

AN ABSTRACT OF THE DISSERTATION OF

Tammy L. Henderson for the degree of Doctor of Philosophy in Human Development and Family Studies presented on July 14, 1999. Title: A Content Analysis of Court Opinions About Grandparent Visitation Rights.

Redacted for Privacy

Abstract approved: _____

Patricia B. Moran

The current study was a content analysis of court opinions on grandparent visitation rights using the method of grounded theory. The research questions addressed in this study were: (a) On what bases were grandparents granted legal standing to petition for visitation with their grandchildren? (b) What was the legal reasoning for denying or granting visitation rights to grandparents who obtained legal standing?

Results showed that 32 out of 103 (31%) grandparents were denied legal standing. Of those grandparents who acquired legal standing ($n = 71$), 34% were denied visitation. Failure to meet statutory requirements was the leading justification for denying grandparents legal standing and visitation rights. Hesitation to intrude on parents' fundamental rights and a strict interpretation of the best interest of the child standard were also justifications used to deny grandparents legal standing and visitation rights.

Although parental rights often superceded grandparent rights, this study found that grandparents have gained some legal ground. Thirty-one out of 103 (31%) grandparents in this study were awarded visitation with their grandchild. Some

grandparents were awarded visitation with grandchildren in intact families. Visitation rights for five grandparents were given or upheld following the adoption of the grandchild. Gains in legal rights were evident in decisions that interpreted grandparent visitation statutes as seeking to balance the rights of parents, grandparents, and children instead of only parents and children. These facts illustrate a slow shift in family law.

©Copyright by Tammy L. Henderson
July 14, 1999
All Rights Reserved

A Content Analysis of Court Opinions About Grandparent Visitation Rights

by

Tammy L. Henderson

A DISSERTATION

Submitted to

Oregon State University

**in partial fulfillment of
the requirements for the
degree of**

Doctor of Philosophy

**Presented July 14, 1999
Commencement June 2000**

Doctor of Philosophy dissertation of Tammy L. Henderson presented on July 14, 1999.

APPROVED:

Redacted for Privacy

Major Professor representing Human Development and Family Studies

Redacted for Privacy

Chair of Department of Human Development and Family Sciences

Redacted for Privacy

Dean of Graduate School

I understand that my dissertation will become part of the permanent collection of Oregon State University libraries. My signature below authorizes release of my dissertation to any reader upon request.

Redacted for Privacy

Tammy L. Henderson, Author

ACKNOWLEDGEMENTS

This dissertation was a collaboration that only God could have developed. It was vested with many contributors, lessons, and dreams. I thank my Mother, Bertha Richard Henderson, who is the First Lady of my life. The person that I am today is a direct result of her guidance and love. This strong, Black woman gave her life to help her children. One of the greatest mechanisms of help was setting a foundation in the lives of her children based on knowledge of God, Black truths, and the strength of my ancestors. It was this foundation that sustained me in my darkest hours and brightest rainbows.

Additionally, I would like to thank Dr. Patricia Moran, the chair of my doctoral committee, for her commitments and perseverance with this project. Additionally, I would like to thank my committee who gave in time and expertise: Drs. Jan Hare, Alan Sugawara, Alexis Walker, and Molly Engle. I would also like to thank Dr. Clara Pratt, Barbara Emily Knudson Endowed Chair in Family Policy, and Dr. Larry Roper, Vice Provost of Student Affairs, for funding my assistantship and allowing me to focus on my dissertation.

In addition, the HDFS staff especially Mrs. Sandy Frye and Katheryn Moore, who give continual service to students. My colleagues were there to celebrate my successes and to believe in me when those successes were growing pains. I would like to take a moment to paste their names on the history books: Rachel Ozretich, Lori McGraw, Diana White, Debbie Coehlo, Margaret Manoogian-O'Dell, Marilyn Barlow Pietrich, and Blythe Kneedler.

The real miracle was the Underground Railroad that band together to help me finish. As I sit here, the tears of joy, amazement, and love flow for the people who worked to the very end with me. Anthony N. Nicholas, my partner for life, has had to sustain me through sleepless nights. Earlean Wilson-Huey, like Anthony, deserves special recognition for her roll in scanning and entering data, as well as, holding my hand when I felt lost. My Sistah friends, Virginia James and Sahara White were there with acceptance, understanding, and prayer. These women came into my life when God knew I needed the nurturance of strong Black women.

The other members of this Underground Railroad proved that it takes a village to sustain not only children, but the adults within it. I take this time to thank the remaining crew of this railroad and the families that they represent: Michelle Weatheroy, Robin Small McCarthy, Drs. Leonor Boulton Johnson, Pamela Monroe, Gladys Hildreth, Denise Skinner, and Ada Skyles. Ute Vergin and others are a joy to my life and blessing to my heart. As Paul wrote to the church at Phillippi: "I thank my God every time I remember you. In prayers for all of you, I always pray with joy because of your partnership in the gospel from the first day until now, being confident of this, that he who began a good work in you will carry it onto completion until the day of Christ Jesus (Phillippians 1:3-7).

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Socio-Historical Changes that Contribute to Contemporary Grandparenting.....	3
The Influence of Grandparent Visitation Right Statutes on Parental Rights and the Definition of the Family	5
REVIEW OF LITERATURE.....	6
Grandparenthood and the Grandparent-Grandchild Relationship	6
A Brief Overview of Landmark Family Law Cases	13
Grandparent Visitation Rights	23
Criticism of the Best Interest of the Child Standard	34
Summary.....	39
METHODS	41
Research Questions	41
Procedures	41
Data Analysis	43
Sampling Strategy	47
RESULTS: GRANDPARENTS WHO DID NOT OBTAIN LEGAL STANDING	51
Grandparent Visitation Unfairly Intruded on the Fundamental Rights of Parents	51
Grandparents Failed to Meet Statutory Requirements	55
Grandparent Visitation Was Not in the Best Interest of the Child.....	61

TABLE OF CONTENTS (Continued)

	<u>Page</u>
Conclusions and Discussion	62
RESULTS: WHEN LEGAL STANDING WAS GRANTED AND COURTS DENIED GRANDPARENTS VISITATION RIGHTS	67
Statutory Requirements	68
Intruding on Parents Fundamental Rights	70
Best Interest of the Child	72
Conclusions and Discussion	75
RESULTS: WHEN LEGAL STANDING WAS GRANTED AND GRANDPARENTS WERE GRANTED VISITATION RIGHTS	78
Upholding Lower Court Decisions	79
Best Interest of the Child	82
The Shift from Family Law Traditions	84
Conclusions and Discussion	88
RESULTS	93
Other Issues	93
Conclusions and Discussion	97
CONCLUSIONS	99
Summary of Findings	99
Discussion	100
Why Are Grandparent Visitation Rights Important to Family Sciences? ...	107
Future Research	109

TABLE OF CONTENTS (Continued)

	<u>Page</u>
Limitations.....	110
Summary.....	111
BIBLIOGRAPHY.....	112
APPENDICES.....	127
Appendix A Number of Grandparent Visitation Cases	128
Appendix B Omitted Cases.....	132
Appendix C Remanded Cases.....	140
Appendix D No Legal Standing.....	146
Appendix E Denied Grandparent Visitation Rights.....	151
Appendix F Granted Grandparent Visitation Rights	157
Appendix G Other Issues.....	162

LIST OF FIGURES

<u>Figure</u>	<u>Page</u>
1. Decision Tree for Coding Grandparent Visitation Cases.....	45
2. Decision Tree for Legal Standing, Denied Visitation Rights.....	46

LIST OF TABLES

<u>Table</u>	<u>Page</u>
1. Number of Cases Heard at Each Court Level and General Outcome.....	50
2. Justifications for Denying Grandparents Legal Standing	51
3. Justifications for Denying Grandparents Visitation Rights.....	67
4. Justification for Granting Grandparents Visitation Rights.....	78

A Content Analysis of Court Opinions About Grandparent Visitation Rights

CHAPTER ONE

Introduction

The first grandparent visitation rights statute was passed in 1986, giving grandparents legal rights to visit their grandchildren over the objections of parents. Now all 50 states have grandparent visitation statutes. The following two cases describe some of the issues that occur when a case is heard under a grandparent visitation rights statute.

In King v. King (1992), the grandfather and son had a dispute over the son's work performance and the grandfather asked the son and his wife to leave the farm. Before this dispute, the grandfather had daily contact with the grandchild. After the dispute, visits were discontinued, resulting in the grandfather petitioning for visitation. The first two courts denied grandfather visitation. The state supreme court granted grandparent visitation rights because it was in the child's best interest. Justices on the state supreme court noted:

"That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physical, mentally, and morally, is clear; but the individual has certain fundamental rights which must be respected. This statute seeks to balance the fundamental rights of parents, grandparents, and the child" (King v King, 1992, p. 632).

The justices also reasoned that the grandparent and grandchild both benefit from their relationship. Grandchildren are exposed to the insights of the grandparents.

Grandparents' loneliness can be reduced by the companionship of their grandchildren. All the members of the court did not agree. The dissenting justice preferred the traditional legal perspective that protected parents' fundamental rights to raise their children as they see fit without interference from anyone, including grandparents (King v. King, 1992).

In Hawk v. Hawk (1993), a father worked a bowling alley with the grandfather. Although the two families spent regular time together at Sunday worship, bowling, and visiting every Sunday and Wednesday, family disputes were frequent among the two Hawk households. Because of poor work performance, the grandfather terminated the father's job. Grandparent-grandchild visits were discontinued because of (a) family disputes between the grandfather and the parents, and (b) the parents' concern over a paternal brother who resided with the grandparents and who had a drug addiction. The paternal grandparents sought visitation with grandchildren via the courts. The trial court awarded visitation and the Court of Appeals upheld the trial court order. The trial court not only superseded the parents' wishes, but noted:

Grandparents don't have to answer to anybody when they have the children. They can take the children to visit friends of theirs, they can take the children anywhere they please. They can also take the children on vacation during the time that they have them for the two week period of time, and they're not restricted as to where they can take them, because the Court is fully convinced that they would not do anything or take these children anywhere that would adversely affect these children. (Hawk v. Hawk, 1993, p. 577)

Sociohistorical Changes that Contribute to Contemporary Grandparenting

At no time in our country's history until 1986 did grandparents have legal rights in relation to their grandchildren. During this century, however, proximal and distal changes in families set the foundation for the emergence of grandparent visitation statutes. These factors included lower fertility rates, longer life expectancy, increased family disruption, and increased political power of older adults (Hooyman & Kiyak, 1996; Erikson, Luttbeg, & Tedin, 1991; Aldous, 1998).

Lower fertility rates and increased longevity have combined to create a situation in which there are more older adults who are grandparents. With the increase in life expectancy, there were larger cohorts of older adults. Hooyman and Kiyak (1996) reported that 94% of all older adults with children are grandparents and 50% are great-grandparents. Szinovacz (1998) suggested that most grandchildren will reach adulthood with more than two grandparents living and around 75% will reach 30 years of age and still have a living grandparent. Additional changes included an increased number of three and four generations (Roberto & Stroes, 1995). Thus grandparents have become less challenged with dividing their time or resources among several grandchildren (Cherlin & Furstenberg, 1986).

Family disruption due to divorce, separation, unwed parents, teen pregnancy, mental illnesses related to alcohol and substance abuse, incarceration, and child maltreatment, have become more visible social concerns (Cherlin & Furstenberg, 1986; Johnson & Barer, 1987; Minkler & Roe, 1993). In 1988, 37 per 1, 000 marriages ended in divorce (Behrman & Quinn, 1994). Because grandparent-

grandchild relationships are mediated by parents, divorce and other forms of family disruption change the ties and exchanges between generations (Giarrusso, Silverstein, & Bengston, 1996; Hooyman & Kiyak, 1996; King & Elder, 1995). Matthews and Sprey (1984) noted that the custodial parent determines the frequency of visits between grandparents and grandchildren; when the custodial parent is the child of the grandparent, then grandparent-grandchild visitation is more likely to continue than if the noncustodial parent is the child of the grandparent.

Because of the increase in family disruption, grandparents have become more important resources to families by providing tangible and social support. Johnson and Barer (1987) showed that grandparents continue to exchange services with their adult children after a divorce. Johnson (1988) found that maternal grandparents are asked to contribute more tangible and social support than they had anticipated in their career or retirement.

With the increased number of grandparents, there has been an increase in grandparents' political powers. Because younger adults are preoccupied with personal or more immediate issues including securing a job or mate, it is not surprising that older adults are more politically active than younger adults (Erikson, Luttbeg, & Tedin, 1991). The political powers of grandparents have gained the attention of state and national governments. One indicator of this attention was the President's designation of 1995 as the "Year of the Grandparent." Another indicator was the rapid acceptance of grandparent visitation right in all 50 states (Burns, 1991; Bostock, 1994; Hartfield, 1996).

The Influence of Grandparent Visitation Right Statutes on Parental Rights and the Definition of Family

Prior to the enactment of grandparent visitation statutes, laws reflected society's vision of the family as a private sphere. Parents have constitutional rights that are protected from unwarranted government intrusion. To intrude, the state must have a compelling interest. Grandparent visitation rights give grandparents, in some circumstances, the right to visit their grandchildren against the wishes of the parents, which weakens the legal protections afforded parents. In this way, grandparent visitation rights have changed the social construction of the private sphere of family life.

Grandparent visitation rights are shifting the way the law defines families (Bohl, 1996; Shandling, 1986). Prior to the enactment of grandparent visitation statutes, the courts considered family to be biological or adoptive parents with children. The courts have provided very limited legal protections to extended families and they have not extended those protections to provide grandparents with a constitutional right to family (Moore v. the City of East Cleveland, 1977). In granting grandparent visitation rights, however, the courts are treating grandparents as members of families and shifting the legal definition of the family (Bohl, 1996; Purnell & Bagby, 1993).

Grandparent visitation statutes directly influence only a small portion of families who are using the courts to win access to their grandchildren. These statutes indirectly influence all families, however, by changing the protections given to parental rights and shifting the definition of the family to include grandparents.

CHAPTER TWO

Review of Literature

The review of literature is divided into three major sections. The first section examines relevant literature on grandparent-grandchild relationships. The second section reviews how grandparents obtain legal standing to petition for visitation with their grandchildren. The last section deals with some of the criticisms of the best interest of the child standard, which is used by courts to determine whether visitation should be granted.

Grandparenthood and the Grandparent-Grandchild Relationship

Smyer and Hofland (1982) found that approximately 95% of grandparents see their grandchildren every week and 50% of grandparents see their grandchild on a daily basis. Geographic proximity is more important than the parent-grandparent relationship in shaping the frequency of visits between grandparents and grandchildren.

Grandparents hold an important role within most families, although it may very well be symbolic (Bengston, 1985; Cherlin & Furstenberg, 1986; Denham & Smith, 1989). For instance, some researchers have suggested that grandparents may act like the "national guard" or the militia, protecting, caring, and enacting policies while others may act as the "arbitrator" negotiating between parents and grandchildren (Bengston, 1985; Hagested, 1985; Troll, 1983). Wiebel-Orlando (1997) found that

some grandparents hold the role of “cultural conservator” in order to teach their grandchildren about their Native American culture and to build personal and community stability.

Grandparenting styles. Cherlin and Furstenberg (1986) explained grandparents’ influence on grandchildren as grandparenting occupations and styles. These researchers noted that grandparenthood is similar to an occupational career that has distinctive stages based on the age of the grandparent relative to the grandchild. The first stage extends from the grandchild’s developmental stages of infancy to adolescence with a high level of grandparental involvement. The second stage spans the adolescent years of the grandchild that may involve a decline in grandparents’ involvement. Adulthood, the final stage, may mean more grandparental involvement if grandparent-grandchild proximity is close.

Researchers also have identified various grandparenting styles (Cherlin & Furstenberg, 1986; Neugarten & Weinstein, 1964). For instance, the involved grandparenting style refers to engaged and involved grandparents who help parents to raise their grandchildren, thereby acting with some authority. In Black families, researchers have found that grandparents are more authoritative and influential than in White families (Cherlin & Furstenberg, 1986; Kivett, 1993; Hunter & Taylor, 1998).

The companionate grandparenting style tends to allow parents to be the grandchild’s primary decision-maker and authority figure; these grandparents follow the norm of noninterference. Grandparenting is not the central role of the companionate grandparenting style (Troll, 1983). The companionate grandparent is

more like the family watchdog who is available to consult with the parents (Hagestad, 1985).

The remote or distant style refers to grandparents who have little contact or involvement with their grandchild; however, this grandparent maybe uncomfortable with this distant position (Cherlin & Furstenberg, 1986). Asian grandparents may adhere to this style based on cultural norms toward intergenerational responsibility, language differences, and other influences related to immigration (Kamo, 1998).

Mediating factors in the grandparent-grandchild relationship. There are several factors that influence relationships between grandparents and grandchildren. Proximity, ethnicity, race, age, and health were found to mediate grandparent-grandchild relationships. Family crises, likewise, influences these relationships.

Proximity. The influence of grandparents on families is mediated by proximity (e.g., Cherlin & Furstenberg, 1986; Johnson, 1983; Kivett, 1985; 1991; Whitbeck, Hoyt, & Huck, 1993). Cherlin and Furstenberg (1986) found proximity influences the frequency of visits between grandparents and grandchildren while Kivette (1985) found it to be an important factor in predicting relationships among grandfathers and grandchildren. Alternatively, proximity was not an important mediating factor for Black grandparents (Strom, Collinsworth, Strom, & Griswold, 1995) or for relationships between White grandparents and teenaged grandchildren (Whitbeck, Hoyt, & Huck, 1993).

Ethnicity, race, and grandparent-grandchildren relationships. Cultural traditions among ethnic or racially diverse groups influence the grandparent-grandchild relationship (e.g., Burton & Bengston, 1985; Chan, 1997; Wiebel-Orlando,

1997). For instance, the salience of grandparent influence on families is stronger in ethnic or racial families than in White families. Black, Hispanic, and Native American grandparents may act more as surrogate parents than do White grandparents (Cherlin & Furstenberg, 1986; Lubben & Becerra, 1987; Markides & Mindel, 1987). Cultural traditions and values, along with economic need, also help to create a climate that allows more grandparental involvement in ethnically and racially diverse families than in White families (Cherlin & Furstenberg, 1986; Markides & Mindel, 1987).

Age and grandparent-grandchild relationships. The age of the grandparent and grandchild are also mediating factors in the grandparent-grandchild relationship. As grandparents age, their involvement with grandchildren declines (Johnson, 1983; Sprey & Mathews, 1982; Thomas, 1986). Some researchers found that older, Black grandparents were satisfied with their grandparenting role (Strom, Collinsworth, Strom, & Griswold, 1995). In the same study, grandparents felt successful with their roles with younger grandchildren as well as with older grandchildren. Other researchers found that younger grandchildren may elicit greater pleasure and involvement if the grandparent and grandchild live in close proximity (Cherlin & Furstenberg, 1986).

Health. Additionally, as grandparents age, they may experience lower energy and have health concerns, thereby reducing their involvement in their grandchild's life. Kivett (1993) found that the relationship between older rural White grandmothers and grandchildren declined with the health of the grandmother. After controlling for proximity, however, some researchers found a low association between the health of grandparents and the associational or functional aspects of the grandparent-grandchild

relationship (Cherlin & Furstenberg, 1986; Troll, 1985). Illness such as Alzheimer's, dementia, and depression may also influence the grandparent-grandchild relationship (Kivett, 1998). Alternatively, the grandchild or grandparent may elect to spend time with friends, at work, or doing other community activities.

Family crises. Another factor that influences grandparent-grandchild relationships is family disruption. Around 17 million children under the age of 18 live with a divorced or separated parent or stepparent (Behrman & Quinn, 1994). Johnson and Barer (1987) found that paternal grandmothers maintain relationships with their former daughters-in-law more often than maternal grandparents maintain relationships with their former daughter-in-law. If relationships were retained, grandparents continued to exchange services. Grandparents are an invaluable source of social support for families experiencing life crises such as divorce as well as normative life changes (Cherlin & Furstenberg, 1986; Johnson, 1995). There appears to be a difference in grandparent involvement after deaths as opposed to divorce and separation. Grandparents' involvement may increase with a child's death and decline with divorce (Johnson, 1995).

Cherlin and Furstenberg (1986) found that maternal grandparents provided more support to nonintact families facing divorce or separation than paternal grandparents. One reason for this difference was that paternal grandparents lived further away from their children. Johnson and Barer (1987) also found that divorce reduced the social supports between divorced parents and grandparents. In general, grandparents' response to family disruption varied because of age of grandparents, ancestral ties, and the norms that each family has for grandparenting (Johnson, 1998).

Grandparent-parent relationship. Grandparents' relationship with their own child, the parent of the grandchild, was an important factor in the grandparent-grandchild relationship (Hagestad, 1985; Thompson & Walker, 1987). For example, Thompson and Walker (1987) found that grandmother's feelings for her own daughter influenced her feelings for her grandchild. When grandparents and parents have close, warm relationships, then grandparents' involvement is more likely than when this relationship is charged with more negative affect (Cherlin & Furstenberg, 1986). Grandparents' influence on grandchildren may also be by way of their economic support to the child's parents. Bass and Caro (1996) found that the economic value of grandparents who provide care for grandchildren can be equated to \$17.4 to \$29.1 billion annually.

Grandparent-grandchild relationship. Grandparents also provide social and tangible support to their grandchildren. Social support from grandparents to grandchildren may involve phone calls, visits, recreational activities, and family dinners and gatherings (Cherlin & Furstenburg, 1986; Denham & Smith, 1989; Roberto & Stoes, 1995). Sometimes grandparents help to resolve disputes between parents and grandchildren or talk over issues raised by their grandchild. Some grandparents may act as playmates to grandchildren while others act as role models or mentors (Cherlin & Furstenberg, 1986; Tomlin, 1998). Transmitting history, values, and morals is also among the direct influences of grandparents on grandchildren (Bengston, 1985; Denham & Smith, 1989; Hagsted, 1985; Roberto & Stoes, 1995).

Tangible support from grandparents to grandchildren involves gift giving that includes money. Grandparents may help grandchildren with chores, teach them new

skills, or show them how to play a game (Cherlin & Furstenberg, 1986; Roberto & Stroes, 1995). Watson and Koblinsky (1997) found that grandmothers were more likely than grandfathers to be involved in teaching grandchildren than about the importance of other people's feelings and lifelong learning.

Additional research on grandparents' influence on child development is needed. In general, research has shown that grandparents who assisted their children with parenting or grandparents who raised their grandchildren have had some positive influence on their grandchildren's development. For example, the behaviors of grandchildren sometimes improved with the grandparents' presence in single-parent families. Grandparents positively influenced the emotional and cognitive development of grandchildren including single or teen parents (Stolba & Amato, 1993).

Mediated by age, grandparents sometimes have a negative influence on grandchildren. Grandchildren in middle school failed to benefit from the presence of grandparents. Sometimes the presence of grandparents failed to mediate behavioral problems of grandchildren when the mothers used drugs or felt burdened by caring for grandparents with Alzheimer's disease (Stolba & Amato, 1993).

There are researchers who argue that some grandparents such as those who take on the remote or distant grandparenting style may have an adverse or no impact on grandchildren (Thompson, Tinsley, Scalora, & Parke, 1989; Thompson, Scalora, Limber, & Castrianno, 1991). According to the research, grandparents sometimes undermine parental authority (Harrigan, 1992) and lower teen mothers' self-concept (Voran & Phillips, 1993). Additionally, parents and grandparents in intergenerational

households sometimes reinforced negative parenting styles or created stress due to conflicting parenting styles.

Summary. The symbolic associations attached to grandparents as the national guard, arbitrators, or cultural conservators shows the importance of grandparenthood in the development of the family and grandchild. Grandparent-grandchild relationships may be expressed in terms of grandparenting styles that range from distant to involved. Factors that influenced the grandparent-grandchild relationship included proximity, ethnicity and race, gender, age, health, and the grandparent-parent relationship. Grandparents may provide parents with social and tangible supports. Grandparents may also provide grandchildren with social and economic supports that range from phone calls to gifts. Regardless, grandparents have the potential to influence grandchildren and hold an important role in families.

On the other hand, grandparents may adversely influence the development of their grandchildren by undermining parental authority or by creating additional stress or conflict within families. Grandparents may have no positive impact on their grandchildren because of mother's involvement in drugs, grandparents' own illnesses, or because of distant grandparenting styles. These mixed research findings serve as a reminder to social scientist and legal professionals that grandparent visitation should be a case-by-case process of decisionmaking.

A Brief Overview of Landmark Family Law Cases

The influence of the law on families is explained first through a brief overview of landmark family law cases. These landmark cases help to explain how state

interests expressed in statutes sometimes compete against the individual rights of parents and children. This section ends with a discussion of how grandparent visitation rights have shifted the traditional relationship between the state and parents.

Individual rights. Citizens' rights are rooted in the founding documents of American democracy, the United States Constitution and Declaration of Independence. These documents protect citizens' individual rights against unwarranted government intrusion. The Constitution protects citizens' rights via the application of four basic principles of America's democracy:

- **Equality of Rights and Opportunity:** Recognition and implementation in our public and private lives that all people are created equal before God and should be treated accordingly by the American government.
- **E Pluribus Unum:** Despite our diversity, there is a national unity that focuses on the principles of equality, liberty, and the common good.
- **Balance of Individual Liberty and Protection of the Common Good:** It is the responsibility of the government to protect the well-being of citizens using a system of checks-and-balances to guard individual liberties.
- **Religious Freedom:** Citizens have the right to practice the religious faith of their choice (Williamson, 1997).

In family law, these are principles that have directed the lives of individuals in American families. These principles require courts to weigh state interests in protecting all citizens against the individual rights of parents and children. Recognizing the influence of capitalism, politics, and national culture, legislators enacted statutes based on perceived needs or demands of the citizens as a whole.

Citizens, in turn, challenged statutes that intruded upon their constitutional rights, and courts determined how to balance the interests of the state and the individual rights of citizens.

State interests. State interests in protecting the well-being of all citizens are expressed in statutes. When a citizen claims that a statute unjustly intrudes upon a constitutional right, the court weighs the state's interests against the individual's rights. In determining the balance, the court uses different tests that depend on the legal question asked and the protections afforded the individual right in question. Because fundamental rights are highly protected, the state must have a compelling interest for intruding upon a citizen's right (Harvard Law Review, [HLR] 1980; Mintz, 1992). The Supreme Court has recognized individual autonomy as a fundamental right in matters pertaining to marriage (e.g., Loving v. Virginia, 1967; Zablocki v. Redhail, 1978), procreation (Griswold v. Connecticut, 1965), contraception (Carey v. Population Services International, 1977), abortion (Roe v. Wade, 1973), family relations (Moore v. the City of East Cleveland, 1977), and raising children (e.g., Meyer v. Nebraska, 1923; Pierce v. Society of Sisters, 1925).

Nevertheless, court decisions have placed limits on parents' fundamental rights to childrearing and family autonomy to protect the overall well-being of American citizens (Harvard Law Review, (HLR) 1980; Jacobson v. Massachusetts, 1905; Prince v. Massachusetts, 1944; Wisconsin v. Yoder, 1972. For instance, in Prince v. Massachusetts (1944) a minor child was distributing religious literature in a public area under the supervision of a guardian in violation of the child labor law that led to her arrest. The guardian claimed that her Fourteenth Amendment protection against

unwarranted government intrusion to bring up the child as she desired and the child's rights to observe her religious practices were violated. The Supreme Court held that the state's interest in controlling the conduct of children in the streets and public places reached beyond its authority over adults or the privacy rights of parents and guardians. Furthermore, child labor laws were designed to protect children and the whole community by safeguarding children from abuse and giving them opportunities to become well developed citizens.

To protect children's rights, the state may act as "parent of the country" (Black et al., 1991) and invoke its parens patriae powers or police powers to protect the interests of all citizens (HLR, 1980). In the case of children, the state is the ultimate parent and protector (HLR, 1980; Mnookin & Weisburg, 1993). Justices also use the best interest of the child standard to protect children from threat of harm or to find an alternative that minimizes potential harm to a child (Mnookin & Weisburg, 1993).

In Jefferson v. Griffin (1981), a mother refused to undergo a Caesarian section and blood transfusion because of her religious beliefs. Justices determined that the mother had to undergo the Caesarian section to save the life of her unborn child who was entitled to protection by the state. The state used its parens patriae powers, becoming the ultimate parent of the child, to take custody of the child for its protection. This action directly conflicted with the parent's right to religious convictions.

Having established that state interests as expressed in statutes sometimes conflict with individual rights, the remainder of this discussion focuses on cases that exemplify how courts seek to balance the rights of parents and children against state's

interests. Cases involving parents' privacy rights, liberty interests, and religious freedom rights are followed by a discussion of children's rights.

Parental rights. Parental rights have been categorized as privacy rights and liberty interests. Parents also have the right to practice their religion without unwarranted government inference.

Privacy rights. Citizens have the right to personal privacy or a guaranteed zone of privacy (Carey v. Population Services International, 1977). Privacy rights are not directly specified in the Constitution but are constructed or interpreted rights within the confines of the First, Fourth, and Fifth Amendments; the penumbras of the Bill of Rights; and the rights reserved to citizens under the Ninth Amendment (Griswold v. Connecticut, 1965). Rights related to procreation (Griswold v. Connecticut, 1965), abortion (Roe v. Wade, 1973), and contraception (Carey v. Population Services International, 1977; Eisenstadt v. Baird, 1972) are one order of privacy rights. Justices have protected procreation rights for both married and unmarried adults (Griswold v. Connecticut, 1965) while at the same time addressing the sanctity of both marital relations and marital privacy (HLR, 1980). The state also has an interest in the survival of humanity (HLR, 1980). In Eisenstadt v. Baird (1972), resting on the Griswold (1965) decision, justices struck down a Massachusetts statute that prohibited the dispersing of contraception to unmarried citizens because all citizens have a natural right to reproduce or not reproduce.

The determination of privacy rights in relation to procreation and contraception set the foundation for Roe v. Wade (1973). The Court found that, just as contraception had a direct relationship to procreation, so did abortion. Therefore, a woman's

decision concerning abortion falls under the protection of privacy rights. Despite common beliefs, the state has an interest in protecting the health and lives of women that was expressed in this decision. Consequently, justices elected to protect a woman's privacy right regarding the decision to an abortion in the first trimester because carrying a baby full term is more dangerous than having a first trimester abortion. The state must protect a woman's health after the first trimester because abortion becomes more dangerous to a woman as the pregnancy advances.

Liberty interests. Individuals also have liberty interests in parenting. Beginning in the early 1900s, family law began to provide additional protection to parent-child relationships (McCarthy, 1988). According to justices, parents' desire for and right to the companionship, care, custody, and management of their children warranted legal protection (e.g., Stanley v Illinois, 1972). This reconstruction of legal decision-making is exemplified in the following family law cases.

In Meyer v. Nebraska (1923), a Nebraska statute required that only English be taught in schools. The state had an interest in educating its citizens so that they may become productive members of society. Parents of a minor child hired an instructor to teach German who was later arrested and convicted of violating this Nebraska statute. The Supreme Court acknowledged that, although the statute had good intentions, it overextended its powers and violated the teacher's right to teach another language and the parent's liberty interests in teaching their children another language. Furthermore, learning another language did not cause harm to the health, morals, or development of the child.

Parents' right to raise and educate sometimes conflict with the state's interest in having a literate citizenry (Pierce v. Society of Sisters, (1925). For example, Oregon's Compulsory Education Act required all children between the ages of 8 and 16 to attend public schools allowing exceptions for children with special needs or who have already completed eight years of schooling. Justices held that this act "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control" (Pierce v. Society of Sisters, 1925, p. 6).

Parents' liberty interests also include personal and family relations (Loving v. Virginia, 1967; Moore v. the City of East Cleveland, 1977). Citizens have the right to associate with or disassociate themselves from whomever they choose. For instance, Loving (1967) involved a White man married to a Black woman. Their marriage violated a Virginia law that prohibited and punished interracial marriages. The Supreme Court held that this statute violated the personal right to marry, equal protection, and due process rights by promoting White supremacy. This quotation captures the essentials of personal privacy: "Under the Constitution," Warren concluded, "the freedom to marry, or not to marry, a person of another race resides with the individual and cannot be infringed by the state" (Loving v. Virginia, 1967, p. 6).

Religious freedom. A parent's privacy rights and liberty interests make up only two domains of constitutional protections afforded parental citizens. Parents also have religious freedom rights which are woven into the social fiber of America. Based on America's concept of separation of church and state, the state is not to interfere with

religious institutions. Likewise, religious institutions are not to exercise authority through the state (Black et al., 1991). All citizens are endowed with religious freedom rights under the First Amendment; family law cases are no exception.

Religious freedom, like privacy rights and liberty interests, are not absolute. Accordingly, the courts seek to balance the state's interests against parent's religious freedom rights. Recalling the readers' attention to Jefferson v. Griffin (1981), justices allowed the state to intrude on the religious practices of parents. On the other hand, the religious practices of Amish parents were protected against a state's compulsory education statute in Wisconsin v. Yoder (1972). The state interest in having compulsory education served to educate children, to reduce the incidence of child labor that might displace adult workers, and to reduce the chance of idleness. Despite these state interests, Amish children in Wisconsin v. Yoder (1972) received an eighth grade education which was sufficient to meet their basic needs. Children were trained to use farm which led to the community's economic self-sufficiency and posed no undue burden to society. Amish children were trained to use farm equipment, thereby removing the compelling state interest of threat of harm or danger to a child. They were not displacing workers in the nearby community with child labor, but maintaining the farming tradition of the Amish. Based largely on these facts, the Supreme Court held that the compulsory education statute violated Amish parents' rights to determine the religious upbringing of their children.

Rights of children. Children have individual rights or personal interests, but these are not as strong as the rights of adults. For instance, children may avoid contractual obligations. Children usually do not manage their earnings or property.

Based on age constraints, children may not vote, hold office, work in certain occupations, drive a car, or consume liquor (Mnookin & Wiesburg, 1993). Children have the right to: (a) be heard, (b) religion, (c) due process, and (d) to family autonomy including procreation, contraception, abortion, and marriage. Right to be heard. Children's rights have evolved over time and the determination of these rights is often embedded in other cases. For instance, in the dissent of *Wisconsin v. Yoder* (1972), justices established children's right to be heard. Justice Douglas pointed out the conflict between the individual rights of parents and child. Children's liberty interests in attending school may override their parents' right to religious freedom.

Right to religion. Citizens have the constitutionally protected right to practice their religion. Children similarly have a right to exercise their religion. In Prince v. Massachusetts (1944), justices also protected children's religious freedom rights.

Due process rights. All citizens have the right to life, liberty, and the pursuit of happiness. Before the state can intrude upon these rights, citizens have a right to due process of law. Children have some due process rights, meaning access to fair and just laws and procedures. In the case of In re Gault (1967), a minor child was arrested, without an adult present or other legal representation, for improper telephone usage. The child did not receive notification about the date of his hearing. The U.S. Superior Court held that children have some guaranteed due process rights such as the right to (a) notice of charges, (b) counsel, (c) confrontation, and (d) cross-examination.

Right to free speech. Tinker v. Des Moines Independent Community School District (1969) shaped children's right to free speech. With their parents' knowledge, three students elected to protest the Vietnam War by wearing black armbands to

school. The principal drafted a school policy that any student wearing a band would be suspended and sent home. Supreme Court justices reasoned that the armbands were neither disruptive, aggressive, nor representative of a group demonstration that hindered the order or economics of the school; therefore, the student's First Amendment right to free speech had been denied: "Students in the public schools do not shed their constitutional rights of freedom of speech or expression at the schoolhouse gate (Tinker v. Des Moines Independent Community School District, p. 3, 1969).

Unlike in Tinker (1969), justices in Hazelwood School District v. Kuhlmeier (1988) placed limits on children's free speech rights to protect the interests of the majority. Students were not allowed to print articles in the school newspaper that dealt with sensitive material concerning teenage pregnancy and divorce. Besides the sensitive material, school officials were concerned about the privacy of other students. The Supreme Court held that school officials acted reasonably in attempting to monitor student's behavior that directly related to school assignments. School officials also acted reasonably to control the moral, ethical, and legal behaviors of students in the journalism class.

Child's right to family autonomy. Children's right to family autonomy differs from that of adults. Statutes regulate children's right to marry by having age requirements and by requiring parental consent. In fact, most statutes require parental consent for children under 16 years of age to marry (HLR, 1980). Delaying minors' right to marry differs from delaying a person's right of abortion, because abortions have time constraints directed by law and far more adverse consequences.

Consequently, having minors obtain parental consent or wait until they are legally adults prove to be an inconvenience more than a violation of rights. In general, state statutes that restrict the rights of parents and children seek to protect citizens from poor decision making and to promote self-sufficiency. State interests protect children in areas in which adults cannot be protected such as school attainment and reducing teen pregnancy.

Despite age requirements, the Supreme Court has reasoned that children, meaning minors under 16 years of age, have the right to procreation, contraception, and abortion Bellotti v. Baird, 1979; Carey v. Population Services International, 1977; Planned Parenthood of Central Missouri v. Danforth, 1976). Carey v. Population Services International (1977) was in response to a statute that prohibited children from acquiring nonprescribed contraception. The state interest in enacting this statute was to regulate the morality of children. Relying on Planned Parenthood of Central Missouri v. Danforth (1976), justices reasoned that third parties, including parents' could not intrude on a woman's right to abortion in the first 12 weeks of pregnancy. Similarly, if parental consent is not needed in cases of abortion, then it should not be needed in issues of contraception. Children, like adults, have the right to abortion and contraception; therefore, it is logical to assume that children have procreation rights.

Grandparent Visitation Rights

Currently, all 50 states have grandparent visitation statutes, although these statutes do not automatically give all grandparents legal standing to petition for visitation. Three main approaches outlined in statutes that give grandparents' legal

standing: derivatives, special circumstances, and open-ended laws (Hartfield, 1996; McCrimmon & Howell, 1989; Walther, 1997).

Derivatives. The first statutes that allowed grandparents to petition for visitation with their grandchildren were based on a derivative of rights theory (Bostock, 1994; Gillman, 1995; Hartfield, 1996; Walther, 1997). These statutes allow grandparents to have access to their grandchildren when their own child does not have access due to death, incompetence, unfitness, or incarceration. If the parent of the child loses their parental rights as a result of divorce or some other form of termination, then the grandparent loses all legal ties to their grandchild. According to Balzlb (1994), if a parent died, the related grandparent could petition for visitation with his or her grandchild.

There are exceptions to these interpretations of derivative of rights. For example, in one case, after the death of the biological father, the grandchild remained in the custody of the mother who allowed visitation by the paternal grandparents (In re the Matter of Grandparental Visitation of C. G. F., 1992; Michaels, 1993). These visitations gradually decreased until the mother remarried and finally refused to allow any visitation. Not long after the marriage, the stepfather began adoption proceedings. The grandparents petitioned for visitation. The trial court held that visitation was in the child's best interest, but the grandparent right to visit would terminate upon an adoption. After the adoption, the grandparents filed a petition opposing the condition set by the trial court.

The Court of Appeals, relying heavily on another case, affirmed the trial court's decision to terminate visitation rights upon the adoption. The Wisconsin

Supreme Court reversed the Court of Appeals decision and concluded that the paternal grandparents had a lawful right to visitation. In short, the father in C. G. F. (1992) continued to hold his parental rights, even in death. Because the father continued to hold his parental rights, the grandparents' right to visitation via their own child also continued. Justices acted to promote the best interest of the grandchild by allowing a continued relationship with the grandparents (Michaels, 1993).

Some derivative of right statutes, an exception, declare that visitation is only allowed to grandparents whose own child is the noncustodial parent (Gillman, 1995; Walther, 1997). This approach remains controversial because grandparents traditional derive their rights through their own child, not the other parent. For example, the Wyoming Supreme Court had to determine whether the state's grandparent visitation statute applied to custodial parents of both direct and indirect ancestry (Balzlb, 1994; Goff v. Goff, 1993). In other words, the parents argued that grandparents should only derive their rights from their own biological child, the parent of the child, instead of from the custodial parent who is not biologically related to the grandparent. This argument failed to prevent the grandparents from obtaining visitation rights with their grandchild.

Family disruption. Another set of statutes allows grandparents to petition for visitation under varying special circumstances including the death of a parent (Bostock, 1994; Hartfield, 1996; Walther, 1997). Under special circumstances such as family disruption, justices may intrude on parental rights and grant grandparent visitation rights in order to protect the interests of children. These special circumstances include (a) death of a parent, (b) declaration as an unfit parent, (c)

completion of military duty, or (d) abandonment (Avin, 1994; Balzlb, 1994; Foster & Freed, 1984; Hartfield, 1996; Shandling, 1986; Walther, 1997). Courts have been more likely to provide grandparent visitation rights when family disruption has occurred than when a family remains intact (Avin, 1994; Balzlb, 1994; Foster & Freed, 1984; Hartfield, 1996; Shandling, 1986; Walther, 1997).

Families experiencing disruption including divorce, death of parent, abandonment, incarceration, or termination of parental rights may be more vulnerable to poorer outcomes than families not experiencing family disruption (Demo, 1992; McLanahan & Adams, 1987). According to the research, children's poor developmental outcomes are not solely due to being raised in an intact versus a nonintact family, but the family conflict associated with the circumstances (Amato, 1994; Demo, 1992). Consequently, the circumstances that surround decisions to divorce, separation, or never marry influence the outcomes for children and families.

Researchers have found that children raised in families headed by single mothers are at risk of poorer developmental outcomes and educational attainment. These poorer outcomes correlated with the lower levels of supervision and parental control. Children in single-parent homes who are economically deprived are vulnerable of poorer developmental outcomes such low school attainment as well as social and psychological strides (Amato, 1994; Demo, 1992). Poverty was found to have the most adverse influence on children and families. According to an article by Behrman and Quinn (1994), in 1991, just under 40% of divorced mothers lived in poverty and 55% of divorced mothers had children under the age of six.

Looking at findings such as these, it is reasonable for justices to believe that there is a compelling state interest to limit economic losses and disruptions in the child's relationships (Balzlb, 1994; Bostock, 1994; Burns, 1991; Digest of Recent Judicial Decisions, 1993; Jackson, 1994). The state may argue that it has a legitimate interest in assuring that children have adequate supervision, guidance, and other necessities. To protect children, the state may use its parens patriae or police power to allow grandparent visitation when families are not intact (Balzlb, 1994). As noted earlier, parens patriae refers to the state's position as the "parent of the country" and responsibility is to protect all citizens, especially those who are vulnerable. In grandparent visitation cases, judges may invoke these powers to promote the interest of dependent children.

Legal issues of differential treatment of families. Some state statutes do not allow grandparents to petition for visitation when families are intact. Some argue that this means that legislators are treating parents in intact families differently than parents in nonintact families. Although differential treatment occurs, some justices do not consider this discriminatory treatment (Ward v. Ward, 1987). Regardless of the debate, American democracy requires equal treatment of its citizens. Legislation that treats intact families differently from families that are not intact threatens the Equal Protection Clause of the Constitution (Hartfield, 1996; Nicholson & Singerman, 1992; Walther, 1997).

With the advent of grandparent visitation rights, grandparents are more likely to obtain legal standing to petition for visitation with their grandchildren when the family is not intact than when the family is intact (Walther, 1997). Once again, this

differential treatment may be violating grandparents' Equal Protection Rights (Hartfield, 1996; Walther, 1997).

Due process of law is another constitutional issue that arises in grandparent visitation cases. Whenever the state intrudes on citizens' individual rights of life, liberty, and the pursuit of happiness, the state must afford the affected citizen due process of law. Some parents argue that grandparent visitation statutes intrude upon their liberty and privacy rights to family relations and their right to raise their children. Because these rights are fundamental, the state must have a compelling interest to justify such an intrusion.

Grandparent visitation petitions will force states to define better the compelling interest for intruding on parental rights. Thus far, some have argued that the state has an interest in providing children with stable relationships with grandparents. Grandparent visitation rights are aimed at protecting children from the emotional harm that comes with the ending of a grandparent-grandchild relationship. Others propose that grandparents who sometimes act as the psychological parent to the child also serve a state interest. Psychological parenting provides children with guidance and support so that they can become self-sufficient citizens (HLR, 1980; Jackson, 1994). Children also benefit from having received additional role models through their relationship with their grandparents (Balzlb, 1994).

Some social scientists disagree and find that grandparents may do more harm to grandchildren than good. According to the research, grandparents sometimes undermine parental authority, create additional conflict, or have no influence as a direct result of issues of drug abuse by mothers or distant grandparenting (Aldous,

1998; Cherlin & Furstenberg, 1986; Thompson, Tinsley, Limber, Castrianno, 1991; Thompson, Tinsley, Scalora, & Parke, 1989).

Substantial relationship. Another special circumstance involves statutes based on substantial relationships between the grandparent and grandchild. Some substantial relationship statutes refer to residency with grandparents as a substantial relationship (Bostock, 1994). Generally, there is little clarity or consistency in the language of state statutes about what constitutes a substantial relationship. Some state statutes are broad stating simply a grandparent-grandchild relationship. Other statutes are more distinctive, using the language of substantial relationship. Consequently, statutes based on a substantial relationship have the potential to extend grandparent visitation rights beyond family disruption (Balzlb, 1994; Bostock, 1994; Walther, 1997). These statutes allow the state to intrude upon the rights of fit parents within intact families. In substantial relationship statutes, justices are attempting to promote and protect the child's best interest by maintaining grandparent-grandchild relationships (Balzlb, 1994; Bohl, 1996; Jackson, 1994).

Some justices have connoted substantial relationships as residency with a grandparent. Referring back Goff v. Goff (1993), a case in Wyoming that involved a derivative of right statute, the custodial parents had a second challenge to the visitation schedule outlined by the trial court. The custodial parents challenged that the trial court abused its discretionary powers by intruding on their parental rights and ignoring the best interest of the child standard. The Supreme Court of Wyoming reasoned that the trial court did not act outside its discretion and the burden of proof was on the custodial parents. Because the custodial parents previously allowed grandparents to

visit with their grandchild, the trial court simply structured a visitation agreement among the two parties (Balzlb, 1994; Goff v. Goff, 1993).

Based on the Wyoming statute, grandparents may petition for visitation if the grandchild lived with them for any six consecutive months. Justices also noted that if parents allowed their child to spend six consecutive months with their grandparents, then the parents relinquished some of their parental rights. Because the children lived with the grandparents for four years and had an extended visitation of six months with the grandparents, then the grandparents were entitled to visitation rights.

Open-ended statutes based on the best interest of the child. The advent of grandparent visitation statutes suggests that the public's belief that grandparents have a legal and moral right to visitation has caused legislators to respond accordingly. Some grandparent visitation statutes, also referred to as open-ended statutes, do not require the conditions of family disruption or derivative rights theory to grant visitation (Bohl, 1996; Bostock, 1994; Jackson, 1994). Open-ended statutes allow grandparents to file petitions against fit, intact families for visitation with grandchildren despite parental objections (Bohl, 1996). Some amendments expanded grandparents' rights by:

- broadening courts' authority to grant grandparent visitation,
- allowing adoptive grandparents to maintain visitation after the parents divorce,
- permitting mediation in grandparent visitation cases,
- removing grandparent visitation rights from adoption laws, and
- assuming that biological parents do not always know what is in the best interest of the child.

In response to more recent open-ended statutes, justices have also awarded visitation to serve the child's best interests (Bohl, 1996; Bostock, 1994; Foster & Freed, 1984; Hartfield, 1996; King v. King, 1992; Klyman, 1994). The best interest of the child has been interpreted as grandparents' deep concern for or significant relationship with the grandchild (King v. King, 1992) and grandparents' economic support of their grandchild (Bostock, 1994; Burns, 1991; Estate of Topel, 1966; In re Emanuel S v. Joseph E, 1991; In the Matter of the Grandparental Visitation of C. G. F., 1992; Jackson, 1994; King v. King, 1992; Lehrer v. Davis, 1990; Spradling v. Harris, 1989). Others argued that parental unfitness or child endangerment, including child maltreatment, are the only circumstances that justify state intrusion on parental rights. Protecting a child in these two circumstances promotes the child's best interest (Bohl, 1996).

Another group of open-ended statutes allows justices to grant visitation with a child to any person if the justice finds such visitation serves the child's best interest (Bohl, 1996; Klyman, 1994; Walther, 1997). Several states have amended their grandparent visitation statutes to include great-grandparents (Jackson, 1994).

According to Bohl (1996), King v. King (1992) and Hawk v. Hawk (1993) exemplify the issues surrounding open-ended statutes. Referring back to King v. King (1992), the Supreme Court of Kentucky held that grandparent visitation was in the child's best interest. These were the facts: Stewart and Ann King lived on a farm owned by Stewart's father. Before a family dispute, the grandfather enjoyed daily contact with his grandchild. After they moved,

Stewart and Ann discontinued the visits between the grandfather and grandchild; the grandfather petitioned for visitation.

The parents argued that grandparent visitation under the Kentucky statute violated their parental rights. The Supreme Court of Kentucky heard this case in order to decide whether the trial court's decision, which granted grandparent visitation to serve the child's best interest, violated the parents' constitutional rights. This court reasoned that disputes among adults should not disrupt the grandparent-grandchild relationship. The court also believed that the continuation of a loving relationship was in the child's best interest. Furthermore, the justices believed that the grandparent-grandchild relationship benefited both parties. For instance, grandchildren are exposed to the insights of grandparents and grandparents are spared loneliness and isolation. The statute also served to protect the child's rights by using the best interest of the child standard to maintain a substantial intergenerational tie.

The father, Stewart King, admitted that his father loved, nurtured, and provided a safe place for the child. Both the grandfather and the son agreed that a substantial relationship existed between the grandchild and grandfather. This decision also focused on the substantial relationship and the best interest of the child.

Referring once more to Hawk v. Hawk (1993), paternal grandparents sought visitation of their grandchildren under the Grandparent Visitation Act of Tennessee. The lower courts granted the visitation resulting in the parents filing an appeal. The Supreme Court of Tennessee denied the grandparents' request for visitation because

the child was not threatened by economic deprivation and the parents were fit. As stated by the court, "The lower court's interference into a decision of admittedly good parents was an unprecedented intrusion into a protected sphere of family life" (Hawk v. Hawk, 1993, p. 577).

As shown by these two cases, open-ended statutes do not always lead to grandparents being awarded visitation with their grandchildren. State intrusion into parental rights create tensions in family law.

Summary. Grandparents may obtain legal standing to visit their grandchildren by way of statutes that take three different approaches. Derivatives are statutes allowing grandparents access to grandchildren when their own child does not have access due to death, incompetence, unfitness, or incarceration (Bostock, 1994). Family disruption including death of a parent or the loss of parental rights due termination of parental rights, military duty, or abandonment is a special circumstance that also affords grandparent some legal standing to petition for visitation. Equal protection and due process of the law are legal concerns when parents are treated differently in intact versus nonintact families. Grandparents may also obtain legal standing to petition for visitation if they have a substantial relationship with their grandchild or if their grandchild resided with them. A final approach to legal standing by grandparents petitioning for visitation rights is open-ended statutes based on the best interest of the child. These statutes state that the best interest of the child is served if grandparents have a deep concern for or significant relationship with grandchildren or if grandparents provide economic support to their grandchildren. Grandparent visitation rights,

unlike parental rights, are not constitutional constructions protected by landmark decisions and common law. These rights are statutory in nature, leaving grandparents legally vulnerable.

Criticism of the Best Interest of the Child Standard

Because the best interest of the child is so predominant in grandparent visitation right cases, it is important to outline some of the criticisms associated with this standard. The strongest criticism of the best interest of the child standard arises because justices are intruding on the individual rights of parents – the right to family and to raise their child as they see fit (Balzlb, 1994; Bostock, 1994; Purnell & Bagby, 1993; Thompson, Tinsley, Scalora, & Parke, 1989).

This criticism, unlike the earlier discussion on grandparents' influence on families, addresses the less positive influences of grandparents on families. Family research indicates that grandparent-grandchild relationships may sometimes have adverse influences on a child by undermining parental authority and religious precepts (Thompson, Tinsley, Scalora, & Parke, 1989). Children may also experience psychological stress due to split loyalties between parents and grandparents. Others are concerned that children will be placed at the center of conflicts between parents and a grandparent, resulting in additional psychological stress that undermines the child's best interest (Bostock, 1994; Jackson, 1994; Purnell & Bagby, 1993; Thompson, Tinsley, Scalora, & Parke, 1989). For instance, Thompson and his colleagues (1994) argued that justices tend to grant visitation rights to grandparents under exceptional circumstances of family disruption. Despite attempts to argue that

grandparental visitation promotes the best interest of the child, justices do not make any provisions for the formation of a new family.

A second criticism is that the best interest of the child standard allows justices to use their discretion in exceptional circumstances of family disruptions (Avin, 1994; Balzlb, 1994; Shandling, 1986). Grandparents may have legal standing, but justices determine if this visitation is in the child's best interest. Justices may interpret the best interest of the child as a response to the child's wishes or they may consider the mental and physical health of the involved parties. Justices also may determine that the best interest of the child warrants an examination of the personal relationship of the child to his or her siblings, parents, and significant others (Hintz, 1994; Indermark, 1992; Klyman, 1994). Justices may also consider (a) parents' desires; (b) child's adjustment to the home, school, and community environments; and (c) maintenance of relationships with a primary caregiver (Indermark, 1992).

Because visitation cases use different legal standards from custody cases, justices have discretion in grandparent visitation cases (Avin, 1994; Bohl, 1996). Open-ended statutes based on the best interest of the child standard provide justices with greater discretion in visitation cases than in custody cases.

For example, in one case the biological parents of the grandchildren divorced and shared joint custody. Both the paternal and maternal grandparents had substantial relationships with the grandchildren that included frequent visits and attendance at grandchildren's extracurricular activities. Although the maternal grandparents saw the children every other Sunday at gatherings of family and friends, they filed a petition against the biological father for visitation rights. The grandparents believed that the

biological father was not giving them sufficient time with their grandchildren. Despite a lack of family disruption or threat of harm to the child, justices determined that grandparent visitation was not dependent upon the parental rights, but rested on the best interest of the child standard. It is important to highlight that the grandparents already had access to their grandchildren, but the justices held that the grandparents had "an independent right to petition for visitation with their grandchildren"

(Fairbanks et ux. v. McCarter, 1993, p. 5).

A third criticism arises because there remains no clear definition of best interest of the child standard as it relates to grandparent visitation petitions (Balzlb, 1994; Bohl, 1996; Hartfield, 1996; Indermark, 1992; Jackson, 1994). Some statutes narrowly define the best interest of the child to include maintenance of stable relationships when family disruption exists (Shandling, 1986). A few statutes give some guidance toward the meaning the best interest of the child standard. The most definitive connotations of the best interest of the child standard are when a parent neglects, physically abuses, or deprives a child of necessities (Balzlb, 1994; Bohl, 1996).

The last major criticism is that the best interest of the child standard varies from state to state (Jackson, 1994). The lack of definitional consistency across states warrants the development of a uniform federal law that incorporates a more clearly defined best interest of the child standard. Without a uniform federal law, grandparents and parents may be treated differently although they may be similarly situated. Without a uniform federal law, parents may move from one state with a stronger grandparent visitation statute to another state with a less defined statute. A

uniform federal law might reduce unequal treatment of grandparents and prevent parents from relocating to avoid adhering to court mandates that allow grandparents visitation with their grandchildren. Likewise, a uniform law may serve to prevent grandparent abuse of powers when good parents, not perfect parents, are establishing their own family traditions and rules. Although these are contradictory goals, this uniform law needs also to be flexible, allowing for case-by-case decision-making (Jackson, 1994; Walther, 1997).

To address some of these criticisms, one legal scholar developed a comprehensive guideline for the best interest of the child standard. Balzlb (1994) suggested these guidelines be amended to the Wyoming Statute (a) to determine if grandparent visitation would interfere with the parent-child relationship, (b) to find out if a natural and prior relationship existed between the grandparent and grandchild, and (c) to examine the relationship between the grandparent and parents of the grandchild. Additionally, Balzlb (1994) suggested that the amendment review some specific issues related to the grandparents' capacity to love and guide the grandchild along with the character of the grandparents including moral fitness. The final portion of the amendment should take into consideration the preferences of the child and the recommendations of impartial third parties.

Balzlb's (1994) guidelines are comprehensive, allowing for the protection of parents' constitutional rights, the grandparent-grandchild relationship, and the parent-grandparent relationship. In addition, these guidelines answer some of the legal concerns of scholars. For instance, these guidelines require that individuals who have

access to a child share a legal obligation for the care and economic support of the child (Bostock, 1994; Hintz, 1994).

Summary. The best interest of the child standard has led to some justices allowing state intrusion on the highly guarded rights of parents. Based on the research reviewed for this study, justices were likely to grant grandparents' visitation with their grandchild if there was form of family disruption or if said visitation was thought to be in the child's best interest. Social scientists opposed to grandparent visitation rights argue that the child's best interest is not served when parental autonomy is undermined, family conflict arises, and children are placed in the middle of disagreements between parents and grandparents (Thompson, Tinsley, Scalora, & Parke, 1989).

Other criticisms of this standard include the fact that justices are given greater discretion in visitation versus custody cases, thereby, allowing a increased likelihood of intruding on parental rights. Still yet, there is no clear definition of what constitutes the child's best interest and definition vary from state to state. Balzlb (1994) developed a comprehensive guideline that including examining relationships among the parent-child, grandparent-grandchild, and grandparent-parent. The ambiguity of this standard provides social scientists with the challenge of continued research (Purnell & Bagby, 1993) and justices with balancing the rights of parents, children, and grandparents (King v. King, 1992).

Summary

Grandparenthood has become an important familial change for social scientists and legal scholars. Changes in fertility, longevity, and family disruption have contributed to the contemporary grandparenthood. At the same time, as the population of older people has grown, so have their political powers. Grandparent visitation rights statutes were enacted in 50 states. Courts are being called upon to interpret these statutes and to balance state interests against the individual rights of parents, children, and grandparents. Grandparent visitation cases have move the pendulum from a tradition in family law that seeks to balance the rights of parents and children that sometimes compete against state interests.

Looking at social science research, the results are varied. In some instances, grandparents provide economic and social support to grandchildren and their own child. On the other hand, grandparents may have more adverse consequences to the parent-child relationship and to family functioning by creating greater stress within homes.

The legal research similarly has varying results. Despite this tradition that protected parental autonomy, grandparent visitation statutes have arisen in three basic forms: derivatives, special circumstances of family disruption, and best interest of the child. Grandparents obtain access to their grandchild through their own child unless their own child, the parent of the child, loses their parental rights. The usually occurs when a parent dies and the grandparents of the dead parent are allowed visitation. With family disruption such as divorce, some visitation statutes provide the child with the prospect of additional social and tangible support from grandparents. Some

grandparent visitation statutes allow grandparent visitation when the said visitation is thought to be in the best interest of the child, even if the parent objects. Each of these statutory approaches intrudes on parental rights at different levels. Derivatives of right statutes are less intrusive than the other two, with the best interest of the child statutes being the most intrusive. Grandparents appear to have a greater chance at obtain visitation with their grandchild with the later approach, the others are highly dependent upon the rights and status of parents.

Because the best interest of the child standard is interpreted from a tradition of threat of harm to a child and unfit parents to substantial grandparent-grandchild relationship, it has received great criticism. The variation in research and legal scholarship failed to help courts to better define this standard. These variations coupled with many unasked or unanswered questions warrant the involvement of social scientists in the legal system. There is a growing need for social scientists to critically analyze legal materials and the influence of justices, attorneys, and others involved parties on families (Tanke & Tanke, 1979; Walters, 1983).

The current study seeks to better understand the court interpretation of all three statutory approaches and the relation of these statutes to the best interest of the child standard. This study serves also to inform social scientists of some of the pertinent issues of grandparent visitation rights. To do so, court opinions were analyzed to determine how grandparents derived legal standing. Additional analyses examined the legal reasoning for granting or denying visitation rights.

CHAPTER THREE

Methods

The current study used content analysis to examine court opinions on grandparent visitation rights. Content analysis is a systematic examination of documents, books, stories, language, videotapes, and more (Berg, 1995). Substantive meanings are gathered from categories, subcategories, and themes extracted from the data. In addition, grounded theory also was employed. Grounded theory is a method that allow researchers to extract substantial meaning and formal theory directly from the data (Strauss & Corbin, 1990). These methods were used to conduct a systematic analysis of issues related to grandparents' petitioning for visitation with their grandchildren.

Research Questions

There were two main research questions: (1) On what bases were grandparents granted legal standing to petition for visitation with their grandchildren? (2) What was the legal reasoning for granting or denying visitation rights?

Procedures

Using LEXIS NEXIS Electronic Database, a national collection of legal articles, court opinions, and other legal resources, several steps were taken to extract

court opinions. The list below includes steps taken to extract data using specific domains and exact language of LEXIS NEXIS:

1. Located "State Legal Research" section of the database
2. Moved to "Case Law State" section of the database
3. Selected and searched one state at a time
4. Searched each state's records using these specific domains:
 - (a) "grandparents and visitation,"
 - (b) higher to lower courts,
 - (c) 01/01/86 to 11/30/98.
5. Reviewed holding and summary of opinion when given.

If there were no state Supreme or Superior Court opinions, then the search was extended to the state Appellate Courts or to lower District or Family Courts. This was done for all 50 states and the District of Columbia. The District of Columbia had no recorded grandparent visitation cases.

To improve the accuracy of the search, a second search was completed using "grandparen! and visitatio!" as the key words along with all the above outlined steps. This technique was recommended by LEXIS NEXIS help option and was used to narrow the search.

There were two important reasons for using selecting cases from the higher court. First, it is important to identify which court heard grandparent right petitions. The highest court, beginning with the U.S. Supreme Court and followed by state supreme courts set precedence on legal issues. Cases heard in state appellate courts set precedence for cases heard in family or district courts. Second, this approach allowed

the researcher to determine where parental rights and grandparent visitation rights stand in the United States. Consequently, a basic data set ($N = 189$) was extracted from LEXIS NEXIS for 50 states (See Appendix A).

Data Analysis

The data analysis involved determining what cases to review and how to code the data. As noted in the review of literature, beginning in 1986, the first grandparent visitation statutes were enacted. Thus, the sample was drawn from opinions occurring from January 1, 1986 to November 30, 1998. No United States Supreme Court decisions were found that dealt with grandparent visitation rights; therefore, the sample for this study has only state level court opinions.

To determine the final sample, two tiers of case elimination occurred. After skimming the conclusions and summary where given, 50 cases were eliminated from the sample of 189 because they did not deal directly with grandparent visitation rights. Some cases dealt with custody issues and merely mentioned grandparent visitation rights. Venue, child support, and fees were the primary focus of many these cases (See Appendix B).

A second reading was also conducted to identify the actual study cases. This second reading revealed that another 36 cases had been remanded back to the trial court for further proceedings (See Appendix C). Remanded cases were not analyzed because they did not contain information pertinent to the research questions.

The remaining 103 cases were reread to determine whether grandparents were granted legal standing to petition for visitation with their grandchildren, the first

research question. The first major category comprised grandparents who failed to obtain legal standing. Accordingly, the second major category included grandparents who obtained legal standing (See Figure 1).

Based on the literature reviewed for this case, grandparents would obtain legal standing based on three statutory approaches: derivatives, special circumstances of family disruption, or best interest of the child. Consequently, under the no legal standing or legal standing categories, the researcher expected some court reasoning to include some aspect of these statutory approaches (See Figure 1).

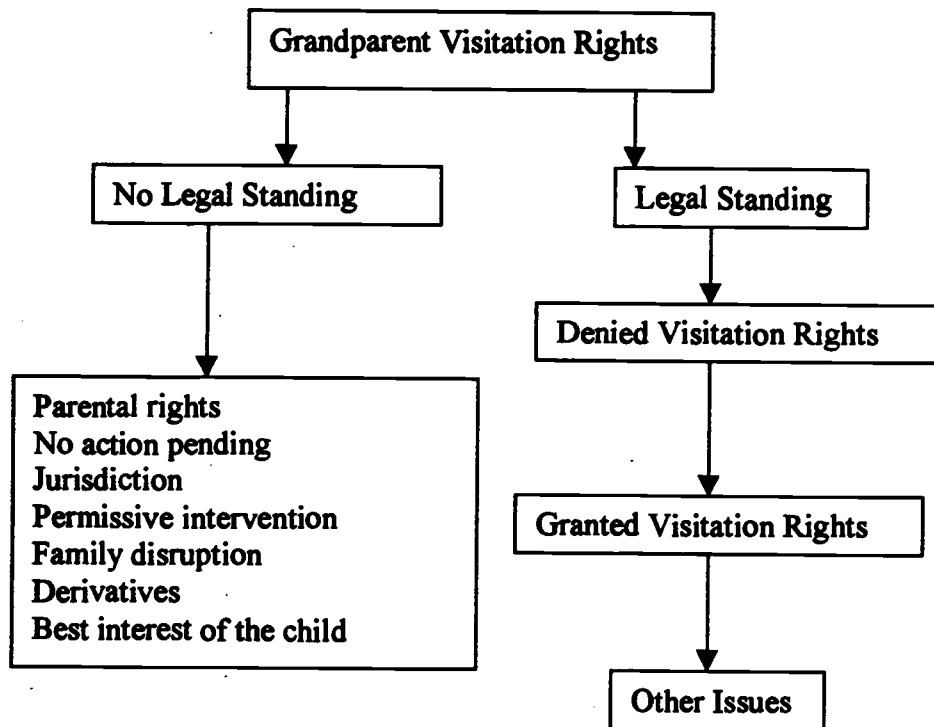
The category of obtained legal standing required additional coding. Three sub-categories were constructed for grandparents who were (a) denied visitation with their grandchild, (b) granted visitation with their grandchild, and (c) involved in related legal issues that had to be decided before the courts could determine if the grandparents should be awarded visitation with their grandchild. Although past research guided the research questions, these additional categories were derived directly from the data.

After defining these categories, the researcher coded the pertinent parts of the court opinions. The themes were influenced by the literature but derived from the data. For each case, a theme or category was identified on the side of relevant paragraphs. For the No Legal Standing Category the themes included no action pending, jurisdiction, permissive intervention, family disruption, derivatives, and best interest of the child. For each of the three sub-categories, additional thematic trees were derived from the data. For instance, under the sub-category of Denied Visitation Rights, the themes of no action pending, jurisdiction, derivatives, family disruption,

intrude upon parental rights, and best interest of the child emerged from the data.

These themes were later recoded under three major headings of statutory requirements, intruding upon parental rights, and best interest of the child (See Figure 2).

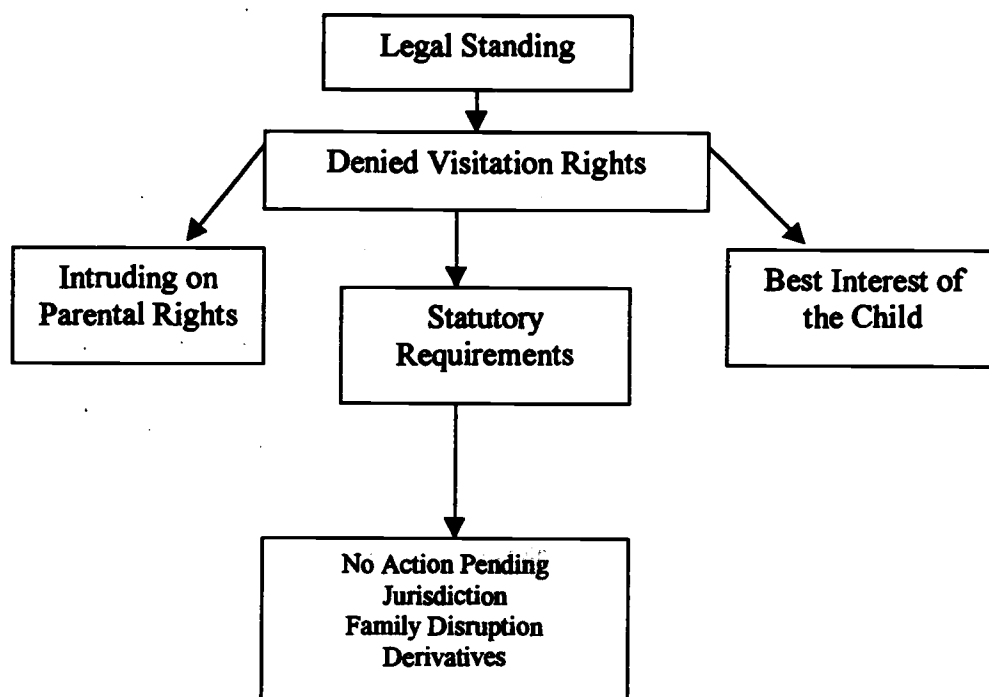
Figure 1 – Decision Tree for Coding Grandparent Visitation Cases



These categories or themes were typed or scanned entered into a Word file and saved as a MS-DOS Text with Breaks. Later, these data were imported into WINMAX under the two major categories of No Legal Standing or Legal Standing, and the four sub-categories of Denied Visitation Rights, Granted Visitation Rights, and Other Issues. WINMAX Qualitative Data Analysis program was used to code or recode data. After the coding was complete, the coded data file was exported into Word with each category and theme being reviewed. Edits were made and the recoded data was

exported into Word. The final results were analyzed by reviewing all trees and codes. The researcher attempted to find appropriate examples from the data to support each identified category, sub-category, and theme.

Figure 2 – Decision Tree for Legal Standing, Denied Visitation Rights



Sampling Strategy

The sample was drawn from state supreme, appellant, and trial courts with the goal of examining the legal reasoning being used for grandparent visitation right cases. To clarify the logic surrounding this sampling method requires an explanation of the United States court system. This country's government is based on the principles of separation of powers between the executive, legislative, and judicial, as well as the principle of federalism, a separation of federal and state governments. The judicial system utilizes both of these principles (Straayer & Wrinkle, 1975).

National court system. The U.S. Supreme Court, constructed by the Constitution, has the ultimate judicial powers in this country. Although few cases make it to this court, the cases heard set the precedence for the nation, meaning establishes the laws and guidelines for all other inferior courts in the federal and state systems (Straayer & Wrinkle, 1975).

Congress has created inferior courts including the federal courts of appeals, district, and a few special courts. The federal courts of appeals are just above the district or trial courts and hear cases on appeal only. District and trial courts hear the case first, legally this court has original jurisdiction. These special courts include U. S. Court of Claims, U.S. Court of Customs and Patent Appeals, U.S. Customs Court, and more (Straayer & Wrinkle, 1975).

State court system. All states have a court system that encompasses some combination of state supreme, major trial, and lower courts. State supreme courts hear cases on appeal and, like the U. S. Supreme Court, determine controversial cases that hinge on some constitutionality question. When state supreme courts render a

decision, that decision becomes the precedence and law for the lower courts to follow. These courts are pivotal in establishing law since all lower courts most follow their decisions. The only exception is when these decision conflict with U.S. Supreme Court decisions. State supreme courts have grave implications for a "large number of people" (Straayer & Wrinkle, p. 121, 1975).

Most states have an immediate appellant court which have jurisdiction over lower courts, but their authority is beneath that of state supreme courts. These courts not only hear cases on appeal, but serve to reduce the case loads of state supreme courts (Straayer & Wrinkle, 1975).

Trial and lower courts including juvenile justice or family courts also hear the majority of cases and have original jurisdiction. Below the trial courts are county, municipal, or justice of the peace courts. These courts may hear cases involving traffic violations, small claims, and misdemeanors. The names and roles of the courts may vary, but the general concept mimics that of the national courts system with hierarchical system (Straayer & Wrinkle, 1975).

The courts and the current study. Of the 103 cases selected for the study, 61% ($n = 63$) were heard in state supreme or superior courts, 29% ($n = 30$) in appellant courts, and 10% ($n = 10$) at the family or district courts (See Table 1).

Grandparents in 71 of the 103 cases (69%) obtained legal standing and 32 (31%) did not obtain legal standing. In cases in which grandparents did not obtain legal standing, 59% ($n = 19$) were heard in state supreme courts, 25% ($n = 8$) in appellant courts, and 16% ($n = 5$) in the family court level (See Table 1).

Of the total sample, 34% ($n = 35$) were granted legal standing, but denied visitations rights. Of these 35 cases, 60% ($n = 21$) were heard in state supreme courts,

34% of cases ($n = 12$) were heard in appellant courts, and 6% ($n = 2$) in lower courts such as family court.

Of the grandparents who received legal standing, 30% ($n = 31$) were granted visitation rights with their grandchild. Approximately 61% ($n = 19$) of grandparents who were granted visitation rights were heard at the state supreme court level, 29% ($n = 9$) were heard at the appellant court level, and 10% ($n = 3$) at family or district court levels.

Another 5 cases did not deal with denying legal standing or granting or denying grandparent visitation rights, but rather issues that needed to be decided before legal standing or court ordered visitation decisions could be made.

Additionally, these cases signified situations in which grandparents were not only given legal standing, but were able to use varying legal issues to set a path toward court-ordered visitation. These related issues were constitutionality of statutes, motion to consolidate proceeding, and a writ of prohibition. Four of the five cases were heard at the supreme court level and one at the appellant court level.

Regardless of the outcome, 59% to 80% of grandparent visitation cases examined in the current study were heard at the state supreme court level. This is an important accomplishment by older adults because state supreme courts establish the legal precedence for each state. Furthermore, for cases to advance to the U.S. Supreme Court, they usually must first reach state supreme courts.

Table 1 – Number of Cases Heard at Each Court Level and the General Outcome

Court	Supreme	Appellant	Trial or Family	Total
Denied Legal Standing	19 (59%)	8 (25%)	5 (16%)	32 (31%)
Legal Standing, Denied Visitation	21 (60%)	12 (34%)	2 (6%)	35 (34%)
Legal Standing, Granted Visitation	19 (61%)	9 (29%)	3 (10%)	31 (30%)
Legal Standing, Other Issues	4 (80%)	1 (20%)	0	5 (5%)
Total	63	30	10	103

Courts of appeal hold the second tier of authority in terms of setting precedents. Another 20% to 34% of grandparent visitation cases were heard at this level. Taken together, grandparents have successfully voiced their right to visitation and family associations by getting the higher courts within states to attend to their political needs or to hear their petitions.

Seven out of the ten cases heard at the district, family, or juvenile court level resulted in grandparents being denied legal standing or visitation rights. This is an important point because justices at the higher court levels tend to adhere to lower court decisions unless there has been an abuse of judicial discretion.

CHAPTER FOUR

Results: Grandparents Who Did Not Obtain Legal Standing

In 32 cases (31%), grandparents failed to receive legal standing (See Appendix D). There were three primary justifications used by judges to deny legal standing: (a) grandparent visitation unfairly intruded upon the fundamental rights of parents, (b) grandparents failed to meet the requirements of grandparent visitation statutes, and (c) grandparent visitation was not in the best interest of the child (See Table 2).

Table 2 – Justifications for Denying Grandparents Legal Standing

Justification	n	Percentage
Intrude on parental rights	4	13
Statutory requirements	26	81
Best interest of the child	2	6
Total	32	100

Grandparent Visitation Unfairly Intruded on the Fundamental Rights of Parents

In 13% ($n = 4$) of the cases, grandparents were denied legal standing, based on the rationale that grandparents would intrude on the fundamental rights of parents. Justices who denied grandparents' legal standing did so in favor of parental rights and because parents are to determine what is best for their child (Brooks et al. v.

Parkerson, 1995; In re Schmidt, 1986; McMain v. Iowa Court of Polk County, 1997; Murray v. Marks, 1993). Themes attached to protecting parents from the unfair intrusion of grandparent visitation rights were (a) parental rights are paramount, and (b) the compelling state interests. These themes support traditions in family law that protect the fundamental rights of parents who are married with children. The following quotation illustrates the attitude of justices in these decisions:

As important as grandparents can be in the lives of their grandchildren, the relationship between parent and child is paramount. For this reason, I can not believe in either the constitutionally or the political correctness of any law that allows a court, using its own notions of what 'special circumstances' are, to pierce the delicate, complex and sacred unity of parent and child against the wishes of fit parents and without a showing of absolute necessity. While I have no quarrel with governmental interference where a parent's conduct may injure a child emotionally or physically, interference on less than those grounds is contrary to our common law tradition of protecting the nuclear family as the foundation of society and leaving fit parents the exclusive right to determine what is in their children's best interest. Far from being outmoded, that tradition is critical today. In this indifferent, lackluster and frightened time, we need to protect the sanctity and shore up the security provided by our families more than at any other time I can think of child. (Brooks et al., v. Parkerson, 1995, p. 6)

Parental rights are paramount. Justices denied grandparents legal standing because parental rights are fundamental and highly guarded. As explained in the review of literature, historically, parents have had the right to raise their children without unwarranted government intrusion. According to some justices, grandparent visitation rights are undermining familial and parental autonomy.

Protections afforded parents are found in landmark cases and common law. In Brooks et al., v. Parkerson (1995) and In the Matter of the Application of Christopher Steven Herbst (1998), justices mentioned the landmark family law cases that set

precedents for protecting parental rights (Meyer v. Nebraska, 1923; Pierce v. Society of Sisters, 1925). Other justices referred to their state statutes that, like these landmark decisions, protected parental rights (R. T. and M. T. v. J. E., 1994; McIntyre v. McIntyre, 1995).

Even though grandparents have more rights now than in the past, parental rights supercede grandparent rights because parental rights are protected under common law and grandparent rights are purely statutory. Common law refers to legal protections outside of pure legislative enactments, such as grandparent visitation statutes. This hierarchy of rights place parental rights in the utmost position of power and protection:

We begin with the common law background against which the visitation statutes were enacted. At common law, grandparents, or third parties in general, have had no right to visitation. Rather, the decision as to who may or may not have access to a minor child has been deemed an issue of parental prerogative. M. Quintal, "Court-Ordered Families: An Overview of Grandparent Visitation Statutes," 29 Suffolk U. L. Rev. 835 (1995);The common law reflects the belief that the family unit should be respected, and its autonomy and privacy invaded through court action only in the most pressing circumstances. That right of the parents to determine the care, custody, and control of their children is recognized because it reflects a strong tradition founded on the history and culture of Western civilization, and because it reflects a strong tradition founded on the history and culture of Western civilization, and because the parental role is now established beyond debate as an enduring American tradition. (Castagno et al v. Wholean et al, 1996, p. 3)

Based on this ideology, the judge deemed that parental rights superceded grandparental rights and state interest in sustaining intergenerational ties.

In other words, the parents' fundamental liberty interest in raising their children in accordance with their own views is paramount to the

grandparents liberty interest in familial relationship may well come within the definition of the family, this right to visit relationship takes second place to the hierarchy of parent-child. (Murry v. Marks, 1993, p. 4)

Intact families, married parents and children, received greater legal protection than grandparents. Although Moore v. the City of East Cleveland (1977) provided grandparents with some constitutional protection, the courts have not advanced the rights of citizens within intergenerational families.

Compelling state interest. What intrusions are permissible? The state or government may intrude upon parents' fundamental rights if there is a compelling state interest exist. Among the cases in which grandparents failed to receive legal standing, justices did not view grandparent visitation rights or the maintenance of intergenerational ties as a compelling state interest (Brooks et al., v. Parkerson, 1995; In the Matter of the Application of Christopher Steven Herbst, 1998; R. T. and M. T. v. J. E. and L. E., 1994).

Justices failed to give grandparents legal standing by relying on landmark cases that outlined what constituted permissible government intrusion such as child labor laws, compulsory education laws, and vaccinations (e.g., Brooks et al., v. Parkerson, 1995; In the Matter of the Application of Christopher Steven Herbst, 1998). A legitimate compelling state interest was interpreted as being an unfit parent or potential threat of harm to the child. Without these two circumstances parental rights were continue to supercede grandparent visitation rights:

The facts of this case involve no harm or threat of harm to S.D.S. and no unfitness on the part of the parents. As a result, there is no interest so compelling which could give the State of Oklahoma license to

interfere with the decision of these parents whose care for their child has never been questioned or suspect. Herbst argues for an application of 10 O.S. Section 5 (A)(1) which effectively strips parents of the right to make the decisions regarding grandparental visitation and their own children. Any conflict between the fundamental, constitutional right of parents to care for their children as they see fit and the statutorily created right of grandparental visitation must be reconciled in favor of the preservation of the parents' constitutional rights. The relationship between parent and child must be held paramount. (In The Matter of The Application of Christopher Steven Herbst, Christopher Steven, 1998, pp. 5-6)

Generally, justices were willing to intrude upon parental rights when a compelling state interest existed such as threat of harm to the child or unfit parents. Additionally, permissible government intrusion required a showing that the child would be harmed by not having access to his or her grandparents. A desirable grandparent-grandchild relationship is not legally sufficient:

However, even assuming grandparent visitation promotes the health and welfare of the child, the state may only impose that visitation over the parents' objections on a showing that failing to do so would be harmful to the child. It is irrelevant, to this constitutional analysis, that it might, in many instances be "better" or "desirable" for a child to maintain contact with a grandparent. The statute in question is unconstitutional under both the state and federal constitutions because it does not clearly promote the health or welfare of the child and does not require a showing of harm before state interference is authorized. For the above and foregoing reason, the trial court's denial of the parents' motion to dismiss is reversed. (Brooks et al., v. Parkerson, 1995, p. 5)

Grandparents Failed to Meet Statutory Requirements

Grandparents were denied legal standing in approximately 81% ($n = 26$) of cases because statutory requirements were not met (B. R. O. v. G. C. O., 1994; Castegno et

al., v. Tina Wholean et al., 1996; Delia S. et al., v. Claymont, 1997; Enos v. Correia, 1995; Gushlaw et al. v. Rohrbaugh et al., 1996; Higginbotham and Higginbotham v. Higginbotham, 1995; In the Interest of J. W. W., 1997; In the Matter of the Adoption of Minor Identified in the Petition, 1990; In the Matter of the Adoption of G. D. L., 1987; In re Gibson, 1991; In re the Marriage of Bridgette Lachae' Morris, 1986; In re the Visitation of Troxel, 1997; Kasper v. Nordfelt, 1991; Little v. Little, 1996; Linda K v. Alex A Jr., 1998; McIntyre v. McIntyre, 1995; O'Brien v. O'Brien, 1996; Olson v. Flinn, 1986; Puleo v. Forgue et al., 1993; Rivers v. Gadwah, 1996; Ruth I. J. & Shirley A. K. v. James R. M., 1993; Sowers v. Tsamolias, 1997; Sposato v. Sposato, 1997; State ex rel Costello v. Honorable F. G. Cottrell, 1994; Suster v. Arkansas Department of Human Services, 1993; Vice v. Andrews, 1997). This justification translated into themes of (a) no action pending and dismissals (b) jurisdiction, (c) permissive intervention, (d) derivatives, and (e) special circumstances of family disruption.

No action pending and dismissals. One statutory requirement involved a pending action. Because grandparent visitation rights were constructed by legislative enactments and not by common law, grandparents were required to meet statutory requirements necessary for legal standing including a pending action. When an action was deemed moot or no action was pending, justices denied grandparents legal standing (B. R. O. v. G. C. O., 1994; Higginbotham and Higginbotham v. Higginbotham, 1991; In re the Visitation of Troxel, 1997; Little v. Little, 1996; Ruth I. J. and Shirley A. K. v. James R. M., 1993; Sposato v. Sposato, 1997). For example:

The issue Robin has raised is moot. This is an appeal from an order granting grandparent visitation for a specific time period that has

expired. Robin appealed the visitation order nearly two months after the period for visitation had passed. The issue was deemed moot because the order expired before the appeal, no 'actual controversy' existed. (Sposato v. Sposato, 1997, p. 3)

In B.R.O v G.C.O. (1994), judges noted that no divorce or visitation proceeding existed that would allow the grandmother to petition for visitation with their grandchild; thereby, the grandmother failed to meet the requirements of the grandparent visitation statute.

Under the theme of no action pending, some cases resulted in dismissals because (a) the grandparents' legal ties were severed once the child was adopted, (b) proper adherence of the best interest of the child standard, and (c) the court upheld the lower courts' decision that denied grandparents visitation rights (David J. & Rita K. v. Theresa K. & Lora Lane, 1993; In the Interest of J. W. W., 1997; Puelo v. Forgue et al., 1993). Grandparent visitation rights were dependent on the strict adherence of relevant laws including grandparent visitation and adoption statutes.

Jurisdiction. Another statutory justification for grandparents not receiving legal standing was a lack of jurisdiction (Delia S. et al. v. Claymont, 1997; In re Gibson, 1991; Linda K v. Alex A. Jr., 1998). For example, in Linda K. v. Alex A. Jr., (1998), grandparents filed a petition in Louisiana when their grandchild was a legal resident in Delaware. Thus, justices dismissed the case because they did not have jurisdiction over this matter.

Permission to intervene. Grandparents were also denied legal standing because they lacked permission to intervene (In Re Schmidt et al, 1986; In the Matter of the Adoption of Minor Identified in the Petition, 1990). Grandparents were denied legal

standing because they were not parties to custody or adoption proceedings or they did not have a statutory right to intervene:

We find that the juvenile court did not err in its application of R.C. 3109.28 when it rejected the Smiths' motion to intervene. There were no allegations or evidence set forth in the Smiths' motion to intervene that would reasonably indicate that the Smiths had a right to custody of or visitation with, their grandson. While persons "claiming a right" to custody or visitation must be joined as parties to custody proceedings, any such claim must be colorable. The record in this case reveals only that the Smiths had a "desire" for custody or visitation. They never sought temporary or permanent custody of Robert, Jr., and their visitation with Robert, Jr. had occurred, with the consent of the welfare department, only during Donna Smith's once monthly visits with her children. In summation, the Smiths never obtained, through statute, court order, or other means, any legal right to custody or visitation with their son. (In re Schmidt et al, 1986, p. 5)

Permission to intervene refers to the legal concept of intervention of rights.

Intervention of right allows anyone with a legal interest in the subject matter to enter a case in order to protect their right or to impose a claim (Black et al., 1991).

Intervention of right assumes that a citizen must possess the right in order to intervene; however, it is left to the justice, after a showing of facts, to grant citizens the right to intervene. Because intervention of right rests on the discretion of the justice to determine that a right already exists (Indermark, 1992), grandparents are vulnerable when petitioning for statutory visitation rights. Consequently, grandparental rights rest in the hands of justices and grandparents' ability to argue their case effectively with facts that follow the dictates of grandparent and other related statutes.

Derivative approach to grandparent visitation rights. Grandparents were also denied legal standing based on derivatives of right visitation statutes (Gushlaw et al., v. Rohrbaugh et al., 1996; In the Matter of the Adoption of G. D. L., 1987; Kasper v.

Nordfelt, 1991; Olson v. Flinn, 1986; Sowers v. Tsamolias, 1997; State ex rel Costello v. Honorable F. G. Cottrell, 1994; Suster v. Arkansas Department of Human Services, 1993; Vice v. Andrews, 1997). This theory is most applicable in cases of adoption and the termination of parental rights. If a parent lost his or her parental rights by adoption or some other mechanism of termination such as child maltreatment, grandparents' legal ties to their grandchild were severed. Some justices reasoned that "the legislature has wisely limited grandparental visitation in adoptions to cases where the child still has blood ties to the new parents" (In the Matter of the Adoption of G. D. L., 1987, p. 5). Another example:

We hold, accordingly, that Mrs. Suster's rights as a grandparent were derivative of her daughter's parental rights and as a result were terminated when daughter's parental rights were terminated, and she does not have a recognized interest in the subject matter of this litigation to warrant intervention as a matter of right. For these reasons, we affirm the trial court's denial of her motion to intervene (Suster v. Arkansas Department of Human Services, 1993, pp. 4 - 5).

If another individual has adopted the grandchild resulting in the grandparents' own child losing his or her parental rights, then the grandparents lose all legal ties to that grandchild. In this case, grandparents do not have any standing to petition for visitation. In Vice v. Andrews (1997), this point was well stated:

The chancery court found that the adoption, which was granted with the consent of the biological father, not only terminated any relationship he might have with his daughter, but also terminated any rights of visitation which his mother, Ms. Vice, might claim. We agree and affirm. (p. 2)

In Olson v. Flinn (1986) for example, grandparents were not allowed to petition for visitation if their own child was one of the parents in the adoptive parents. Grandparents had no legal ties or legal standing to petition for visitation with their grandchild if their own child was not the biological parent of the adopted child.

Special circumstances of family disruption. The lack of family disruption was yet another justification for denying grandparent legal standing. The presence of family disruption, such as the death of a parent or divorce, sometimes helped grandparents to receive legal standing. In some of the cases analyzed for the current study, grandparents were allowed to petition for visitation with their grandchild if their own child died because death does not terminate parental rights (Castagno et al v. Wholean, 1996; Enos v. Correria, 1995; In re the Matter of Bridgette Lachae, 1993; Rivers v. Godwah, 1996). In other words, when parental rights are maintained, grandparents' legal ties to their grandchild are also maintained. Otherwise, grandparents, absent the death of a child, had no legal avenue for standing.

In the absence of divorce, conditions as written in certain statutes, justices denied grandparents legal standing (Castagno et al v. Wholean, 1996). After a divorce, the state has an interest in maintaining grandparent-grandchild relationships because grandparents may provide the grandchild with additional social and tangible supports. As noted by other legal scholars and justices, grandparents' may provide their grandchildren with emotional (Bostock, 1994; Burns, 1991; Jackson, 1994; Lehrer v. Davis, 1990; Spradling v. Harris, 1989) and economic supports (Estate of Topel, 1966; In the Matter of the Grandparental Visitation of C. G. F., 1992). Listening to the voice of a justice helps to explain the reasoning behind statutes with family disruption:

If the parents of an unmarried minor child are divorced, married but living apart, under a temporary order or judgment of separate support, or if either or both parents are deceased, or if said unmarried minor child was born out of wedlock whose paternity has been adjudicated by a court of competent jurisdiction or whose father has signed an acknowledgment of paternity, and the parents do not reside together, the grandparents of such minor child may be granted reasonable visitation rights to the minor child during his minority . . . [provided] such visitation rights would be in the best interest of the said minor child. (Enos v. Correia, 1995, p. 2)

Grandparent Visitation Was Not in the Best Interest of the Child

In 6% ($n = 2$) of cases grandparents failed to obtain legal standing because said visitation was not in the child's best interest (David J. & Rita K. v Theresa K. & Lora Lane Hockenssin, 1993; In The Matter of The Application of Christopher Steven Herbst, Christopher Steven, 1998). Justices held varying interpretations or approaches to the best interest of the child. In one situation the justices held steadfastly to the notion that best interest of the child referred to threat of harm to the child:

However, a vague generalization about the positive influence many grandparents have upon their grandchildren falls far short of the necessary showing of harm which would warrant the state's interference with this parental decision regarding who may see a child. With respect to our constitutional evaluation, whether a court-ordered grandparent relationship might be thought of as better or more desirable for a child is not relevant. See Brooks v. Parkerson, 454 S.E.2d at 773. If operating over the objection of fit parents, grandparental visitation may be imposed only upon a showing that the child would suffer harm without it" (In The Matter of The Application of Christopher Steven Herbst, Christopher Steven, 1998, p. 6).

In the other situation the interpretations of best interest of the child steered away from tradition. Justices did not believe that the child's best interest was served if

the child herself opposed court-ordered visitation (David J. & Rita K. v. Theresa K. et al., 1993). This perspective aligns itself with the Wisconsin v. Yoder (1972) decision in which justices held that children had a right to be heard.

The best interest of the child was not included in other court decisions that were categorized under statutory requirements. Consistent with family law traditions, another court held in favor of the adoptive parents. In this situation, grandparents were denied visitation rights because the child best interest was served by severing ties with biological family following adoption (Olson v Flinn, 1986). The lack of a meaningful grandparent-grandchild prior to the petition by the grandparents was a factor in another court denying grandparents visitation rights (O'Brien v. O'Brien, 1996).

Two less traditional decisions centered around the child's well-being. In one case, justices believed that the best interest of the child was not served when a child is forced to travel over 1000 miles to visit a grandparent (Sposato v. Sposato, 1997). Justices also held that the child's best interest was not being met when a child is in the middle of conflict between adults (Puleo v. Forgue, 1993).

Conclusions and Discussion

Of all the cases ($N = 103$) analyzed, 31% of grandparents were denied legal standing. Of the grandparents who were denied legal standing ($n = 32$), 84% of cases being heard in state supreme and appellant courts. In a third of the cases, the legal precedence set by higher courts was to deny grandparents legal standing because of visitation rights intruded on parental rights, grandparents failed to meet statutory

requirements, and the best interest of the child was not being served by allowing grandparent-grandchild visitation.

One justification used to deny grandparent visitation rights was that such visitation was an unwarranted intrusion upon parental rights violating a tradition that protected parental and family autonomy. This traditional approach was evident in the legal reasoning used to support the fundamental rights of biological and adoptive parents who were fit and married.

Furthermore, parental rights superceded grandparent visitation rights because the former is constitutionally constructed and the later is statutory in nature. The constitutional protections given to parents are based on landmark cases and common law. Unlike parents, grandparents were more vulnerable. Because grandparent visitation rights are statutory in nature, justices were given more leeway in decision making (Avin, 1994; Bohl, 1996).

To intrude on parent's highly guarded, constitutional rights, judges had to find a compelling state interest. Based on tradition, compelling state interests were threat of harm to a child or unfit parents. Otherwise, there was no reason to intrude upon the rights of parents.

Grandparents also were denied legal standing if they failed to meet the statutory requirements. Although there were several statutory requirements (i.e., an action pending, permission to intervene, or jurisdiction), two key ones were derivatives and family disruption. As other legal scholars have found, the current study found grandparents' legal standing was derived via their own children (Balzlb, 1994; Bostock, 1994; Hartfield, 1996). If a parent lost legal ties to a child by way of

adoption or termination of parental rights, then the grandparent also lost legal ties to their grandchild including an avenue to derive legal standing. This stipulation allowed justices to deny grandparents legal standing.

Consistent with the research, the lack of family disruption resulted in some grandparents being denied visitation (Balzlb, 1994; Bostock, 1994; Hartfield, 1996). Nevertheless, justices believed that the state had an interest in protecting children who faced family disruption. Grandparent visitation was allowed so that the grandparents would provide some continuity and social support to the grandchild. In cases of divorce, the state does have an interest in someone other than the government subsidizing the family's income. Families headed by single mothers sometimes face economic hardships and some seek out public assistance. It is in the best interest of the state to find non public dollars to support children and families.

Justifications surrounding family disruption may make legal sense; however, it supports the idea that family is married parents and children; therefore, intact families deserved the highest legal protections afforded by the U.S. Constitution. Judges and legislators who hold that grandparents may obtain legal standing if families are not intact are undermining the human capital found in other families.

Social science research has not provided justices with a clear indication of the benefits of grandparent-grandchildren relationships. As noted in the review of literature, grandparents may undermine parental authority, increase family stress, and reduce positive outcomes for parents and grandchildren (Stolba & Amato, 1993; Thompson, Tinsley, Scalora, & Parke, 1989; Thompson, Scalora, Limber, & Castrianno, 1991).

Justices also denied grandparents legal standing by holding to rigid interpretations of the best interest of the child standard. Within the confines of traditional family law, the best interest of the child referred to unfit parents or threat of harm to a child. By holding to traditions, justices were protecting families from the personal biases that justices may hold that favor grandparents (Bostock, 1994). Holding to a rigid interpretation also buffered justices from being accused of abusing their discretionary powers while protecting a long tradition that carefully guarded parental and family autonomy (Balzlb, 1994; Shandling, 1986).

Based on the cases analyzed that denied grandparents legal standing, the competing interests of the state against the rights of parents and children remained constant. Justices have largely focused on state interests in grandparent visitation that sometimes compete against the individual rights of parents with a little concern for children's rights. In one case, judges took into account the children's opinions (David J. & Rita K. v. Lora Lane Hockenssin, 1993). Because the focus was largely on parental rights, each argument held at its core parents' right to childrearing and to determine with whom their children should associate. Even the best interest of the child focused narrowly on parental unfitness including parents' inability to keep their child from threat of harm.

Consistent with other research, justices denied grandparents legal standing largely due to statutory requirements (e.g., Bohl, 1994; Bostock, 1994; Klyman, 1994; Walther, 1997). These data showed the legal susceptibility of grandparents because parental rights continue to supercede grandparent visitation rights. Society has constructed a fierce guard railing around parental rights with permissible state

intrusion being limited to threat of harm or parental unfitness. The essences of these ideas are: "The right to the custody and control of one's child is a fiercely guarded right in our society and in our law. It is a right that should be infringed upon only under the most compelling circumstances" (Brooks et al. v. Parkerson, 1995, p. 3).

The results of these data mimic other research that examined grandparent visitation legislation in 50 states (Bostock, 1994; Walther, 1997) and analyses of grandparent visitation cases (Bohl, 1994; Klyman, 1994).

CHAPTER FIVE

Results: When Legal Standing was Granted and Courts Denied Grandparent Visitation Rights

Grandparents were denied visitation with their grandchild when (a) statutory requirements were not met, (b) the fundamental rights of parents were intruded upon, and (c) visitation did not served the best interest of the child (See Appendix E). Statutory requirements were the most frequent justification for denying grandparents visitation rights (See Table 3).

Table 3 – Justifications for Denying Grandparents Visitation Rights

Justification	<u>n</u>	Percentage
Statutory requirements	21	60
Intrude on parental rights	3	9
Best interest of the child	11	31
Total	35	100

Although the same justifications were used to deny grandparents legal standing, the frequencies were different for grandparents who obtained legal standing but were denied visitation rights. In denying grandparents legal standing, the justifications surrounding statutory requirements were used in 81% of cases; however,

this justification represented only 60% of cases in which grandparents were denied visitation with their grandchild. The best interest of the child standard represented another 31% of cases in which grandparents were denied visitation rights.

Statutory Requirements

Approximately 60% ($n = 21$) of grandparents who received legal standing were denied visitation rights with their grandchild because of statutory requirements (Bond v. Yount, 1987; Bopp v. Lino, 1994; Brown v. Brown, 1996; Bush et al. v. Sequallati, 1998; Clark v. Leslie, 1988; In the Custody of B. S. Z-S, 1994; In the Marriage of Daniel G. Bradshaw, 1994; In the Matter of the Adoption of R. D. S. 1990; In re the Adoption of Rideanour et al., 1991; In re Martin, 1994; In re Lola Francis McCarthy, 1990; In re the Marriage of Dawn M. Soergel v. Soergel, 1990; In the Interest of A. C. and L. C., 1988; In the Interest of A.M. B. & T. B., 1997; In the Interest of N. S., 1991; Jimmy S. and Wilma Jean S. v. Kenneth B. and Phyliss B., 1997; Maner et ux. v. Stephenson, 1996; M. J. Alvarez f/k/a Carlson Pecka v. S. R. Carlson, 1991; Reed v. Glover, 1994; Thompson v. Vanaman, 1986b; Turner v. Turner, 1997). As with those grandparents who were denied legal standing, the themes under this category encompassed no action pending, family disruption, and derivatives. Jurisdiction and permission to intervene were less prevailing themes under this category. Because of the commonalties among results surrounding legal standing and denial of grandparent visitation rights, these results focus on family disruption and derivatives.

Special circumstances of family disruption. As with legal standing, grandparents were denied visitation in situations where there was no family disruption

(Clark v. Clark, 1988; In re Lola Francis McCarty, 1990; Thompson v. Vanaman, 1986b; Turner v. Turner, 1997). In Brown v Brown Earnhardt (1990), justices concluded that grandparent visitation rights should be reviewed separately from parental rights. Recognizing that the potential positive outcomes of the grandparent-grandchild relationship, justices noted: "However, this Court does not subscribe to the view that grandparents are to contend for autonomous visitation privileges absent a showing of exceptional circumstances (p. 3).

State statutes permitted grandparents to petition for visitations when certain forms of family disruption existed. The death of a parent, divorce, or even a parent who was unable to fulfill his or her parental duties due to mental illness or incarceration were possible forms of family disruption.

The rationale behind allowing grandparent visitation when family disruption existed was to reduce the possible negative outcomes for families and children. This rationale translates into what legal scholars refer to as a compelling state interest. A compelling state interest allows grandparents to provide social and economic support to the children facing some form of family disruption (Bostock, 1994; Burns, 1991; Estate of Topel, 1966; In re Emanuel S v. Joseph E, 1991; In the Matter of the Grandparental Visitation of C. G. F., 1992; Jackson, 1994; King v. King, 1992; Lehrer v. Davis, 1990; Spradling v. Harris, 1989).

Derivative approach to grandparent visitation rights. Grandparents were denied visitation under statutes based on a derivative of rights approach to grandparent visitation. For instance, in Jimmy S. & Wilma Jeans S. v. Kenneth B. & Phyliss B., (1997), justices denied grandparents visitation with their

grandchild because the parents' rights were terminated, thereby severing all legal ties to the grandparent. In the other cases, adoption severed the legal ties between the grandparent and grandchild and justices held in favor of adoptive parents' fundamental rights (Beckman v. Boggs, 1995; Bond v. Yount, 1987; Bopp v. Lino, 1994; Bush et al v. Sequellati et al., 1998; Clark v. Clark, 1988; In re the Adoption of Rideanor et al., 1991; In re the Custody of B. S. Z. S., 1994; In the Interest of A. M. B. & T. B., 1997; In re the Interest of A. C. & L. C., 1988; In re the Interest of N. S., 1991; In re the Marriage of Soergel, 1990; In re Martin, 1994; In the Matter of the Adoption of R. D. S., 1990). The court in the Bond v. Yount (1987) decision sent a clear message about the protections given to adoptive parents:

The appellants, the adoptive parents (and maternal grandparents) of Bobby, appeal the trial court's grant of visitation rights Bobby's biological (paternal) grandparents. We agree that the trial court erred in so ruling and reverse the trial court.... The only factual difference between Mitchell and the case at bar is that this child was not adopted by strangers but by the maternal grandparents. We do not find this distinction sufficient to outweigh the policy underlying adoptions. The judgment of the trial court must be reversed. (Bond v. Yount, 1987, p. 2)

Intruding on Parents Fundamental Rights

In just under 10% of cases ($n = 3$) in which grandparents were denied visitation with their grandchildren. The justification was grandparent visitation wrongfully intrude upon the parental rights of biological and adoptive parents. In three cases, judges held steadfastly to the idea that grandparent visitation wrongfully intruded upon

the fundamental rights of parents (Hawk v. Hawk, 1993; Simmons v. Simmons, 1995; Ward v. Ward, 1987). Some justices dismissed grandparent visitation cases using the justification that they were protecting the rights of parents.

Based on tradition, the fundamental rights of parents were protected against government intrusion unless a compelling state interest existed. Although legislators have established grandparent visitation statutes to promote and strengthen families, or to promote the well-being of children whose families were experiencing divorce, these statutes have not rid this country of its loyalty to parents. This loyalty rests in the constructs of common law and the constitutional protections carved from landmark decisions to protect parental rights:

At common law, parents had the right to control and select the persons with whom their child would associate as long as the parents had not forfeited this right in a manner recognized by law. Dogole v. Cherry, Pa. Super., 196 Pa Super. 46, 173A. 2d (1961). Thus, it appears that grandparents had no common-law right to visitation, their rights being derivative through the natural parent. The parents' obligation to allow visitation with the grandparent was characterized as a moral, not a legal, obligation. 57A C.J.S. Parent and Child, Section 41c (1968). This is the rule generally followed by courts in this country in ruling on grandparent visitation. (Ward v. Ward, 1987, pp. 1066 - 1067)

Furthermore, the law does not always follow the moral positions of promoting nurturing parents and healthy children. In Ward v. Ward (1987), judges reasoned that the government is not in a position to promote the well-being of children and families: The rule recognizes that government is ill equipped to dictate the details of social interaction among family members. It also recognizes that parenting right is a fundamental liberty interest that is protected against unwarranted state intrusion. (Ward v. Ward, 1987, p. 1069). Despite this fact, is it appropriate to not hold the

courts accountable for decisions that undermine societal goals that promote nurturing parents and healthy children?

Best Interest of the Child

Another 31% ($n = 11$) of cases involved grandparents whose visitation rights were denied because justices did not believe the child's best interest was served (Eberspacher v. Hulme, 1995; Ellis v. Ellis, 1993; Hawkins v. Haley, 1989; In re the Visitation of Hershel Walker, 1996; In re the Visitation of Neola B. Kanivick, Morris v. Corzatt, 1988; In the Interest of R. N. C., 1989; Steward v. Steward, 1995; Strouse v. Olsen, 1986; Tope v. Kaminski, 1990; Williams, III et al. v. Williams IV, 1998). For these cases, unlike the ones where grandparents were denied legal standing, several interpretations were given for the best interest of the child standard.

One interpretation of this standard that was used to deny grandparents' visitation with their grandchild was threat of harm (Ellis v. Ellis, 1993; In re the Visitation of Neola B. Kanivick, 1988; Tope v. Kaminski, 1990; Williams, III et al v. Williams, IV, 1998). If there was no threat of harm, then grandparents were denied visitation rights (Tope v. Kaminski, 1990; Williams, III et al v. Williams, IV, 1998). Grandparents were appropriately denied visitation with their grandchild if there was an actual threat of harm to the child, such as circumstances in which grandparents allowed their grandchildren to have contact with fathers who were accused or convicted of sexual abuse (Ellis v. Ellis, 1993; In re the Visitation of Neola B. Kanivick, 1988). For example:

Mother opposes grandparent visitation at this point indicating that son Jason Haslam, age 15, still suffers from the trauma of sex abuse for which Terry Ellis has been incarcerated in Smyra on a ten year sentence.... The welfare of the child is the single most important factor in determining visitation rights and must not be subordinated to any other interests. Rogers v. Trent, Del. Supr., 594 A.2d 32, 22 (1991). If the foregoing is applicable as between the interests of competing parents, then it is certainly just as applicable as between a grandparent who seeks visitation versus a parent. (Ellis v. Ellis, 1993, p. 2)

Another example illuminates grandparents' inability to honor the restraints set by the court to protect their grandchild:

Section 40-9-102(2), MCA, allows the court to grant a grandparent visitation rights only after finding that the visitation would be in the child's best interest. The District Court chose not to allow visitation in this matter because the natural father lived with his parents, the Kanvicks, a majority of the time and that the Kanvicks were not able to ensure that he would not interfere with their visits with the daughter. Mr. Kanvick testified that he had no plans to restrict his son's comings and goings from the Kanvick home. He also testified that his son's stays at the home between three and seven days a week or 'whenever he feels like it.' Testimonial evidence presented by respondent's expert reveals that due to possibility of sexual abuse any contact with K. R.'s father could result in severe psychological damage to K. R. We will not reverse the District Court absent clearly erroneous findings which result in an abuse of discretion.... The District Court did not discount the beneficial effects of the Kanvicks' relationship with their grandchild and encouraged K. R.'s mother to continue to allow visits in her home. The court, however, did recognize that a regular visitation schedule could most likely force K.R. to visit her natural father as well. It did not abuse its discretion refusing such a schedule. Affirmed (In re the Visitation of Neola B. Kanvick, 1988, p. 5)

Justices denied grandparent visitation using some additional interpretations of the best interest of the child standard. Justices reasoned that grandparent visitation would not serve the best interest of the child when visitation undercut parental authority (Bopp v. Lino, 1994; Morris v. Corzatt, 1988). Judges also justified denying

grandparents visitation with their grandchild when there was no clear and convincing evidence that this visitation would serve the best interest of the child (Eberspacher v. Hulme, 1995). The best interest of the child was also interpreted as not placing children in the center of conflicts between parents. In Strouse v. Olsen (1986) the following quotation explains how the child's best interest goes unmet:

Here, the settled record evidences severe ill feelings, bitterness, animosity between Richard and Olsen. These bad feelings are highlighted in the settled record, as demonstrate, by a transcription of a telephone conversation between Richard and Olsen, in which Olsen threatens civil suits over personal property matters, threatens that the children were stressful before and after Olsen's visits, and the children testified that they no longer desired to visit with Olsen. Under these facts and circumstances, we conclude the circuit court did not err in determining that Olsen's visits were not in the children's best interests. The order appealed from is therefore affirmed. (p. 5)

Additionally, justices denied grandparents visitation rights because there was no substantial grandparent-grandchild relationship to argue that the child's best interest was being served (In re the Visitation of Hershel Walker, 1996; Steward v. Steward, 1995). Court reasoning in most of the above instances focused on the child's needs, although parental autonomy remains at the core of the courts' reasoning.

A final interpretation of the best interest of the child standard focused more on the structure of the law. Grandparent visitation rights were denied visitation rights when the judges believed that a ruling in favor of grandparents would undermine the trial courts' discretion in upholding parents' fundamental rights (Maner et ux v. Stephenson, 1996).

Conclusions and Discussion

Of the total sample ($N = 103$), 34% of grandparents were denied visitation rights with their grandchild with 94% of cases being heard in state supreme and appellant courts. In over a third of cases analyzed for this study, justices in the higher courts set a precedence that protected the individual rights of parents and children.

Some of the same reasons given to deny grandparents legal standing resulted in grandparents being denied visitation rights with justifications focusing largely on statutory requirements and the best interest of the child. Grandparent visitation is a statutory right; therefore, it is not surprising that more than half of the cases involved grandparents being denied visitation because statutory requirements were unmet.

In almost 10% of cases, grandparents were denied visitation rights because such visitation was an unwarranted intrusion on parental rights. The justifications of denying grandparent visitation if it intruded upon parental rights coupled with the justifications of family disruption and derivatives continue to purport that parental rights, especially within intact families, supercede grandparent visitation rights. Grandparent visitation statutes and court decisions that use family disruption as a potential justification for intruding upon parental rights are treating parents in intact families differently than nonintact families. This differential treatments of parents, based on society's and justices' notion that intact family is better than nonintact families, continues to be an undercurrent woven in these data.

According to these data the best interest of the child standard was the second most frequent justification for denying grandparents visitation rights. The interpretations of this standard included:

1. The absence of or the potential for threat of harm to the child.
2. Grandparent visitation would undermine parental authority.
3. There was no clear and convincing evidence that grandparent visitation would serve the child's best interest.
4. Children would be placed at the center of conflict between parents and grandparents.
5. The absence of a substantial grandparent-grandchild relationship does not warrant providing grandparents with court-ordered visitation.
6. The trial courts' discretion would be undercut by reversing their decision that protected the rights of parents when denying grandparents visitation with their grandchild.

These data support other research findings that show that the legal system, legislators and the courts have not developed a comprehensive or concise interpretation of the best interest of the child (Avin, 1994; Balzlb, 1994; Shandling, 1986).

These data also bring into perspective the criticisms surrounding the best interest of the child. In attempting to protect the interests of children, justices have denied grandparent visitation rights because there are some potential negative outcomes. Children do not benefit from parental authority being undermined or experiencing additional stress due to parent-grandparent conflicts or divided loyalties (Thompson, Tinsley, Scalora, & Parke, 1989; Stolba & Amato, 1993). Overall, these different interpretations show that the lack of a clear definition of this standard continues and few state statutes have provided justices with any consistent or clear guidance in this

area. Does this lack of clarity promote the child's best interest? Is this the precedence that family scientist are willing to accept?

Before leaving the discussion on the best interest of the child, it is pertinent to recognize the interpretations that remain constant. Although there was a slight shift in the application of the best interest of the child standard, the interpretation of threat of harm to the child maintains a legal tradition that promotes parental rights. The rational basis for maintaining tradition was the state interest in supporting parents who are charged with the task of raising children to become self-sufficient members of society (HLR, 1980).

These results mimic those of other legal scholars that have determined that justices are unwilling to intrude upon the rights of parents unless certain circumstances like family disruption exist (Balzlb, 1994; Hartfield, 1996). These data, like other studies, show that across the United States, the legal precedence set around grandparent visitation rights remain in favor of tradition and the intact family.

The other interpretations, excluding the one aimed at protecting judicial discretion, are focusing more on the rights of children. This is quite consistent with landmark decisions that allow children right to be heard and to family autonomy.

Grandparent visitation rights are carving out another dimension of children's rights.

CHAPTER SIX

Results: When Legal Standing was Granted and Grandparents were Granted Visitation Rights

In 103 cases analyzed, 30% ($n = 31$) grandparents obtained legal standing and were awarded visitation with their grandchild. Of those grandparents that obtained legal standing ($n = 71$), 44% were granted visitation with their grandchildren. The justifications used by judges to grant grandparents visitation rights differed from those in which grandparents were denied legal standing and visitation rights. Three justifications for grandparents obtaining visitation rights were to (a) uphold lower court decisions, (b) maintain the best interest of the child, and (c) a shift in tradition (See Appendix F). The most frequent justification for granting grandparents' visitation with their grandchildren was upholding lower court decisions (See Table 4).

Table 4 – Justifications for Granting Grandparents Visitation Rights

Justifications	n	Percentage
Upholding Lower Court Decisions	22	71
Maintaining the Best Interest of the Child	4	13
Shift in Tradition	5	16
Totals	31	100

Upholding Lower Court Decisions

Based upon the data analyzed for the current study, approximately 71% ($n = 22$) of cases involved justices upholding lower court decisions (Beckman et al., v. Boggs et ux., 1995; Bishop v. Piller, 1994; Brown v. Brown, 1996; Camerlingo v. Camerlingo, 1998; Cockrell v. Sittason, 1986; Goff v. Goff, 1996; Oliver Talley v. Oliver, 1993; Olson v. Olson, 1995; In the Marriage of Candyce & John D. Perry, 1998; In the Interest of K. R., 1995; In re the Marriage of Kathleen A. Kovash, 1993; In re the Marriage of Larry D. Jacobson, 1987; King v. King, 1992; Romo et al. v. Hickok et al., 1994; Rosse v. Rosse, 1994; Rudolph et al v Floyd, 1992; Settle v. Galloway, 1996; Smith et al., v. Smith, 1993; Smith Loftin v. Smith, 1993; Snipes v. Carr, 1988; Stone v. Short, 1991; Sweeney v. Sweeney, 1994). The themes associated with this category involved trust in the lower court discretion, the absence of judicial abuse, discretionary powers, and statutory authorization.

Trust in lower court discretion. Justices elected to uphold the lower court decisions because they trusted the discretion of those courts and they believed that the lower courts had better access and understanding of the facts in each case. Some justices hearing these cases on appeal held that the trial court made no error in granting grandparents visitation rights (Hicks v. Enlow, 1989; In the Interest of K. R., 1995).

No abuse of judicial discretion. Without a finding of judicial abuse, justices upheld lower court decisions that granted grandparents visitation rights (i.e., trial, juvenile, family, and district courts) (Camerlingo v. Camerlingo, 1998; In re the Marriage of Kathleen A. Kovash, 1993; Olson v. Olson, 1995; Rosse v. Rosse, 1994;

Rudolph v. Floyd, 1992; Settle v. Galloway, 1996; Smith et al. v. Smith, 1991; Stone v. Short, 1991; Sweeney v. Sweeney, 1994). Justices at the lower court levels protected themselves against judicial abuse by following previous landmark and state decisions and interpreting state statutes. For example:

This case is one of first impression for this court regarding grandparent visitation rights. However, we have consistently held that, in a dissolution of marriage action, determinations concerning visitation with a minor are initially entrusted to the discretion of the trial judge, whose determinations, on appeal, will be reviewed de novo on the record and affirmed in the absence of abuse of the trial judge's discretion. Hickenbottom v. Hickenbottom, 239 Neb. 579, 477 N.W.2d 8 (1991). We hold that the same standard of review is to be applied to a judicial determination of grandparent visitation rights. (Rosse v. Rosse, 1994, p. 3)

Discretionary powers. Judges upheld lower court decisions since lower courts possessed the discretionary powers in custody and visitation proceedings (Brown v. Brown, 1996; Rosse v. Rosse, 1994; Settle v. Galloway, 1996). The point is eloquently expressed in the following quotation:

The court may make, modify, or vacate an order for the custody of or visitation with the minor child including an order that provides for the visitation by a grandparent or other person if that is in the best interests of the child." As Section 25.24.150(a). Section 25.24.150(a) does not require the trial court to specify why such visitation is in the best interests of the children. Instead, it merely states that the trial court may award such rights if they are, in fact, in the best interests of the children. Thus it is implicit in the court's decision that such visitation is in the best interests of the children. The trial court could have reasonably determined that visitation by the paternal grandparents would be in the best interests of the children; we see no reason to require a precise explanation. Cases cited by Ruth do not support a contrary result. (Brown v. Brown, 1996, p. 5)

In grandparent visitation cases, justices also were given the ability to invoke parens patriae powers. That is, justices intruded upon parental rights to protect the interests of all citizens, especially when a citizen is legally vulnerable:

The State has a competing interest in the welfare of children within its jurisdiction, and may, as parens patriae, intervene in the family milieu if a child's welfare is at stake. Prince v. Massachusetts supra. Accordingly, parental rights are not absolute, but are subordinate to the State's parens patriae power, and must yield to the welfare of the child. (Preston v. Mercieri, 1990, p. 3)

Statutory authorization. Legislators, by way of statutes, have given justices the legal authority to determine if grandparents should obtain visitation rights (Cockrell v. Cockrell, 1986; In the Interest of K. R., 1995; In the Matter of Grandparental Visitation of C. G. F., 1992; In the Marriage of Kathleen A. Kovash, 1993; Maner et al v. Stephenson, 1996; Thompson v. Vanaman, 1986a). Consequently, justices upheld lower court decisions because the statutes authorized lower court justices with the power to determine if grandparents should be awarded visitation with their grandchild. As noted, there are constraints to judicial discretion, but justices can decide visitation issues:

If it is in the best interest of K.R. to have visitation with her grandmother, we hold the court may grant visitation. Although section 598.35 may limit grandparent visitation rights, it does not limit the statutory authority of the juvenile court to decide the issue. (In the Interest of K.R., 1995, p. 4)

Best Interest of the Child

Although noted in other cases, 13% ($n = 4$) of grandparents were granted visitation with their grandchildren based on the best interest of the child standard (Becker v Becker, 1992; Cynthia M. v Priscilla C., Matthew B., Norman H. 1998; Phillips S. v Rita A. W., 1996). Judges in In re the Marriage of Larry D. Jacobson, (1987), pointed out that the legislation that gave the court the authority to "grant reasonable visitation rights to a grandparent if such visitation is in the child's best interests" (In re the Marriage of Larry D. Jacobson, 1987, p. 4).

The best interest of the child standard in these cases included some traditional interpretations but also some liberal depictions of this standard. Some have connoted the best interest of the child in the actual statute and its application. For instance, according to Delaware's grandparent visitation statute, best interest of the child referred to:

1. the wishes of the child's parent or parents as to his or her custody and residential arrangements,
2. the wishes of the child as to his or her custodian and residential arrangements,
3. the interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests (Smith et al. v. Smith, 1993).

The liberal interpretations of this standard reached beyond unfit parents or threat of harm to the child to include issues such as the welfare of the child despite parental objections. In Becker v Becker (1992) justices noted that "the welfare of the child is

the primary, paramount and controlling consideration in determining the question of visitation and custody of a minor child. The legal rights and claims of either parent and the wishes and personal desires of said parent must yield, if opposed to what the court, in the discharge of its duty, regards the welfare of the child to be" (Becker, v. Becker, 1992, p. 3).

In the current data, there was one incidence in which the intergenerational conflict was settled by the parents and grandparents with the court legalizing the conditions agreed upon by both parties. The mother of the child agreed to allow visitation by the paternal grandmother with some stipulations that honored her parental authority. In Phillips S. v Rita A. W., (1996), justices entered into their opinion the stipulations that the mother had about grandparent visitation. The mother and the incarcerated father agreed that the grandmother should visit with the grandchild. The mother simply wanted the legal authority to discontinue visits if she felt the child was being harmed. In this case, unlike the Ward v. Ward (1987), justices were able to help the family to find amiable solution and to legal put this solution in effect.

Changes within families that include higher divorce rates have shaped justices' reasoning that the child's best interest was served by granting grandparents visitation rights. These changes have contributed to the advent of grandparent visitation rights:

The plaintiff seeks the right to visit with her grandchild. Due to the changing life styles of our society, the court system will continue to see an increasing number of such situations. When such circumstances exist, it is imperative that the court act in the best interest of the grandchild. In Fiore v. Fiore, 49 N. J. Super. 219, 225, 13 9,4.2d 414 (App. Div. 195 8), certif. denied 28 NJ 59, 145,4.2d 168 (1958), the court held that 'the welfare of the child is the primary, paramount and controlling consideration in determining the question of visitation and custody of a minor child. The legal rights and claims of either parent

and the wishes and personal desires of said parent must yield, if opposed to what the court, in the discharge of its duty, regards the welfare of the child to be. (Becker v. Becker, 1992, p. 3)

In other circumstances of family disruption, justices are providing for the child's interest when granting grandparents' visitation. Justices reasoned that children who experienced the death of a parent would need additional social support:

In a situation such as the present one, where the child's natural parent has died suddenly, the love and commitment of grandparents can be a source of security which lessens the trauma occasioned by the parent's death. To abruptly terminate such a meaningful relationship would be cruel and inhumane, and would frustrate the policy behind our adoption statute, which seeks to further the welfare of the child.... The trial court concluded that the best interests of the child would be served by continued visitation, and we find no abuse of discretion. We note that the trial court's order, like all orders concerning visitation, is subject to modification at any time upon a showing of changed circumstances affecting the welfare of the child. (Preston v. Mercieri, 1990, p. 6)

Children's need for additional support during life crises is self-evident, but understandable.

The Shift from Family Law Traditions

Among the cases in which grandparents were granted visitation rights, 16% (n = 5) justified giving grandparents rights in a way that was a significant shift from tradition (Hicks v. Enlow, 1989; In the Matter of the Grandparental Visitation of C. G. F., 1992; Puelo v. Forgue et al., 1986; Raines v Suggs, 1996). This shift from tradition was evident in several situations: (a) when grandparent visitation was granted although these rights intruded upon the rights of parents in intact families, (b) when grandparent

visitation survived adoption, and (c) when justices interpreted grandparent visitation statutes as seeking to balance the rights of parents, children, and grandparents.

The shift in tradition allowing an intrusion on parents' fundamental rights. In King v King (1992), grandparents were awarded visitation with their grandchild although the parents lived in an intact family. In several other cases, the fundamental rights of parents who remarried were also intruded upon (Goff v Goff, 1996; Hicks v. Enlow, 1989; In the Matter of the Grandparental Visitation of C. G. F., 1992; Preston v. Mercieri, 1990; Puelo v. Forgue et al, 1992; Raines v. Suggs, 1996).

Grandparent visitation survived adoptions. Traditionally, adoptive parents have had the same legal protection as biological parents. Based on derivatives of rights theory, if in an adoption, the grandparents' own child was not one of the adoptive parents, then parents and grandparents lost all legal ties with that grandchild. The current study, five cases involved grandparents who were granted visitation despite the fact that the grandchild was being adopted (Hicks v. Enlow, 1989; In the Matter of the Grandparental Visitation of C. G. F., 1992; Preston v. Mercieri, 1990; Puelo v. Forgue et al, 1986; Raines v. Suggs, 1996). Grandparents legal ties to their grandchild survived after an adoption because (a) the grandparents' own child died and continued to hold his or her parental rights (Hicks v. Enlow, 1989; In the Matter of the Grandparental Visitation of C. G. F., 1992;), (b) the grandparents own child was one of the adoptive parents (Preston v. Mercieri, 1990), (c) the grandparents met the requirement of the adoption and grandparent visitation statutes (Puelo v. Forgue et al, 1992). Based on family law traditions that protected the rights of adoptive parents, in

situations in which grandparent visitation rights survived adoption, represents a shift away from the strong protections afforded adoptive parents:

This court should take the opportunity it missed in In re Martin (1994), 68 Ohio St.3d 250, 626 N.E.2d 82, to recognize the important public policy reasons for allowing courts to grant visitation rights to grandparents in non-stranger adoption cases where such visitation is in the best interests of the child. This court noted with apparent approval in In-re Adoption of Ridenour (1991), 61 Ohio St.3d 319, 327, 574 N.E.2d PI 055, 1062, that at least five states grant grandparent visitation after a stepparent adoption. Adopted children should not be forced to trade a continuing loving relationship with grandparents for the stability of an adoptive home. Certainly, in many cases it is in the child's best interest to have both, and should have the power to make that determination (Sweeney v. Sweeney, 1994, p. 2).

This shift toward allowing grandparent visitation after a child is adopted also has some constraints. To determine if grandparents have a right to visit an adopted grandchild, the visitation must be in the child's best interest and supportive of parental autonomy. In (In the Matter of the Grandparental Visitation of C. G. F., (1992), justices outlined several factors to consider when deciding to allow grandparent visitation when a child has been adopted. Reasonable visitation may be granted to relatives who have maintained a relationship with the child that resembles a parent-child relationship. To determine if visitation should survive adoption, the court must determine what is in the child's best interest, if the visitation would undermine parental authority, and if the visitor would respect and adhere to the wishes of the adoptive parents. These conditions serve to remind citizens that in cases of adoption, grandparent visitation is not guaranteed. Based on these data, grandparent visitation rights survived adoption is more of an exception rather

than the norm. Justices are not rushing to judgment but using a "case-by-case approach of the Grandparents' Visitation Statute" (In re the Marriage of James Allen Aragon, 1988, pp. 3 - 4).

Balancing the rights of parents, children, and grandparents. The shift from tradition involves state interests and the individual rights of citizens. The foundation of family law has been called upon the courts to balance the rights of parents and children that sometimes compete against a state interest. Currently, grandparent visitation cases have caused a reexamination of this traditional competition. In the advent of grandparent visitation statutes, courts are called upon to balance the rights of parents, children, and grandparents (King v. King, 1992; Puleo et al. v. Forgue et al., 1992). In other words, the tradition of parental rights being weighed against state interests expressed in statutes has shifted with the advent of grandparent visitation cases.

This new competition has resulted in a reexamination of the rights of children and grandparents. When the best interest of the child standard is used, courts are broadening the rights of children. Similarly, there was an underlying assumption that grandparents have rights:

That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights that must be respected. This statute seeks to balance the fundamental rights of parents, grandparents, and the child. (King v. King, 1992, p. 3)

In Puleo et al. v. Forgue et al., (1992), after an adoption was completed, grandparents petitioned for visitation with their grandchild. In this case, justices concluded that

grandparent visitation survived adoption. The justices went on to say that their were not setting a precedence that automatically allowed all grandparent visitation to survive adoption. Their decision was "consistent with the case-by- case approach of the Grandparents' Visitation Statute, which, by making the granting of visitation subject to a 'reasonable' standard, balances the best interest of the child and the custodial parents with those of the grandparents" (Puleo et al. v. Forgue et al., 1992, p. 4).

Conclusion and Discussion

Of the 103 cases analyzed, 30% ($n = 31$) of grandparents were granted visitation with their grandchildren and over 90% of these cases were heard in state supreme and appellant courts. The legal precedence being set by these courts are that parental rights are not absolute. The courts are now being called upon to balance state interests that sometimes compete against the individual rights of parents, children, and grandparents instead of just parents and children.

Upholding the lower court decisions. In most instances (71% of cases within this category), justices' justification for allowing grandparent visitation was to uphold the lower court decision. Justices upheld the lower court decision out of trust for trial court justices and there was no finding that justices abused their discretionary powers in granting grandparents visitation with their grandchildren. Justices also upheld lower court decisions because these courts were vested with more knowledge about the facts of each case. Justices also were vested with the discretionary authority in visitation

and custody cases. Additionally, statutes gave justices the authority to determine if grandparents should be awarded visitation with their grandchildren.

The best interest of the child standard. In almost all of these cases, the decision to grant grandparents visitation rights was justified by using some aspect of the best interest of the child standard. In decisions that denied grandparents legal standing or visitation rights, when the best interest of the child was interpreted as unfit parents and threat of harm to the child, parents' rights were highly guarded. Unlike those cases, there was a shift away from the rigid interpretation of this standard to include the child's opinion, the parents' wishes, the welfare of the child, and the relationships among different family members and parents. The current interpretations of this standard serve to protect the interests of children, parents, and in a few cases, grandparents. Furthermore, if citizens were to remain silent about this narrow definition then that is an assumption of agreement that the child's best interests are only served when parents are unfit or the child is endanger of harm, a daily minimum standard.

Changes within families including divorce, and unwed parenthood have contributed to the expansion of interpretations of the best interest of the child standard and to the creation of grandparent visitation statutes. Because of the increased incidence of family disruption, grandparents have become an important potential resource to families by providing tangible and social support (Johnson & Barer, 1987; Johnson 1988). Grandparents may also serve as a role model, mentor, companion, and transmitters of values (Bengston, 1985; Cherlin & Furstenberg, 1986; Denham &

Smith, 1989; Hagsted, 1985; Roberto & Stroes, 1995). These familial changes and adaptations have contributed to the advent of grandparent visitation rights.

This does not mean that justices are ignoring the potential negative influence of grandparents on families. Judicial decisions and statutes that allow grandparent visitation under special circumstances of family remain controversial. Critics of this approach argue that justices are given too much discretion in circumstances of family disruption and are allowed to use less traditional interpretations of the best interest of the child standard (Balzlb, 1994; Shandling, 1986). Others argue that the assumption that grandparent visitation will render positive outcomes is an over generalization based on romantic views of intergenerational ties (Aldous, 1998; Thompson, Tinsley, Scalora, & Parke, 1989; Thompson, Scalora, Limber, & Castrianno, 1991). As mentioned in decisions in which justices denied grandparents legal standing and visitation, grandparents may undermined parental authority, create additional stress and conflict, and have other less positive influences on children and families. The possibility of positive and negative outcomes warrants case-by-case decisionmaking.

Before leaving this discussion on the best interest of the child, it is important to note that the strict interpretation of unfit parents and threat of harm to a child fails to address the developmental concerns of children. In addition, underlying this strict interpretation is an assumption that children only need minimum daily requirements. Children are devalued when justices sign into family law history these ideas:

"The majority opinion and the statute seem to rely on the idea, in addition to the erroneous belief of a fundamental right in the grandparent, that the lives of the grandchild and grandparent are enriched by their association. While such may be true in many cases, while in others it is not, mere improvement in quality of life is not a

compelling state interest and is insufficient to justify invasion of constitutional rights. So long as a family satisfies certain minimum standards with respect to the care of its children, the state has no interest in attempting to make things better" (King v. King, 1992, p. 5).

The shift from family law traditions. The final justification used by justices was labeled as a small shift in family law traditions that have largely guarded the rights of parents. The beginning of this shift rested with the advent and enactment of grandparent visitation statutes followed by grandparents being awarded visitation. Evidence of a shift comes from cases in which grandparents visitation was awarded and allowed to intrude upon the parental rights of parents in intact including remarried families. Other evidence occurred when grandparent visitation rights survived adoptions. Additionally, once justices interpreted that grandparent visitation statutes seek to balance the rights of parents, children, and grandparents' it is hard to deny that a shift from tradition is occurring.

This shift in favor of grandparent visitation implies that families are no longer strictly viewed as two parents with children. A reexamination of the legal definition of family is in order. Judges in Becker v. Becker (1992) adequately addressed this issue by suggesting that The United States Supreme Court has deemed that limiting a definition of 'family unit' to only those couples that are legally bound by marriage is unconstitutional. In Stanley v. Illinois (1972), the court noted that it would not be constrained by any rigid or formal definitions as to what can constitute a 'family unit' but would examine the facts of the case. Nicholson and Singerman (1992) have argued that if all citizens are endowed with the right to define family and personal associations (Loving v. Virginia, 1967; Moore v the City of East Cleveland, 1977),

then why are grandparents denied the right to define their families? The data from the current study showed that this question remains unresolved across the country, not just in Maryland.

Practical applications. These findings are important to grandparents and legal professionals who side with grandparents. To plan strategically to obtain visitation rights grandparents and their advocates would do well to examine the ideology of the lower court justices because according to the data analyzed in this study, state supreme and appellate judges upheld lower court decisions. Looking at the circumstances that justified grandparents being denied legal standing or visitation rights, grandparents need to cultivate a clear understanding of the grandparent visitation statutes along with the adoption and custody laws (Haralambie, 1991; Segal & Karp, 1989).

Family disruption appears to open doors for grandparent visitation; however, grandparents should build substantial relationships with their grandchild if they wish to have visitation. In King v. King (1992), a substantial relationship evidenced by daily contact and the grandfather's involvement in the child's extra curricular activities guided the justices to grant visitation rights to the grandparents. Statutes alone do not win cases involving human interactions; relationships matter in some courts (Haralambie, 1991; Segal & Karp, 1989).

CHAPTER SEVEN

Results

Other Issues

Of the total sample ($N = 103$), five cases did not deal directly with legal standing nor with granting or denying visitation (See Appendix G). These cases dealt with issues that had to be decided before judges could address grandparent visitation petitions. Three of the five cases dealt with issues of whether grandparent visitation statutes were constitutional. The remaining two cases dealt with a Motion for Consolidation and Writ of Prohibition. A motion to consolidate is a request to hear two different but related cases at the same time. For example, a custody and adoption case may be heard together. A Writ of Prohibition is a request to not comply with a court-ordered request.

Constitutionality of statutes. The three cases dealing with constitutionality varied from a traditional to a non-traditional approach. The Florida Supreme Court took a traditional approach. Judges held that Section 752.01(1)(a) of the Florida Statutes (1993) was unconstitutional because it wrongfully intruded on parents' fundamental rights (Persico v. Russo, 1998). The judges in this case referred back to Von Eiff v. Azicri, (1998), reiterating that "at common law, grandparents had no legal right to visit their grandchildren if the child's parents opposed the visitation" (p. 2).

Justices in Reinhardt et al. v. Reinhardt (1998) took a less traditional approach. They recognized the importance of protecting the fundamental rights of

parents; however, those rights are not absolute. Justices referred to state statutes that intrude on parental rights in order to promote the overall well-being of children whose parents are divorcing. For families experiencing divorce, the children may find additional support from grandparents:

Civil Code article 136 is found in the code section governing divorce. Thus, it provides for court imposed visitation with the children of divorced parents. See Lingo v. Kelsay, 94-1038 p.2 (La. App. 3d Cir. 3/3/95); 651 So. 2d 499, 500. After the fragmentation of the children's primary family through divorce, the state has a legitimate and substantial interest in encouraging beneficial extended family relationships with children. See Sightes v. Barker, 684 N.E.2d at 23 1; Michael v. Hertzler, 900 P.2d 1144, 1151 (Wyo. 1995); Campbell v. Campbell, 896 P.2d 635, 643 (Utah App. 1995); Hollingsworth v. Hollingsworth, 34 Ohio App. 3d 13, 16, 516 N.E.2d 1250, 1253 (1986). In cases, like this one, where one parent is infrequently or not even involved with the children, the children's relationship with one side of their extended family may be lost in the absence of grandparent or family member visitation. See Lindsey v. House, 29, 790 p. 4 & n.2 (La. App. 2d Cir. 9/24/97); 699 So. 2d I 1 90, 1192; Ray v. Ray, 94-1478 pp.2-3 (La. App. 3d Cir. 1995); 657 So. 2d 171, 173. Additionally, as noted by the district court, the state mandates ascendant support of descendants in need. La. C. C. art. 229. In anticipation of a possible order of future support, the state and the ascendants have a legitimate and substantial interest to maintain extended family relationships through reasonable visitation. The sum of these facts and concerns is a compelling interest by the state in stabilizing broken or single parent families through visitation with extended family members. (Reinhardt v. Reinhardt, 1998, p. 3)

Grandparents hold the burden of proving that visitation serves the best interest of the child.

Similarly justices in R. T. v. M. T. v. J. E. and L. E. (1994), concluded that a grandparent visitation statute was constitutional despite the fact it intruded upon the fundamental rights of parents who were married. In an initial hearing the grandparents were awarded visitation rights. As a result of the second hearing the families were

referred to a mediation program. Because mediation was ineffective, the families were referred to a mental health advisor. During this period, the parents filed a motion claiming that the New Jersey statute was unconstitutional. The justices held that the legislature created grandparent visitation statutes to balance the competing interests of grandparents, grandchildren, and parents. Grandparents were not given visitation automatically. The statute has outlined eight factors that should be weighed in determining if the child's best interest would be served by granting visitation to the grandparents. For example, New Jersey has a statute that outlines the circumstances under which visitations should be awarded to grandparents including a finding of that this visitation serves the child's best interest. These are some of the other factors that used to determine if visitation serves the child's best interest:

1. The relationship between the child and applicant;
2. The relationship between each of the child's parents or the person with whom the child is residing and the applicant;
3. The time which has elapsed since the child last had contact with the applicant;
4. The effect that such visitation will have on the relationship between the child's parents or the person with whom the child is residing;
5. If the parents are divorced or separated, the time sharing arrangement which exists between the parents with regard to the child;
6. The good faith of the applicant in filing this application;
7. Any history of physical, emotional or sexual abuse or neglect by the applicant, and
8. Any other factor relevant to the best interest of the child.
 - c. With regard to any application made pursuant to this section, it shall be prima facie evidence that visitation is in the child's best interest if

the applicant, had, in the past, been a full-time caretaker for the child.
(R. T. v. M. T. v. J. E. and L. E., p. 2, 1994)

As with decisions that granted grandparents visitation with their grandchildren, the best interest of the child standard was less rigidly interpreted.

Motion for consolidation. In R. K. and L. K. et al., v. A. J. B. and H. B. (1995), grandparents petitioned to consolidate an adoption with their visitation case. The reason for the petition of consolidation was the grandparents wanted an opportunity to oppose the adoption. Justices reasoned that this was not a consolidation motion but a motion to intervene. Additionally, judges reasoned that the adoption would not interfere with the grandparents' visitation petition; however, grandparents were not in a position to petition for a consolidation hearing because they were not the parents of the child. The judges denied the motion of consolidation, but protected the grandparents' interest by allowing them to intervene in the adoption hearing:

The motion for consolidation will be denied, but the grandparents will be permitted to intervene and present relevant evidence at the adoption hearing. Because the grandparents' visitation action will not be barred if the adoption occurs, there is no reason why both issues should be resolved based upon a record made at the same hearing. While the parties may be called upon to testify at both hearings, the overlap of the testimony at those hearings will not be so substantial as to suggest that any particular advantage will be gained through consolidation. It is preferable that there be separate hearings so that the focus on each important issue will not be blurred by the confluence of all the testimony on both subjects at one sitting. (R. K. and L. K. et al., v. A. J. B. and H. B., p. 5, 1995)

Writ of prohibition. In State of West Virginia, ex Rel David Allen B. v. the Honorable L. Sommerville, Jr. (1995), David Allen B. sought a Writ of Prohibition to prevent the circuit court from forcing him to comply with a DNA fingerprinting blood

test. David and the child's mother had always presented him as the father of the grandchild. The maternal grandparents wanted to prove that David Allen B. was not the child's biological father. Justices held in favor of the alleged father and noted that grandparents do not have legal standing in paternity cases:

We hold that while an alleged biological parent has standing to challenge the paternity established pursuant to W. Va. Code 48A-6-6(b) (1990), that same right is not vested in a grandparent of a child" State of West Virginia, ex Rel David Allen B. v The Honorable L. Sommerville, Jr., 1995).

This case shows the lengths to which some grandparents will go to maintain a connection to their grandchild. These efforts begin at the home and land in the courts.

Conclusions and Discussion

Constitutionality. Grandparent visitation cases raised issues of constitutionality. Two out of three courts held that grandparent visitation statutes were constitutional, although these statutes intruded upon the fundamental rights of parents. The judges in the Florida case held strictly to common law and a tradition that protects the social construction of intact families and declared that the grandparent visitation statute was unconstitutional.

For the cases in which the statute was deemed constitutional, one court acknowledged the state interest in granting grandparents visitation with their grandchild is to give families experiencing some form of disruption some stability. In another case, justice reiterated the guidelines for determining if grandparent visitation served the best interests of the child. These two justices held in favor of the

grandparents, which represents a small shift away from tradition, but a shift just the same.

Unique legal arguments made by grandparents. At the same time, grandparents used some unique legal arguments to gain access to their grandchildren. These involved a motion to consolidate and a request for a paternity test. In these cases, being heard was a positive outcome for grandparents. In R. K. and L. K. et al., v. A. J. B. and H. B. (1995), the grandparent motion of consolidation was declined, but the judge provided another avenue for the grandparent. The judges recommended that the grandparent file a petition to intervene in the adoption hearing, which signified a shift from tradition. To be specific, when a child is adopted both a parent and the related grandparent lose all legal ties to that child. To be allowed to intervene in an adoption case changes the protections afforded adoptive parents who in the eyes of the law hold the same rights as biological parents.

Justices in Reindhart v. Reinhardt (1998) had the same disposition toward the goal of grandparent visitation statutes as did the justices in King v. King, (1992). According to justices in these two cases, grandparent visitation statutes seek to balance the rights of parents, children, and grandparents.

These five cases directly influenced the outcomes of grandparent visitation statute cases. These cases serve to show that grandparent visitation rights may have some success in the courts, especially in cases where the statutes that created these rights are found to be constitutional. On the other hand, grandparents' ability to intervene in cases that determine the fate of their grandchild has also become an avenue for grandparents to obtain legal standing and visitation with their grandchild.

CHAPTER EIGHT

Discussion

Summary of Findings

No legal standing. Thirty-one percent ($n = 32$) of grandparents failed to obtain legal standing because visitation (a) intruded upon parents fundamental rights, (b) did not meet statutory requirements, and (c) failed to serve the child's best interests. The most frequent occurring justification used to deny grandparents legal standing was a failure to meet statutory requirements that included a lack of family disruption. The overall message being sent in court opinions that denied grandparents' legal standing was that parental rights remain paramount and supercede grandparents' visitation rights.

Legal standing and denied visitation. Thirty-five out of 103 (34%) of cases involved grandparents who obtained legal standing, but were denied visitation with their grandchild. Although the frequencies differed, judges used the same justifications to deny grandparents legal standing and visitation rights (i.e., intrudes upon parental rights, fails to statutory requirements, and does not serve the best interest of the child). The varying interpretations of the best interest of the child standard were unique to justifications used to deny grandparents' visitation with their grandchild. Although threat of harm was among these interpretations, undermining parental authority and placing children in the middle of adult conflicts were also included. The message that

justices were sending when denying grandparent visitation rights is similar to the message sent when denying grandparents' legal standing.

Legal standing and granted visitation. Thirty percent ($n = 31$) of grandparents were granted legal standing and visitation rights. The justifications differed from those situations in which grandparents were denied legal standing or visitation rights. Upholding lower court decisions was the most frequent justification for granting grandparents the right to visit with their grandchild. For instance, judges acknowledged the advantages that trial court justices have over them in terms of knowledge of the facts and statutory authorization in custody and visitation cases.

The other justifications show a shift in family law traditions from maintaining the strong guard railings of parental rights. The shift was clearly seen in situations in which grandparents were allowed to intrude on intact families, visitation was allowed after the grandchild was adopted, and the best interest of the child standard was interpreted to include children's opinions and a contextual understanding of intergenerational relationships. The message being sent by judges who granted grandparents visitation rights is that parental rights are not absolute.

Legal standing and other issues. Two out of three justices found grandparent visitation statutes to be constitutional. In another legal dispute, justice did not allow grandparents to petition to consolidate an adoption and visitation case, but justices did recommend a viable legal solution. The justices recommended a petition to intervene in the adoption cases and this recommendation was placed in the actual opinion.

Out of the five cases that dealt with legal issues that were pertinent to any forthcoming grandparent visitation case, two held in favor of parental rights. One

court held that a grandparent visitation statute was unconstitutional and the other held that grandparents could not petition for a paternity test. The overall message of these cases is that grandparent visitation rights, while delicate, have been instituted.

Discussion

Parents' fundamental rights. How much are justices willing to intrude upon the fundamental rights of parents in grandparent visitation right cases? Family law traditions that protect parental rights continue to exist with parental rights having greater legal strength than grandparent visitation rights. In over 67 of 103 (65%) cases grandparents were denied legal standing or visitation, compared to 31 (31%) of grandparents being awarded standing and visitation rights. Among the five cases that dealt with other issues, three favored grandparents. In general, grandparents are gaining some legal ground, but parental rights holds the stronger constitutional protections via common law, landmark cases, and tradition.

Looking at decisions that denied grandparents legal standing and visitation rights, absent a compelling state interest such as threat of harm or parental unfitness, justices were usually not willing to intrude on parents' rights by granting grandparents visitation with their grandchildren. This unwillingness stands on a foundation of common law and landmark cases. As one judge stated: "coercing grandparent visitation over parental objection demonstrates a respect for family privacy and parental autonomy" (Ward v. Ward, 1987, p. 1069). Some justices have held this view because in their eyes "government is ill equipped to dictate the details of social interaction among family members" (Ward v. Ward, 1987, p. 1069).

Under common law, grandparents do not have a legal right to visitation with grandchildren against the wishes of the parents. Parental rights are constitutional constructions (i.e., landmark cases and common law), whereas grandparent visitation rights are purely statutory. Thus, in order for a grandparent to gain visitation rights, a statute must exist and grandparents must adhere to all conditions set in that statute. Grandparents are vulnerable because their rights not only depend upon the enactment and conditions of a statute, but grandparents are largely dependent upon a pending action of divorce, custody, or adoption. The death of a parent may also provide grandparents with some legal avenues to gain access to their grandchild.

Some social scientists agree with judges who hold on to this tradition that protects parental and family autonomy, especially within intact families. Thompson and his colleagues (1991) used variability in grandparenthood to substantiate the need to protect parental and familial autonomy. For instance, grandparenting styles range from distant to involved (Cherlin & Furstenberg, 1986; Hagestad, 1985; Roberto & Stroes, 1995). According to opponents of grandparent visitation, this variability has been ignored and a romanticized illusion of grandparents has been emphasized that avoid issues of parental boundaries, authority, and family (Thompson, Scalora, Limber, & Castrianno, 1991; Thompson, Tinsley, Scalora, & Parke, 1989)

A shift away from a tradition that protects parental rights. Grandparents successfully lobbied legislators into enacting visitation statutes in 50 states in less than 20 years (Bostock, 1994; Burns, 1991; Hartfield, 1996). In the current study, 30% ($n = 31$) of grandparents were awarded legal standing and visitation with their grandchildren, which indicates a slight intrusion upon on parental rights. These legal

accomplishments show that grandparents have won some legal grounds including having their voices heard before courts.

The fact that a few judges granted grandparent visitation in traditional intact families and allowed after an adoption shows that grandparents are gaining legal ground. In five more recent cases, however, grandparent visitation survived adoption (Hicks v. Enlow, 1989; In the Matter of the Grandparental Visitation of C. G. F., 1992; Preston v. Merceori, 1990; Puelo v. Forgue et al, 1986; Raines v. Suggs, 1996). Since biological and adoptive parents hold the same legal parental rights, a paradigm shift is occurring when justices allowed grandparents to visitation following an adoption.

Prior to the advent of grandparent visitation statutes, courts were called upon to balance the rights of parents and children that sometimes compete against state interests. Results of this study indicated that justices sometimes sought to protect the interests of parents, grandparents, and children (King v. King, 1992; Puleo et al. v. Forgue et al., 1992; Reinhardt v. Reinhardt, 1998). This too is a paradigm shift.

Even when examining cases that challenged the constitutional soundness of grandparent visitation cases, grandparents appeared to be winning some ground. In Reinhardt v. Reinhardt (1998) and R. T. v. M. T. v J. E. and L. E. (1994), justices held that Louisiana's and New Jersey's grandparent visitation statutes were constitutional despite the fact these statutes allowed the state to intrude upon the fundamental rights of intact families. In Reinhardt v. Reinhardt (1998), the grandparent visitation statute was deemed constitutional because it (a) was narrowly drawn and rationally related to a state interest, (b) was not unduly intrusive on the parental right of privacy, and (c) operated to balance the competing interests of the parent, the extended family, and the

children. This stance is in direct conflict with the premise that the only justifiable government intrusion into families has to have the following circumstances: (a) potential threat of to the child, (b) unfit parents, or (c) the contemporary view of family disruption. When judges make decisions on constitutionality, it is sending a message about its importance and the legal soundness of a statute.

Taken together all of above facts show that grandparents are gaining legal ground. Although Moore v. City of East Cleveland (1977) gave grandparents some legal protection, justices are interpreting that grandparents do have some rights via state statutes. Although grandparents have some rights, their visitation rights are not as strong as parental rights.

Myth about families. Among the five myths about families, two appear to be more applicable to the current study. The first myth relates to the "ideal American family." The other focuses on families as harmonious institutions (Anderson & Hill Collins, 1995).

Monolithic myth about families. This myth is a social construction about the ideal family being two parents with children. The data for situations in which grandparents were denied legal standing and visitation rights was justified by a family law tradition that provided intact families with more regard and legal protections than nonintact families. Justices were more willing to intrude on parental rights when families were not intact than when families were intact. Justices justified denying grandparents legal standing and visitation in the absence of family disruption (i.e., Castegno et al., v Wholean, 1996; Enos v. Correia, 1995) and granted it when family disruption existed (i.e., Becker v. Becker, 1992; Preston v. Mercieri, 1990).

By allowing grandparents to petition for visitation when families are not intact, justices are giving parents in intact families greater protection than parents in nonintact families. This establishes a hierarchy with the best family being an intact family. Furthermore, this differential treatment implies that nonintact families are less fit than intact families to raise their children.

The rationale behind this differential treatment was that grandparents have the potential to provide their grandchild with social and economic support in the face of family disruption (Balzlb, 1994; Bostock, 1994; Burns, 1991; Digest of Recent Judicial Decisions, 1993; Jackson, 1994). For example, justices in Goff v. Goff (1996) noted that grandparents sometimes hold the symbolic roles of family watchdog, arbitrator, or family historian.

Some justices recognized that differential treatment of intact families poses problems because intact families are not free of issues with child maltreatment and other familial concerns. Some justices recognize that even in the absence of child maltreatment, there is no compelling constitutional requirement that the legislature must defer, in every instance, to the parental autonomy of an intact family over that of a nonintact family. To do so allows greater intrusion by the state into families headed by "widowed, divorced, remarried, or unmarried parent" (Lehrer v. Davis, 1990, p. 4). These issues raise numerous questions. Is it time to readdress the definition of the family? Is it time to construct protections for other familial forms? What avenues must be taken to diminish the social and legal hierarchy given to intact families over families with varying structures? What would it take to empower all families?

This differential treatment is not only seen in the legal arena, but social scientists also have been aware of it (Andersen & Hill Collins, 1995; Baca Zinn, 1991; Simmons v. Simmons, 1995; Ward v. Ward, 1987). There was an underlying assumption by justices that parents in intact families were better than parents in nonintact families. These assumptions coincide with the monolithic myth about families. By treating nonintact and intact families differently, the courts are marginalizing families and supporting aspects of this myth.

Families are harmonious institutions. Another social construction is that families are always joyful havens. This myth ignores the natural conflicts that result from normal life events or from family crises. Using a justice's own words, these cases dispel the myth that families are harmonious institutions

In closing, I feel compelled to express my regret at the inability of the litigants in the instant case to function as a harmonious extended family unit. It is particularly regrettable that children who love both their parents and grandparents have become pawns in animosities and differences among adults. This opinion is not to be taken as the Court's endorsement of the position taken by the natural parents in this matter; indeed, the Court would remind them of what other courts have stressed: that this is the moral duty of the parents to promote and strengthen association between grandchildren and grandparents. (Ward v. Ward, 1987, p. 1071)

In Herndon v Tuhey (1993), justices admitted to the inadequacies of the law in solving personal problems within families. The courts may not be the best place to resolve these tensions; however, some families have found themselves in the courts when intergenerational conflicts arise.

Some of the life events or crises involve distal and proximal factors. The increase in life expectancy and decrease in child births are macro and micro changes

that have also contributed to the dialog on grandparenthood and grandparent visitation rights (Aldous, 1998; Hooyman & Kiyak, 1996). With over 94% of older adults becoming grandparents (Hooyman & Kiyak, 1996), grandparents have not only obtained some statutory rights to visit with their grandchild, but some grandparents were awarded visitation rights against parents' wishes. These changes have created challenges to some families.

Family crises such as the death of a parent or divorce have also influenced grandparenting (Cherlin & Furstenberg, 1986; Johnson, 1995). Grandparenthood is not a monolithic paradigm; therefore, the intergenerational issues vary. Despite these variations, family crises have contributed to grandparenthood and the advent of grandparent visitation rights.

In short, families are interconnected with many systems. Distal and proximal factors such as increased longevity, decreased fertility rates, and older adults coincided with the enactment of grandparent visitation statutes (Hooyman & Kiyak, 1996; Szinovacz, 1998). These statutes are a response to changes within families and the larger contextual environment. These changes reflect society's views about parental rights, family autonomy, and grandparent rights. Just as society is shaping its views around these issues, so are judges.

Why Are Grandparent Visitation Rights Important to Family Sciences?

As the ecological model asserts, families are affected both directly and indirectly by multiple contexts of the environment in which they live (Bronfenbrenner, 1977, Salkind, 1985). Because laws do have an impact on families (Melton, 1987;

Purnell & Bagby, 1993; Walters, 1983) law is a viable research area for social scientists. By fostering understanding of the intersection of the courts and families, family scientists will increase understanding of the impact, both direct and indirect, that the legal system has on family functioning. For example, the changed fault divorce to no fault divorce impacted many marriages. More recently, laws concerning access to adoption records have profoundly affected many families.

It is important to recognize that the impact of laws cannot be measured only by the direct effect they have on certain families. Laws set boundaries in which we are all expected to operate. For example, a law that sets the speed limit at 55 mph not only impacts persons fined for speeding, but also every person that drives on that road. Similarly, the impact of grandparent visitation rights on families should not be measured only by the small number of families that have brought cases, but rather by the boundaries on relationships within families that are established by these statutes.

An illustration comes from a classroom discussion of grandparent visitation cases. After class, a student commented that, at 16 years of age, her sister gave birth to a baby. The student's parents were very involved in rearing the child. The sister and her parents quarreled often and the sister frequently threatened to take her baby from her parents. The student said that she wanted to tell both her sister and her parents about grandparent visitation rights because it would help them to smooth out the quarrels between them. She thought that if her parents knew about these rights, they would feel more empowered to do what they thought was right for the baby, and the sister would be less likely to threaten her parents with taking the child away from her

parents. In other words, the law set different boundaries for the relationships among the parent, grandparents, and child.

Future Research

There are numerous questions for future research. A study of the grandparents who were awarded visitation with their grandchild would be important. Some questions that could be posed: (a) How did the parent-grandparent relationship fair after this court-ordered visitation? (b) How did the grandchild benefit or not benefit from the visitation? (c) What type of grandparenting style existed following this court order? Grandparents, grandchildren, parents, and attending attorneys may be interviewed to answer these questions. These questions may provide researchers and courts with needed information about the influence of court-ordered visitation on children and families. For example, program counselors may help grandparents to empower parents to become more self-sufficient economically and socially so they are able to better care for their child.

These questions may also assist programs to develop additional approaches to promoting family functioning and healthy developmental outcomes in children when families are facing challenges between generations. In addition, these questions may assist programs whose goal to support grandparents raising grandchildren. Responses to these questions may enlighten family mediators with insights into the core problem.

For grandparent visitation advocates, a pertinent study to move the country toward enacting a federal grandparent visitation statute, would be to find out the utility of visitation in the lives of children. What effect did the court-ordered visitation have

on family functioning and child development? Do differences exist between families with court-ordered visitation and those without this court mandate?

Another study of interest would interview grandparents, children, and parents to examine critical issues that led to a legal petition for visitation rights. A pertinent question would be how the social construction of family influenced the conflicts between parents and grandparents that led them to the courthouse door. Another question would center on how the social scientist creates evaluation studies to address issues of best interest of the child and family functioning to adjust to court-ordered and life cycle changes faced by contemporary families.

Limitations

As a family scientist with knowledge of family law, this study was influenced by the researcher's biases toward helping families that sometimes conflict with the legal reasoning of family law. Data analyses were also influenced by the researcher's social location as a Black southern female has longstanding values toward respecting elders and whose definition of family includes intergenerational and fictive ties. The literature reviewed for this study also has influenced the researcher's perspective on grandparent-grandchild relationships and the legal issues surrounding grandparent visitation rights.

These data failed to give a complete contextual understanding of what transpired in the courtroom. For instance, these data do not include the actual verbal and nonverbal communication of parents, grandparents, children, and other participants. Additionally, the data was only compared to legal and family studies

research. The influence of race, ethnicity, income, education, age, and gender cannot be adequately explored. In other words, personal interviews with parents, children, grandparents, attorneys, or justices would provide a clearer picture of the family and legal issues encircling grandparent visitation rights.

Summary

Parents continue to hold a higher level of legal protections when compared to grandparents. Grandparent visitation rights are statutory making them less strong than the constitutionally constructed rights of parents. Despite this fact, grandparents are obtaining legal ground as they petition for visitation with their grandchildren. Evidence of this legal ground is found in decisions to allow grandparents to visit their grandchild when families are intact and parents who are fit or when the legal ties between grandparents and grandchildren are not severed after an adoption. Furthermore, a very limited number of justices have included in their opinions that legislators enacted grandparent visitation right statutes to seek a balance between the rights of parents, children, and grandparents. Taken together, these represent a shift away from family law traditions. This shift is very slight because parental rights "supercede" and remain "paramount" to grandparent visitation rights.

BIBLIOGRAPHY

Amato, P. R. (1994). Life-span adjustment of children to their parents' divorce. The Future of Children, 4, 143-164.

Anderson, M. L., & Hill Collins, P. (1995). Race, class, and gender: An anthology. Belmont, CA: Wadsworth Publishing.

Avin, J. E. (1994). Grandparent visitation: The one and only standard - Best Interest of the Child. University of Baltimore Law Review, 24: <http://web.lexis-nexis.com>. (4 December 1998).

Baca Zinn, M. (1991). Family, feminism, and race in America. In J. Lorber & S. A. Farrell (Eds.). The social construction of gender (pp. 180-192). Newbury Park, CA: Sage.

Balzlb, C. L. (1994). Grandparent visitation rights – constitutional considerations and the Need to define the “best interest of the child standard.” Land and Water Law Review, 29, 593-613.

Bass, S. A., & Caro, F. G. (1996). The economic value of grandparent assistance. Generations, 20, 29-33.

Becker v. Becker, 262 N.J. Super. 311; 620 A.2d 1092; 1992 N.J. Super. LEXIS 479: <http://web.lexis-nexis.com>. (8 December 1998).

Beckman et al. v. Boggs et ux., 337 Md. 688; 655 A.2d 901; 1995 Md. LEXIS 38: <http://web.lexis-nexis.com>. (5 December 1998).

Behrman, R. E. & Quinn, L. S. (1994). Children and divorce: An overview and analysis. Children and Divorce, 4, 1-14.

Bellotti v. Baird, 322 U.S. 622 (1979).

Bengston, V. L. (1985). Diversity and symbolism in grandparental roles. In V. L. Bengston & J. R. Robertson (Eds.). Grandparenthood (pp.11-25). Beverly Hills, CA: Sage.

Berg, B. L. (1995). Qualitative research methods for the social sciences. Needham Heights, MA: Allyn & Bacon.

Bishop v. Piller, 536 Pa. 41; 637 A.2d 976; 1994 Pa. LEXIS 39: <http://web.lexis-nexis.com>. (8 December 1998).

Black, H. C., Nolan, J. R., & Nolan-Haley, J. M. (1991). Black's Law Dictionary. St. Paul, MN: West.

Bohl, J. C. (1996). The unprecedented intrusion: A survey and analysis of selected grandparent visitation cases. Oklahoma Law Review, 33: <http://web.lexis-nexis.com>. (4 December 1998).

Bond v. Yount, 47 Wash. App. 181; 734 P.2d 39; 1987 Wash. App. LEXIS 3347: <http://web.lexis-nexis.com>. (5 March 1999).

Bopp v. Lino, 110 Nev. 1246; 885 P.2d 559; 1994 Nev. LEXIS 163: <http://web.lexis-nexis.com>. (8 December 1998).

Bostock, C. (1994). Does the expansion of grandparent rights promote the best interests of the child?: A survey of grandparent visitation laws in the fifty states. Columbia Journal of Law and Social Problems, 27, 319-373.

B. R. O. v. G. C. O., 646 So. 2d 126; 1994 Ala. Civ. App. LEXIS 378: <http://web.lexis-nexis.com>. (5 January 1999).

Bronfenbrenner, U. (1977). Toward an experimental psychology of human development. American Psychologist, 32, 513-531.

Brooks et al. v. Parkerson, 265 Ga. 189; 454 S.E.2d 769; 1995 Ga. LEXIS 157; 95 Fulton County DR P1103: <http://web.lexis-nexis.com>. (5 December 1998).

Brown v. Brown Earnhardt, 302 S.C. 374; 396 S.E.2d 358; 1990 S.C. LEXIS 185: <http://web.lexis-nexis.com>. (8 December 1998).

Brown v. Brown, 914 P.2d 206; 1996 Alas. LEXIS 27: <http://web.lexis-nexis.com>. (5 December 1998).

Burns, E. M. (1991). Grandparent visitation rights: Is it time for the pendulum to fall? Family Law Quarterly, 25, 59-81.

Burton, L. M., & Bengston, V. L. (1985). Black grandmothers: Issues of timing and continuity of roles. In V. L. Bengston & J. R. Robertson (Eds.). Grandparenthood (pp. 61-77). Beverly Hills, CA: Sage.

Bush et al. v. Squellati et al., 122 Ill. 2d 153; 522 N.E.2d 1225; 1998 Ill. LEXIS 65; 119 Ill. Dec. 366: <http://web.lexis-nexis.com>. (5 December 1998).

Camerlingo v. Camerlingo, 88 Haw. 68; 961 P.2d 1162; 1998 Haw. App. LEXIS 133: <http://web.lexis-nexis.com>. (23 February 1999).

Carey v. Population Services International, 431 U.S. 678 (1977).

Castegno et al. v. Tina Wholean et al., 239 Conn. 336; 684 A.2d 1181; 1996 Conn. LEXIS 438: <http://web.lexis-nexis.com>. (5 December 1998).

Chan, F. (1997). To be old and Asian: An unsettling life in American. In M. Hutter (Ed.). The family experience (pp. 373-375). Needham Heights, MA: Allyn and Bacon.

Cherlin, A. J., & Furstenberg, Jr., F. F. (1986). The new American grandparent: A place in the family, a life apart. Cambridge, MA: Harvard University Press.

Clark v. Leslie, 537 So. 2d 25; 1988 Ala. Civ. App. LEXIS 336: <http://web.lexis-nexis.com>. (5 January 1999).

Cockrell v. Sittason, 500 So. 2d 1119; 1986 Ala. Civ. App. LEXIS 1581: <http://web.lexis-nexis.com>. (5 January 1999).

Cynthia M v. Priscilla C., Matthew B., Norman H., 1998 Del. Fam. Ct. LEXIS 34: <http://web.lexis-nexis.com>. (23 February 1999).

David J. & Rita K. v. Theresa K. & Lora Lane. Hockessin, 1993 Del. Fam. Ct. LEXIS 32: <http://web.lexis-nexis.com>. (23 February 1999).

Delia S. et al. v. Claymont, 1997 Del. Fam. Ct. LEXIS 24: <http://web.lexis-nexis.com>. (23 February 1999).

Demo, D. H. (1992). Parent-child relations: Assessing recent changes. Journal of Marriage and the Family, 54, 104-117.

Denham, T. E., & Smith, C. W. (1989). The influence of grandparents on grandchildren: A review of the literature and resources. Family Relations, 38, 345-350.

Digest of Recent Judicial Decisions. (1993). Grandparent visitation rights. Journal of Juvenile Law, 14, 194-199.

Eberspacher v. Hulme et al., 248 Neb. 202; 533 N.W.2d 103; 1995 Neb. LEXIS 150: <http://web.lexis-nexis.com>. (8 December 1998).

Ellis v. Ellis, 1993 Del. Fam. Ct. LEXIS 103: <http://web.lexis-nexis.com>. (23 February 1999).

Enos v. Correia, 38 Mass. App. Ct. 318; 647 N.E.2d 1215; 1995 Mass. App. LEXIS 243: <http://web.lexis-nexis.com>. (8 December 1998).

Estate of Topel, 32 Wis. 2d 223, 145 N. W. 2d 162 (1966).

Eisenstadt v. Baird, 405 U.S. 438; 92 S. Ct. 1029; 1972 U.S. LEXIS 145; 31 L. Ed. 2d 349. <http://web.lexis-nexis.com>. (29 June 1999).

Erikson, R. S., Luttbeg, N. R., & Tedin, K. L. (1991). American public opinion. (4th ed.). New York: Macmillan.

Estate of Topel, 32 Wis. 2d 223, 145 N. W. 2d 162; 1966 Wisc, LEXIS 903: <http://web.lexis-nexis.com>. (15 October 1998).

Fairbanks et ux. v. McCarter, 330 Md. 39; 622 A. 2d 121; 1993 Md. LEXIS 44: <http://web.lexis-nexis.com>. (5 December 1998).

Foster, H. H., & Freed, D. J. (1984). The child's right to visit grandparents: An emerging question of visitation rights. Trial, 18, 38-45.

Gillman, C. M. (1995). One big, happy family? In search of a more reasoned approach to grandparent visitation in Minnesota. Minnesota Law Review, 79: <http://web.lexis-nexis.com>. (4 December 1998).

Girrusso, R., Silverstein, M., & Bengston, V. L. (1996). Family complexity and the grandparent role. Generations, 20, 17-23.

Goff v. Goff, 844 P.2d 1087; 1993 Wyo. LEXIS 6: <http://web.lexis-nexis.com>. (1 March 1999).

Griswold v. Connecticut, 381, U.S. 479 (1965).

Gushlaw et al. v. Rohrbaugh et al., 673 A.2d 63; 1996 R.I. LEXIS 80: <http://web.lexis-nexis.com>. (8 December 1998).

Hagested, G. O. (1985). Continuity and connectedness. In V. L. Bengston & J. R. Robertson (Eds.). Grandparenthood (pp. 31-48). Beverly Hills, CA: Sage.

Harrigan, M. P. (1992). Advantages and disadvantages of multigenerational family households: Views of three generations. The Journal of Applied Gerontology, 11, 457-474.

Harvard Law Review. (1980). Developments in the law: The Constitution and the family. Boston, MA: author.

Hartfield, B. W. (1996). Legal recognition of the value of intergenerational nurturance: Grandparent visitation statutes in the nineties. Generations, 20: <http://web2.searchbank.com/infortrac>. (5 August 1998).

Hawk v. Hawk, 855 S. W. 2d (Tenn., 1993).

Hawkins v. Haley, 765 S.W.2d 914; 1989 Tex. App. LEXIS 629: <http://web.lexis-nexis.com>. (8 December 1998).

Hazelwood School District v. Kuhlmeier, 108 S. Ct. 562, 98 L. Ed. 2d 592 (1988).

Herndon v. Tuhey, 857 S. W. 2d 203; 1993 Mo. LEXIS NEXIS 72: <http://web.lexis-nexis.com>. (8 December 1998).

Hicks v. Enlow, Ky., 764 S.W.2d 68 (1989).

Higginbotham and Higginbotham v. Higginbotham, 669 So. 2d 990; 1995 Ala. Civ. App. LEXIS 667: <http://web.lexis-nexis.com>. (5 January 1999).

Hintz, P. A. (1994). Grandparents' visitation rights following adoption: Expanding traditional boundaries in Wisconsin. Wisconsin Law Review: <http://web.lexis-nexis.com>. (4 December 1998).

Hooyman, N., & Kiyak, H. A. (1996). Social gerontology: A multidisciplinary perspective (4th ed.). Needham Heights, MA: Schuster & Schuster.

Hunter, A. G., & Taylor, R. J. (1998). Grandparenthood in African American families. In M. E. Scinovacz (Ed.). Handbook on Grandparenthood (pp. 70-86). Westport, CT: Greenwood Press.

Indermark, K. J. (1992). Permissive Intervention: Grandparents' key to entering adoption proceedings. Georgia Law Review, 26: <http://web.lexis-nexis.com>. (4 December 1998).

In the Interest of A. C. and L. C., 428 N.W.2d 297; 1988 Iowa Sup. LEXIS 217: <http://web.lexis-nexis.com>. (5 December 1998).

In the Interest of A. M. B. & T. B., 946 P. 2d 607; 1997 Colo. App. LEXIS 223; 1997 Colo. J. C. A. R. 2123: <http://web.lexis-nexis.com>. (5 December 1998).

In the Interest of J. W. W., 936 P.2d 599; 1997 Colo. App. LEXIS 12: <http://web.lexis-nexis.com>. (23 February 1999).

In the Interest of K. R., 537 N.W.2d 774; 1995 Iowa Sup. LEXIS 186: <http://web.lexis-nexis.com>. (5 December 1998).

In the Interest of N. S., 821 P.2d 931; 1991 Colo. App. LEXIS 348; 15 BTR 1652: <http://web.lexis-nexis.com>. (23 February 1999).

In the Interest of R. N. C., 768 S.W.2d 516; 1989 Tex. App. LEXIS 1112: <http://web.lexis-nexis.com>. (8 December 1998).

In re Adoption of Ridenour et al., 61 Ohio St. 3d 319; 574 N.E.2d 1055; 1991 Ohio LEXIS 1931: <http://web.lexis-nexis.com>. (8 December 1998).

In re the Custody of: B. S. Z- S, 74 Wash. App. 727; 875 P.2d 693; 1994 Wash. App. LEXIS 290: <http://web.lexis-nexis.com>. (23 February 1999).

In re Emanuel S. v. Joseph E., 577 N.E.2d 27 (NY 1991).

In re Gault, 387 U.S. 1 (1967).

In re Gibson, 61 Ohio St. 3d 168; 573 N.E.2d 1074; 1991 Ohio LEXIS 1749: <http://web.lexis-nexis.com>. (8 December 1998).

In re Lola Francis McCarty, 559 So. 2d 517; 1990 La. App. LEXIS 721: <http://web.lexis-nexis.com>. (8 December 1998).

In re Martin, 68 Ohio St. 3d 250; 626 N.E.2d 82; 1994 Ohio LEXIS 47: <http://web.lexis-nexis.com>. (8 December 1998).

In re the Marriage of Daniel G. Bradshaw, 270 Mont. 222; 891 P.2d 506; 1995 Mont. LEXIS 33; 52 Mont. St. Rep. 154: <http://web.lexis-nexis.com>. (8 December 1998).

In re the Marriage of Dawn M. Soergel v. Dawn Soergel Raufman, 154 Wis. 2d 564; 453 N.W.2d 624; 1990 Wisc. LEXIS 228: <http://web.lexis-nexis.com>. (9 December 1998).

In re the Marriage of Frankie J. Herreras, R. L. Herreras, v. Jean. Jenkins, 768 P.2d Series 673 (Ariz., 1989).

In re the Marriage of James Allen Aragon, 764 P. 2d 419; 1988 Colo. App. LEXIS 366; 12 BTR 1510: <http://web.lexis-nexis.com>. (2 February 1999).

In re the Marriage of Kathleen A. Kovash, 260 Mont. 44; 858 P.2d 351; 1993 Mont. LEXIS 241; 50 Mont. St. Rep. 934: <http://web.lexis-nexis.com>. (8 December 1998).

In re the Marriage of Larry D. Jacobson, 228 Mont. 458; 743 P.2d 1025; 1987 Mont. LEXIS 1020; 44 Mont. St. Rep. 1678: <http://web.lexis-nexis.com>. (8 December 1998).

In re the Matter of Bridgette Lachae' Morris, 494 So. 2d 87; 1986 Ala. Civ. App. LEXIS 1394: <http://web.lexis-nexis.com>. (5 January 1999).

In re Schmidt et. al., 25 Ohio St. 3d 331; 496 N.E.2d 952; 1986 Ohio LEXIS 734; 25 Ohio B. Rep. 386: <http://web.lexis-nexis.com>. (8 December 1998).

In re the Visitation of Herschel Walker, 665 N.E.2d 586; 1996 Ind. LEXIS 53: <http://web.lexis-nexis.com>. (5 December 1998).

In re the Visitation of Neola B. Kanvick, 233 Mont. 324; 760 P.2d 743; 1988 Mont. LEXIS 253: <http://web.lexis-nexis.com>. (8 December 1998).

In re Visitation of Troxel, 87 Wash. App. 131; 940 P.2d 698; 1997 Wash. App. LEXIS 1223: <http://web.lexis-nexis.com>. (23 February 1999).

In re Whitaker, 36 Ohio St 3d 213; 522 N.E. 2d 563, 1988 Ohio LEXIS 125: <http://web.lexis-nexis.com>. (5 December 1998).

In the Marriage of Candyce & John D. Perry, 61 Cal. App. 4th 295; 1998 Cal. App. LEXIS 89; 71 Cal. Rptr. 2d 499; 98 Cal. Daily Op. Service 968; 98 Daily Journal DAR 1287: <http://web.lexis-nexis.com>. (23 February 1999).

In the Matter of the Adoption of G. D. L., 747 P.2d 282; 1987 Okla. LEXIS 273

In the Matter of the Adoption of Minor Identified in the Petition, 558 So. 2d 854; 1990 Miss. LEXIS 156: <http://web.lexis-nexis.com>. (8 December 1998).

In the Matter of the Adoption of R. D. S. & J. S. v. F. V. and C. V., 787 PR 2d 968-971 (Wyo. 1990).

In the Matter of the Application of Christopher Steven Herbst, 1998 OK 100; 1998 Okla. LEXIS 110; 69 O.B.A.J. 3508: <http://web.lexis-nexis.com>. (8 December 1998).

In the Matter of the Grandparental Visitation of C. G. F., H. F., T. F. v. T. F. & D. L., 168 Wis. 2d 62; 483 N.W.2d 803; 1992 Wisc. LEXIS 199: <http://web.lexis-nexis.com>. (15 October 1998)

Jackson, A. M., (1994). The coming of age of grandparent visitation rights. The American University Law Review, 563, 563-600.

Jacobson v. Mass., 197 U.S. 11, 35 (1905)

Jefferson v. Griffin, 247 GA 86, 274 S. E. 2d 457 (1981).

Jimmy S. and Wilma Jean S. v. Kenneth B and Phyliss B., 199 W. Va. 263; 483 S.E.2d 846; 1997 W. Va. LEXIS 20: <http://web.lexis-nexis.com>. (9 December 1998).

Johnson, C. (1983). A cultural analysis of the grandmother. Research in Aging, 5, 547-568.

Johnson, C. L., & Barer, B. M. (1987). Marital instability and the changing kinship networks of grandparents. The Gerontologists, 27, 330-335.

Johnson, C. L. (1988). Ex familia: Grandparents, parents, and children adjust to divorce. New Brunswick, NJ: Rutgers University Press.

Johnson, C. L. (1995). Effects of adult children's divorce on grandparenthood. In M. E. Scinovacz (Ed.). Handbook on Grandparenthood (pp. 184-199). Westport, CT: Greenwood Press.

Kamo, Y. (1998). Asian grandparents. In M. E. Scinovacz (Ed.). Handbook on Grandparenthood (pp. 97-112). Westport, CT: Greenwood Press.

Kasper v. Nordfelt, 165 Utah Adv. Rep. 42; 815 P.2d 747; 1991 Utah App. LEXIS 111: <http://web.lexis-nexis.com>. (9 December 1998).

King v. King, 929 S. W. 2d 630 (KY, 1992).

King, V., & Elder, G. H. Jr. (1995). American children view their grandparents: Linked lives across three rural generations. Journal of Marriage and the Family, 57, 165-178.

Kivett, V. R. (1985). Grandfather and grandchildren; Patterns of association, helping, and psychological closeness. Family Relations, 34, 565-571.

Kivett, V. R. (1991). The grandparent-grandchild connection. Marriage and Family Review, 16, 267-290.

Kivett, V. R. (1993). Racial comparisons of the grandmother role. Family Relations, 42, 165-272.

Kivett, V. R. (1998). Transitions in grandparents' lives: Effects on the grandparent role. In M. E. Scinovacz (Ed.). Handbook on Grandparenthood (pp. 131-143). Westport, CT: Greenwood Press.

Klyman, A. C. (1994). Hawk v. Hawk: Grandparent visitation rights – court protects parental privacy rights over “child’s best interest.” Memphis State Law Review, 24, 413-427.

Law, S. A. (1999). White privilege and Affirmative Action. Akron Law Review, 31: <http://web.lexis-nexis.com>. (26 July 1999).

Lehrer et. al. v. Davis et. al., 571 AR 2d 691 (1990).

Linda K. v. Alex A. Jr., 1998 Del. Fam. Ct. LEXIS 49: <http://web.lexis-nexis.com>. (23 February 1999).

Little v. Little, 680 So. 2d 308; 1996 Ala. Civ. App. LEXIS 451: <http://web.lexis-nexis.com>. (5 January 1999).

Loving v. Virginia, 388 U.S. 1; 87 S. Ct. 1817; 1967 U.S. LEXIS 1082; 18 L. Ed. 2d 1010. <http://web.lexis-nexis.com>. (1 March 1999).

Lubben, J. E., & Becerra, R. M. (1987). Social support among Black, Mexican, and Chinese elderly. In D. E. Gelfand & C. M. Barresi (Eds.). Ethnic dimensions of aging (pp. 130-144). New York: Springer.

McCarthy, F. B. (1988). Parents, children, and the courts: The confused constitutional status and meaning of parental rights. Georgia Law Review, 22. <http://web.lexis-nexis.com>. (4 December 1998).

McLanahan, S., & Adam, J. (1987). Parenthood and psychological well being. In W. R. Scott and J. F. Short (Eds.). Annual Review of Sociology (Vol. 13, pp. 237-257). Palo Alto, CA: Annual Reviews.

McCrimmon, C. A., & Howell, R. J. (1989). Grandparents legal rights to visitation in the fifty states and the District of Columbia. Bulletin of American Academy of Psychiatry and Law, 17, 355-366.

McIntyre v. McIntyre, 341 N.C. 629; 461 S.E.2d 745; 1995 N.C. LEXIS 409: <http://web.lexis-nexis.com>. (8 December 1998).

McMain v. Iowa District Court for Polk County, 559 N.W.2d 12; 1997 Iowa Sup. LEXIS 60: <http://web.lexis-nexis.com>. (5 December 1998).

Maner et ux. v. Stephenson et ux., 342 Md. 461; 677 A.2d 560; 1996 Md. LEXIS 53: <http://web.lexis-nexis.com>. (5 March 1999).

Markides, K. S., & Mindel, C. H. (1987). Aging and ethnicity. Beverly Hills, CA: Sage.

Matthews, D. H., & Sprey, J. (1984). The impact of divorce on grandparenthood: An exploratory study. The Gerontologist, 24, 41-47.

Melton, G. B. (Ed.). (1987). Reforming the law: Impact of child development research. New York: Guilford.

Meyer v. Nebraska, 262 U.S. 390 (1923).

Michaels, B. (1993). Grandparent visitation rights. Digest of Recent Judicial Decisions, 14, 194-199.

Minkler, M., & Roe, K. M. (1993). Grandmothers as caregivers: Raising children of crack cocaine epidemic. Newbury Park: Sage.

Mintz, S. (1992). Children, families, and the state: American family law in historical perspective. Denver University Law Review, 69, 635-661.

M. J. Alvarez, f/k/a Carlson, f/k/a Pecka v. S. R. Carlson, 474 N.W.2d 79; 1991 N.D. LEXIS 149: <http://web.lexis-nexis.com>. (5 March 1999).

Mnookin, R. H., & Weisburg, D. K. (1993). Child, family, and state: Problems and materials on children and law (2nd ed.). Boston, MA: Little, Brown and Company.

Moore v. the City of East Cleveland, 431 U.S. 494; 97 S. Ct. 1932; 1977 U.S. LEXIS 17; 52 L. Ed. 2d 531.

Morris v. Corzatt, 255 Neb. 182; 583 N.W.2d 26; 1998 Neb. LEXIS 193: <http://web.lexis-nexis.com>. (8 December 1998).

Murray v. Marks, 1993 Del. Fam. Ct. LEXIS 86: <http://web.lexis-nexis.com>. (23 February 1999).

Neugarten, B. L., & Weinstein, K. K. (1964). The changing American grandparent. Journal of Marriage and the Family, 26, 199-204.

Nicholson, C. W., & Singerman, M. O. (1992). Grandparent visitation in intact marriages: An unresolved Maryland family law issue. The University of Baltimore Law Review, 21. <http://web.lexis-nexis.com>. (4 December 1998).

O'Brien v. O'Brien, 141 N.H. 435; 648 A.2d 1352; 1996 N.H. LEXIS 118: <http://web.lexis-nexis.com>. (8 December 1998).

Oliver Talley v. Oliver, 628 So. 2d 690; 1993 Ala. Civ. App. LEXIS 299: <http://web.lexis-nexis.com>. (5 January 1999).

Olson v. Flinn, 484 So. 2d 1015; 1986 Miss. LEXIS 2417: <http://web.lexis-nexis.com>. (8 December 1998).

Olson v. Olson, 534 N.W.2d 547; 1995 Minn. LEXIS 613: <http://web.lexis-nexis.com>. (8 December 1998).

Persico et al. v. Russo, 721 So. 2d 302; 1998 Fla. LEXIS 2206; 23 Fla. Law W. S 603: <http://web.lexis-nexis.com>. (5 March 1999).

Phillips S. R. v. Rita A. W., 1996 Del. Fam. Ct. LEXIS 67: <http://web.lexis-nexis.com>. (23 February 1999).

Pierce v. the Society of Sisters, 268 U.S. 510; 45 S. Ct. 571; 1925 U.S. LEXIS 589; 69 L. Ed. 1070; 39 A.L.R. 468.

Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976).

Preston v. Mercieri, 133 N.H. 36; 573 A.2d 128; 1990 N.H. LEXIS 28: <http://web.lexis-nexis.com>. (8 December 1998).

Prince v. Massachusetts, 321 U.S. 158 (1944).

Puleo et al. v. Forgue et al., 610 A.2d 124; 1992 R.I. LEXIS 173: <http://web.lexis-nexis.com>. (8 December 1998).

Puleo et al. v. Forgue et al., 634 A. 2d 857; 1993 R. I. LEXIS 264: <http://web.lexis-nexis.com>. (8 December 1998).

Purnell, M., & Bagby, B. H. (1993). Grandparents' rights: Implications for family specialists. Family Relations, 42, 173-178.

Raines v. Sugg, 930 S.W.2d 912; 1996 Tex. App. LEXIS 4207: <http://web.lexis-nexis.com>. (8 December 1998).

Reed v. Glover, 319 Ark. 16; 889 S.W.2d 729; 1994 Ark. LEXIS 695: <http://web.lexis-nexis.com>. (5 December 1998).

Reinhardt et al., 97 1889 (La. App. 1 Cir, 09/25/98); 1998 La. App. LEXIS 2857: <http://web.lexis-nexis.com>. (5 December 1998).

Rivers v. Gadwah, 165 Vt. 568; 679 A.2d 891; 1996 Vt. LEXIS 51: <http://web.lexis-nexis.com>. (27 April 1999).

R. K. and L. K. et al. - In the Matter of Adoption of a Child H. B., 284 N.J. Super. 687; 666 A.2d 215; 1995 N.J. Super. LEXIS 503: <http://web.lexis-nexis.com>. (8 December 1998).

Roberto, K. A., & Stroes, J. (1995). Grandchildren and grandparents: Roles, influences, and relationships. In J. Hendricks (Ed.). The ties of later life (pp. 141-153). Amityville, NY: Baywood.

Roe v. Wade, 410 U.S. 113 (1973).

Romo et al. v. Hickok et al., 264 Mont. 341; 871 P.2d 894; 1994 Mont. LEXIS 80; 51 Mont. St. Rep. 320: <http://web.lexis-nexis.com>. (8 December 1998).

Rosse v. Rosse, 244 Neb. 967; 510 N.W.2d 73; 1994 Neb. LEXIS 13: <http://web.lexis-nexis.com>. (8 December 1998).

R. T. and M. T. v. J. E. and L. E., 277 N.J. Super. 595; 650 A.2d 13; 1994 N.J. Super. LEXIS 486: <http://web.lexis-nexis.com>. (8 December 1998).

Rudolph et al. v. Floyd, 309 Ark. 514; 832 S.W.2d 219; 1992 Ark. LEXIS 392: <http://web.lexis-nexis.com>. (5 December 1998).

Ruth I. J. & Shirley A. K. v. James R. M., 1993 Del. Fam. Ct. LEXIS 66: <http://web.lexis-nexis.com>. (23 February 1999).

Salkind, N. J. (1985). Theories of human development. New York: John Wiley & Sons.

Segal, E. C., & Karp, N. (1989). Grandparent visitation disputes: A legal resource manual. Washington D. C.: American Bar Association, Commission on Legal Problems of the Elderly.

Settle v. Galloway, 682 So. 2d 1032; 1996 Miss. LEXIS 573: <http://web.lexis-nexis.com>. (8 December 1998).

Shandling, J. L. (1986). The constitutional constraints on grandparents' visitation statutes. The Columbia Law Review, 86: <http://web.lexis-nexis.com>. (4 December 1998).

Simmons v. Simmons, 900 S.W.2d 682; 1995 Tenn. LEXIS 271: <http://web.lexis-nexis.com>. (8 December 1998).

Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816 (1977).

Smith et al. v. Smith, 1993 Del. Fam. Ct. LEXIS 52: <http://web.lexis-nexis.com>. (23 February 1999).

Smith Loftin v. Smith, 590 So. 2d 323; 1991 Ala. Civ. App. LEXIS 628: <http://web.lexis-nexis.com>. (5 January 1999).

Smyer, M., & Hofland, B. F. (1982). Divorce and family support in later life. Journal of Family Issues, 3, 61-77.

Snipes v. Carr, 526 So. 2d 591; 1988 Ala. Civ. App. LEXIS 88: <http://web.lexis-nexis.com>. (5 January 1999).

Sowers v. Tsamolias, 262 Kan. 717; 941 P.2d 949; 1997 Kan. LEXIS 122: <http://web.lexis-nexis.com>. (5 December 1998).

Sposato v. Sposato, 1997 ND 207; 570 N.W.2d 212; 1997 N.D. LEXIS 265: <http://web.lexis-nexis.com>. (5 March 1999).

Spradling v. Harris, 778 P.2d 365 (Kan App 1989).

Sprey, J., & Matthews, S. H. (1982). Contemporary grandparenthood: A systematic transition. Annals of the American Academy of Political and Social Science, 464, 91-103.

Stanley v. Illinois, 405 U.S. 645; 92 S. Ct. 1208; 1972 U.S. LEXIS 70; 31 L. Ed. 2d 551.

State ex rel Costello v. Honorable F. G. Cottrell, 318 Ore. 338; 867 P.2d 498; 1994 Ore. LEXIS 9: <http://web.lexis-nexis.com>. (8 December 1998).

State of West Virginia, ex. Rel David Allen B. v. The Honorable L. Sommerville, Jr., 194 W. Va. 86; 459 S.E.2d 363; 1995 W. Va. LEXIS 99: <http://web.lexis-nexis.com>. (9 December 1998).

Steward v. Steward, 111 Nev. 259; 890 P.2d 777; 1995 Nev. LEXIS 17: <http://web.lexis-nexis.com>. (8 December 1998).

Stolba, A., & Amato, P. R. (1993). Extended single-parent households and children's behavior. Sociological Quarterly, 34, 543-549.

Stone v. Short, 1991 Tex. App. LEXIS 337: <http://web.lexis-nexis.com>. (5 March 1999).

Straayer, J. A., & Wrinkle, R. D. (1975). Introduction to American government and policy. Columbus, OH: Charles Merrill.

Strauss, A., & Corbin, J. (1990). Basics of qualitative research: Grounded theory procedures and techniques. Newbury Park, CA: Sage.

Strom, R., Collinsworth, P., Strom, S., & Griswold, D. (1995). Strengths and needs of Black grandparents. In J. Hendricks (Ed.). The ties of later life (pp. 195-207). Amityville, NY: Baywood.

Strouse v. Olson, 397 N.W.2d 651; 1986 S.D. LEXIS 354: <http://web.lexis-nexis.com>. (8 December 1998).

Suster v. Arkansas Department of Human Services, 314 Ark. 92; 858 S.W.2d 122; 1993 Ark. LEXIS 455: <http://web.lexis-nexis.com>. (5 December 1998).

Sweeney v. Sweeney et al., 71 Ohio St. 3d 169; 642 N.E.2d 629; 1994 Ohio LEXIS 2806: <http://web.lexis-nexis.com>. (8 December 1998).

Szinovacz, M. E. (1998). Grandparents today: A demographic profile. The Gerontologist, 38, 37-52.

Tanke, E. D., & Tanke, T. J. (1979). Getting off a slippery slope: Social science in the judicial process. American Psychologists, 34, 1130-1138.

Thomas, H. L. (1986). Age and sex differences in perceptions of grandparenting. Journal of Gerontology, 41, 417-423.

Thompson, L., & Walker, A. (1987). Mothers as mediators of intimacy between grandmothers and their young adult granddaughters. Family Relations, 38, 72-77.

Thompson, R. A., Tinsley, B. R., Scalora, M. J., & Parke, R. D. (1989). Grandparent visitation rights: Legalizing the ties that bind. American Psychologist, 44, 1217-1222.

Thompson, R. A., Scalora, M. J., Limber, S. P., & Castrianno, L. (1991). Grandparent visitation rights: A psychological analysis. Family and Conciliation Courts Review, 29, 9-25.

Thompson v. Vanaman, 210 N.J. Super. 225; 509 A.2d 304; 1986a N. J. Super. LEXIS 1268: <http://web.lexis-nexis.com>. (8 December 1998).

Thompson v. Vanaman, 212 N.J. Super. 596; 515 A.2d 1254; 1986b N.J. Super. LEXIS 1420: <http://web.lexis-nexis.com>. (8 December 1998).

Thorton Dill, B. (1995). Our mothers' grief: Racial ethnic women in early America. In M. L. Anderson & P. Hill Collins (Eds.). Race, class, and gender: An anthology (pp. 237-260). Belmont, CA: Wadsworth.

Tinker et al. v. Des Moines Independent Community School District, 393 U.S. 503; 89 S. Ct. 733; 1969 U.S. LEXIS 2443; 21 L. Ed. 2d 731; 49 Ohio Op. 2d 222.

Tope v. Kaminski, 793 S.W.2d 315; 1990 Tex. App. LEXIS 1680: <http://web.lexis-nexis.com>. (5 March 1999).

Troll, L. E. (1983). Grandparents: The family watchdogs. In T. Brubaker (Ed.). Family relationships in later life (pp. 63-74). Beverly Hills, CA: Sage.

Troll, L. E. (1985). The contingencies of grandparenting. In V. L. Bengson & J. F. Robertson (Eds.). Grandparenthood (pp. 135-149). Beverly Hills, CA: Sage.

Turner v. Turner, 706 So. 2d 1219; 1997 Ala. Civ. App. LEXIS 425:
<http://web.lexis-nexis.com>. (5 January 1999).

Vice v. Andrews, 328 Ark. 573; 945 S.W.2d 914; 1997 Ark. LEXIS 305:
<http://web.lexis-nexis.com>. (5 December 1998).

Von Eiff v. Azicri, 1998 Fla. LEXIS 2197, 1998): <http://web.lexis-nexis.com>. (5 December 1998).

Voran, M., & Phillips, D. (1993). Correlates of grandmother childcare support to adolescent mothers: Implications for child development in two generations of women. Children and Youth Services Review, 15, 321-334.

Walther, D. L. (1997). Survey of grandparents visitation rights. American Journal of Family Law, 11, 95-107.

Ward v. Ward, Del. Fam. Ct., 537 A.2d 1063 (1987).

Walters, L. H. (1983). The role of family specialists and research in the law. Family Relations, 32, 521-526.

Watson, J. A., & Koblinsky, S. A. (1997). Strengths and needs of working-class African-American and Anglo-American grandparents. International Journal of Aging and Human Development, 44, 149-165.

Whitbeck, L. B., Hoyt, D. R., & Huck, S. M. (1993). Family relationship history, contemporary parent-grandparent relationship quality, and the grandparent-grandchild relationship. Journal of Marriage and the Family, 55, 1025-1035.

Wiebel-Orlando, J. (1997). Grandparenting styles: Native American perspective. In M. Hutter (Ed.). The family experience: A reader in cultural diversity (pp. 376-388). Needham Heights, MA: Allyn & Bacon.

Williams III et al. v. Williams IV, 256 Va. 19; 1998 Va. LEXIS 99; 601 S.E.2d 417: <http://web.lexis-nexis.com>. (9 December 1998).

Williamson, M. (1997). The healing of America. New York: Simon & Schuster.

Wisconsin v. Yoder, 406 U.S. 205 (1972).

Zablocki v. Redhail, 434 U.S. 374 (1978).

APPENDICES

Appendix A**Number of Grandparent Visitation Cases**

Appendix A – Number of Grandparent Visitation Cases

State	Study Cases	Omitted Cases
Alabama	13	5
Alaska	1	0
Arizona	0	1
Arkansas	4	2
California	1	1
Colorado	7	0
Connecticut	2	0
Delaware	10	3
Florida	4	0
Georgia	2	0
Hawaii	1	1
Idaho	0	1
Illinois	1	0
Indiana	1	1
Iowa	5	3
Kansas	1	3
Kentucky	2	0
Louisiana	3	0
Maine	1	1

Appendix A – Number of Grandparent Visitation Cases (Continued)

State	Study Cases	Omitted Cases
Maryland	3	1
Massachusetts	2	0
Michigan	1	0
Minnesota	1	0
Mississippi	5	1
Missouri	1	0
Montana	5	0
Nebraska	5	1
Nevada	2	0
New Hampshire	2	2
New Jersey	5	1
New Mexico	1	0
New York	1	0
North Carolina	1	1
North Dakota	4	3
Ohio	6	1
Oklahoma	2	0
Oregon	1	1
Pennsylvania	1	1
Rhode Island	3	0

Appendix A – Number of Grandparent Visitation Cases (Continued)

State	Study Cases	Omitted Cases
South Carolina	1	0
South Dakota	2	0
Tennessee	1	1
Texas	5	9
Utah	2	1
Vermont	2	1
Virginia	1	0
Washington	3	1
West Virginia	4	1
Wisconsin	3	1
Wyoming	4	0
Total	139	50

Appendix B
Omitted Cases

Appendix B - Omitted Cases

Legal Issue	Case Name	Court
These cases dealt with other legal issues (i.e., judicial prejudice or discretion, venue, fees, child support, and other peripheral issues).	<u>W. G., D. G., and S. G.</u>	Court of Civil Appeals
	<u>v. W. B., B. B., and</u>	of Alabama
	<u>State Dept. of Human</u>	
	<u>Resources</u>	
	<u>Jones v. Breshears and</u>	Court of Civil Appeals
	<u>Breshears</u>	of Alabama
	<u>Palmer v. Bolton</u>	Court of Civil Appeals
		of Alabama
	<u>Sanders v. Sanders</u>	Supreme Court of
		Arkansas
	<u>Maria S et al. v. Maria S</u>	Family Court of
	<u>et al.</u>	Delaware
	<u>Henderson v. Forster &</u>	Family Court of
	<u>Henderson</u>	Delaware
	<u>Paroksky Burdsal</u>	Family Court of
		Delaware
	<u>Doe v. Roe</u>	Intermediate Court of
		Appeals of Hawaii

Appendix B – Omitted Cases (Continued)

These cases dealt with other legal issues (i.e., judicial prejudice or discretion, venue, fees, child support, and other peripheral issues).	<u>Daugherty v. Ritter</u>	Supreme Court of Indiana
	<u>In re the Marriage of Ruth Marie Bolson</u>	Supreme Court of Iowa
	<u>In the Matter of Mitchell Taylor</u>	Supreme Court of Kansas
	<u>In the Matter of the Marriage of D. Scott and R. Scott</u>	Supreme Court of Kansas
	<u>The State Ex Rel. Kaylor v. Judge Browning</u>	Supreme Court of Ohio
	<u>In the Matter of the Marriage of Francine Marie Holm</u>	Supreme Court of Oregon
	<u>S. Von Behren v. W. and L. Von Behren</u>	Court of Appeals of Texas

Appendix B – Omitted Cases (Continued)

Legal Issue	Case Name	Court
These cases dealt with other legal issues (i.e., judicial prejudice or discretion, venue, fees, child support, and other peripheral issues).	<u>In re Anabelle Cifarelli</u>	Supreme Court of Vermont
	<u>W. Joseph & J. Coots v. Leanard</u>	Court of Appeals of Texas
	<u>Chavers v. Hammac</u>	Court of Civil Appeals of Alabama
These cases dealt with other third parties petitioning for visitation, custody or guardianship, adoption, or conservator.	<u>Peavy and Peavy v. Dollar</u>	Court of Civil Appeals of Alabama
	<u>In the Matter of the Adoption of Angela Michelle Perkins</u>	Supreme Court of Arkansas
	<u>In re Robert A. et al.</u>	Court of Appeals of California

Appendix B – Omitted Cases (Continued)

Legal Issue	Case Name	Court
These cases dealt with other third parties petitioning for visitation, custody or guardianship, adoption, or conservator.	<u>Finck v. Honorable</u>	Supreme Court of
	<u>Thomas W. O'Toole et</u>	Arizona
	<u>al.</u>	
	<u>Stockwell (Porter) v.</u>	Supreme Court of Idaho
	<u>Stockwell</u>	
	<u>Lihs et al. v. Lihs</u>	Supreme Court of Iowa
	<u>In the Marriage of Kelli</u>	Supreme Court of Iowa
	<u>Yvette Michell</u>	
	<u>In re Senator J.</u>	Supreme Court of
	<u>Christopher Hood</u>	Kansas
	<u>Beckman et al. v. Boggs</u>	Court of Appeals of
		Maryland
	<u>In re Melanie S. et al.</u>	Supreme Judicial Court
		of Maine
	<u>Ziebarth v. Ziebarth</u>	Supreme Court of
		Nebraska
	<u>In the Interest of N. W.</u>	Supreme Court of North
		Dakota

Appendix B – Omitted Cases (Continued)

Legal Issue	Case Name	Court
These cases dealt with other third parties petitioning for visitation, custody or guardianship, adoption, or conservator.	<u>Bodwell v. Brooks</u>	Supreme Court of New
		Hampshire
	<u>Zack v. Fiebert</u>	Superior Court of New
		Jersey
	<u>In re A.M.A. T.N.A.</u>	Supreme Court of North
	<u>and N.D.A.</u>	Dakota
	<u>In re the Custody of</u>	Supreme Court of
	<u>H.S.H.-K</u>	Wisconsin
	<u>The State Ex Rel.</u>	Supreme Court of Ohio
	<u>Kaylor v. Judge</u>	
	<u>Bruening</u>	
	<u>Moore v. Moore</u>	Supreme Court of
		Pennsylvania
	<u>Claymore v. Serr</u>	Supreme Court of South
		Dakota
	<u>Bower and Bower v.</u>	Court of Appeals of
	<u>Neasbitt</u>	Texas

Appendix B – Omitted Cases (Continued)

Legal Issue	Case Name	Court
Issues dealt with another third party petitioning for visitation, custody or guardianship, adoption, or conservator.	<u>Bosakewich v.</u>	Court of Appeals of
	<u>Honorable R. Webb</u>	Texas
	<u>In the Interest of D.L.B.</u>	Court of Appeals of Texas
	<u>Landry v. Nauls</u>	Court of Appeals of Texas
	<u>S. Valdez and D.</u>	Court of Appeals of
	<u>Hennigan v. Adam</u>	Texas
	<u>Valdez et al.</u>	
	<u>Wright v. Wright</u>	Court of Appeals of Texas
This case was heard at the appellant level, the state supreme court cases were used for this state.	<u>State of Utah in the</u>	Supreme Court of Utah
	<u>Interest of J.W.F.</u>	
	<u>Cole v. Thomas</u>	Court of Appeals of Kentucky

Appendix A – Omitted Cases (Continued)

Legal Issue	Case Name	Court
This case dealt with the reinstatement of an attorney's license.	<u>In re Petition of J. Steele for reinstatement</u>	Supreme Court of Mississippi
This case was outside the timeline of current study.	<u>Roberts v. Ward</u>	Supreme Court of New Hampshire
This case dealt with transportation issues.	<u>R. Capello Jr. v. M. Capello</u>	Court of Appeals of Texas
This case dealt with conditions of grandparent visitation.	<u>In re Custody of E.T. and D.T.</u>	Court of Appeals of Washington

Appendix C
Remanded Cases

Appendix C - Remanded Cases

Legal Issue	Case Name	Court
These cases were remanded to deal with issues concerning the best interest of the child.	<u>Weathers and Weathers</u>	Court of Civil Appeals
	<u>v. Weathers Compton</u>	of Alabama
	<u>Mills and Mills v.</u>	Court of Civil Appeals
	<u>Parker and Mills</u>	of Alabama
	<u>Lehrer v. Davis</u>	Supreme Court of Connecticut
	<u>Herndon v. Tuhey</u>	Supreme Court of Missouri
	<u>Schemp-Cook v. Cook</u>	Supreme Court of North Dakota
	<u>In re Whitaker</u>	Supreme Court of Ohio
	<u>Campbell v. Campbell</u>	Court of Appeals of Utah
	<u>Jean H. v. Pamela Kay</u>	Supreme Court of
	<u>R.</u>	Appeals of West Virginia

Appendix C – Remanded Cases (Continued)

Legal Issue	Case Name	Court
These cases were remanded to deal with issues concerning the best interest of the child.	<u>In re the Petition of</u>	Supreme Court of
	<u>Sharon K. Nearhoof to</u>	Appeals of West
	<u>Adopt David Andrew</u>	Virginia
	<u>Nearhoof</u>	
	<u>In re the Interest of</u>	Supreme Court of
	<u>Brandon S. et al. v.</u>	Wisconsin
	<u>Laura S. and Micheal R.</u>	
	<u>Godwin V Bogart,</u>	Court of Civil Appeals
	<u>Bogart, and Bogart</u>	of Alabama
	<u>F. H. & B. H. v. K. L.</u>	Court of Appeals of
	<u>M.</u>	Colorado
	<u>In re the Marriage of</u>	Court of Appeals of
	<u>James Allen</u>	Colorado
	<u>In the Marriage of Linda</u>	Court of Appeals of
	<u>Peterson</u>	Colorado
	<u>Good von Eiff v. Azicri</u>	Supreme Court of
		Florida
	<u>Fowler v. Knebel et al.</u>	Supreme Court of
		Georgia

Appendix C – Remanded Cases (Continued)

Legal Issue	Case Name	Court
These cases dealt with statutory requirements including adoptions, permission to intervene, custody, visitation, and legal standing.	<u>Wishart et al. v. Boggs et al.</u>	Supreme Court of Florida
	<u>Beagle et al. v. Beagle et al.</u>	Supreme Court of Florida
	<u>In the Matter of Emanuel S.</u>	Court of Appeals of New York
	<u>Hero v. Hero</u>	Court of Appeals of Louisiana
	<u>Berg v. Bragdon</u>	Supreme Judicial Court of Maine
	<u>Fairbanks et ux. v. McCarter</u>	Court of Appeals of Maryland
	<u>In the Guardianship of</u>	Appeals Court of
	<u>Norman and Others</u>	Massachusetts
	<u>Stephen v. Nehls</u>	Supreme Court of Michigan

Appendix C – Remanded Cases (Continued)

Legal Issue	Case Name	Court
These cases dealt with statutory requirements including adoptions, permission to intervene, custody, visitation, and legal standing.	<u>Howell v. Rogers</u>	Supreme Court of
		Mississippi
	<u>Rust v. Buckler</u>	Supreme Court of
		Nebraska
	<u>In re the Marriage of</u>	Supreme Court of Iowa
	<u>Ruth M. Bolson et al.</u>	
	<u>In re Interest of Kaylee</u>	Supreme Court of
	<u>C. and Kylee C. v.</u>	Nebraska
	<u>Michelle C. and Donald</u>	
	<u>Y. et al.</u>	
	<u>Nation v. Nation</u>	Supreme Court of
		Wyoming
	<u>In the Matter of</u>	Court of Appeals of
These cases dealt with conditions of visitation.	<u>Michelle Annette</u>	Colorado
	<u>Oswald</u>	

Appendix C – Remanded Cases (Continued)

Legal Issue	Case Name	Court
These cases dealt with conditions of visitation.	<u>In the Matter of the Guardianship of Nathan Paul Nemer et al.</u>	Supreme Court of Iowa
	<u>Martin v. Coop</u>	Supreme Court of Mississippi
	<u>Pillars v. Thompson</u>	Supreme Court of New Mexico
These cases dealt with conditions of visitation.	<u>Peterson v. Peterson</u>	Supreme Court of North Dakota
	<u>In re S.B.L.</u>	Supreme Court of Vermont
	<u>Micheal et al. v.</u>	Supreme Court of
	<u>Hertzler</u>	Wyoming

Appendix D

No Legal Standing

Appendix D - No Legal Standing

Legal Issue	Case Name	Court
These cases dealt with varying statutory requirements needed to obtain legal standing.	<u>Higginbotham and</u>	Court of Civil Appeals
	<u>Higginbotham v.</u>	of Alabama
	<u>Higginbotham</u>	
	<u>Little v. Little</u>	Court of Civil Appeals
		of Alabama
	<u>In re the Matter of</u>	Court of Civil Appeals
	<u>Bridgette Lachae Morris</u>	of Alabama
	<u>B.R.O. v. G.C.O.</u>	Court of Civil Appeals
		of Alabama
	<u>Suster v. Arkansas</u>	Supreme Court of
	<u>Department of Human</u>	Arkansas
	<u>Services</u>	
	<u>Vice v. Andrews</u>	Supreme Court of
		Arkansas
	<u>In the Interest of J. W.</u>	Court of Appeals of
	<u>W.</u>	Colorado
	<u>Castegno et al. v. Tina</u>	Supreme Court of
	<u>Wholean et al.</u>	Connecticut

Appendix D - No Legal Standing (Continued)

Legal Issue	Case Name	Court
These cases dealt with varying statutory requirements needed to obtain legal standing.	<u>Linda K. v. Alex A. Jr.</u>	Family Court of Delaware
	<u>Delia S. et al. v. Claymont</u>	Family Court of Delaware
	<u>Ruth I. J. & Shirley A. K. v. James R. M.</u>	Family Court of Delaware
	<u>Sowers v. Tsamolias</u>	Supreme Court of Kansas
	<u>Enos v. Correia</u>	Appeals Court of Massachusetts
	<u>Olson v. Flinn</u>	Supreme Court of Mississippi
	<u>In the Matter of the Adoption of the Minor Identified in Petition</u>	Supreme Court of Mississippi
	<u>O'Brien v. O'Brien</u>	Supreme Court of New Hampshire

Appendix D - No Legal Standing (Continued)

Legal Issue	Case Name	Court
These cases dealt with varying statutory requirements needed to obtain legal standing.	<u>McIntyre v. McIntyre</u>	Supreme Court of North Carolina
	<u>Sposato v. Sposato</u>	Supreme Court of North Dakota
	<u>In re Gibson</u>	Supreme Court of Ohio
	<u>In the Matter of the</u>	Supreme Court of
	<u>Adoption of G. D. L.</u>	Oklahoma
	<u>State ex rel Costello v.</u>	Supreme Court of
	<u>Honorable F.G. Cottrell</u>	Oregon
	<u>Gushlaw et al. v.</u>	Supreme Court of
	<u>Rohbaugh et al.</u>	Rhode Island
	<u>Puleo v. Forgue et al.</u>	Supreme Court of Rhode Island
	<u>Kasper v. Nordfelt</u>	Court of Appeals of Utah
	<u>Rivers v. Gadwah</u>	Court of Appeals of Vermont

Appendix D - No Legal Standing (Continued)

Legal Issue	Case Name	Court
These cases dealt with varying statutory requirements needed to obtain legal standing.	<u>In re Visitation of Troxel</u>	Court of Appeals of Washington
These cases dealt with some aspect of the best interest of the child standard.	<u>David J. & Rita K. v Theresa K. & Lora Lane. Hockessin</u>	Family Court of Delaware
	<u>In the Matter of the Application of Christopher Steven Herbst</u>	Supreme Court of Oklahoma
Intruded upon parental rights	<u>Murray v. Marks</u>	Family Court of Delaware
	<u>Brooks et al. v. Parkerson</u>	Supreme Court of Georgia
	<u>McMain v. Iowa District Court for Polk County</u>	Supreme Court of Ohio
	<u>In re Schmidt</u>	Supreme Court of Ohio

Appendix E

Denied Grandparent Visitation Rights

Appendix E - Denied Grandparent Visitation Rights

Legal Issue	Case Name	Court
These cases dealt with varying statutory requirements used to deny grandparents visitation rights.	<u>Turner v. Turner</u>	Court of Civil Appeals of Alabama
	<u>Clark v. Leslie</u>	Court of Civil Appeals of Alabama
	<u>Reed v. Glover</u>	Supreme Court of Arkansas
	<u>In the Interest of N. S.</u>	Court of Appeals of Colorado
	<u>In the Interest of A. M.</u>	Court of Appeals of
	<u>B. & T. B.</u>	Colorado
	<u>Bush et al. v. Squellati</u> <u>et al.</u>	Supreme Court of Illinois
	<u>In the Interest of A. C.</u> <u>and L. C.</u>	Supreme Court of Iowa
	<u>In re Lola Francis</u>	Court of Appeals
	<u>McCarty</u>	Louisiana

Appendix E - Denied Grandparent Visitation Rights – (Continued)

Legal Issue	Case Name	Court
These cases dealt with varying statutory requirements used to deny grandparents visitation rights.	<u>Maner et ux. v.</u>	Court of Appeals of
	<u>Stephenson</u>	Maryland
	<u>In re the Marriage of</u>	Supreme Court of
	<u>Daniel G. Bradshaw</u>	Montana
	<u>Bopp v. Lino</u>	Supreme Court of
		Nebraska
	<u>Thompson v. Vanaman</u>	Superior Court of New
		Jersey
	<u>M. J. Alvarez, f/k/a</u>	Supreme Court of North
	<u>Carlson, f/k/a Pecka v.</u>	Dakota
	<u>S. R. Carlson</u>	
	<u>In re Adoption of</u>	Supreme Court of Ohio
	<u>Rideanour et al.</u>	
	<u>In re Martin</u>	Supreme Court of Ohio
	<u>Brown v. Brown</u>	Supreme Court of South
		Carolina

Appendix E - Denied Grandparent Visitation Rights – (Continued)

Legal Issue	Case Name	Court
These cases dealt with varying statutory requirements used to deny grandparents visitation rights.	<u>Bond v. Yount</u>	Court of Appeals of Washington
	<u>In the Custody of B. S.</u>	Court of Appeals of
	<u>Z. – S.</u>	Washington
	<u>Jimmy S. and Wilma</u>	Supreme Court of
	<u>Jean S. v. Kenneth B</u>	Appeals of West
	<u>and Phyliss B.</u>	Virginia
	<u>In re the Marriage of</u>	Supreme Court of
	<u>Dawn M. Soergel v.</u>	Wisconsin
These cases referred to issues related to intrusions upon parental rights.	<u>Soergel</u>	
	<u>In the Matter of the</u>	Supreme Court of
	<u>Adoption of RDS</u>	Wyoming
	<u>Ward v. Ward</u>	Family Court of Delaware
	<u>Simmons v. Simmons</u>	Supreme Court of Tennessee

Appendix E - Denied Grandparent Visitation Rights – (Continued)

Legal Issue	Case Name	Court
<p>These cases referred to issues related to intrusions upon parental rights.</p> <p>These cases dealt with some aspect of the best interest of the child standard.</p>	<u>Hawk v. Hawk</u>	Supreme Court of Tennessee
	<u>Ellis v. Ellis</u>	Family Court of Delaware
	<u>In re the Visitation of Herschel Walker</u>	Supreme Court of Indiana
	<u>In re the Visitation of Neola B. Kanvick</u>	Supreme Court of Montana
	<u>Morris v. Corzatt</u>	Supreme Court of Nebraska
	<u>Eberspacher v. Hulme et al.</u>	Supreme Court of Nebraska
	<u>Steward v. Steward</u>	Supreme Court of Nevada
	<u>Strouse v. Olson</u>	Supreme Court of South Dakota

Appendix E - Denied Grandparent Visitation Rights – (Continued)

Legal Issue	Case Name	Court
These cases dealt with some aspect of the best interest of the child standard.	<u>Tope v. Kaminski</u>	Court of Appeals of
		Texas
These cases dealt with some aspect of the best interest of the child standard.	<u>In the Interest of R. N.</u>	Court of Appeals of
	<u>C.</u>	Texas
	<u>Hawkins v. Haley</u>	Court of Appeals of
		Texas
	<u>Williams III et al. v.</u>	Supreme Court of
	<u>Williams IV</u>	Virginia

Appendix F
Granted Grandparent Visitation Rights

Appendix F – Granted Grandparent Visitation Rights

Legal Issue	Case Name	Court
These cases dealt with grandparent visitation surviving adoption.	<u>Hick v. Enlow</u>	Supreme Court of Kentucky
	<u>Preston v. Merceori</u>	Supreme Court of New Hampshire
	<u>Puleo v. Forgue et al.</u>	Supreme Court of Rhode Island
	<u>Raines v. Sugg</u>	Court of Appeals of Texas
	<u>In the Matter of the Grandparental</u>	Supreme Court of Wisconsin
	<u>Visitation of C. G. F.</u>	
These cases dealt with grandparents being granted visitation based on the best interest of the child standard.	<u>Cynthia M v. Priscilla</u>	Family Court of
	<u>C.. Matthew B.</u>	Delaware
	<u>Norman H.</u>	
	<u>Phillips S. v. Rita A. W.</u>	Family Court of Delaware

Appendix F – Granted Grandparent Visitation Rights (Continued)

Legal Issue	Case Name	Court
These cases dealt with grandparents being granted visitation based on the best interest of the child standard.	<u>Thompson v. Vanaman</u>	Superior Court of New Jersey
	<u>Becker v. Becker</u>	Superior Court of New Jersey
These cases granted grandparents' visitation by upholding the lower court's decisions.	<u>Cockrell v. Sittason</u>	Court of Civil Appeals of Alabama
	<u>Oliver Talley v. Oliver</u>	Court of Civil Appeals of Alabama
	<u>Snipes v. Carr</u>	Court of Civil Appeals of Alabama
	<u>Smith Loftin v. Smith</u>	Court of Civil Appeals of Alabama
	<u>Rudolph et al. v. Floyd</u>	Supreme Court of Arkansas

Appendix F – Granted Grandparent Visitation Rights (Continued)

Legal Issue	Case Name	Court
These cases granted grandparents' visitation by upholding the lower court's decisions.	<u>Brown v. Brown</u>	Supreme Court of Alaska
	<u>In the Marriage of</u>	Court of Appeal of
	<u>Candyce & John D.</u>	California
	<u>Perry</u>	
	<u>Smith et al. v. Smith</u>	Family Court of Delaware
	<u>Camerlingo v.</u>	Intermediate Court of
	<u>Camerlingo</u>	Appeals of Hawaii
	<u>In the Interest of K. R.</u>	Supreme Court of Iowa
	<u>King v. King</u>	Supreme Court of Kentucky
	<u>Beckman et al. v. Boggs</u>	Court of Appeals of
	<u>et ux.</u>	Maryland
	<u>Settle v. Galloway</u>	Supreme Court of Mississippi
	<u>In re the Marriage of</u>	Supreme Court of
	<u>Larry D. Jacobson</u>	Montana

Appendix F – Granted Grandparent Visitation Rights (Continued)

Legal Issue	Case Name	Court
These cases granted grandparents' visitation by upholding the lower court's decisions.	<u>In re the Marriage of</u>	Supreme Court of
	<u>Kathleen A. Kovash</u>	Montana
	<u>Olson v. Olson</u>	Supreme Court of
		Minnesota
	<u>Romo et al. v. Hickok et</u>	Supreme Court of
	<u>al.</u>	Montana
	<u>Rosse v. Rosse</u>	Supreme Court of
		Nebraska
	<u>Sweeney v. Sweeney et</u>	Supreme Court of Ohio
	<u>al.</u>	
	<u>Bishop v. Piller</u>	Supreme Court of
		Pennsylvania
	<u>Stone v. Short</u>	Court of Appeals of
		Texas
	<u>Goff v. Goff</u>	Supreme Court of
		Wyoming

Appendix G

Other Issues

Appendix G – Other Issues

Legal Issue	Case Name	Court
Statute constitutional	<u>Persico et al. v. Russo</u>	Supreme Court of Florida
	<u>Reinhardt et al. v.</u>	Court of Appeals of
	<u>Reindhardt</u>	Louisiana
	<u>R. T. and M. T. v. J. E.</u> <u>and L. E.</u>	Superior Court of New Jersey
Motion of Consolidation	<u>R. K. and L. K. et al. - In</u> <u>the Matter of Adoption</u> <u>of a Child H. B.</u>	Superior Court of New Jersey
Writ of Prohibition	<u>State of West Virginia,</u>	Supreme Court of
	<u>ex. Rel David Allen B.</u>	Appeals of West
	<u>v. The Honorable L.</u>	Virginia
	<u>Sommerille, Jr.</u>	