# NOTES

## THE COLLEGE SUPPORT DOCTRINE: EXPANDED PROTECTION FOR THE OFFSPRING OF BROKEN HOMES

When a divorce is granted, it is common for the trial court to include an award of child support in the decree. The child's educational needs are one of the factors which determine the amount of the award. To decide whether a college education will be considered in determining the extent of the child's educational needs, several recent decisions must be considered. This note will briefly review previously existing college support rules, discuss recent developments in those rules, and suggest possible further improvements.

### I. COLLEGE EXPENSE AS AN ELEMENT OF SUPPORT

Education at some level always has been considered an integral element of the support required of divorced parents (usually the father) for their offspring.[1] Grade school and then high school[2] were both early recognized as legitimate elements of support due to the increasing educational requirements for competitive employment and the frequency of attendance in the average family.[3] Both of these educational levels are now firmly entrenched as regular elements of the support obligation for all divorced or separated fathers. The vast majority of divorce courts presume that support during high school shall be provided in all cases unless the father demonstrates a clear inability to bear the expense.[4]

Since the leading decision of *Esteb v. Esteb* in 1926,[5] it has become

1 *See, e.g.*, Meyer v. Nebraska, 262 U.S. 390 (1923); State v. Bailey, 157 Ind. 324, 61 N.E. 730 (1901), Division of Pub. Assistance v. Mills, 391 S.W.2d 363 (Ky. Ct. App. 1965).

2 *See, e.g.*, Matthews v. Matthews, 245 Ark. 1, 430 S.W.2d 864 (1968); Barry v. Barry, 291 Mich. 666, 289 N.W. 397 (1939); *cf.* Sisson v. Schultz, 251 Mich. 553, 232 N.W. 253 (1930); O'Brien v. Springer, 202 Misc. 210, 107 N.Y.S.2d 631 (Sup. Ct. 1951); Middlebury College v. Chandler, 16 Vt. 683 (1844).

3 *Cf.* Esteb v. Esteb, 138 Wash. 174, 244 P. 264 (1926).

4 *See* Matthews v. Matthews, 245 Ark. 1, 430 S.W.2d 864 (1968); *cf.* Golay v. Golay, 35 Wash. 2d 122, 210 P.2d 1022 (1949).

5 138 Wash. 174, 244 P. 264 (1926); *cf.* Streitwolf v. Streitwolf, 58 N.J. Eq. 570, 43 A. 904 (1899); Middlebury College v. Chandler, 16 Vt. 683 (1844).

increasingly fashionable for appellate courts throughout the United States to order divorced or separated parents, chiefly the father, to finance their offspring's education beyond the completion of high school.[6] Some form of judicial or legislative inclusion of college expenses as an element of the support obligation is now accepted in every jurisdiction which has considered the question.[7]

Although the development of the college support doctrine[8] in the various jurisdictions has been by numerous methods, ranging from inclusion of college in the common law definition of "necessaries"[9] to interpretation of general support statutes,[10] the resulting "rule" in these jurisdictions is fairly uniform.[11] Express requirements, which must be demonstrated to the trial court before an order may enter, include the

6. *See* Annot., 56 A.L.R.2d 1207 (1957); & Annot. 133 A.L.R. 902 (1941), and cases collected therein.

7. *See* Ogle v. Ogle, 275 Ala. 483, 156 So. 2d 345 (1963); Worthington v. Worthington, 207 Ark. 185, 179 S.W.2d 648 (1944); Straub v. Straub, 213 Cal. App. 2d 792, 29 Cal. Rptr. 183 (1963); Hoffman v. Hoffman, 210 A.2d 549 (D.C. App. 1965); Maitzen v. Maitzen, 24 Ill. App. 2d 32, 163 N.E.2d 840 (1960); Dorman v. Dorman, 241 N.E.2d 50 (Ind. 1968); Beasley v. Beasley, 159 N.W.2d 449 (Iowa 1968); Allison v. Allison, 188 Kan. 593, 363 P.2d 795 (1961); Clark v. Graves, 282 S.W.2d 146 (Ky. Ct. App. 1955); Luques v. Luques, 127 Me. 356, 143 A. 263 (1928); Titus v. Titus, 311 Mich. 434, 18 N.W.2d 883 (1945); Pass v. Pass, 238 Miss. 449, 118 So. 2d 769 (1960); Anderson v. Anderson, 437 S.W.2d 704 (Mo. Ct. App. 1969); Refer v. Refer, 102 Mont. 121, 56 P.2d 750 (1936); Lewis v. Lewis, 71 Nev. 301, 289 P.2d 414 (1955); Lund v. Lund, 96 N.H. 283, 74 A.2d 557 (1950); Nebel v. Nebel, 99 N.J. Super. 256, 239 A.2d 266 (Ch. 1968); Winkler v. Winkler, 25 Misc. 2d 938, 207 N.Y.S.2d 940 (Sup. Ct. 1960); Crosby v. Crosby, 272 N.C. 235, 158 S.E.2d 77 (1967); Calogeras v. Calogeras, 82 Ohio L. Abs. 438, 10 Ohio Op. 2d 441, 163 N.E.2d 713 (1959); Jackman v. Short, 165 Ore. 626, 109 P.2d 860 (1941); Commonwealth *ex rel.* Decker v. Decker, 204 Pa. Super. 156, 203 A.2d 343 (1964); Atchley v. Atchley, 29 Tenn. App. 124, 194 S.W.2d 252 (1946); Price v. Price, 197 S.W.2d 200 (Tex. Civ. App. 1946); Barnes v. Craig, 202 Va. 229, 117 S.E.2d 63 (1960); Esteb v. Esteb, 138 Wash. 174, 244 P. 264 (1926); Peck v. Peck, 272 Wis. 466, 76 N.W.2d 316 (1956).

8. The term "college support doctrine" as used herein, refers to the rules which govern that portion of a divorced parent's child support liability which results in some measure from his child's college education expenses. *See generally* Inker & McGrath, *College Education of Minors*, 6 J. FAM. L. 230 (1966).

9. *See, e.g.*, Straub v. Straub, 213 Cal. App. 2d 792, 29 Cal. Rptr. 183 (1963); Calogeras v. Calogeras, 82 Ohio L. Abs. 438, 10 Ohio Op. 2d 441, 163 N.E.2d 713 (Juv. Ct. 1959); Feek v. Feek, 187 Wash. 573, 60 P.2d 686 (1936). *Contra*, Hachat v. Hachat, 117 Ind. App. 294, 71 N.E.2d 927 (1947); Straver v. Straver, 26 N.J. Misc. 218, 59 A.2d 39 (Ch. 1948); Walits v. Richter, 286 App. Div. 1068, 145 N.Y.S.2d 617 (1955).

10. *See, e.g.*, Rawley v. Rawley, 94 Cal. App. 2d 562, 210 P.2d 891 (1949); Maitzen v. Maitzen, 24 Ill. App. 2d 32, 163 N.E.2d 840 (1959); Johnson v. Johnson, 346 Mich. 418, 78 N.W.2d 216 (1956); Herbert v. Herbert, 198 Misc. 515, 98 N.Y.S.2d 846 (Sup. Ct. 1950). These cases interpret respectively: CAL. CIV. CODE ANN. § 139 (Deering 1960) (Repealed by Stats. 1969 ch. 1608, § 3); ILL. REV. STAT. ch. 40, § 19 (Smith-Hurd Supp. 1969); MICH. STAT. ANN. § 25.103 (Supp. 1969); N.Y. DOM. REL. LAW § 240 (McKinney 1964).

11. *See, e.g.*, Dorman v. Dorman, 241 N.E.2d 50 (Ind. 1968).

following: the child must be a minor,[12] unemancipated,[13] in the custody of another,[14] and of sufficient aptitude for college work.[15] Additionally, and most importantly, the father must be financially able to pay.[16] Consideration in the past has rarely been limited to these five factors, since the courts generally provide college support in only the most exceptional cases. In these cases, a vast array of additional favorable circumstances were available to sustain their decision.[17] A sampling of these equitable circumstances[18] includes: the social status of the father;[19]

12 *See, e.g.*, Genda v. Superior Ct., 103 Ariz. 240, 439 P.2d 811 (1968); Rawley v. Rawley, 94 Cal. App 2d 562, 210 P.2d 891 (1949); Dorman v. Dorman, 241 N.E.2d 50 (Ind. 1968); Luques v. Luques, 127 Me. 356, 143 A. 263 (1928); Davis v. Davis, 8 Mich. App. 104, 153 N.W.2d 879 (1967); Pass v. Pass, 238 Miss. 449, 118 So. 2d 769 (1960); Cohen v. Cohen, 6 N.J. Super. 26, 69 A.2d 752 (1949); Robrock v. Robrock, 167 Ohio St. 479, 150 N.E.2d 421 (1958); Price v. Price, 197 S.W.2d 200 (Tex. Civ. App. 1946); Peck v. Peck, 272 Wis. 466, 76 N.W.2d 316 (1956). *Contra*, Maitzen v. Maitzen, 24 Ill. App.2d 32, 163 N.E.2d 840 (1959); Hart v. Hart, 239 Iowa 142, 30 N.W.2d 748 (1948). This requirement is one which should be altered in order to allow greater utility to the college support doctrine. *See* text accompanying notes 44-49, *infra*.

13 *See, e.g.*, Gerk v. Gerk, 259 Iowa 293, 144 N.W.2d 104 (1966); Clark v. Graves, 282 S.W.2d 146 (Ky. Ct. App. 1955); Straver v. Straver, 26 N.J. Misc. 218, 59 A.2d 39 (Ch. 1948); *cf.* Codorniz v. Codorniz, 34 Cal. 2d 811, 215 P.2d 32 (1950); Porter v. Powell, 79 Iowa 151, 44 N.W. 295 (1890).

14 *See, e.g.*, Refer v. Refer, 102 Mont. 121, 56 P.2d 750 (1936); Esteb. v. Esteb. 138 Wash. 174, 244 P. 264 (1926).

15 *See, e.g.*, Ogle. v. Ogle, 275 Ala. 483, 156 So. 2d 345 (1963); Haag v. Haag, 240 Ind. 291, 163 N.E.2d 243 (1959); Gerk v. Gerk 259 Iowa 293, 144 N.W.2d 104 (1966); Anderson v. Anderson, 437 S.W.2d 704 (Mo. Ct. App. 1969).

In the past, the typical student in college support cases has been a straight-A student, armed with a scholarship based on scholastic achievement. Apparently recognizing that trial courts do not make very good admissions officers, several recent decisions have indicated that admission to a college is sufficient proof of ability. *See, e.g.*, Dorman v. Dorman, 241 N.E.2d 50 (Ind. 1968); Anderson v. Anderson, 437 S.W.2d 704 (Mo. Ct. App. 1969); Commonwealth *ex rel.* Decker v. Decker, 204 Pa. Super. 156, 203 A.2d 343 (1964).

16 *See, e.g.*, Nebel v. Nebel, 99 N.J. Super. 256, 239 A.2d 266 (Ch. 1968); Herbert v. Herbert, 198 Misc. 515, 98 N.Y.S.2d 846 (Dom. Rel. Ct. 1950); Golay v. Golay, 35 Wash. 2d 122, 210 P.2d 1022 (1949).

17 It is not uncommon to find early decisions stressing the need for some "exceptional" circumstances:

> Unlike the furnishing of a common school education to an infant, the furnishing of a classical or professional education by a parent to a child is *not* a "necessary,". . . . It may be that *unusual circumstances* might make the furnishing of a professional or classical education . . . enforceable in law against a parent. (emphasis added)

Halsted v. Halsted, 228 App. Div. 298, 299, 239 N.Y.S. 422, 424 (1930).

18. Although no court has expressly disclaimed these equitable circumstances as a requirement, primarily because they are relevant to a trial court's discretion, some recent decisions are noticeably lacking in their mention. *See, e.g.*, Ogle v. Ogle, 275 Ala. 483, 156 So. 2d 345 (1963); Hoffman v. Hoffman, 210 A.2d 549 (D.C. App. 1965); Elble v. Elble, 100 Ill. App. 2d 221, 241 N.E.2d 328 (1968); O'Berry v. O' Berry, 36 Ill. App. 2d 163, 183 N.E.2d 539 (1962); Sandler v. Sandler, 165 N.W.2d 799 (Iowa 1969); Beasley v. Beasley, 159 N.W.2d 449 (Iowa 1968);

the educational background of the parents;[20] the previous educational opportunities afforded the children;[21] the age of the child, with the emphasis on the few years remaining before the child passes beyond the jurisdiction of the court;[22] scholarships and other academic achievements;[23] the number of children in the family;[24] the income of the custodial mother;[25] and the amount of the child's own savings.[26] This note focuses on the requirement that the father must be financially able to pay.

## II. THE EXPANDED COLLEGE SUPPORT DOCTRINE

Today's American society requires expansion of the college support doctrine. Happily, a group of recent decisions indicates that the courts are now convinced that college educations are, for a large segment of the population, a prerequisite to a competitive intellectual and economic position, regardless of their parents' marital status.

### *A. The Need for an Expanded Doctrine*

Although there are no nationwide surveys available, a limited survey made in preparation of this note indicated that less than 10% of the divorce decrees and incorporated separation agreements in Chicago, Illinois, for the early part of 1969, included any provisions designed to secure support for or during attendance in college by children of a

Anderson v. Anderson, 437 S.W.2d 704 (Mo. Ct. App. 1969); Nebel v. Nebel, 99 N.J. Super. 256, 239 A.2d 266 (Ch. 1968); Mitchell v. Mitchell, 170 Ohio St. 507, 166 N.E.2d 396 (1960).

19. *See, e.g.*, Winkler v. Winkler, 25 Misc. 2d 938, 107 N.Y.S.2d 940 (Sup. Ct. 1960); Esteb v. Esteb, 138 Wash. 174, 244 P. 264 (1926).

20. *See, e.g.*, Ogle v. Ogle, 275 Ala. 483, 156 So. 2d 345 (1963); Hart v. Hart, 239 Iowa 142, 30 N.W.2d 748 (1948); Herbert v. Herbert, 198 Misc. 515, 98 N.Y.S.2d 846 (Dom. Rel. Ct. 1950); Commonwealth *ex rel.* Decker v. Decker, 204 Pa. Super. 156, 203 A.2d 343 (1964).

21. *See, e.g.*, Winkler v. Winkler, 25 Misc. 2d 938, 207 N.Y.S.2d 940 (Sup. Ct. 1960).

22. *See* Dorman v. Dorman, 241 N.E.2d 50 (Ind. 1968); Haag v. Haag, 240 Ind. 291, 163 N.E.2d 243 (1959); Clark v. Graves, 282 S.W.2d 146 (Ky. Ct. App. 1955); *cf.* Sportsman v. Sportsman, 409 S.W.2d 787 (Mo. Ct. App. 1966).

23. *See, e.g.*, Straub v. Straub, 213 Cal. App. 2d 792, 29 Cal. Rptr. 183 (1963) (full tuition to Stanford Univ.); Clark v. Graves, 282 S.W.2d 146 (Ky. Ct. App. 1955) (half-expenses to Notre Dame); Commonwealth *ex rel.* Decker v. Decker, 204 Pa. Super. 156, 203 A.2d 343 (1964) (half tuition).

24. *See* Ogle v. Ogle, 275 Ala. 483, 156 So. 2d 345 (1963); Beasley v. Beasley, 159 N.W.2d 449 (Iowa 1968).

25. *See, e.g.*, Gerk v. Gerk, 259 Iowa 293, 144 N.W.2d 104 (1966). *But cf.* Maitzen v. Maitzen, 24 Ill. App. 2d 32, 163 N.E.2d 840 (1959) (an only child, but father remarried with two children).

26. *Cf.* Gerk v. Gerk, 259 Iowa 293, 144 N.W.2d 104 (1966). This is especially true if the child is contributing summer earnings. *See* Dorman v. Dorman, 241 N.E.2d 50 (Ind. 1968).

dissolved marriage.[27] The apparent explanation of low percentage is that until recently, even the states which had adopted a college support doctrine were unwilling to indicate any general approval of college liability for all divorced or separated fathers. Rather, a courtroom guarantee of financial support for advanced education has been restricted to the offspring of broken families which had large incomes or substantial personal assets.[28] This high income standard has been the major impediment to expansion of the college support doctrine.

Statistical evidence illustrates that a college education should be viewed in the same manner as grade school and high school in determining the proper amount of child support.[29] If the children of divorced parents are not assured an equal opportunity for a college education, they will be saddled with an initial disadvantage when competing for more lucrative occupations. This is not to say that they have some sort of *right* to a college education, but merely points out that a college education should not be viewed as an extraordinary advantage available to the rich. Rather, in today's American society, a college education is becoming commonplace and should not be denied to a child solely because his divorced parents are of average income.

The minimum standard of financial ability for a college support

27 Out of 500 divorce files for 1969 in the Circuit Court of Cook County, Illinois, selected at random, 41 included some express provision directed at college expenses. Incorporated separation agreements in divorce decrees with clauses such as "The father agrees to pay for the educational expenses of the children" were not considered. *See* Johnson v. Johnson, 346 Mich. 418, 78 N.W.2d 216 (1956) reversing an order for college support for two children, ages fourteen and eight, on the basis that no evidence was yet available as to their college plans. Adherence to this rationale may account for the low percentage of college support provisions included in original divorce decrees. Of course, this means additional legal expenses and litigation for these children when and if they do wish to attend college. *See also* Primm v. Primm, 46 Cal. 2d 609, 299 P.2d 231 (1956).

28 "A rich man, well able to pay, might well be held for a college education of an extended and expensive sort." Golay v. Golay, 35 Wash. 2d 122, 123, 210 P.2d 1023, 1024 (1949). This restrained attitude represents a holdover from now outdated and rejected decisions which held that the law is unable to place on a divorced parent any greater obligation toward his children than the law has in the absence of divorce. *See* Morris v. Morris, 92 Ind. App. 65, 171 N.E. 386 (1939).

> It is well known that there are worthy parents in all parts of the country, with sufficient means to do, who do not send their children to college. We can not say that each of them has failed in a legal duty to his child and to the state.

*Id* at 69, 171 N.E. at 387; *cf.* Miller v. Miller, 52 Cal. App. 2d 443, 126 P.2d 357 (1942).

29. The percentage enrollment in college increased 90.5% from 1960 to 1968 while high school enrollment for the same period increased 38%. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1969, No. 145, at 103 (90th ed. 1969). In 1967, the total college and professional enrollment was nearly 50% of the total high school enrollment. *Id.*, No. 141, at 101 The college graduate in 1967 could expect to have an annual mean income which was more than $4,000 greater than a high school graduate. *Id.*, No. 155, at 108.

order is not translatable into a dollar amount. The discretion of the trial court is, however, circumscribed by the income levels found appropriate on the appellate levels. Although the amount approved on appeal will vary, depending on whether continued support payments plus college expenses have been requested, or only a continuation of support payments in the same amount as paid during high school,[30] rarely has a father with less than an exceptionally large income or substantial personal assets been subjected to a court-ordered college liability.[31]

Unless college support is more regularly provided by trial courts at the time of the divorce and affirmed by appellate courts, the result for even those children who readily qualify for such support may well be additional litigation, expense and delay.[32] The psychological and emotional strain of again dragging the family skeleton before the public eye, linked with expensive legal services, may prove for many to be an insurmountable obstacle.

### *B. Recent Developments*

Some recent decisions indicate that exceptionally high incomes or assets are not absolute prerequisites to a college support order. Recognizing the increased college enrollment and widening gap of income potentials between high school and college graduates, the courts are apparently advancing to a position which will place advanced educational training on the same level as high school.

The Indiana Supreme Court, bolstered by the passage of an

30. *Compare* Winkler v. Winkler, 25 Misc. 2d 938, 207 N.Y.S.2d 940 (Sup. Ct. 1960), *with* Maitzen v. Maitzen, 24 Ill. App. 2d 32, 163 N.E.2d 840 (1959).

31. *See, e.g.*, Olge v. Olge, 275 Ala. 483, 156 So. 2d 345 (1963) ($12,000 minimum income per year); Straub v. Straub, 213 Cal. App. 2d 792, 29 Cal. Rptr. 183 (1963) ($173,200 inheritance); Maitzen v. Maitzen, 24 Ill. App. 2d 32, 163 N.E.2d 840 (1959) (father earned between $36,000 and $39,000 annually); Gerk v. Gerk, 259 Iowa 293, 144 N.W.2d 104 (1966) ($8,000 to $10,000 annual income; $170,000 in assets); Davis v. Davis, 153 N.W.2d 879 (Mich. Ct. App. 1967) ($12,000 gross annual income); Titus v. Titus, 311 Mich. 434, 18 N.W. 2d 883 (1945) ($10,000 plus in annual income); Anderson v. Anderson, 437 S.W.2d 704, (Mo. Ct. App. 1969) (had recently inherited land valued at $210,000); Pass v. Pass, 238 Miss. 449, 118 So. 2d 769 (1960) ($15,000 annual income); Nebel v.Nebel, 99 N.J. Super. 256, 239 A.2d 266 (Ch. 1968) ($11,500 net income annually, $45,000 in property, $12,770 in stock); Herbert v. Herbert, 198 Misc. 515, 98 N.Y.S.2d 846 (Dom. Rel. Ct. 1950) (large income and lived in an expensive environment); Commonwealth *ex rel.* Decker v. Decker, 204 Pa. Super. 156, 203 A.2d 343 (1964) ($30,000 in assets).

32. *See* Dorman v. Dorman, 241 N.E.2d 50 (Ind. 1968) (decision rendered one month *after* fall semester commenced); Sportsman v. Sportsman, 409 S.W.2d 787, 792 (Mo. Ct. App. 1966) ("If he did matriculate he would *normally* be in his sophomore year at the present time").

amendment to that state's general support statute,[33] recently held in *Dorman v. Dorman*[34] that where children under support decrees were accepted to college, even the low-income father must continue the support ordered under the original divorce decree until graduation from college, emancipation or attainment of majority, whichever occurs first. By so holding, the court eliminated the financial ability of the father as a condition *precedent* to support for college expenses. Instead, it imposed a general liability on all fathers who have been paying support unless they demonstrate that changed financial circumstances merit a reduction of the support award.[35] The Indiana court cited the following language from *Peck v. Peck*,[36] a 1965 decision of the Wisconsin Supreme Court:

> [A] court should not relieve the father from *at least* being required to continue paying the monthly support money provided in the divorce judgment for the period prior to the child arriving at the age of 18 years. . . .[37] (emphasis added)

This language clearly placed college and other advanced educational programs undertaken during a child's minority on the same plane with high school and stamped approval of college liability for all fathers under a court-ordered support liability.

The Supreme Court of North Carolina in *Crosby v. Crobsy*[38] similarly decided in 1967 that the duty of a father with a $4,500 annual income to continue support remains the same and should continue until the child's majority, without regard to college attendance. The court's rejection of the technical emancipation argument presented by the

33 IND STAT. ANN. § 3-1219 (1968):

> . . [T]he court may require the father to provide all or some specified part of the cost of education of such child or children beyond the twelfth year of education provided by the public schools, taking into consideration the earnings of the father, the station of life of the parents and child . . . involved, the aptitude of the child . . . as evidenced by school records, the separate property of the child . . . and all other relevant factors. . . .

34. 241 N.E.2d 50 (Ind. 1968). In *Dorman*, a father who earned only $75 a week was required to continue paying his two minor daughters $40 a week for their support and college expenses because the father had not shown that this award had in the past been excessive or that his financial circumstances were changed.

35. Of course, the mother could also petition for an increase in the support allowance. In some jurisdictions, the child may be able to petition for an increase in his support allowance in his own right. *See* Simonds v. Simonds, 154 F.2d 326 (D.C. Cir. 1946).

36. 272 Wisc. 466, 76 N.W. 2d 316 (1956). The *Peck* court did not follow its own rule, however, with a father earning $5,370 a year. The take-home pay of the father in *Dorman* was only $3,900 a year.

37. 241 N.E.2d at 55; 272 Wis. at 467, 76 N.W.2d at 319.

38. 272 N.C. 235, 158 S.E.2d 77 (1967).

father was based on that court's recognition that college now stands equal with high school as an educational necessity.

Likewise, the Iowa Supreme Court in *Beasley v. Beasley*,[39] faced with a schoolteacher earning only $5,859 a year, required her, as mother, to increase her support payments to $60 per month for nine months for her oldest son's college expenses, and to repay $1,640 to the father for voluntary contributions he made while the suit was in progress.

These cases mark a development which will result in more frequent inclusion of support provisions for advanced education in divorce decrees, especially for families of average or below average incomes. It should not be assumed that courts are unaffected in this kind of case by decisions from other jurisdictions. Throughout the development of the college support doctrine—from denial of college expenses as a "necessary," to its inclusion only for the rich—courts in the various states have reinforced each other's views of the changing place of a college education in American society.[40] The *Dorman* case and others like it merely signify that a college education has become a normal and reasonable element of child support even for average and below-average income families.

### *C. Remaining Improvements to the College Support Doctrine*

By considering the father's ability to pay for both high school and college on the same level, the courts are assuring that some support for advanced education will probably be available. It does not, however, guarantee that sufficient funds to adequately meet all college expenses will be available.

The Indiana Supreme Court noted that continuation of the support order in *Dorman* would furnish only approximately half of the anticipated expenses of college education.[41] With the father earning only $45 more a week than awarded for support, an increased support award in that case was clearly untenable. But courts should recognize

39. 159 N.W.2d 449 (Iowa 1968); *accord*, Sandler v. Sandler, 165 N.W.2d 799 (Iowa 1969) ($7,515 annual income). In addition to these cases, *see* Sportsman v. Sportsman, 409 S.W.2d 787 (Mo. Ct. App. 1966) ($7,800 annual income); *cf.* O'Berry v. O'Berry, 36 Ill. App. 2d 163, 183 N.E.2d 539 (1962). *But cf.* Golay v. Golay, 35 Wash. 2d 122, 210 P.2d 1022 (1949) (support denied on $2,420 annual income).

40. *See, e.g.*, Dorman v. Dorman, 241 N.E.2d 50 (Ind. 1968); Pass v. Pass, 238 Miss. 449, 118 So. 2d 769 (1960); Calogeras v. Calogeras, 82 Ohio L. Abs. 438, 10 Ohio Op. 2d 441, 163 N.E.2d 713 (Juv. Ct. Ohio 1959); Jackman v. Short, 165 Ore. 626, 109 P.2d 860 (1941); Esteb v. Esteb, 138 Wash. 174, 244 P. 264 (1926).

41. Dorman v. Dorman, 241 N.E.2d 50, 54 (Ind. 1968).

*at the time of divorce* that the father is obligated to furnish as much as is reasonably possible for the higher education of his children so that trust funds may be more frequently employed for college costs.[42] A trust fund started at the time of a divorce, in anticipation of possible college enrollment, requiring $5 a week (which would have represented only 6.6% of the father's net pay in *Dorman*) would equal $2,400 plus interest over a period of 10 years, an amount greater than total tuition charges for a four-year program of study at many state-supported schools.[43] Such a fund could additionally serve as ancillary protection against unexpected medical expenses or death of the father and could be designed to revert to the father if any of the contingencies did not occur.

Minority age limitations on the jurisdiction of the court,[44] another limitation on the utility of the college support doctrine, have rarely limited support for high school, customarily completed by age 18. The same, however, is not true of college, where graduation frequently does not occur until sometime after the twenty-first birthday.[45] This means that, for the student whose birthday is between June and December and who enters college at 18, the maximum support which can be compelled by the court extends through only three years of study, one short of graduation. If the state's legal majority is 18, no support would be possible.

There are two possible solutions to this problem. The court might simply extend its equitable jurisdiction over the parents and children until graduation.[46] Alternatively, a state could amend its general support statute to continue the court's jurisdiction after the child's majority for purposes of educational support. Illinois courts initially

42 *See, e.g.*, Allison v. Allison, 188 Kan. 539, 363 P.2d 795 (1961); Underwood v. Underwood, 162 Wash. 204, 298 P. 318 (1931).

43 *See, e.g.*, UNIVERSITY OF ALA. BULL. 1969-70, at 39; INDIANA STATE UNIV. UNDERGR. BULL. 1967-69, at 26; UNIVERSITY OF MO —COLUMBIA, GEN. CATALOG 1969-70, at 47-48.

44 With the exception of Illinois, states generally limit their courts' jurisdiction to provide child support to the child's minority unless the child is physically or mentally disabled. *See* H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES § 15.1, at 495 (1968). Generally, the age arbitrarily selected for majority is twenty-one, although some states have selected eighteen.

45 *See* Johnson v. Johnson, 346 Mich. 418, 78 N.W.2d 216 (1956) (the court states that the child's senior year in college will not be supported).

46 *Cf.* Matthews v. Matthews, 245 Ark. 1, 403 S.W.2d 864 (1968) (child reached majority before graduation from high school; equity jurisdiction available for financial support until graduation); Kruvant v. Kruvant, 100 N.J. Super. 107, 241 A.2d 259 (1968).

adopted the first approach[47] but later rejected it.[48] Thereafter, the Illinois legislature acted to amend its general support statute as suggested.[49]

Until such amendments are forthcoming, the solution of this problem for the individual child lies in the separation agreement. Such agreements, universally enforceable,[50] need not be limited to the minority of the children involved. Where such an agreement is possible between the parents, counsel for the custodian or the children should seek to include specific provisions extending college support to graduation, rather than to any particular age or attainment of majority.[51] Such a provision will later prevent the father from withdrawing to the more limited responsibility under the state's statutes.[52]

In any event, the indirect effects of the expanded doctrine to counsel for the custodial parent (or perhaps the children) may be an improved bargaining position in negotiations for favorable separation agreements, more varied financial programs, such as trust funds to guarantee educational funds in the future, and more comprehensive and complete support orders for the children of the dissolved family. For the states, any expansion of parental responsibilities which results in more opportunities for advanced learning without additional state treasury expense stands as a skillful piece of social legislation. For the parent who must pay, these decisions herald the possible development of supplemental legislation which will permit support payments to extend beyond the children's majority until graduation from college.

## CONCLUSION

There are no empirical studies available to indicate what percentage of divorced fathers are ordered to finance their offspring's higher

47. Maitzen v. Maitzen, 24 Ill.2d 32, 163 N.E.2d 840 (1959).

48. *See* Crane v. Crane, 45 Ill. App. 2d 316, 196 N.E.2d 27 (1964).

49. ILL. REV. STAT. ch. 14, § 19 (Smith-Hurd Supp. 1969): "[A]nd the court has jurisdiction after such children have attained majority age to order payments for their support for educational purposes only."

50. *See, e.g.*, Weber v. Weber, 51 Misc. 2d 1042, 274 N.Y.S.2d 791 (Fam. Ct. 1966); Commonwealth v. Grossman, 188 Pa. Super. 236, 146 A.2d 315 (Ch. 1958).

51. "College graduation" should be specified to avoid the pitfalls of a protected illness or required military service, either of which might delay completion of school beyond majority.

52. Not infrequently, litigants in a divorce action, as an inducement to the settlement of marital difficulties, are willing to assume obligations which in the cold economics of a subsequent marriage and second family, become burdensome. Robrock v. Robrock, 167 Ohio St. 479, 150 N.E.2d 421 (1958).

education. Whatever the specific figure might be, it would not be very high. To a great degree, this percentage is low because until recently, the father possessing only average or slightly below average income and assets was almost never ordered to send his children to college. There has been, however, a line of precedents requiring college financing by parents whose earnings and assets were exceptionally high, with the children benefitted in those cases having high intelligence. A further restriction has been a legislative requirement that limited support to the minority of a child, a relic of earlier theories of jurisdiction outdated by the realities of a college education. This conservative history in the appellate courts is primarily responsible for the present unequal treatment of college and high school as elements of a divorced father's support obligation. Recent decisions do represent a departure from the past. These decisions merit consideration by the judges and lawyers who are shaping both divorce decrees and separation agreements. If the demands of our social climate are in any way relevant to the level of education included in the obligation of the average man, this departure surely will continue.