

Abstract: Margaret Brinig (Plenary on Inequality)

To the extent that family law is governed by statute, all families are treated as though they are the same. This is of course consistent with the equal protection guarantees of the US Constitution as well as those of the states. However, in our pluralistic society, all families are not alike. At birth, some children are born to wealthy, married parents who will always put the children's interests first and will never engage in domestic violence. Many laws benefit these children, while, according to some academics, they either further disadvantage other children or at best ignore their needs.

This presentation empirically explores these questions using a large sample of more than a thousand family dissolution case records (divorces, support and custody actions) from two counties in Arizona and five in Indiana. The cases were randomly selected from those initiated in January, April and September of 2008, and documents were collected for all file entries at least through the next five years and were coded to permit comparisons along more than a hundred variables.

The discussion involves differences—inequalities—based on income, parents' marital status, race and ethnicity, and the presence or absence of domestic violence. It also compares results based upon differences in the two states' parenting and child support laws, showing how presumptions and guidelines chosen to validate public policy can exacerbate inequalities. Time permitting, I will also discuss how the data also reveal differences (no doubt related to wealth) in cases handled by attorneys compared to the pro se.