND CHILD SUPPORT ARE EVISCERATING MILITARY RECRUITMENT" Newswithviews.com. http://www.newswithviews.com/Usher/david.htm June 4, 2005.

[xii] Eckhart, Jacey. "All's Not Fair In Love And Divorce In The Military" *Norfolk Virginian-Pilot*. http://www.freerepublic.com/forum/a3b5589414a4b.htm. July 14, 2001.

[xiii] Eckhart, Jacey. "All's Not Fair In Love And Divorce In The Military" *Norfolk Virginian-Pilot*. http://www.freerepublic.com/forum/a3b5589414a4b.htm. July 14, 2001.

[xiv] Eckhart, Jacey. "All's Not Fair In Love And Divorce In The Military" *Norfolk Virginian-Pilot*. http://www.freerepublic.com/forum/a3b5589414a4b.htm. July 14, 2001.

## BIBLIOGRAPHY


Bowen, Gary L., and Dennis K. Orthner. *The Organization of the Family: Work and Family Linkages in the U.S. Military.* New York: Praeger Publishers, 1989.

Committee on Armed Services, United States Senate. *Issues Affecting Families of Soldiers, Sailors, Airmen, and Marines.* Washington, DC: U.S. Government Printing Office, 2005.

Farrell, Warren, Ph.D. *The Myth of Male Power.* New York: Berkley Books, 1994.

Fiore, Faye. "Troops' Struggles in Iraq include Failing Marriages." *The Seattle Times.* http://seattletimes.nwsource.com.

Eckhart, Jacey. "All's Not Fair In Love And Divorce In The Military" *Norfolk Virginian-Pilot*. http://www.freerepublic.com/forum/a3b5589414a4b.htm. July 14, 2001.

Gomulka, Gene T. "Marriage in the Military: Let's Lower Military Divorces" *WWW.Military.com.* http://www.military.com/NewContent/0,13190,Gomulka_080105,00.html.

Groening, Chad and Jenni Parker. "U.S. Troop Deployment Patterns Put Military Families Under Stress" *http://headlines.agapepress.org*. http://headlines.agapepress.org/archive/6/222005e.asp June 22, 2005.

Jowers, Karen, and Gina Cavallaro. "War and Warlock: Stress of Duty and Deployments Turning Marriage into a Minefield." *Army Times.* June 27, 2005.

Kitfield, James. "Military Manpower: Adjusting to New Stresses." *National Journal, Washington* Vol 36, Iss 6 (2004): 398 – 400.

McMillen, Tom. "Finding Fault With No-Fault Divorce." *Rocky Mountain Family Council* http://divorcesupport.about.com/gi/dynamic/offsite.htm?zi=1

/XJ&sdn=divorcesupport&zu=http%3A%2F%2Fwww.rmfc.org%2Fdivop1.html

Philpott, Tom. “JCS Chairman Supports Review of Ex-Spouse Law” *WWW.Military.com*. http://www.military.com/NewContent/0,13190,Philpott_071305,00.html. July 13, 2005.

Shinseki, Eric K. *The Army Family: A White Paper.* 2003.

Usher, David R. “DIVORCE AND CHILD SUPPORT ARE EVISCERATING MILITARY RECRUITMENT” Newswithviews.com. http://www.newswithviews.com/Usher/david.htm June 4, 2005.

Vernez, Georges, and Gail L. Zellman. *Families and Mission: A Review of the Effects of Family Factors on Army Attrition, Retention, and Readiness.* Santa Monica: The Rand Corporation, 1987.

Zoroya, Gregg. “Soldiers’ Divorce Rates Up Sharply.” *USA TODAY. http://www.usatoday.com/news/nation.*